

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

# Report 173

*Consular functions in Macau - China; Montreal Ozone Layer-  
Amendment*

Joint Standing Committee on Treaties

September 2017  
CANBERRA

© Commonwealth of Australia

ISBN 978-1-74366-669-2 (Printed Version)

ISBN 978-1-74366-670-8 (HTML Version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:  
<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

# Executive Summary

This Report contains the Joint Standing Committee on Treaties' review of two treaty actions:

- Exchange of notes amending the *Agreement on Consular Relations between Australia and the People's Republic of China* and *Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China* (Canberra, 9 May 2016); and
- Amendment to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Kigali, 15 October 2016).

The proposed Amendments to the China-Macau agreements relate to the consular relations between the Special Administrative Region (SAR) of Macau in the People's Republic of China, and the Government of Australia.

Australia has a strong commercial presence in Macau, which includes the design, construction and fit out of casinos, as well as other commercial interests in the marinas and entertainment precinct of Macau.

Consular relations between Australia and Macau currently operate under a different agreement than the rest of China, as China had not resumed control of the region when the Australia-China consular relations agreement was signed.

The purpose of the amendments is to bring the SAR under the auspices of the China Agreement, providing better procedural clarity for managing consular cases in Macau.

The Kigali Amendment to the *Montreal Protocol on Substances that Deplete the Ozone Layer* aims to facilitate the global phase down of hydrofluorocarbon (HFC) production and use between 2019 and 2036.

HFCs are high global warming potential substances, commonly used in air conditioning and refrigerants.

The Agreement also provides for developed countries to provide financial and technical support to developing countries to assist them in compliance with the Amendment. These provisions are in line with previous amendments to the Montreal Protocol.

Australia has accepted all six previous amendments to the Protocol and has already implemented domestic legislation to begin a HFC phase down from 2018.

The measure has been supported by industries that use HFCs in production.

The Committee recommends the ratification of both treaty actions.

The report also contains the Committee's review of two minor treaty actions:

- Lodgement of the *Declaration on the Effective Date for Exchange of Information under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information*; and
- Lodgement of the *Declaration on the Effective Date for Exchange of Information under the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports*.

# Contents

Executive Summary.....iii

Abbreviations.....vii

Members.....ix

Terms of Reference .....xiii

List of Recommendations .....xv

## The Report

**1 Introduction.....1**

    Purpose of the report.....1

    Conduct of the Committee’s review .....2

**2 Consular functions in Macau - China .....3**

    Background of the Australia-Macau relationship.....4

    Overview.....4

    Reasons for taking proposed treaty action.....5

    The Agreement.....6

        Proposed changes.....6

        Obligations .....7

    Entry into force.....8

        Implementation .....8

        Costs .....8

    Committee comment .....8

<b>3</b>	<b>Montreal Protocol - Amendment .....</b>	<b>11</b>
	Introduction.....	11
	Background.....	11
	The Montreal Protocol .....	11
	Overview of the Kigali Amendment .....	12
	Reasons to undertake proposed treaty action .....	13
	The Agreement.....	15
	Obligations .....	15
	Entry into force.....	16
	Implementation .....	16
	Costs .....	18
	Committee comment .....	19
<b>4</b>	<b>Minor Treaty Actions .....</b>	<b>21</b>
	Minor treaty actions .....	21
	Lodgement of OECD Declarations for Common Reporting Standards and Country- by-Country Reports .....	21
	Common Reporting Standards.....	21
	Country-by-Country Reporting .....	22
	<b>Appendix A. List of Submissions .....</b>	<b>25</b>
	<b>Appendix B. List of witnesses.....</b>	<b>27</b>

# Abbreviations

ATO	Australian Taxation Office
CbC	Country-by-Country
China Agreement	<i>Agreement on Consular Relations between Australia and the People's Republic of China</i>
CRS	Common Reporting Standard
DFAT	Department of Foreign Affairs and Trade
HCFC	Hydrochlorofluorocarbon
HFC	Hydrofluorocarbons
Kigali Amendment	<i>Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer</i>
Macau Agreement	<i>Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China</i>
Montreal Protocol	<i>Montreal Protocol on Substances that Deplete the Ozone Layer</i>
MtCO <sub>2</sub> e-	Metric tons of carbon dioxide equivalent
NIA	National Interest Analysis
OECD	Organisation for Economic Cooperation and Development

OSGG Program	Ozone Protection and Synthetic Greenhouse Gas Program
RIS	Regulation Impact Statement
SAR	Special Administrative Region
UNFCCC	<i>United Nations Framework Convention on Climate Change</i>
Unilateral Declaration	<i>Declaration on the Effective Date for Exchange of Information under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information</i>
Vienna Convention	<i>Vienna Convention for the Protection of the Ozone Layer</i>



# Members

## *Chair*

Hon Stuart Robert MP

## *Deputy Chair*

Hon Michael Danby MP

## *Members*

Mr John Alexander OAM, MP

Senator Slade Brockman (*from 17.08.17*)

Senator David Bushby (*from 26.06.17 to 17.08.17*)

Mr Chris Crewther MP

Senator Sam Dastyari

Senator David Fawcett

Senator Sarah Hanson-Young (*from 09.08.17*)

Senator Kimberley Kitching

Senator the Hon Ian Macdonald

Mrs Nola Marino MP

Senator Jenny McAllister

Ms Susan Templeman MP

Mr Ross Vasta MP

Mr Andrew Wallace MP

Mr Josh Wilson MP

## **Committee Secretariat**

Ms Lynley Ducker, Committee Secretary

Dr Narelle McGlusky, Inquiry Secretary

Mr Kevin Bodel, Senior Research Officer

Ms Stephanie Limm, Researcher

Ms Cathy Rouland, Office Manager



# Terms of Reference

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - either House of the Parliament, or
  - a Minister; and
  - such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



# List of Recommendations

## Recommendation 1

---

- 2.26 The Committee supports the amendments to the *Agreement on Consular Relations between Australia and the People's Republic of China* and the *Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China* and recommends that binding treaty action be taken.

## Recommendation 2

---

- 3.39 The Committee supports the amendments to the *Montreal Protocol on Substances that Deplete the Ozone Layer* and recommends that binding treaty action be taken.





# 1. Introduction

## Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the proposed amendments to the following treaty actions:
  - Exchange of notes amending the *Agreement on Consular Relations between Australia and the People's Republic of China* and *Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China* (Canberra, 8 September 1999).
  - Amendment to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Kigali, 15 October 2016).
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty action to which Australia has become a signatory, on the treaty being tabled in Parliament.
- 1.3 Treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australia will not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by the Government. This document considers arguments for and against the treaty and outlines the treaty obligations and any regulatory or financial implications. The NIA reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry and non-government organisations.

- 1.5 A *Regulation Impact Statement* (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties examined in this report did not require a RIS.
- 1.6 Copies of the treaty actions considered in this report and their associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/ConsularMacau-China](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/ConsularMacau-China); and
  - [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/MontrealOzoneLayer](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/MontrealOzoneLayer).
- 1.7 This Report also contains the Committee's views on two minor treaty actions:
- Lodgement of the *Declaration on the Effective Date for Exchange of Information under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information*; and
  - Lodgement of the *Declaration on the Effective Date for Exchange of Information under the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports*.

## Conduct of the Committee's review

- 1.8 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. The Committee received two submissions, one for each treaty action.
- 1.9 The Committee held a public hearing into both treaty actions in Canberra on 14 August 2017. The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website. A list of submissions received is at Appendix A. A list of witnesses who appeared at the public hearing is at Appendix B.

## 2. Consular functions in Macau - China

*Exchange of notes amending the Agreement on Consular Relations between Australia and the People's Republic of China and Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China*

- 2.1 This chapter examines the proposed amendments to the *Agreement on Consular Relations between Australia and the People's Republic of China* (the China Agreement) and the *Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China* (the Macau Agreement). The amendments were agreed to by an exchange of diplomatic notes dated 12 November 2015 and 9 May 2016, and tabled in the Parliament on 9 May 2017.
- 2.2 The purpose of the amendments is to bring the Macau Special Administrative Region (SAR) under the auspices of the China Agreement.

## Background of the Australia-Macau relationship

- 2.3 According to the National Interest Analysis (NIA), Australia has a strong commercial presence in Macau, which includes the design, construction and fit out of casinos, as well as other commercial interests in the marinas and entertainment precinct of Macau.<sup>1</sup>
- 2.4 Bilateral trade between Australia and the Macau SAR reached \$88.2 million over the 2015-2016 financial year. Australian exports account for 82 per cent of two way merchandise trade.<sup>2</sup>
- 2.5 Over 2 600 people of Macanese descent live in Australia, and approximately 1 000 Australians live in the Macau SAR.<sup>3</sup>
- 2.6 Australia and Macau SAR have a number of bilateral agreements, including a Tax Information Exchange Agreement signed on 12 July 2011, and a Memorandum of Understanding on immigration cooperation signed on 19 November 2013.<sup>4</sup>

## Overview

- 2.7 The China Agreement was signed in September 1999, prior to the sovereignty of Macau being handed to the government of the People's Republic of China.<sup>5</sup> A shorter treaty was signed between the two parties to provide for Australia's consulate functions in Macau in preparation for the resumption of Chinese governance in December 1999.<sup>6</sup> The proposed treaty

---

<sup>1</sup> National Interest Analysis [2017] ATNIA 11 with attachment on consultation, Exchange of notes amendment the *Agreement on Consular Relations between Australia and the People's Republic of China* [2000] ATS 26 and *Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China* [1999] ATS 33, (Canberra, 9 May 2016) hereafter referred to as the NIA, para 7.

<sup>2</sup> NIA, para 8.

<sup>3</sup> Ms Nicola Gordon-Smith, Assistant Secretary, Consular Policy Branch, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 14 August 2017, p. 2.

<sup>4</sup> NIA, para 8.

<sup>5</sup> NIA, para 5.

<sup>6</sup> NIA, para 6.

action is to bring the Macau SAR within the geographic scope of the China Agreement application.<sup>7</sup>

- 2.8 According to the Department of Foreign Affairs and Trade (DFAT), the request to include the Macau SAR in the China Agreement came after procedural issues in relation to a number of arrest notifications in 2013 and 2014:

Our consulate general in Hong Kong at that time approached the relevant authorities in Macau to discuss how to improve that notification process. During those discussions, it was agreed that it would be desirable to amend the China agreement to include the Macau Special Administrative Region.<sup>8</sup>

- 2.9 Consulate functions for the Macau SAR are managed through the Australian Consulate-General in Hong Kong.<sup>9</sup>

## Reasons for taking proposed treaty action

- 2.10 According to the NIA, the proposed treaty action will enable improved consular access to Australians in the Macau SAR. The amendment would provide better procedural clarity for managing consular cases in Macau.<sup>10</sup> DFAT highlighted specific procedural changes resulting from the amendments:

For example, by aligning the two treaties, consular officials will be informed within three days if a national is arrested or committed to prison or custody pending trial in the Macau Special Administrative Region ... a consular visit to that detainee must be permitted within two days. Those time lines are not currently mandated in the Macau agreement.<sup>11</sup>

- 2.11 According to DFAT, the amendments are also consistent with the Department's new Consular Strategy, announced by the Foreign Minister, the Hon Julie Bishop MP, on 25 July 2017:

That strategy is about making sure that we can provide the best services that we can ... The strategy focuses principally on ensuring that the consular service adapts to changing travel trends, that we provide support from

---

<sup>7</sup> NIA, para 4.

<sup>8</sup> Ms Gordon-Smith, DFAT, *Committee Hansard*, Canberra, 14 August 2017, p. 2.

<sup>9</sup> NIA, para 13.

<sup>10</sup> NIA, para 9.

<sup>11</sup> Ms Gordon-Smith, DFAT, *Committee Hansard*, Canberra, 14 August 2017, p. 2.

Australia for victims of serious crime committed overseas and also for managing the increasingly complex and numerous cases that have a mental health component.<sup>12</sup>

## The Agreement

### Proposed changes

- 2.12 The NIA lists three proposed amendments to the two existing agreements. The first proposed amendment is to **Article 18** of the China Agreement and relates to vessels of the sending state. The amendment provides that the application of this article extends only so far as it does not contravene air services agreements signed between Australia and the Macau SAR.<sup>13</sup>
- 2.13 The second proposed amendment is to **Article 21** of the China Agreement and brings the Macau SAR under the scope of the Agreement's geographic application.
- 2.14 The third proposed amendment is to **Article 2** of the Macau Agreement. The amendment provides that the Macau Agreement will remain in force, and obliges the government of the People's Republic of China to accord necessary assistance and facilities to the Consulate General of Australia in Hong Kong in the exercise of its consular functions in the Macau SAR.<sup>14</sup>
- 2.15 The Committee noted that the Macau-Australia agreement would remain in place despite the inclusion of Macau within the scope of the China agreement. DFAT highlighted that this was a request from the Chinese Administration:
- The Chinese have asked us that the Macau agreement remain in place. We have no objection to that.<sup>15</sup>
- 2.16 DFAT admitted that they were unaware of the reasons behind this request.<sup>16</sup>
- 2.17 In response to the Committee's query relating to the implications of having two overlapping agreements, DFAT responded:

---

<sup>12</sup> Ms Gordon-Smith, DFAT, *Committee Hansard*, Canberra, 14 August 2017, p. 2.

<sup>13</sup> NIA, para 11.

<sup>14</sup> NIA, para 13.

<sup>15</sup> Ms Gordon-Smith, DFAT, *Committee Hansard*, Canberra, 14 August 2017, p. 2.

<sup>16</sup> Ms Gordon-Smith, DFAT, *Committee Hansard*, Canberra, 14 August 2017, p. 2.

There isn't any particular benefit, but I'm not aware that there is a particular detriment either.<sup>17</sup>

2.18 DFAT clarified that there will not be any difference in the way an Australian national is treated under either agreement:

Technically speaking, there is no difference in the standard of treatment expected to be provided to an Australian national detained in China or Macau under either agreement. The treatment provided to Australian nationals in China or Macau is primarily defined by the *Vienna Convention on Consular Relations*-(VCCR), which is given effect by the two agreements.<sup>18</sup>

## Obligations

2.19 Under the amendments to **Article 21** of the China Agreement, the following commitments under the China Agreement will apply to Macau SAR:

- **Article 2** requires the notification of appointments, arrivals and departures of consulate staff.<sup>19</sup>
- **Article 3** obliges the parties to take appropriate measures to ensure the smooth performance of a consular post's functions.<sup>20</sup>
- **Article 4** facilitates the purchase or lease of a building or land as consular premises and the residence of consular staff.<sup>21</sup>
- **Articles 5 to 9** provide the functions that can be undertaken by consular staff.<sup>22</sup>
- **Article 10** requires parties to facilitate travel between the two states for people who may have claims to the nationality of both countries.<sup>23</sup> However, **Article 10(1)** states that the article does not imply that the People's Republic of China recognises dual nationality.<sup>24</sup>

---

<sup>17</sup> Ms Gordon-Smith, DFAT, *Committee Hansard*, Canberra, 14 August 2017, p. 2.

<sup>18</sup> Department of Foreign Affairs and Trade, *Submission 1*, p. [1].

<sup>19</sup> NIA, para 12.

<sup>20</sup> NIA, para 12.

<sup>21</sup> NIA, para 12.

<sup>22</sup> NIA, para 12.

<sup>23</sup> NIA, para 12.

<sup>24</sup> *Agreement on Consular Relations between Australia and the Peoples Republic of China* (the China Agreement), done at Canberra 8 September 1999, Article 10(1).

- **Article 11** obliges the parties to ensure the consular officers can communicate with their nationals.<sup>25</sup>
- **Articles 12 and 13** provide the process of informing the other party of a death of a national and the process for handling their estate.<sup>26</sup>
- **Article 14** entitles the parties to protect nationals who are minors and other vulnerable persons.<sup>27</sup>
- **Articles 15 to 18** entitle consular officers to provide assistance to vessels and aircrafts of the sending state, and which are in the territorial waters or airspace of the receiving state, and oblige the receiving state to notify the consular post when they intend to take compulsory action or begin an investigation against a vessel or aircraft.<sup>28</sup>
- **Article 19** allows consular posts to level fees and charges.<sup>29</sup>

## Entry into force

2.20 The amendments will come into force on the thirty-first day after both countries have informed the other that domestic processes have been completed.<sup>30</sup> China informed Australia of the completion of its domestic processes on 16 June 2016.<sup>31</sup>

## Implementation

2.21 No changes to Australian legislation are required for the implementation of the treaty action.<sup>32</sup>

## Costs

2.22 No costs are anticipated for Australia.<sup>33</sup>

## Committee comment

---

<sup>25</sup> NIA, para 12.

<sup>26</sup> NIA, para 12.

<sup>27</sup> NIA, para 12.

<sup>28</sup> NIA, para 12.

<sup>29</sup> NIA, para 12.

<sup>30</sup> NIA, para 2.

<sup>31</sup> NIA, para 3.

<sup>32</sup> NIA, para 14.

<sup>33</sup> NIA, para 15.



- 2.23 The Committee commends DFAT in its efforts to improve Australia's global consular services.
- 2.24 The Committee further notes the economic ties and people-to-people links between Australia and the Macau SAR.
- 2.25 The Committee supports the amendments to the China agreement and the Macau agreement and recommends that binding treaty action be taken.

---

**Recommendation 1**

---

- 2.26 **The Committee supports the amendments to the *Agreement on Consular Relations between Australia and the People's Republic of China* and the *Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of the Consular Functions by Australia in the Macau Special Administrative Region of the People's Republic of China* and recommends that binding treaty action be taken.**



# 3. Montreal Protocol - Amendment

## *Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer*

### Introduction

- 3.1 This chapter reviews the Amendment to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Montreal Protocol) signed on 15 October 2016 in Kigali and tabled in the Parliament on 22 June 2017 (the Kigali Amendment). The Montreal Protocol was initially signed in September 1987, and entered into force for Australia on 17 August 1989.
- 3.2 The Kigali Amendment will enter into force on 1 January 2019 if at least twenty countries have deposited their instruments of ratification, acceptance or approval. If this condition has not been met by 1 January 2019, the amendment will enter into force on the ninetieth day following the date from fulfilment.<sup>1</sup>

### Background

#### The Montreal Protocol

---

<sup>1</sup> National Interest Analysis [2017] ATNIA 14 with attachment on consultation, *Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer*, [2017] ATNIF 15, (Kigali, 15 October 2016) hereafter referred to as the NIA, para 3.

- 3.3 The Montreal Protocol resulted from the *Vienna Convention for the Protection of the Ozone Layer* (the Vienna Convention), which was adopted in 1985 and subsequently received universal ratification. The convention's objectives were to promote cooperation by means of systematic observations, research and information exchange on the effects of human activities on the ozone layer.<sup>2</sup>
- 3.4 The Montreal Protocol mandates the phase-out of scheduled ozone depleting substances on a differentiated basis for developed and developing countries. The last major class of ozone depleting substances (*hydrochlorofluorocarbons* or HCFCs) is currently being phased out.<sup>3</sup>
- 3.5 Australia has accepted all six previous amendments to the Montreal Protocol.<sup>4</sup> The Department of the Environment and Energy noted the success of the Montreal Protocol in achieving its aims:

The Montreal Protocol community is very proud not only of its ozone-related accomplishments but also of its climate accomplishments. It has achieved more greenhouse reductions through its phase out of ozone-depleting substances than the whole first phase of the Kyoto protocol.<sup>5</sup>

## Overview of the Kigali Amendment

- 3.6 The Kigali Amendment will mandate the global phase-down of *hydrofluorocarbons* (HFCs). According to the NIA, although HFCs are not ozone depleting, they are considered to be of high global warming potential.<sup>6</sup> For example, the release of 1 megatonne of HFC 23 is equivalent to releasing 14 800 megatonnes of carbon dioxide into the atmosphere.<sup>7</sup>

---

<sup>2</sup> UNEP Ozone Secretariat, 'The Vienna Convention for the Protection of the Ozone Layer', <<http://ozone.unep.org/en/treaties-and-decisions/vienna-convention-protection-ozone-layer>>, viewed 17 July 2017.

<sup>3</sup> NIA, para 8.

<sup>4</sup> NIA, para 7.

<sup>5</sup> Mr Greg Manning, Assistant Secretary, Assessments and Air Branch, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 5.

<sup>6</sup> NIA, para 9.

<sup>7</sup> Explanatory Memorandum to the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Bill 2017*  
<[http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5849\\_ems\\_0f1a8c1e-7146-494b-9529-2df892f85ff1/upload\\_pdf/626506.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5849_ems_0f1a8c1e-7146-494b-9529-2df892f85ff1/upload_pdf/626506.pdf;fileType=application%2Fpdf)>, viewed 17 July 2017.

- 3.7 The NIA states that HFCs are used in the same sectors and industries as many of the ozone depleting substances. The NIA suggests therefore that the existing Montreal Protocol infrastructure is deemed to be suitable for management of the phase-down of HFCs.<sup>8</sup>
- 3.8 The NIA points out obligations under the Amendment are different for developed and developing countries. For developed countries (including Australia), the baseline is established from 2011–2013 HFC consumption (imports plus production). The phase down will occur between 2019 and 2036, with 15 per cent of the baseline still available from 2036 onwards for hard to transition uses.<sup>9</sup>
- 3.9 The NIA explains that, for most developing countries, the baseline is established from 2020–2022 HFC consumption. The phase-down will occur between 2024 and 2045, with 20 per cent of the baseline remaining available for hard to transition uses from 2045 onwards.<sup>10</sup>

## Reasons to undertake proposed treaty action

- 3.10 According to the NIA, ratification of the proposed treaty action stands to benefit Australia in a number of ways. Acceptance of the Kigali Amendment highlights Australia's commitment to international action on climate change and could allow Australia to maintain its leadership role in relation to the Montreal Protocol.<sup>11</sup>
- 3.11 The NIA states that acceptance of the Amendment is in line with the Australian Government's commitment to phase down the import of HFCs from January 2018 to reach 85 per cent by 2036. Legislative instruments have been introduced to Parliament to facilitate this, and would also act to implement Australia's obligations under the Kigali Amendment.<sup>12</sup>
- 3.12 The NIA suggests that acceptance of the Amendment may also assist Australia in reaching its commitment to achieve the 2030 emissions

---

<sup>8</sup> NIA, para 9.

<sup>9</sup> NIA, para 9 a.

<sup>10</sup> NIA, para 9 b.

<sup>11</sup> NIA, para 13 b and c.

<sup>12</sup> NIA, para 13 a.

reduction target under the United Nations Framework Convention on Climate Change (UNFCCC) by reducing HFC use.<sup>13</sup>

- 3.13 The Committee asked what percentage of Australia's climate change emissions reduction commitment will be covered by the changes that come into effect under the Kigali Amendment. The Department could not provide an exact answer at this stage but explained that the current estimate of cumulative reductions required to meet Australia's 2030 target is 990Mt-1055MtCO<sub>2</sub>e- and the HFC phase down is estimated to result in 23MtCO<sub>2</sub>e- of emissions reductions for the period 2021–2030.<sup>14</sup> The Department expects to be able to provide a more accurate estimate in the future:

The projections will be updated in 2017 to include new policies, including the phase down of HFCs, as well as updated industry forecasts. The Department will then be in a better position to indicate what the HFC phase down will contribute to the 2030 target.<sup>15</sup>

- 3.14 The NIA states that the gradual phase down of HFCs is largely supported by Australian importers and users of refrigeration and air conditioning technologies and suggests that the approach provides long term certainty on the availability of HFCs, creating an environment conducive to the innovation and introduction of new technologies.<sup>16</sup>
- 3.15 The Committee asked which Australian industries would be impacted by the phase-down of HFCs. The Department explained that, other than refrigeration and air conditioning, there were a small number of industries that would be affected:

... there are smaller uses in fire protection in some very specialised circumstances; phone production, where it's needed for thermal insulation; and some medical metered dose inhalers such as asthma inhalers. They're probably the key ones. ... it's an industrial chemical that has a wide variety of uses, but refrigeration and air conditioning, as a refrigerant in equipment, is the main use.<sup>17</sup>

---

<sup>13</sup> NIA, para 13 d.

<sup>14</sup> Department of Environment and Energy, *Submission 1*. (MtCO<sub>2</sub>e- equals metric tons of carbon dioxide equivalent.)

<sup>15</sup> Department of Environment and Energy, *Submission 1*.

<sup>16</sup> NIA, para 13 e.

<sup>17</sup> Mr Patrick McInerney, Director, International Ozone and Synthetic Greenhouse Gas Section, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 6.

3.16 The Committee queried what effective alternatives were available for industries affected. The Department admitted that there were some areas where alternatives were not successful, particularly refrigeration equipment in high-ambient-temperature situations. However, for uses such as metered-dose asthma inhalers there are alternatives available.<sup>18</sup>

3.17 The Department advised that the Protocol now provides for a 15 per cent residual to accommodate instances where an alternative is not available:

It's the first time a residual has been permitted under the Montreal Protocol. Previously it's been a 100 per cent phase-out, which has caused some difficulties as you get towards the end, because you have very small uses where it is actually difficult to find replacements and it can be an economic challenge to put that investment in. Under the HFC phase-down, there's the 15 per cent residual available, which is to cover off a number of things, including uses where alternatives aren't available or it's not viable to actually move to the alternatives.<sup>19</sup>

3.18 The Department explained that there is provision for an exemption for countries that experience high-ambient-temperatures, in order to allow them time for technological solutions to be put in place:

While they're availing themselves of the exemption ... they're not allowed to receive funding from the multilateral fund for that period. Those countries also have a slightly delayed start-up schedule, so their schedule is pushed back a little bit to also permit the technologies that they need to come onto the market in time for them to start their phase-down activities.<sup>20</sup>

## The Agreement

### Obligations

3.19 **Annex F** of the Kigali Amendment lists the 18 HFCs for which parties are required to reduce consumption.<sup>21</sup>

---

<sup>18</sup> Mr McInerney, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 6.

<sup>19</sup> Mr McInerney, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, pp. 6–7.

<sup>20</sup> Ms Annie, Gabriel, Assistant Director, International Ozone and Synthetic Greenhouse Gas Section, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 7.

<sup>21</sup> NIA, para 20.

- 3.20 **Article 2J(1)** provides the target rates of reduction in consumption of HFCs for most developed countries including Australia:
- 2019 – reduction of 10 per cent from baseline;
  - 2024 – reduction of 40 per cent from baseline;
  - 2029 – reduction of 70 per cent from baseline;
  - 2034 – reduction of 80 per cent from baseline; and
  - 2036 onwards – reduction of 85 per cent from baseline.<sup>22</sup>
- 3.21 The HFC baseline for developed countries is calculated using the average consumption of HFCs in the years 2011, 2012 and 2013 plus 15 per cent of the HCFC baseline to account for transition to HFCs from HCFCs.<sup>23</sup>
- 3.22 A number of Articles under the Montreal Protocol have been extended to include reference to the HFC phase-down. These include:
- **Article 3** which creates obligations relating to the calculation of control levels of listed HFCs;
  - **Article 4** which requires Parties to ban the import and export of HFCs from parties not subject to the protocol, once the provisions enter into force;
  - **Article 7** which requires Parties to report the production, import and export of HFCs between 2011 and 2013; and
  - **Article 10** which obliges parties to provide financial and technical cooperation to developing countries, enabling them to comply with measures relating to HFCs.<sup>24</sup>
- 3.23 Other obligations relate to the production of HFCs and HCFC-22. The NIA states that, as Australia does not produce HFCs or HCFC-22, these obligations are not applicable to Australia.<sup>25</sup>

## Entry into force

### Implementation

---

<sup>22</sup> NIA, para 14 a.

<sup>23</sup> NIA, para 14 b.

<sup>24</sup> NIA, para 14 e.

<sup>25</sup> NIA, para 14 c.



- 3.24 Provisions are already in place under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* to facilitate the implementation of the Kigali Amendment.<sup>26</sup>
- 3.25 The NIA states that the Australian government previously committed to an 85 per cent phase down of HFC imports by 2036. This measure was a recommendation of a two year review by the Department of the Environment and Energy on the Ozone Protection and Synthetic Greenhouse Gas Program (OSGG Program).<sup>27</sup>
- 3.26 The phase-down is due to begin in Australia from 2018, a year earlier than required by the Kigali Amendment. Enabling legislation was passed by the parliament through the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Act 2017* which received royal assent on 23 June 2017.
- 3.27 The Department of Environment and Energy stressed that Australia has gone further than required with the implementation program:

Domestically, the Australian government has agreed that Australia's phase-down of hydrofluorocarbons can be more ambitious than that agreed under the Kigali amendment. The Australian phase-down starts 12 months earlier, from 1 January 2018 instead of 1 January 2019; it uses a lower starting point of eight megatonnes of carbon dioxide equivalent instead of the 10.7 megatonnes of carbon dioxide equivalent which was the starting point set by the Kigali amendment; and it will use two-yearly phase-down steps rather than the larger steps agreed to internationally. Taken together, these changes mean that Australia will use 25 per cent less hydrofluorocarbons than permitted internationally under the Kigali amendment.<sup>28</sup>

- 3.28 The Committee asked what steps have been taken to decommission automobiles and buildings that have HFCs present in air conditioning or cooling systems. The Department advised that the *Ozone Protection and Synthetic Greenhouse Gas Management Act* and regulations have provisions to address the issue. In addition, industry has established a reclamation program:

There's also an industry operated and funded program, Refrigerant Reclaim Australia, which provides incentives to refrigeration and air-conditioning

---

<sup>26</sup> NIA, para 17.

<sup>27</sup> NIA, para 16.

<sup>28</sup> Mr Manning, Department of Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, pp. 5–6.

technicians to recover and dispose of gas. To dispose of is to generally destroy the gas.<sup>29</sup>

## Costs

- 3.29 As a developed country, Australia has financial obligations to the Montreal Protocol, through its Multilateral Fund. Australia's contributions are sourced from the Department of Foreign Affairs and Trade's (DFAT's) Overseas Development Aid budget.<sup>30</sup> According to the NIA, Australia's contributions have been between \$3–5 million per year. Funding countries will be expected to provide additional funding to assist developing countries meet the requirements to phase down HFCs.<sup>31</sup>
- 3.30 The exact amount of additional funding required will be determined every three years following replenishment negotiations. The NIA expects that total additional contributions would be approximately \$145 million over a 30 year period.<sup>32</sup>
- 3.31 The Department told the Committee that the money provided to assist developing countries meet their obligations under the Protocol is distributed through a multilateral fund.<sup>33</sup> Australia is a member of the board of the fund and plays an active part in assessing how the money is spent:
- The multilateral fund looks at a three-year work program, so we don't make an up-front commitment for the whole period; there's an assessment of contributions, and we would look at what was proposed to be supported through that each three years and make our assessments in relation to it ...<sup>34</sup>
- 3.32 According to the NIA, further financial implications are negligible, due to the Australian Government's previous decisions to phase down the import of HFCs.

---

<sup>29</sup> Mr McInerney, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 10.

<sup>30</sup> NIA, para 27.

<sup>31</sup> NIA, para 27.

<sup>32</sup> NIA, para 28.

<sup>33</sup> Ms Gabriel, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 9.

<sup>34</sup> Mr Manning, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 9.

- 3.33 A cost-benefit analysis undertaken for Australia's domestic HFC phase down estimated that the transitional and administrative costs for the period between 2016 and 2030 would be around \$2.5 million for government and less than \$1 million for industry.<sup>35</sup>
- 3.34 However, the NIA states that increased costs to industry regarding gas, maintenance and capital are estimated to be \$30–84 million for the same period.<sup>36</sup>
- 3.35 The Committee queried if small business would bear the burden of these costs. The Department does not expect the cost burden to unduly affect any particular sector of the economy:
- While there was no specific modelling in relation to small and medium sized enterprises, the Department estimates that costs would be spread fairly evenly across the economy. HFC costs are unlikely to increase due to the phase-down as the pace of the phase-down is modelled against projected future demand.<sup>37</sup>
- 3.36 With regard to emergency services the Department assured the Committee that such services should not face any extra costs:
- ... essentially it would be very minor, because refrigeration and air-conditioning wouldn't be a big part of emergency services costs. And from the fire protection side of things, we're looking at the special hazards category, which is things like computer rooms et cetera. So, it's more a cost to the operators of those facilities rather than emergency services.<sup>38</sup>

## Committee comment

- 3.37 The Committee acknowledges the success of the Montreal Protocol and its role in assisting Australia to reach its climate change emissions reduction targets.
- 3.38 The Committee supports the amendments to the Montreal Protocol and recommends that binding treaty action be taken.

---

<sup>35</sup> NIA, para 29.

<sup>36</sup> NIA, para 29.

<sup>37</sup> Department of Environment and Energy, *Submission 1*.

<sup>38</sup> Mr McInerney, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 August 2017, p. 9.

## **Recommendation 2**

---

- 3.39** The Committee supports the amendments to the *Montreal Protocol on Substances that Deplete the Ozone Layer* and recommends that binding treaty action be taken.

## 4. Minor Treaty Actions

### Minor treaty actions

- 4.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 4.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee's website. The Committee can choose to formally inquire into these treaty actions, or accept them without a formal inquiry and report.

### Lodgement of OECD Declarations for Common Reporting Standards and Country-by-Country Reports

- 4.3 These treaty actions relate to the *Convention on Mutual Administrative Assistance in Tax Matters* as amended by the *Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters*.
- 4.4 The first treaty action obliges the implementation of the Organisation for Economic Cooperation and Development's (OECD) Common Reporting Standard (CRS).
- 4.5 The second treaty action outlines timeframes for implementation of the OECD G20 Base Erosion and Profit Shifting Country-by-Country (CbC) Reporting Rules.

### Common Reporting Standards

- 4.6 This treaty action is the lodgement of the *Declaration on the Effective Date for Exchange of Information under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information* (the Unilateral

Declaration). This would allow Australia to benefit from multilateral information exchange without having to undergo lengthy bilateral processes.<sup>1</sup>

- 4.7 The Unilateral Declaration primarily aims to address tax evasion by individuals who are illegally concealing offshore investment income by failing to report it correctly.<sup>2</sup> The CRS is a globalised standardised system developed by the OECD for the collection and reporting of financial account information on foreign tax residents to facilitate this exchange of information.<sup>3</sup>
- 4.8 According to the Explanatory Statement, this treaty action will have a positive practical effect but a negligible legal and financial effect on Australia.<sup>4</sup> No legislative changes are needed to implement the proposed treaty action.<sup>5</sup>
- 4.9 The Unilateral Declaration would enter into force for Australia on the date of lodgement of a Third Party Note with the OECD through the Australian Embassy in Paris.<sup>6</sup> Therefore, Australia could begin exchanging CRS information from 2018 with jurisdictions who have similarly lodged Notes.<sup>7</sup>

## Country-by-Country Reporting

- 4.10 The second proposed treaty action is the lodgement of the *Declaration on the Effective Date for Exchange of Information under the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports*.
- 4.11 The OECD Country-by-Country Reporting Rules enable national revenue authorities to exchange certain transfer pricing information provided to them by multinational enterprises headquartered in their jurisdictions.
- 4.12 Australia's CbC reporting rules, which require large multinationals to report transfer pricing information to the Australian Taxation Office, were enacted

---

<sup>1</sup> Explanatory Statement 3, para 10.

<sup>2</sup> Explanatory Statement 3, para 3.

<sup>3</sup> Explanatory Statement 3, para 3.

<sup>4</sup> Explanatory Statement 3, para 2.

<sup>5</sup> Explanatory Statement 3, para 11.

<sup>6</sup> Explanatory Statement 3, para 9.

<sup>7</sup> Explanatory Statement 3, para 5.

on 11 December 2015 and apply to financial years commencing on or after 1 January 2016.<sup>8</sup>

- 4.13 The proposed treaty action will enter into force for Australia on the date of lodgement of a Third Person Note delivered via the Australian Embassy in Paris. Therefore, Australia could begin to exchange CbC reports from 2018 with jurisdictions who have similarly lodged Notes.<sup>9</sup>
- 4.14 The Explanatory Statement states that the treaty action will have a positive practical effect but a negligible legal and financial effect on Australia.<sup>10</sup> No legislative changes are needed to implement the proposed treaty action.<sup>11</sup>

The Hon Stuart Robert MP

Chair

4 September 2017

---

<sup>8</sup> Explanatory Statement 4, para 3.

<sup>9</sup> Explanatory Statement 4, para 8.

<sup>10</sup> Explanatory Statement 4, para 2.

<sup>11</sup> Explanatory Statement 4, para 10.





## **A. List of Submissions**

### **Consular functions in Macau - China**

- 1 Department of Foreign Affairs and Trade

### **Montreal Protocol - amendment**

- 1 Department of the Environment and Energy



## **B. List of witnesses**

**Monday, 14 August 2017**

Canberra

*Department of Foreign Affairs and Trade*

*Department of the Environment and Energy*