
Joint Standing Committee on Treaties

Report 176

Air Force Training - Singapore; Deployment of Personnel -
Solomon Islands; Space Tracking - USA

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ISBN 978-1-74366-733-0 (Printed Version)

ISBN 978-1-74366-734-7 (HTML Version)

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Executive Summary

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

- *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce* (Singapore, 21 August 2017)
- *Agreement between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands* (Canberra, 14 August 2017); and
- *Agreement between the Government of Australia and the Government of the United States of America for Space Vehicle Tracking and Communication Facilities* (Washington D.C., 17 October 2017).

The Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce replaces a Memorandum of Understanding (MOU) between Australia and Singapore. The Agreement provides a legally-binding framework to support the continuation of Singapore's Flying Training Institute at the RAAF Base Pearce in Western Australia. The MOU has been in effect since 1993 and is due to expire on 21 March 2018.

The Flying Training Institute has been a central element of Australia's defence relationship with Singapore for almost a quarter of a century and this Agreement will allow Singapore to continue flight training at the RAAF Base Pearce into the future.

The Agreement between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands enables the Australian Federal Police

(AFP) and the Australian Defence Force (ADF) to deploy rapidly and effectively at the request of the Solomon Islands government in the event of a major security challenge or humanitarian emergency. For fourteen years from 2003, Australia led the Regional Assistance Mission to the Solomon Islands (RAMSI) to assist with stabilisation and peace building after a period of ethnic and civil unrest. RAMSI concluded on 30 June 2017.

While RAMSI was successful, the Solomon Islands still faces many development challenges, and this Agreement will allow Australia to provide ongoing support, helping to build long-term stability and enduring growth.

The Agreement between the Government of Australia and the Government of the United States of America for Space Vehicle Tracking and Communication Facilities consolidates an arrangement that has existed between Australia and the United States of America since 1960. Australia provides vital support for America's space program through a number of facilities including the Canberra Deep Space Communication Complex (CDSCC) at Tidbinbilla. The Agreement will permit the ongoing collaboration between the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and the National Aeronautics and Space Administration (NASA) to continue for another 25 years.

The Committee supports these treaties and recommends that binding treaty action be taken for all three agreements.

The Report also contains the Committee's review of the following four minor treaty actions:

- Amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended* Resolution MSC.404(96);
- Amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended* Resolution MSC.409(97);
- Amendments to the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 as amended* Resolution MSC.416(97);
- Amendments to Part A of the *Seafarers' Training, Certification and Watchkeeping (STCW) Code* Resolution MSC.417(97); and
- Amendments to Annex I of the *International Convention Against Doping in Sports*.

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Abbreviations

ADF	Australian Defence Force
ADOD	Australian Department of Defence
AFP	Australian Federal Police
CDSCC	Canberra Deep Space Communication Complex
CSIRO	Commonwealth Scientific and Industrial Research Organisation
CSP	Comprehensive Strategic Partnership
Defence	Department of Defence
DFAT	Department of Foreign Affairs and Trade
DIIS	Department of Industry, Innovation and Science
DSN	Deep Space Network
IMO	International Maritime Organization
JPL	Jet Propulsion Laboratory
JSCOT	Joint Standing Committee on Treaties
MOU	Memorandum of Understanding
MSC	Maritime Safety Committee
NASA	National Aeronautics and Space Administration
NIA	National Interest Analysis
RAAF	Royal Australian Air Force
RAMSI	Regional Assistance Mission to the Solomon Islands
RIS	Regulation Impact Statement

RSAF	Republic of Singapore Air Force
RSIPF	Royal Solomon Islands Police Force
SAFTA	Singapore-Australia Free Trade Agreement
SAJMC	Singapore-Australia Joint Ministerial Committee
SIPDP	Solomon Islands Police Development Program
SOFA	<i>Exchange of Notes constituting a Status of Forces Agreement between the Government of Australia and the Government of the Republic of Singapore</i>
SOLAS	<i>International Convention for the Safety of Life at Sea, 1974, as amended</i>
STCW Code	<i>Seafarers' Training, Certification and Watchkeeping Code</i>
STCW	<i>International Convention on Standards of Training, Certification and Watchkeeping for Seafarers</i>
UNESCO	United Nations Education, Scientific and Cultural Organisation
USA	United States of America
WADA	World Anti-Doping Agency

Members

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Hon Stuart Robert MP

Deputy Chair

Hon Michael Danby MP

Members

Senator Slade Brockman

Mr Chris Crewther MP

Senator Sam Dastyari (*to 25.01.2018*)

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Mr Josh Wilson MP

Committee Secretariat

Ms Lynley Ducker, Committee Secretary

Dr Narelle McGlusky, Inquiry Secretary

Mr Kevin Bodel, Inquiry Secretary

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

- 2.43 The Committee supports the ratification of the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce* and recommends that binding treaty action be taken.

Recommendation 2

- 3.41 The Committee supports the *Agreement between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands* and recommends that binding treaty action be taken.

Recommendation 3

- 4.33 The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America for Space Vehicle Tracking and Communication Facilities* 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 following treaty actions:
 - *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce* (Singapore, 21 August 2017);
 - *Agreement between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands* (Canberra, 14 August 2017); and
 - *Agreement between the Government of Australia and the Government of the United States of America for Space Vehicle Tracking and Communication Facilities* (Washington D.C., 17 October 2017).
- 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 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:
- https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/AirForce-Singapore
 - https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Personnel-SolomonIsl
 - https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/SpaceTracking-USA
- 1.7 This Report also contains the Committee's views on five minor treaty actions:
- Amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended* Resolution MSC.404(96);
 - Amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended* Resolution MSC.409(97);
 - Amendments to the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 as amended* Resolution MSC. 416(97);
 - Amendments to Part A of the *Seafarers' Training, Certification and Watchkeeping (STCW) Code* Resolution MSC. 417(97); and
 - Amendments to Annex I of the *International Convention Against Doping in Sports*.

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 one submission for each of the inquiries.
- 1.9 The Committee held a public hearing into the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce* and *Agreement between the Government of Australia and the Government of Solomon Islands Concerning the*

Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands on 29 November 2017 and a public hearing into the remaining treaty on 4 December 2017.

- 1.10 The transcripts of evidence from the public hearings 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 hearings is at Appendix B.

2. Air Force Training - Singapore

Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce

Introduction

- 2.1 This Chapter reviews the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce*.
- 2.2 The Agreement was signed in Singapore on 21 August 2017 and tabled in the Parliament on 16 October 2017.

Background

- 2.3 Australia was the first country to recognise Singapore when it became an independent nation in 1965 and the two countries have a significant history of bilateral relations. In 2015, on the fiftieth anniversary of diplomatic relations, the two countries agreed to a Comprehensive Strategic Partnership

(CSP). The CSP covers all aspects of the relationship including trade, defence, science and innovation, education and the arts.¹

- 2.4 Initiatives to improve consultation and cooperation under the CSP include annual meetings between the Australian and Singaporean Prime Ministers and regular meetings across all levels of government, including the Singapore-Australia Joint Ministerial Committee (SAJMC) meeting and the Public Service Roundtable.²
- 2.5 The two countries have recently updated the Singapore-Australia Free Trade Agreement (SAFTA) which was reviewed by the Joint Standing Committee on Treaties (JSCOT) in *Report 172*.³ Australia and Singapore have strong people to people and cultural links encompassing education, tourism and the arts and have signed a range of Memoranda of Understanding (MOUs) in other areas including innovation and science.⁴
- 2.6 The NIA states that Singapore is Australia's most advanced defence partner in South East Asia.⁵ The two countries have a number of defence related MoUs which provide for personnel exchanges, military intelligence cooperation and defence science and technology. Additionally, Australia and Singapore are both members of the Five Power Defence Arrangements alongside the United Kingdom, New Zealand and Malaysia.⁶

¹ Department of Foreign Affairs and Trade (DFAT), 'Singapore country brief' <<http://dfat.gov.au/geo/singapore/Pages/singapore-country-brief.aspx>> viewed 5 December 2017.

² DFAT, 'Joint declaration by the Prime Ministers of Australia and Singapore on a Comprehensive Strategic Partnership', <<http://dfat.gov.au/geo/singapore/Pages/joint-declaration-on-a-csp.aspx>> viewed 5 December 2017.

³ Joint Standing Committee on Treaties (JSCOT), *Report 172: Singapore Free Trade Agreement - Amendment; Defence Supplies and Services - Japan*, August 2017, Canberra.

⁴ DFAT, 'Singapore country brief' <<http://dfat.gov.au/geo/singapore/Pages/singapore-country-brief.aspx>> viewed 5 December 2017.

⁵ National Interest Analysis [2017] ATNIA 25 with attachment on consultation *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce* (Singapore, 21 August 2017) [2017] ATNIF 33, hereafter referred to as the NIA, para 3.

⁶ DFAT, 'Singapore country brief' <<http://dfat.gov.au/geo/singapore/Pages/singapore-country-brief.aspx>> viewed 5 December 2017.

Overview

- 2.7 The purpose of the Agreement is to establish a legally-binding framework to support the continuation of Singapore's Flying Training Institute at the RAAF Base Pearce in Western Australia.⁷ The Flying Training Institute has operated under a MOU since 1993. The MOU is due to expire on 21 March 2018. The MOU will terminate on entry into force of this Agreement.⁸ The Department of Defence (Defence) explained the importance of the Institute and the decision to replace the MOU:

Through the flying training institute the Republic of Singapore Air Force conducts basic flying training and other courses on their Pilatus PC-21 trainer aircraft. Around 70 Singapore students graduate each year. This new treaty is a critical step to formalising and institutionalising this longstanding partnership that has grown out of the original MOU. Our judgement is that now our mature cooperation requires a secure and legally binding treaty.⁹

- 2.8 Elevating the MOU to a legally-binding treaty will align the status of the RAAF Base Pearce instruments with those providing for Singapore to train at Oakey and Shoalwater Bay in Queensland.¹⁰
- 2.9 Defence told the Committee that the Agreement was limited to Singapore's Flying Training Institute at the RAAF Base Pearce although a number of satellite airfields were used by both the RAAF and Republic of Singapore Air Force (RSAF) in the conduct of their training.¹¹

Reasons to undertake the treaty action

- 2.10 According to the NIA, the Agreement will allow Singapore to continue training at the RAAF Base Pearce for a further 25 years. The Flying Training Institute has been a central and positive element of Australia's defence relationship with Singapore for almost 25 years. The presence of the RSAF in

⁷ NIA, para 2.

⁸ NIA, para 2.

⁹ Mr Scott Dewar, First Assistant Secretary, International Policy Division, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, p. 10.

¹⁰ NIA, para 3.

¹¹ Air Commodore Mark Green, Director-General Strategy and Planning, Air Force, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, p. 12.

Australia is seen as underpinning a strong, high-end and wide-ranging defence engagement program.¹²

- 2.11 Defence emphasised the capability benefits that the arrangement brings to Australia and Singapore and the enhancement to the air-force-to-air-force relationship. The exchange of qualified flying instructors between the two countries for nearly 20 years has enhanced pilot training regimes across both air forces. Broader general air-force-to-air-force links have been enhanced and opportunities for interoperability and capability increased:

One aspect that's particularly important is that the RAAF introduces the Pilatus PC-21, the aircraft that the Singaporeans have already been using. As we introduce that to train our own pilots, we'll be able to draw on Singapore's expertise and experience and learn from them.¹³

- 2.12 On the ground, the two air forces work closely together to ensure that the arrangements work to the benefit of both Parties:

There is close cooperation between the flying units ... it's quite a busy airfield, so that close cooperation is required so that the flying programs of both air forces can be dovetailed and not cause conflict. We do have a standing arrangement of a qualified flying instructor exchange, so one of our instructors has insight into the training programs and practices of the Singaporeans and vice versa, and there's a fair amount of, as you would imagine, of social and informal interaction between the Singaporeans and the Australian forces on the base.¹⁴

- 2.13 Asked if Singapore could change its aircraft fleet, Defence explained that there was provision for Singapore to do so following consultation:

The number of aircraft is specified. It says in article 4(1) that the Republic of Singapore air force may use up to 30 aircraft of a type as mutually determined in an implementing arrangement, so there is a process of consultation with Singapore about the types of aircraft. They don't just swap out aircraft tomorrow without consultation; that is part of one of the implementing arrangements.¹⁵

¹² NIA, para 4.

¹³ Mr Dewar, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, p. 11.

¹⁴ Air Commodore Green, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, pp. 13–12.

¹⁵ Mr Dewar, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, p. 12.

- 2.14 The Committee inquired if the treaty is likely to stifle closer cooperation or innovation, perhaps with regard to sharing resources. Defence assured the Committee that the treaty would not inhibit cooperation between the two countries in any way, but cautioned that Singapore's obligation to pay for its costs with regard to the use of RAAF Base Pearce would have to be considered:

There's nothing to stop us being innovative in this treaty. The treaty very specifically provides for Singapore to establish its flying training institute and just converts that MOU into a treaty in many ways, but there's nothing in there that stops us cooperating with them more deeply ... Singapore is responsible for its own costs, so we'd need to work through any issues ... but there is nothing in this that prevents us from developing closer cooperation with Singapore, no.¹⁶

- 2.15 The NIA maintains that the significant RSAF presence at RAAF Base Pearce ensures continued economic benefits to Australian businesses in the area and notes that the local community is supportive of the Singaporean presence.¹⁷
- 2.16 The NIA suggests that the Agreement demonstrates Australia's commitment to the CSP with Singapore and to the ongoing development of the wider bilateral relationship.¹⁸ Defence described the Agreement as a 'key aspect' of supporting the CSP:

That CSP sets out how Australia and Singapore will strengthen our relationship, including through economic security, people-to-people and foreign policy. Greater collaboration on training is a key element of the comprehensive strategic partnership, and that will be advanced by the treaty under consideration today.¹⁹

The Agreement

Obligations

- 2.17 The *Exchange of Notes constituting a Status of Forces Agreement between the Government of Australia and the Government of the Republic of Singapore* (SOFA),

¹⁶ Mr Dewar, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, p. 11.

¹⁷ NIA, para 5.

¹⁸ NIA, para 6.

¹⁹ Mr Dewar, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, pp. 10–11.

which entered into force on 10 February 1988 (or any successor agreement) applies to this Agreement.²⁰

- 2.18 **Article 2** provides for the RSAF to maintain operation of a Flying Training Institute at RAAF Base Pearce in Western Australia.²¹
- 2.19 **Article 3** details the activities of the Flying Training Institute, which include basic flying training, flying instructor courses, weapons systems officer courses, and the maintenance of the quality and standards of fixed winged flying instructions. According to **Article 3(e)**, other activities may be mutually determined between the two Parties. According to the NIA, the Australian Department of Defence (ADOD) can suspend these activities if they would adversely affect RAAF training, operations or operational readiness.²²
- 2.20 **Article 4** outlines the composition of the Flying Training Institute. **Article 4(1)** provides that the RSAF may use up to 30 aircraft of a type as mutually determined in an implementing arrangement to this Agreement for the conduct of Activities. **Article 4(2)** provides that with prior written consent, the RSAF may use additional RSAF aircraft, vehicles and equipment in support of its activities. **Article 4(5)** provides that the Parties shall mutually determine, through an implementation arrangement, the maximum number of RSAF personnel forming part of the RSAF Flying Training Institute and the maximum number of contractors permitted at Pearce.²³
- 2.21 **Article 5** obliges the Flying Training Institute to conduct activities in accordance with Australian laws and policies, as well as ADOD instructions. Any activities that the ADOD considers do not comply with such laws, policies, and instructions must be suspended until the non-compliance is rectified to the satisfaction of the ADOD (**Article 5(3)**).²⁴
- 2.22 **Article 7** outlines noise abatement policies. **Article 7(1)** provides that should the conduct of RSAF activities prevent the effective application of ADOD noise abatement policies, the Parties shall immediately consult to mutually

²⁰ *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce*, preamble.

²¹ NIA, para 7.

²² NIA, para 8.

²³ NIA, paragraphs 9–11.

²⁴ NIA, para 12.

determine noise mitigation measures. In the event of noise complaints from the local community that result from the RSAF flying, or a combination of the RSAF and RAAF flying, the ADOD will handle them in the same manner as complaints made in relation to RAAF activities. The ADOD will liaise with the local community on the matters on behalf of the RSAF, and any costs of settlement will be apportioned according to the responsibility of the RSAF and RAAF (**Article 7(3)** and **(4)**).²⁵

- 2.23 **Article 8(1)** and **(2)** obliges the RSAF to notify the RAAF Commander of any breaches of flying regulations and to participate in safety audits. The RSAF will undertake any corrective action needed to comply with these requirements. The RAAF will coordinate accident response at RAAF Base Pearce, but will seek to accommodate RSAF policies and procedures where practicable (**Article 8(3)**).
- 2.24 **Article 9** provides for the management of aircraft, vehicles and equipment. The numbers and types of aircraft, vehicles and equipment at the Flying Training Institute will be closely monitored (**Article 9(1)**). The RSAF will not use explosives at RAAF Base Pearce without ADOD consent, and any RSAF explosives must be stored in accordance with procedures to be detailed in an implementing arrangement to the Agreement (**Article 9(2)** and **(3)**).²⁶
- 2.25 **Article 10(2)** provides that the ADOD shall provide the support requested by Singapore on a best endeavour basis, consistent with Australia's national requirements, priorities and capabilities.²⁷
- 2.26 **Article 11** allows for Singapore to procure goods and services from a commercial entity, noting that under **Article 11(1c)** and **11(3)** it must demonstrate a practical commitment to the use of local Australian suppliers and report against this requirement. However, under **Article 11(2)**, the use of Australian suppliers is subject to exemptions.²⁸
- 2.27 **Article 12** provides for the development, upgrade and use of facilities at RAAF Base Pearce. **Article 12(3)** provides that Singapore does not have full control over the facilities it uses at RAAF Base Pearce, and that certain ADOD personnel retain right of access.²⁹

²⁵ NIA, paragraphs 15–16.

²⁶ NIA, para 14.

²⁷ NIA, para 17.

²⁸ NIA, para 17.

²⁹ NIA, para 18.

- 2.28 **Article 13** provides that Australia is primarily responsible for the security of RAAF Base Pearce. The RSAF must comply with security regulations and instructions, and report and rectify any breaches (**Article 13(1)-9**). Classified information exchanged under the Agreement is government by the *Agreement between the Government of Australia and the Government of the Republic of Singapore for the Reciprocal Protection of Classified Information Transmitted Between the Australian Department of Defence and the Singapore Ministry of Defence 1997* (or successor agreement) (**Article 13(10)**).³⁰
- 2.29 **Article 14(1)** provides for Singaporean personnel and their dependents to receive certain immunities from Australian criminal jurisdiction under SOFA. **Article 14(2)** provides that the resident RSAF commander shall exercise command, control and discipline over all RSAF personnel. **Article 14(3)** allows Australia to request in writing that certain RSAF personnel be removed from Australia should their behaviour be professionally or socially unacceptable.³¹
- 2.30 **Article 15(1)** provides the maximum stay in Australia of RSAF personnel at three years, unless mutually determined by the Joint Australia Singapore Coordination Group.³²
- 2.31 **Article 16(1)** obliges Singapore to ensure that all personnel are medically fit before arrival in Australia. The Singaporean personnel may be provided medical care at RAAF Base Pearce as set out in an implementing arrangement to the Agreement (**Article 16(4)**).³³
- 2.32 **Article 19** provides for Singaporean personnel and their dependents to be exempt from taxes and duties in connection with activities under the Agreement in accordance with SOFA.³⁴
- 2.33 **Article 20** provides for claims arising from the Agreement to be handled in accordance with SOFA, except that no claims will be waived for damage to property or personal injury, and Singapore will pay all compensation arising from conduct for which it is solely responsible.³⁵

³⁰ NIA, para 19.

³¹ NIA, para 20.

³² NIA, para 20.

³³ NIA, para 20.

³⁴ NIA, para 23.

³⁵ NIA, para 21.

- 2.34 **Article 22** provides that disputes arising from the interpretation or implementation of the proposed Agreement shall be resolved by consultation and negotiation between the Parties, and not referred to any national or international tribunal or court or any third party for resolution.³⁶
- 2.35 Defence assured the Committee that there have been no disputes over the past 25 years of the operation of the Flying Institute that have been referred to a tribunal or court:
- There certainly haven't been disputes that have been elevated to that level ... I'm sure that over 25 years there have been discussions around which aircraft might fly on which days, but nothing I'm aware of was elevated to a national government level.³⁷

Implementation

- 2.36 The NIA states that the Department of Defence will lead Australia's implementation of the Agreement and that implementation does not require any changes to Australian law or regulations.³⁸

Costs

- 2.37 The NIA maintains that Singapore will be responsible for all costs associated with the Flying Training Institute. Defence told the Committee that Singapore pays the Australian Government 'in the order of \$10 million annually to cover the cost of fuel, meals and other services' provided at the Base.³⁹
- 2.38 **Article 18** requires further details regarding finances to be set out in implementing arrangements to the Agreement.⁴⁰
- 2.39 The Committee questioned the application of **Article 19** with regard to tax and duty exemptions for dependants of Singaporean personnel. Defence explained that dependents only receive the tax and duties privileges under the Agreement in accordance with the *Exchange of Notes constituting a Status*

³⁶ NIA, para 21.

³⁷ Mr Dewar, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, p. 12.

³⁸ NIA, para 22.

³⁹ Air Commodore Green, Department of Defence, *Committee Hansard*, Canberra, 29 November, p. 13.

⁴⁰ NIA, para 23.

*of Forces Agreement between the Government of Australia and the Government of the Republic of Singapore 1988 (SOFA).*⁴¹

2.40 Defence summarised the privileges afforded to dependents in Article 5 of SOFA:

- an entitlement to import personal effects, furniture and household goods (other than cigarettes, cigars, tobacco and spirituous liquors), and a motor vehicle, free of duty and sales tax, subject to particular conditions; and
- an exemption from Australian estate and gift duty laws relating to personal property being transferred to or from Dependents, subject to particular conditions.⁴²

2.41 However, Defence stated that other than the specifications provided in the Agreement and SOFA, 'the particular tax arrangements of such Dependents will be governed by Australian law, and any applicable double taxation agreements'.⁴³

Conclusion

2.42 The Committee supports the ratification of the treaty and recommends that binding treaty action be taken.

Recommendation 1

2.43 The Committee supports the ratification of the *Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Republic of Singapore Air Force Flying Training Institute Detachment at Royal Australian Air Force Base Pearce* and recommends that binding treaty action be taken.

⁴¹ Department of Defence, *Submission 1*, p. [2].

⁴² Department of Defence, *Submission 1*, p. [2].

⁴³ Department of Defence, *Submission 1*, p. [2].

3. Deployment of Personnel - Solomon Islands

*Agreement between the Government of Australia
and the Government of Solomon Islands Concerning
the Basis of Deployment of Police, Armed Forces
and other Personnel to Solomon Islands*

Introduction

- 3.1 This Chapter reviews the *Agreement between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands*. The Agreement was signed in Canberra on 14 October 2017 and tabled in the Parliament on 16 October 2017.

Background

- 3.2 During five years of ethnic and civil unrest between 1998 and 2003 known as the 'Tensions', Solomon Islands came close to becoming a failed state. This possibility presented Australia with a range of issues:

It would have exacerbated security threats faced across the Pacific, such as narcotics trafficking, illegal fishing, health pandemics, irregular people movements and natural disaster.¹

- 3.3 In 2003, at the invitation of the Solomon Islands government, Australia led the Regional Assistance Mission to the Solomon Islands (RAMSI) to assist with stabilisation and peace building.²
- 3.4 RAMSI was a partnership with 15 Pacific Island nations³ and, over 14 years, it was successful in:
 - restoring law and order;
 - rebuilding critical law and order institutions;
 - stabilising government finances;
 - restoring business confidence; and
 - rebuilding the Royal Solomon Islands Police Force (RSIPF).⁴
- 3.5 RAMSI concluded on 30 June 2017. According to the National Interest Analysis (NIA), while RAMSI successfully fulfilled its mandate, Solomon Islands continues to face many development challenges, some of which were the underlying causes of the 'Tensions'. The country will need ongoing support to retain the gains made under RAMSI and to help build long-term stability and enduring growth. The NIA suggests that the Agreement provides an important message to the people of Solomon Islands that Australia stands ready to assist in the event of a future emergency.⁵

Overview

- 3.6 The Agreement, together with a written request from the Solomon Islands Government, provides a legal basis for the Australian Federal Police (AFP),

¹ Mr Bruce Soar, Acting Assistant Secretary, Melanesia Branch, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 29 November 2017, p. 1.

² National Interest Analysis [2017] ATNIA 27, *Agreement between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands* [2017] ATNIF 34 (hereafter referred to as the NIA), paragraphs 6 and 7.

³ The other participants of RAMSI (other than Australia and the Solomon Islands) were New Zealand, Fiji, Papua New Guinea, Samoa, Cook Islands, Federated States of Micronesia, Kiribati, The Republic of the Marshall Islands, Narau, Niue, Republic of Palau, Tonga, Tuvalu and Vanuatu.

⁴ NIA, para 7.

⁵ NIA, para 8.

Australian Defence Force (ADF) and associated civilian personnel, with contributions from other countries, as appropriate, to deploy rapidly and effectively in an operational capacity in the event of a major security challenge or event, including humanitarian response situations.⁶

Reasons to take the proposed treaty action

- 3.7 The NIA considers that the Agreement will reinforce the close bilateral relations between Australia and the Solomon Islands as well as consolidating Australia's role as the country's primary security partner.⁷ DFAT drew attention to the limited capacity that the Solomon Islands has to tackle major security issues;

Solomon Islands, like many countries in the region, has limited capacity to respond individually to security challenges such as transnational crime, natural disasters, climate change and outbreaks of pandemics. The bilateral security treaty ... will allow Australia to assist the Solomon Islands with these security challenges. It will also reinforce Australia's close bilateral relationship with the Solomon Islands.⁸

- 3.8 According to the NIA, the ongoing stability of the Solomon Islands and the region is critical to Australia's national interest. The ability of Australia to respond quickly to a crisis or threat could prevent a security vacuum in the Solomon Islands. Such a security vacuum could see an increased risk to Australia and the broader Pacific region.⁹ DFAT reiterated the importance to Australia of stability and economic progress throughout the Pacific Island countries:

Stability in the region is vital to our ability to defend Australia's northern approaches, to secure our borders and to protect our exclusive economic zone.¹⁰

- 3.9 DFAT explained that there had been some concern amongst the general population of the Solomon Islands regarding the conclusion of the RAMSI mission and the withdrawal of its personnel. The negotiation of the new

⁶ NIA, para 5.

⁷ NIA, para 9.

⁸ Mr Soar, DFAT, *Committee Hansard*, Canberra, 29 November 2017, p. 2.

⁹ NIA, para 11.

¹⁰ Mr Soar, DFAT, *Committee Hansard*, Canberra, 29 November 2017, p. 2.

bilateral agreement had gone someway to allaying those fears and had, in the Department's view, wide support among the Solomon Islanders:

The message we got from [local consultations] was very supportive of this treaty and the need to put in place arrangements to reassure the people that Australia was not just leaving the country and turning its back on the Solomon Islands.¹¹

- 3.10 DFAT referred to the length of time required to set up the RAMSI agreement and stressed the importance of having this Agreement in place to allow a quick and effective response to any incident:

... one of the advantages of having this treaty in place is that we don't really need to get too bogged down in ... detailed discussions when a security incident or a humanitarian disaster occurs. The treaty sets out quite thorough and detailed rules on the powers a visiting contingent would have, so we can move in rather quickly.¹²

- 3.11 Asked if there was any likelihood of Australian forces being redeployed to the Solomon Islands, DFAT assured the Committee that there appeared little reason to expect such an event.¹³ The AFP confirmed this assessment and provided recent examples demonstrating the strength of the RSIPF to maintain law and order:

Since RAMSI ceased on 30 June, there have been a couple of incidents that could have been a flashpoint, could have developed into what we might have thought would be a flashpoint. But the RSIPF are a developing police force. ... it is a new RSIPF. It is really developing that way. We've had the leader of Taiwan go in on a high-level visit right in the middle of a no-confidence vote. As soon as the no-confidence vote was in, the RSIPF were actually able to mobilise and protect the community and have that presence in the community that instilled that confidence. For that to happen in such a short time post RAMSI, I think goes well for the future.¹⁴

Deployment of personnel

- 3.12 There are currently 44 Australian personnel deployed to the Solomon Islands: 43 unarmed police officers and one member of the fire service. This

¹¹ Mr Soar, DFAT, *Committee Hansard*, Canberra, 29 November 2017, p. 3.

¹² Mr Soar, DFAT, *Committee Hansard*, Canberra, 29 November 2017, p. 6.

¹³ Mr Soar, DFAT, *Committee Hansard*, Canberra, 29 November 2017, p. 8.

¹⁴ Commander Amada Kates, Manager Pacific, Australian Federal Police 9AFP, *Committee Hansard*, Canberra, 29 November 2017, p. 8.

figure is expected to remain constant for the next four years. The review after two years will determine if any changes are required:

At the two-year mark we'll do a review, assessment, monitoring and evaluation to see how it's going, and that's when we'll make the decision, after the four-year period, to either increase or decrease.¹⁵

- 3.13 The Committee asked what the status of these personnel is, considering that the new treaty has not yet come into force. DFAT explained that AFP personnel currently deployed are advisers and have no police powers:

... the AFP officers in the country are employed as advisers in much the same way as an AusAID adviser would be treated. They have no powers under Solomon Islands legislation to exercise the authorities of a member of a police force. They're effectively providing technical assistance to the Solomon Islands police force in the same manner as AusAID staff generally do to other departments.¹⁶

- 3.14 The AFP elaborated on the support role:

We mentor and support and develop. The RSIPF have the capability to do their policing roles. Behind those, we support them to protect life and property.¹⁷

- 3.15 DFAT told the Committee that the current AFP contingent is deployed as part of the Solomon Islands Police Development Program (SIPDP) which takes place under a Memorandum of Understanding (MOU) signed on 14 April 1994.¹⁸ The MOU does not provide the 'same level of privileges and immunities' that were available under the RAMSI treaty and the advisers hold Official Passports, not Diplomatic Passports.¹⁹

- 3.16 The MOU provides:

- that the Government of the Solomon Islands will arrange for protective services necessary to ensure the safety of the person and property of Australian personnel and their dependents (Article 16);
- some exemptions from the usual laws of the Solomon Islands. For example, exemptions from certain duties, taxes and levies (Article 10); and

¹⁵ Commander Kates, (AFP), *Committee Hansard*, Canberra, 29 November 2017, p. 3.

¹⁶ Mr Soar, DFAT, *Committee Hansard*, 29 November 2017, p. 4.

¹⁷ Commander Kates, AFP, *Committee Hansard*, 29 November 2017, p. 4.

¹⁸ Department of Foreign Affairs and Trade, *Submission 1*, p. [2].

¹⁹ DFAT, *Submission 1*, pp. [2 and 4].

- that the Government of the Solomon Islands will ‘bear all risks associated with operations’ and ‘will hold harmless the Government of Australia and Australian personnel’ in the event of claims arising from activities under the MOU.²⁰

3.17 DFAT reiterated that the current contingent of AFP personnel deployed to the Solomon Islands ‘do not possess the legal authority ... to carry firearms, use force or exercise police powers’. However, they have the same rights as the general population to protect themselves:

The ability of AFP members to respond to threats to life, limb and property is not different to any other member of the Solomon Islands public. However, the common law doctrine of self-defence would operate to exclude criminal liability in circumstances where an AFP member applies force and that use of force is necessary and reasonable in the circumstances.²¹

3.18 With regard to the Agreement under review here, the NIA explains that it provides for future assisting police and defence forces to exercise the same powers and authorities, and have substantially the same privileges and immunities, as were provided under the RAMSI treaty. The relevant privileges and immunities are implemented in Solomon Islands domestic law through the *Facilitation of International Assistance Act 2003* (Solomon Islands).²²

3.19 The Committee queried if it is a blanket immunity or if there are exceptions. Defence considered that the Agreement conveyed adequate immunity for the purpose of the treaty:

It is a sufficient immunity to cover any type of deployment envisaged under the treaty and it is an immunity from legal proceedings, both civil and criminal, and in relation to their official duties. It’s reasonably broad ...²³

3.20 DFAT said that the immunities applied as long as the actions of the personnel were ‘taken in the course of, or incidental to, their official duties’.²⁴ The Department directed the Committee’s attention to Article 6 of the Agreement which makes clear the extent of the immunities:

²⁰ DFAT, *Submission 1*, p. [2].

²¹ DFAT, *Submission 1*, p. [2].

²² NIA, para 10.

²³ Commodore Peter Bowers, Director-General, Australian Defence Force Legal Services, Defence Legal, Department of Defence, *Committee Hansard*, Canberra, 29 November 2017, p. 2.

²⁴ DFAT, *Submission 1*, p. [1].

Members of a Visiting Contingent (defined in Article 1 as personnel comprised of an Assisting Police Force, Assisting Defence Force and/or Other Personnel) will be immune from arrest, detention and all legal proceedings in Solomon Islands courts and tribunals in relation to their official duties. The members also cannot be compelled to appear or give evidence in any legal proceedings in Solomon Islands. 'Legal proceedings' is defined widely to include criminal, civil, disciplinary, administrative and customary law proceedings.²⁵

- 3.21 Article 6 provides for Australia or a Third Party State to waive any immunity if the circumstances warrant it. It also allows Australia or a Third Party State to assert jurisdiction over members of the contingent:

... Australia or a Third State may assert criminal or disciplinary jurisdiction over actions of a member in the Area of Operations, including actions outside of official duties. In such circumstances, the Solomon Islands will not assert, or will relinquish, jurisdiction over such actions of the member.²⁶

- 3.22 The Committee was told that the details of rules of engagement and/or status of forces arrangements are not contained in the Agreement. However, the Committee was assured that the relevant provisions could be drawn up quickly for both the Australian Defence Force (ADF) the Australian Federal Police (AFP) if required:

... the Australian Defence Force would, in the event that ADF personnel were deployed to the Solomon islands, fairly quickly come to a position where we would settle and promulgate rules of engagement for ADF members. We would liaise with our AFP colleagues to make sure that there was consistency, noting that we operate under different frameworks. It is the case that we do not have rules of engagement for this operation because it's not an operation yet, in effect.²⁷

- 3.23 The AFP explained that they already have use-of-force options in place and that these would apply:

The use-of-force guidelines which apply to AFP on deployments—and this includes within Australia and outside of Australia—are of course matched to the circumstances and the environment in which they're operating ... when we operate in countries like the Solomons, the police in the Solomons know exactly what we do and how we do it. They know under what circumstances a weapon might be produced and under what circumstances a weapon might be

²⁵ DFAT, *Submission 1*, p. [1].

²⁶ DFAT, *Submission 1*, p. [1].

²⁷ Commodore Bowers, Department of Defence, *Committee Hansard*, 29 November 2017, p. 4.

used. And we would try to act entirely consistently with that while we are in country.²⁸

- 3.24 While both Defence and the AFP would seek to work cooperatively with the Solomon Islands authorities, officers from both forces would remain under national command.²⁹

The Agreement

Obligations

- 3.25 **Article 1(ix)** defines ‘Visiting Contingent’ as a contingent of personnel comprised of an Assisting Police Force, Assisting Defence Force and/or Other Personnel.³⁰
- 3.26 **Article 2(1)** allows Australia to deploy a Visiting Contingent to Solomon Islands at the written request of Solomon Islands, after Australia has accepted such a request based on Australia’s assessment of the circumstances on a case-by-case basis. The Visiting Contingent will assist in the provision of safety and security of persons and property, provide humanitarian assistance and disaster response, and/or provide such other assistance as may be mutually determined.³¹
- 3.27 **Article 2(2)** provides that Australia and the Solomon Islands must consult on the nature and duration of requested deployments.³²
- 3.28 **Article 3(1)** obliges Australia to nominate a head of a Visiting Contingent and notify Solomon Islands of the appointment. This nominee is obliged under **Article 3(3)** to work cooperatively with Solomon Islands to achieve the purposes of the deployment.³³
- 3.29 **Article 4** and **Article 5** provide for the scope and powers of Assisting Police Force and Assisting Defence Force personnel. Where an Assisting Police force is deployed as part of the Visiting Contingent, the most senior

²⁸ Mr Howard Allen, Australian Federal Police Legal, AFP, *Committee Hansard*, 29 November 2017, p. 5.

²⁹ Mr Soar, DFAT, *Committee Hansard*, Canberra, 29 November 2017, p. 6.

³⁰ NIA, para 12.

³¹ NIA, paragraphs 12 and 13.

³² NIA, para 14.

³³ NIA, para 15.

Australian police officer notified to Solomon Islands shall serve as its commander (**Article 4(1)**). Where an Assisting Defence Force is deployed as part of a Visiting Contingent, an Australian Defence Force member notified to Solomon Islands shall serve as its commander (**Article 5(1)**).³⁴

- 3.30 Both the Assisting Police Force and Assisting Defence Force will be able to exercise the powers, authorities and privileges afforded to members of the Royal Solomon Islands Police Force, and use such force as is reasonable necessary to achieve the purposes of the deployment (**Article 4(9)** and **Article 5(4)**).³⁵
- 3.31 **Article 6(1)** obliges a Visiting Contingent to take all appropriate measures to ensure that Solomon Islands laws are observed and respected. **Article 6(2)** provides that members of a Visiting Contingent shall be immune from arrest, detention and legal proceedings in Solomon Islands courts and tribunals in relation to actions that are taken in the course of, or are incidental to, official duties.³⁶
- 3.32 Members of a Visiting Contingent will be accorded privileges in relation to matters such as entry and departure (**Article 7**), freedom of movement (**Article 9**), taxation (**Article 17**), utilities and facilities (**Article 10**), communications (**Article 11**) and health and safety (**Article 12**).³⁷
- 3.33 **Article 18** obliges a Visiting Contingent to withdraw within three months if Solomon Islands request the withdrawal in writing. Under **Article 18(3)**, following consultations between the Parties, Australia may at any time withdraw a Visiting Contingent, or any part of it, from the Solomon Islands.³⁸
- 3.34 **Article 20** provides that Australia, with the consent of the Solomon Islands, may invite third states to contribute to a Visiting Contingent.³⁹

Implementation

³⁴ NIA, para 16.

³⁵ NIA, para 17.

³⁶ NIA, para 18.

³⁷ NIA, para 19.

³⁸ NIA, para 20.

³⁹ NIA, para 21.

- 3.35 The NIA states that no changes to Australian domestic law are required to implement the proposed Agreement.⁴⁰

Costs

- 3.36 The NIA states that if Australia decides to deploy a Visiting Contingent to Solomon Islands, Australia will incur costs as a result. The NIA points out that until the nature and duration of such a deployment are known, it is not possible to estimate the costs.⁴¹
- 3.37 Under **Article 2(1)**, any request to deploy Australian forces would undergo a decision making process which would include a cost consideration, based on the specific request of the Solomon Islands Government.⁴²

Conclusion

- 3.38 The Committee recognises the importance of the Pacific region to Australia's security and the need to provide ongoing support to the Solomon Islands to enable it to maintain and build on the gains made under RAMSI.
- 3.39 The Committee is satisfied that the Agreement will provide the legal framework for Australia to respond quickly and efficiently to any request for assistance from the Solomon Islands, as well as for the protection and safety of Australian personnel deployed on such a mission.
- 3.40 The Committee supports the treaty action and recommends that binding treaty action be taken.

Recommendation 2

- 3.41 The Committee supports the Agreement between the Government of Australia and the Government of Solomon Islands Concerning the Basis for Deployment of Police, Armed Forces and Other Personnel to Solomon Islands and recommends that binding treaty action be taken.**

⁴⁰ NIA, para 22.

⁴¹ NIA, para 23.

⁴² NIA, para 24.

4. Space Tracking - USA

Agreement between the Government of Australia and the Government of the United States of America for Space Vehicle Tracking and Communication Facilities

Introduction

- 4.1 This Chapter reviews the *Agreement between the Government of the United States of America and the Government of Australia for Space Vehicle Tracking and Communication Facilities*. The Agreement was signed in Washington D.C. on 17 October 2017 and tabled in the Parliament on 18 October 2017.
- 4.2 The Agreement replaces the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning Space Vehicle Tracking and Communication Facilities* (the current Agreement) done at Canberra on 29 May 1980, as Amended by an Exchange of Notes completed on 21 November 2013. The current Agreement will expire on 26 February 2018.¹

¹ National Interest Analysis [2017] ATNIA 30, *Agreement between the Government of Australia and the Government of the United States of America for Space Vehicle Tracking and Communication Facilities* [2017] ATNIF 37(hereafter referred to as the NIA), para 2.

Overview

- 4.3 Australia and the United States of America (USA) have cooperated on space related activities since 1957, with the establishment of facilities at Woomera in South Australia to track USA satellites. Cooperation extended to include facilities set up by the National Aeronautics and Space Administration (NASA) in 1960.²
- 4.4 The National Interest Analysis (NIA) states that the space vehicle tracking and communication relationship between Australia and the USA has been the subject of a succession of agreements and exchanges of notes between the two countries. The first was an *Exchange of Notes constituting an Agreement relating to Space Vehicle Tracking and Communications* in 1960. The 1960 Agreement was superseded by a similar Agreement in 1970, and then again in 1980, the current Agreement.³
- 4.5 As a result, the current Agreement consists of a base document and multiple subsequent Exchanges of Notes. In 2009 the Parties agreed to conclude a new agreement consolidating the previous Exchanges of Notes into one document. At the same time, they agreed to extend the current Agreement until 2012, and then subsequently to 2014. Due to the proposed Agreement not being finalised by 2014, both Parties agreed to extend the current Agreement until the expiry date in 2018.⁴
- 4.6 The Department of Industry, Innovation and Science (DIIS) told the Committee that over the 50 years of operation of the various forms of the Agreement, Australia has derived significant scientific and economic benefits:

... including collaboration between Australian and NASA scientists;
employment of Australians, including in engineering, scientific and other

² NIA, para 5.

³ NIA, para 6.

⁴ NIA, para 7.

technical disciplines; and the provision of a pool of trained personnel for high-end engineering, scientific and other technical roles.⁵

- 4.7 NASA's scientific investigations of the solar system are accomplished mainly through the use of robotic spacecraft. The NIA notes that the Australian facilities covered by the Agreement are vital to NASA programs involving radio contact with human and robotic missions, scientific satellites and deep space probes. This includes the Canberra Deep Space Communication Complex (CDSCC) at Tidbinbilla, the Data Relay Satellite facilities in Alice Springs, Northern Territory and Dongara, Western Australia.⁶
- 4.8 The facilities provide a two-way communication link for the guidance and control of spacecraft and the relay of data and images. They have provided support for missions including the Curiosity Rover's exploration of the surface of Mars, the Cassini mission to Saturn and the Hubble space telescope.⁷
- 4.9 The CDSCC is an integral component to NASA's Deep Space Network (DSN), the largest and most sensitive scientific telecommunications system in the world. The DSN is an international network of antennas that supports interplanetary spacecraft missions and the radio and radar astronomy observations for the exploration of the Solar System and the universe.⁸

Reasons to undertake the treaty action

- 4.10 According to the NIA, the collaboration between NASA and the Commonwealth Scientific and Industrial Research Organisation (CSIRO) allows Australian scientists access to world class radio and astronomy facilities at a reduced cost. Data gathered by NASA is also freely available to Australian scientists and used by organisations such as Geoscience Australia and the Australian Bureau of Meteorology.⁹
- 4.11 CSIRO stressed the importance of the Agreement to both the USA and to Australia:

⁵ Dr Anne Byrne, General Manager, Industry Transition Branch, Department of Industry, Innovation and Science (DIIS), *Committee Hansard*, Canberra, 4 December 2017, p. 13.

⁶ NIA, para 10.

⁷ NIA, para 11.

⁸ NIA, para 12.

⁹ NIA, para 9.

... it would be very difficult for the United States to track. They need this longitude and this part of the world ... From our perspective, the facility attracts \$20 million a year from NASA, of which about three-quarters goes to salaries. From a revenue point of view, that's about \$15 million a year that comes straight to Australia and is spent in Australia. Over the life of 25 years of this treaty, it's a lot of money, which is valuable to us. At the same time we also generate expertise and we play a part in a fantastic space exploration activity.¹⁰

- 4.12 The NIA states that all activities conducted in Australia under the Agreement are managed to ensure that they are consistent with Australian interests. The CSIRO manages the facilities on behalf of NASA, with specific operational and maintenance activities contracted out as required.¹¹
- 4.13 Management and operation of the CDSCC is conducted by CSIRO. The NIA suggests that continued use of Australian facilities presents further opportunities for Australia to develop its highly skilled technical workforces, significantly enhance domestic scientific and technical capabilities, and provide opportunities for Australian industry.¹²
- 4.14 The Committee queried the inclusion of an intellectual property (IP) clause for the first time since the arrangements were put in place, and DIIS explained that although IP was considered under previous iterations of the Agreement, it was not clearly articulated:

So we've introduced article 7 as a reflection of other treaties on IP. We brought in IP Australia during our consultation process. We had two approaches. One was to set out article 7 and go into quite a lot of detail, with a few provisions specific to both NASA and CSIRO's technical arrangements. However, it was agreed by both parties that something consistent with other treaties such as article 7 was our preferred approach.¹³

- 4.15 DIIS further clarified that the IP rights remain with NASA for all work done under the Agreement:

Because NASA funds fully all staff, all training, all personnel and does all the design work through JPL in the US, the intellectual property always sits with

¹⁰ Dr Ed Kruzins, CSIRO NASA Operations & Canberra Deep Space Communications Complex, CSIRO, *Committee Hansard*, Canberra, 4 December 2017, p. 15.

¹¹ NIA, para 13.

¹² NIA, para 14.

¹³ Mr Rodney Harris, Assistant Manager, Industry Transition Branch, DIIS, *Committee Hansard*, Canberra, 4 December 2017, p. 14.

either JPL, the Jet Propulsion Laboratory, or with NASA, who are both contracted to NASA.¹⁴

- 4.16 NASA funds the total cost of the facilities, including the salaries and administrative costs of Australian Government personnel involved in the management of activities under the Agreement.¹⁵ CSIRO estimates there are approximately 90 staff involved and told the Committee that NASA provides funding every quarter in advance of performance through CSIRO's annual operating plan.¹⁶

The Agreement

Obligations

- 4.17 **Article 1** extends the obligations under the current Agreement to reflect the current policy and legislative positions of the Australian and US Governments which will enable the objectives and purpose of the treaty to continue for another 25 years. **Article 1** specifies that all activities made under the Agreement will be compliant with Australian and US national laws and regulations, including those relating to export control.¹⁷
- 4.18 **Article 5** ensures that each Party is obliged to bear any costs required to fulfil their respective responsibilities under the proposed Agreement, including travel and subsistence of personnel and transportation of equipment. However, it limits obligations to ensure that bearing any costs is subject to availability of a Party's funding procedures and availability of appropriated funds.¹⁸
- 4.19 **Article 6** obligates both Parties to allow the transfer of all goods, technology, proprietary data, or technical data (including software) without restriction except as otherwise required by the Agreement. The addition of this obligation clarifies the conditions in the current Agreement. However, **Article 6(4)** expressly limits the manner in which transferred materials for

¹⁴ Ms Kerry Fereday, Support Services manager, CSIRO NASA Operations, Commonwealth Scientific and Industrial Research Organisation (CSIRO), *Committee Hansard*, Canberra, 4 December 2017, p. 14.

¹⁵ NIA, para 14.

¹⁶ Ms Fereday, CSIRO, *Committee Hansard*, Canberra, 4 December 2017, p. 15.

¹⁷ NIA, para 15.

¹⁸ NIA, para 16.

which protection is to be maintained, may be used. Further, **Article 6(5)** ensures that after the completion of activities performed under the Agreement, the items must be returned or disposed as directed by the originating Party or its contractor.¹⁹

- 4.20 **Article 7** obliges both parties to protect any intellectual property created or provided. This is a new addition to the Agreement and was not included in the current Agreement.²⁰
- 4.21 **Article 8** obliges Parties to coordinate any release of public information. It further stipulates that certain data and information cannot be shared without mutual and written permission.²¹
- 4.22 **Article 9** obligates Australia to exempt and refund the US Government for any taxes, duties, and any other charges for items purchased in or removed from Australia for use in connection with the activities under the Agreement. This is a continuation of provisions in the current Agreement. **Article 9** further obligates the Australian Government to assist with the movement of goods between states and territories as required.²²
- 4.23 **Article 10** obligates Australia to support the exchange of mutually agreed personnel and facilitate the entry to and exit from Australia. Further, **Article 10(2)** provides tax exemptions for any personal and household items imported for use by personnel.²³
- 4.24 **Article 11** obligates the US Government to utilise Australian resources and personnel to the maximum extent possible.²⁴
- 4.25 **Article 12** obligates the US to comply with Australia's national security requirements for any activity associated with the Agreement.²⁵
- 4.26 **Article 13** obligates the Australian Government to take all necessary steps to ensure that radiofrequency bands continue to be available to carry out the

¹⁹ NIA, para 17.

²⁰ NIA, para 18.

²¹ NIA, para 19.

²² NIA, para 20.

²³ NIA, para 21.

²⁴ NIA, para 22.

²⁵ NIA, para 23.

activities set out in the Agreement. NASA is obligated to use the radio transmitting and receiving equipment in compliance with Australian law.²⁶

- 4.27 **Article 14** encourages both Parties to consult with one another and exchange views on future cooperation and resolve questions between each other. **Article 14** further provides a dispute settlement clause, requiring the Cooperating Agencies²⁷ to endeavour to resolve the questions. If the Cooperating Agencies cannot reach a resolution, the questions shall be resolved by means of consultation between the Parties.²⁸

Implementation

- 4.28 According to the NIA, no new domestic legislation or amendments to existing legislation are required to allow Australia to meet its obligations under the proposed Agreement. Exemptions from taxes and duties are covered by existing legislation.²⁹

Costs

- 4.29 According to the NIA, no additional costs are anticipated as a consequence of the Agreement. As noted above, NASA funds the total cost of the establishment, operation and maintenance of the listed facilities in Australia through its contractual arrangements with CSIRO.³⁰
- 4.30 Under the Agreement, the Australian Government is obliged to grant NASA an exemption from, or refund for, duties, taxes or like charges including GST, on imports to Australia of goods for use in connection with the Agreement (**Article 9**). This includes a refund of Commonwealth indirect taxes (including GST) for goods and services purchased in Australia for use in connection with the Agreement.³¹
- 4.31 The NIA states that these provisions already exist under the *Taxation Administration Act 1953*, the *Taxation Administration Regulations 1976*, the A

²⁶ NIA, para 24.

²⁷ The Cooperating Agencies are listed in **Article 2** as the National Aeronautics and Space Administration (NASA) for the United States of America (USA) and the Commonwealth Scientific and Industrial Research Organisation (CSIRO) for Australia.

²⁸ NIA, para 25.

²⁹ NIA, para 26.

³⁰ NIA, para 27.

³¹ NIA, para 28.

*New Tax System (Goods and Services Tax) Act 1999 and the Customs Tariff Act 1995.*³²

Conclusion

- 4.32 The Committee supports the treaty and recommends that binding treaty action be taken.

Recommendation 3

- 4.33 **The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America for Space Vehicle Tracking and Communication Facilities* and recommends that binding treaty action be taken.**

³² NIA, para 29.

5. Minor Treaty Actions

Minor treaty actions

- 5.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 5.2 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.
- 5.3 The Committee has been asked to consider the following four minor treaty actions.

Amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended*

- 5.4 The treaty actions amend the *International Convention for the Safety of Life at Sea, 1974, as amended* (SOLAS). SOLAS is one of the key international instruments addressing the safety of merchant ships. It provides minimum standards for the construction, equipment and operation of ships and is administered by the International Maritime Organization (IMO), a specialised agency of the United Nations. The Maritime Safety Committee (MSC) is the IMO Committee with responsibility for SOLAS.¹

¹ Explanatory Statement [2017] AMTAES 9, Amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended* Resolution MSC.404(96) hereafter referred to as Explanatory Statement 9, para 3; Explanatory Statement [2017] AMTAES 10, Amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended* Resolution MSC.409(97) hereafter referred to as Explanatory Statement 10, para 3.

- 5.5 The amendments are deemed amendments and shall be deemed to have been accepted on 1 July 2019, unless prior to that date, not less than one third of the Parties, or Parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have communicated to the IMO their objection to the amendments. If, as expected, the amendments are accepted, they will enter into force on 1 January 2020.²
- 5.6 If Australia were to object to the amendments, and they nonetheless entered into force, Australia would not be obliged under SOLAS to require Australian registered ships, or foreign ships within Australia's jurisdiction, to comply with the new requirements. However, Australian registered ships could be required to comply with the new requirements while under the jurisdiction of a State Party that has accepted the amendments (for example while in that State's waters or ports).³
- 5.7 Australia's deemed acceptance of the amendments would be considered consistent with its longstanding support for the safety of ships, their crews and passengers and our active backing of, and participation in, the IMO.⁴

Resolution MSC.404(96)

- 5.8 The Resolution:
- a. amends Chapter II-2 to require vessels with helidecks (and constructed on or after 1 January 2020) to be provided with foam fire-fighting appliances which comply with relevant provisions of the IMO's Fire Safety Systems Code;
 - b. amends Chapter II-2 containing provisions for an evacuation analysis to be carried out on escape routes on passenger ships during the design phase of their construction (the requirement for an evacuation analysis has been in place for roll on roll off passenger ships since 1999; the amendment extends this requirement to all passenger ships carrying more than 36 passengers built after 1 January 2020); and

² Explanatory Statement 9, para 6; Explanatory Statement 10, para 6.

³ Explanatory Statement 9, para 7; Explanatory Statement 10, para 7.

⁴ Explanatory Statement 9, para 8; Explanatory Statement 10, para 8.

- c. amends Chapter III to update existing requirements for the maintenance, testing and repair of lifeboats.⁵

Resolution MSC.409(97)

5.9 The Resolution:

- a. amends Chapter II-1 to clarify the application of a requirement of the Code of Noise Levels on Board Ships. This would correct a discrepancy in its current application noting that IMO has an interim measure in place to cover this discrepancy until this amendment is in effect;
- b. amends Chapter II-2 to allow cargo ships fitted with boilers that are protected by a water-based local application fire-extinguishing system, to no longer be required to provide additional foam-type extinguishers of 135 litre capacity. These fire extinguishers are considered to be redundant where there is a fixed spray system that can extinguish a fire on a boiler. This is a practical improvement for these ships; and
- c. amends Chapter XI-1 to harmonise survey periods for ships that are not bulk carriers or oil tankers.⁶

Amendments to International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended and the Seafarers' Training, Certification and Watchkeeping (STCW) Code

- 5.10 The treaty actions amend the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)* and the *Seafarers' Training, Certification and Watchkeeping (STCW) Code (STCW Code)*. The STCW is one of the key international instruments promoting safety of life at sea and the protection of the marine environment by establishing international standards of training, certification and watchkeeping for seafarers. STCW Code supports the STCW. The STCW is administered by

⁵ Explanatory Statement 9, para 5.

⁶ Explanatory Statement 10, para 5.

the IMO, a specialised agency of the United Nations. The MSC is the IMO Committee with responsibility for STCW.⁷

- 5.11 The amendments are deemed amendments and shall be deemed to have been accepted on 1 January 2018, unless prior to that date, not less than one third of the Parties, or Parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have communicated to the IMO their objection to the amendments. If, as expected, the amendments are accepted, they will enter into force on 1 July 2018.⁸
- 5.12 If Australia were to object to the amendments, and they nonetheless entered into force, Australia would not be obliged under the STCW to require Australian registered ships, or foreign ships within Australia's jurisdiction, to comply with the new requirements. However, Australian registered ships would be required to comply with the new requirements while under the jurisdiction of State Parties that have accepted the amendments (for example while in those States' waters or ports).⁹
- 5.13 Australia's deemed acceptance of these amendments would be considered consistent with its longstanding support for the safety of life at sea and protection of the marine environment, and its active backing of, and participation in, the IMO.¹⁰

Resolution MSC.416(97)

- 5.14 The Resolution:
 - a. amends Chapter I to insert definitions of 'Polar Code' and 'polar waters', and to insert a new paragraph concerning the continuing professional competence of masters and officers of ships operating in polar waters;

⁷ Explanatory Statement [2017] AMTAES 11, Amendments to the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)*, 1978, as amended, Resolution MSC.416(97) hereafter referred to as Explanatory Statement 11, para 3; Explanatory Statement [2017] AMTAES 12, Amendments to Part A of the *Seafarers' Training, Certification and Watchkeeping (STCW) Code*, Resolution MSC.417(97), hereafter referred to as Explanatory Statement 12, para 3.

⁸ Explanatory Statement 11, para 6; Explanatory Statement 12, para 5.

⁹ Explanatory Statement 11, para 7; Explanatory Statement 12, para 6.

¹⁰ Explanatory Statement 11, para 8; Explanatory Statement 12, para 7.

- b. amends Chapter V (new Regulation V/4) to set out the new mandatory minimum standards for the training and qualifications of masters and deck officers on ships operating in polar waters. These amendments provide for basic and advanced training, and recognition of previous seagoing experience in polar waters; and
- c. amends Chapter V (Regulation V/2) to provide revised training requirements to enhance existing safety training on passenger ships, specifically emergency familiarisation training of ship personnel as appropriate to their capacity, duties and responsibilities on board the ship. Basic emergency training is required for all personnel working on board passenger ships.¹¹

Resolution MSC.417(97)

- 5.15 The Resolution proposes to amend Part A of the STCW Code to correspond with the new training requirements as amended in Resolution MSC.416(97) and provide updated tables specifying the required standards of competence.¹²

Amendments to Annex I of the International Convention Against Doping in Sports.

- 5.16 The proposed treaty action amends Annex I to the *United Nations Education, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport 2007* (the Convention). Annex I (Prohibited List-International Standard) identifies the substances and methods of doping which are prohibited in sport. Annex I is an integral part of the Convention.¹³
- 5.17 The proposed amendment updates Annex I to reflect the 2018 Prohibited List adopted by the World Anti-Doping Agency (WADA) on 24 September 2017 which takes effect on 1 January 2018.¹⁴
- 5.18 According to the Explanatory Statement compliance with the proposed amendment to Annex I of the Convention does not require amendment to the Australian anti-doping legislative framework, as the specification of

¹¹ Explanatory Statement 11, para 5.

¹² Explanatory Statement 12, para 1.

¹³ Explanatory Statement [2017] AMTAES 13, Amendment to Annex I of the *International Convention Against Doping in Sport*, hereafter referred to as Explanatory Statement 13, para 1.

¹⁴ Explanatory Statement 13, para 2.

prohibited substances and methods under the Australian Government's anti-doping arrangements is based on the current WADA Prohibited List.¹⁵

Conclusion

- 5.19 The Committee determined not to hold a formal inquiry into any of the minor treaty actions, and agreed that binding treaty action may be taken in each case.

The Hon Stuart Robert MP

Chair

5 February 2018

¹⁵ Explanatory Statement 13, para 9.

A. List of Submissions

Air Force Training–Singapore

1 Department of Defence

Deployment of Personnel–Solomon Islands

1 Department of Foreign Affairs and Trade

Space Tracking–USA

1 National Committee for Space and Radio Science, Australian Academy of Science

B. List of Witnesses

Air Force Training - Singapore

Wednesday, 29 November 2017

Canberra

*Air Commodore Mark Green, Director-General Strategy and Planning, Air Force,
Department of Defence*

*Commodore Peter Bowers, Director-General, Australian Defence Force Legal Services,
Defence Legal, Department of Defence*

*Mr Scott Dewar, First Assistant Secretary, International Policy Division, Department of
Defence*

Deployment of personnel - Solomon Islands

Wednesday, 29 November 2017

Canberra

Commander Amanda Kates, Manager Pacific, Australian Federal Police

Mr Howard Allen, Australian Federal Police Legal, Australian Federal Police

*Commodore Peter Bowers, Director-General, Australian Defence Force Legal Services,
Defence Legal, Department of Defence*

*Mr Bruce Soar, Acting Secretary, Melanesia Branch, Department of Foreign Affairs and
Trade*

Space Tracking - USA

Monday, 4 December 2017

Canberra

Dr Anne Byrne, General Manager, Industry Transition Branch, Department of Industry, Innovation and Science

Mr Rodney Harris, Assistant Manager, Industry Transition Branch, Department of Industry, Innovation and Science

Dr Ed Kruzins, CSIRO NASA Operations & Canberra Deep Space Communications Complex, Commonwealth Scientific and Industrial Research Organisation

Ms Kerry Fereday, Support Services Manager, CSIRO NASA Operations, Commonwealth Scientific and Industrial Research Organisation