

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Report 195

Film Co-Production - Malaysia; Radio Regulations - WRC-19; Tax Information Exchange - Timor-Leste

Joint Standing Committee on Treaties

May 2021
CANBERRA

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Executive Summary

This report reviews three proposed treaty actions:

- *Agreement between the Government of Australia and the Government of Malaysia on Film Co-Production;*
- *Partial Revision of the 2015 Radio Regulations, as incorporated into the Final Acts of the World Radiocommunication Conference 2019 (WRC-19); and*
- *Agreement between Australia and Timor-Leste on Taxation Information Exchange.*

The purpose of the proposed *Agreement between the Government of Australia and the Government of Malaysia on Film Co-Production* is to stimulate industry, employment, technical development and cultural exchange between Australia and Malaysia by facilitating screen co-productions between the two countries. The proposed Agreement provides a framework within which the relevant authorities of each country may cooperate to approve the making of a broad range of films including feature films, television, video recordings, animations and digital format productions.

Malaysia is an attractive market for Australian co-productions, due to numerous government-funded schemes that support local Malaysian film production and the potential to reach a very large audience. The proposed Agreement is expected to build on existing partnerships between Australian and Malaysian producers and provide the impetus to develop high-quality projects.

The Committee notes the interest amongst both Australian and Malaysian producers to develop co-productions, and welcomes the proposed Agreement as an effort to further deepen the already close cultural and economic relationship with Malaysia. The Committee considers the proposed Agreement should be ratified, and recommends that binding treaty action be taken.

The Radio Regulations are a binding international instrument regulating the use of radio-frequency spectrum and satellite orbits by communications technologies.

This facilitates equitable access to, and rational use of, the radio-frequency spectrum and satellite orbits. The proposed Final Acts of the World Radiocommunication Conference 2019 (WRC-19) contain the revisions agreed at that Conference.

The WRC-19 revisions are expected to benefit Australia by providing more bandwidth to support 5G mobile broadband services; improving connectivity on aeroplanes and ships; increasing global satellite broadband availability and competition in the non-geostationary satellite orbit market; expanding capacity and coverage, particularly in Polar regions and in the provision of Global Maritime Distress and Safety System satellite services; and improving protection for radio astronomy and earth observation sciences.

The Committee acknowledges Australia made reservations and declarations at the WRC-19, and notes they are consistent with the position Australia took at previous World Radiocommunication Conferences.

The Committee is satisfied that the WRC-19 revisions to the Radio Regulations are in Australia's national interest and recommends that binding treaty action be taken.

The purpose of the proposed *Agreement between Australia and Timor-Leste on Taxation Information Exchange* is to allow Australia and Timor-Leste to exchange information for the purpose of administering taxes affected by, or brought into existence as a consequence of, Annex D of the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the Maritime Boundaries Treaty).

The proposed Agreement is necessary to implement the Parties' obligations under the Maritime Boundaries Treaty, to provide companies whose petroleum activities are affected by that treaty with conditions equivalent to those previously in place under the revoked *Timor Sea Treaty between the Government of East Timor and the Government of Australia*.

The Committee notes that the proposed Agreement would ensure Australia satisfies its obligations under the Maritime Boundaries Treaty, and acknowledges the proposed Agreement would also ensure the avoidance of double taxation and prevent fiscal evasion in relation to petroleum activities. Accordingly, the Committee supports the proposed Agreement and recommends that binding treaty action be taken.

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Abbreviations

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
AMRD	Autonomous Maritime Radio Device
ARSP	Australian Radiofrequency Spectrum Plan
ASEAN	Association of Southeast Asian Nations
DFAT	Department of Foreign Affairs and Trade
DITRDC	Department of Infrastructure, Transport, Regional Development and Communications
ESIM	Earth Stations in Motion
FTA	Free Trade Agreement
GHz	Gigahertz
GMDSS	Global Maritime Distress and Safety System
HAPS	High-Altitude Platform Stations
Hz	Hertz
ITU	International Telecommunication Union
IMT	International Mobile Telecommunications
JPDA	Joint Petroleum Development Area
MHz	Megahertz
MIPCOM	International Market of Communications Programs
MYR	Malaysian Ringgit
NIA	National Interest Analysis
RIS	Regulatory Impact Statement

WRC World Radiocommunication Conference

WRC-19 World Radiocommunication Conference 2019

Members

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Senator Andrew Bragg

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Stephen Sherlock, Inquiry Secretary

Kevin Bodel, Senior Researcher

Cathy Rouland, Office Manager

Terms of Reference

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to enquire 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 questions 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

- 2.40 The Committee supports the *Agreement between the Government of Australia and the Government of Malaysia on Film Co-Production* and recommends that binding treaty action be taken.

Recommendation 2

- 3.32 The Committee supports the *Partial Revision of the 2015 Radio Regulations, as incorporated into the Final Acts of the World Radiocommunication Conference 2019* and recommends that binding treaty action be taken.

Recommendation 3

- 4.22 The Committee supports the *Agreement between Australia and Timor-Leste on Taxation Information Exchange* and recommends that binding treaty action be taken.

1. Introduction

- 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 Malaysia on Film Co-Production* (Sydney, 29 November 2019);
 - *Partial Revision of the 2015 Radio Regulations, as incorporated into the Final Acts of the World Radiocommunication Conference 2019 (WRC-19)* (Sharm El-Sheikh, 22 November 2019); and
 - *Agreement between Australia and Timor-Leste on Taxation Information Exchange* (Canberra, 28 November 2019; Dili, 20 March 2020).
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in the Parliament.
- 1.3 The 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 Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal, State and Territory agencies, and with industry or non-government organisations.
- 1.5 A Regulatory 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.

- 1.6 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.7 None of the treaty actions examined in this report required a RIS.
- 1.8 Copies of the treaties considered in this report and the associated documentation may be accessed through the Committee's website at:
 - https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/FilmCo-ProdMalaysia;
 - https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RadioRegs-WRC-19; and
 - https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/TaxInfoExchTimor-Leste.

Conduct of the Committee's review

- 1.9 The treaty actions reviewed in this report were advertised on the Committee website from the date of referral. Submissions for the treaty actions were requested by 19 February 2021. Two submissions were received relating to the revisions of the Radio Regulations, and one submission was received for each of the other treaty actions reviewed.
- 1.10 The Committee held a public hearing on 22 February 2021. The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website as listed above.
- 1.11 A list of submissions received is at Appendix A and a list of witnesses who appeared at the public hearing is at Appendix B.

2. Film Co-Production - Malaysia

Agreement between the Government of Australia and the Government of Malaysia on Film Co-Production

Introduction

- 2.1 This chapter examines the *Agreement between the Government of Australia and the Government of Malaysia on Film Co-Production* (the proposed Agreement). The treaty action was signed in Sydney on 29 November 2019 and tabled in the Parliament on 2 February 2021.
- 2.2 The proposed Agreement would be the thirteenth co-production arrangement that Australia has entered into under Australia's International Co-Production Program (the Program), the principal purpose of which is to foster industry development and cultural exchange between cooperating countries.¹
- 2.3 Within the Program's framework, co-production arrangements are negotiated bilaterally with the aim of sustaining and developing Australian creative resources and production. Australia is currently party to ten bilateral film co-production treaties (with the United Kingdom, Canada, China, Italy, Ireland, Israel, Germany, Republic of Korea, Singapore and

¹ National Interest Analysis [2020] ATNIA 14 with attachment on consultation, *Agreement between the Government of Australia and the Government of Malaysia on Film Co-Production*, [2020] ATNIF 18, hereafter NIA, para 8.

South Africa) and two Memoranda of Understanding (with France and New Zealand).²

- 2.4 Since the Program began in 1986, 194 co-productions with a total budget of approximately A\$2 billion have either been completed or have commenced production (as at 10 February 2020).³ A breakdown of co-productions made under the Program was provided to the Committee, including by country and the type of production.⁴
- 2.5 The National Interest Analysis (NIA) states the purpose of the proposed Agreement with Malaysia is to stimulate industry, employment, technical development and cultural exchange between Australia and Malaysia by facilitating screen co-productions between the two countries. The proposed Agreement provides a framework within which the relevant authorities of each country may cooperate to approve the making of a broad range of films including feature films, television, video recordings, animations and digital format productions.⁵
- 2.6 According to the NIA, the proposed Agreement aims to facilitate co-productions which:
- increase the output of high-quality productions, by sharing equity investment with Malaysia;
 - open up new markets both in Malaysia and internationally for Australian film, television, animation and digital format productions;
 - share the risk (and cost) of screen production;
 - establish links with Malaysian production and distribution interests;
 - facilitate interchange between Australian and Malaysian screen professionals, particularly those in principal creative positions;
 - create employment opportunities for Australian industry personnel; and
 - strengthen existing diplomatic ties between Australia and Malaysia.⁶

² NIA, para 8.

³ NIA, para 8.

⁴ Department of Infrastructure, Transport, Regional Development and Communications, *Submission 1*.

⁵ NIA, para 3.

⁶ NIA, para 9.

Reasons for Australia to take the proposed treaty action

- 2.7 According to the NIA, Malaysia is an attractive market for Australian co-productions, due to the numerous government-funded schemes in place to support Malaysian local film production and the potential to reach a very large audience (Malaysia has a population of 32 million, over 1,000 cinemas nationwide, and there is a growing appeal of Malaysian films in China). The Malaysian government allocated Malaysian Ringgit (MYR) 30 million (A\$10 million) and MYR 20 million (A\$6.5 million) for the development of the local film industry for 2019 and 2020 respectively. Fifty-four locally-produced films were released in 2018, with gross takings over MYR 170 million (A\$60 million), and Malaysia's participation in the 2019 edition of the International Market of Communications Programs (MIPCOM) generated MYR 20.7 million (A\$7 million) worth of local film exports and investments.⁷
- 2.8 Ms Michele McDonald from Screen Australia told the Committee that from her organisation's perspective:
- ... the treaty is very positive and is a great opportunity for Australian producers. ... it does provide access to a new market where producers are sharing resources and the risk of financing a film, and it provides access to audiences in both markets. The co-production program encourages creative collaboration between producers from both countries and can really increase the scale of a film. So from our point of view and from the industry's point of view it's a very positive agreement.⁸
- 2.9 The NIA also states the proposed Agreement expects to build on existing partnerships between Australian and Malaysian producers and provide the impetus to develop high-quality projects that may not otherwise have been undertaken.⁹
- 2.10 Commenting on industry interest in the proposed Agreement, Ms Caroline Fulton from the Department of Infrastructure, Transport, Regional

⁷ NIA, para 11.

⁸ Ms Michele McDonald, Senior Manager, Producer Offset and Co-Production, Screen Australia, *Committee Hansard*, Canberra, 22 February 2021, p. 2.

⁹ NIA, para 13.

Development and Communications said that ‘there was consistent interest from the Australian sector in having a co-production agreement in place’.¹⁰

2.11 Ms Fulton added:

Given that there is already interest between Malaysian producers and Australian producers, we would be hoping that, when this agreement comes into force, should it do so, it will foster the development of cultural projects, particularly cultural projects of scale, for both markets.¹¹

2.12 Ms McDonald from Screen Australia submitted:

We know of one television series that is interested in utilising the treaty when it's in force, and we've had a couple of other general queries over the past year or so. Generally, I would say that industry is very positive about new opportunities across the board. We definitely have one that's looking at moving forward into production if the treaty goes through, and I believe that's a TV live-action series.¹²

2.13 The NIA explained that the proposed Agreement is underpinned by the notion of reciprocity, a principle applied to ensure that over time there is an overarching balance of financial and creative participation by both countries, and that the proposed Agreement is of comparable benefit to both countries. This includes an overall balance in relation to respective production costs, studio and laboratory usage, and the employment of nationals of both Parties in major creative (i.e. directors, writers), performing, craft and technical positions related to screen co-productions made under the proposed Agreement.¹³

2.14 Ms Angela Corcoran from the Department of Foreign Affairs and Trade (DFAT) explained how the proposed Agreement would affect Australia's broader relationship with Malaysia, submitting that the proposed

¹⁰ Ms Caroline Fulton, Assistant Secretary, Creative Industries, Office for the Arts, Department of Infrastructure, Transport, Regional Development and Communications, *Committee Hansard*, Canberra, 22 February 2021, p. 2.

¹¹ Ms Fulton, Department of Infrastructure, Transport, Regional Development and Communications, *Committee Hansard*, Canberra, 22 February 2021, p. 3.

¹² Ms McDonald, Screen Australia, *Committee Hansard*, Canberra, 22 February 2021, p. 2.

¹³ NIA, para 12.

Agreement 'is very much consistent with our overall bilateral relationship with Malaysia, which is at a very strong point'.¹⁴

- 2.15 Ms Corcoran went on to explain the importance of Australia's 'comprehensive strategic partnership' with Malaysia:

We've got a very significant and mutually beneficial trade and investment relationship. In 2019, Malaysia was our second-largest trading partner in ASEAN and our ninth-largest trading partner overall, and around 3,800 Australian companies trade with Malaysia, of which around 300 have a physical presence there. We have strong economic complementarities and two FTAs [Free Trade Agreements] – the Malaysia-Australia FTA and the ASEAN-Australia-New Zealand FTA, AANZFTA. So this agreement offers us new opportunities to expand those trade and investment relationships.¹⁵

Obligations

- 2.16 Pursuant to Article III of the proposed Agreement, proposals for the making of co-productions must be submitted to the Competent Authorities of each Party for provisional approval prior to the commencement of production. Where such approval is withheld by one of the Competent Authorities, a project would not be approved as a co-production under the proposed Agreement.¹⁶
- 2.17 In approving co-productions, Article IV of the proposed Agreement requires the Competent Authorities to ensure that none of the co-producers are linked to one another, either directly or indirectly, by common management, ownership or control, unless the common management relates to the making of the co-production itself.¹⁷
- 2.18 Article V of the proposed Agreement further requires the Competent Authorities to ensure that contractual arrangements between co-producers include certain details, such as the date of completion of the co-production.¹⁸

¹⁴ Ms Angela Corcoran, Assistant Secretary, Southeast Asia Maritime Branch, Southeast Asia Division, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 22 February 2021, p. 3.

¹⁵ Ms Corcoran, DFAT, *Committee Hansard*, Canberra, 22 February 2021, p. 3.

¹⁶ NIA, para 14.

¹⁷ NIA, para 15.

¹⁸ NIA, para 15.

- 2.19 Once a co-production is approved, Article VII of the proposed Agreement requires that each co-production be entitled to all the benefits that are or may be accorded in Australia or Malaysia to national productions.¹⁹
- 2.20 Article VIII of the proposed Agreement provides that Australia shall, subject to its laws, facilitate the entry and temporary stay in Australia of Malaysian nationals or nationals of the country of any third co-producer, for the purpose of producing the film. Malaysia would be under the same obligations in corresponding circumstances.²⁰
- 2.21 Article IX of the proposed Agreement obliges Australia, subject to its laws, to permit the import and re-export, free of import duties and taxes, of cinematographic and technical equipment for the making of co-productions.²¹
- 2.22 Articles X of the proposed Agreement requires that each co-producer contribute a minimum of 20 per cent of the total financial and creative contributions, and that the creative contribution is in reasonable proportion to that co-producer's financial contribution.²²
- 2.23 Pursuant to Article XVIII of the proposed Agreement, each Competent Authority would monitor and ensure that an overall balance of contributions is achieved over each three-year period, consistent with the aims of the proposed Agreement.²³
- 2.24 Articles XI to XIV and Article XVI of the proposed Agreement set out obligations and powers of each Party and their Competent Authority in relation to various aspects of film production, including location filming in third countries (Article XI), participation of nationals of a Party in the making of a film co-production (Article XII), the language of the soundtrack and footage (Article XIII), the location of the majority of film making and processing (Article XIV), and acknowledgements and credits (Article XVI).²⁴
- 2.25 Article XV of the proposed Agreement requires that each Party satisfy itself that the working conditions in each of the countries of the participating co-

¹⁹ NIA, para 16.

²⁰ NIA, para 17.

²¹ NIA, para 17.

²² NIA, para 18.

²³ NIA, para 18.

²⁴ NIA, para 19.

producers are generally comparable and the working conditions for approved location filming in countries other than those of the co-producers is, generally, no less favourable.²⁵

- 2.26 Article XVII of the proposed Agreement obliges both Parties to apply their respective laws for the purposes of taxation, subject to the provisions of any tax treaty between Australia and Malaysia.²⁶
- 2.27 Article XXI of the proposed Agreement requires that the Parties conform with their respective national laws, rules and regulations, and any respective international legal obligations regarding the protection of intellectual property rights.²⁷
- 2.28 Article XXII of the proposed Agreement requires that the processing, treatment, recording, distribution, or transmission of documents, data and information under the proposed Agreement be consistent with the respective domestic laws of each Party on confidentiality, and any respective international legal obligations.²⁸
- 2.29 Pursuant to Article XX of the proposed Agreement, any dispute concerning the interpretation, implementation and/or application of any of the provisions of the proposed Agreement shall be settled amicably through mutual consultation and/or negotiations between the Parties through diplomatic channels, without reference to any third party or international tribunal.²⁹
- 2.30 In the event of termination, Article XXIV provides that the proposed Agreement shall continue as if in force in respect of any co-production approved by the Competent Authorities, but not yet completed prior to the termination.³⁰

²⁵ NIA, para 20.

²⁶ NIA, para 21.

²⁷ NIA, para 22.

²⁸ NIA, para 23.

²⁹ NIA, para 24.

³⁰ NIA, para 25.

Implementation

- 2.31 The NIA states that no new legislative measures are required to implement the obligations under the proposed Agreement.³¹
- 2.32 According to the NIA, the *Income Tax Assessment Act 1997* already allows access to tax incentives for official co-productions (the Producer Offset), and the *Migration Act 1958* and its regulations allow for entry into Australia of co-production teams as envisaged by the proposed Agreement.³²
- 2.33 For goods that are the subject of a ‘relevant intergovernmental agreement’, the NIA confirms the *Customs Act 1901* provides for their delivery into home consumption as goods temporarily imported, without the need for the goods to be entered for that purpose, or the payment of applicable duty, provided that a security or undertaking is established. Corresponding provisions in *A New Tax System (Goods and Services Tax) Act 1999* extend these arrangements to the otherwise applicable Goods and Services Tax. The NIA also confirms that once in force, the proposed Agreement would constitute a ‘relevant intergovernmental agreement’ for the purposes of both these Acts.³³
- 2.34 As set out above, under the proposed Agreement both Parties are to apply their domestic tax laws, subject to the provisions of any tax treaty in force between Australia and Malaysia (Article XVII). The current tax treaty in force between Australia and Malaysia is the *Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, which entered into force in 1981.³⁴

Costs

- 2.35 The NIA advises that, while there would be some costs associated with the administration of the proposed Agreement, these costs would be absorbed by Screen Australia.³⁵

³¹ NIA, para 26.

³² NIA, para 27.

³³ NIA, para 28.

³⁴ NIA, para 29.

³⁵ NIA, para 31.

- 2.36 The NIA further advises that direct agency funding of Australia-Malaysia co-productions through Screen Australia would be provided from existing funds.³⁶
- 2.37 According to the NIA, Producer Offset claims under the *Income Tax Assessment Act 1997* that would be incurred because of the proposed Agreement were considered in the broader context of the associated *Trans-Pacific Partnership Agreement*.³⁷

Conclusion

- 2.38 The Committee notes the interest amongst both Australian and Malaysian producers to develop co-productions between the two countries, and welcomes the proposed Agreement as an effort to further deepen the already close cultural and economic relationship with Malaysia.
- 2.39 The Committee considers the proposed Agreement should be ratified and recommends that binding treaty action be taken.

Recommendation 1

- 2.40 The Committee supports the *Agreement between the Government of Australia and the Government of Malaysia on Film Co-Production* and recommends that binding treaty action be taken.**

³⁶ NIA, para 32.

³⁷ NIA, para 32.

3. Radio Regulations - WRC-19

Partial Revision of the 2015 Radio Regulations, as incorporated into the Final Acts of the World Radiocommunication Conference 2019 (WRC-19)

Background

- 3.1 This Chapter examines the *Partial Revision of the 2015 Radio Regulations, as incorporated into the Final Acts of the World Radiocommunication Conference 2019 (WRC-19)* (the proposed Final Acts), done at Sharm El-Sheikh on 22 November 2019.¹ The proposed Final Acts were tabled in the Parliament on 2 February 2021.
- 3.2 The Radio Regulations are a binding international instrument administered by the International Telecommunication Union (ITU) under the Constitution of the International Telecommunication Union (the Constitution) and the Convention of the International Telecommunication Union (the Convention).
- 3.3 The National Interest Analysis (NIA) states that the Radio Regulations ‘set out mandatory technical, operational and regulatory parameters and conditions of use for radiofrequency spectrum and satellite orbits by

¹ National Interest Analysis [2020] ATNIA 18 with attachment on consultation, *Partial Revision of the 2015 Radio Regulations, as incorporated into the Final Acts of the World Radiocommunication Conference 2019 (WRC-19)*, [2020] ATNIF 23, hereafter the NIA, para 1.

communications technologies'.² This facilitates equitable access to, and rational use of, the radio-frequency spectrum and satellite orbits.³

Radio-frequency spectrum

- 3.4 The radio-frequency spectrum is part of the electromagnetic radiation spectrum that includes visible light. Electromagnetic radiation propagates as electromagnetic waves. The characteristics of these waves change across the electromagnetic spectrum.⁴
- 3.5 For the purposes of the Radio Regulations, the most important characteristic of electromagnetic waves is frequency. Frequency refers to the number of waves generated in a set period of time and is measured in Hertz (Hz). Hertz measures the number of waves per second. One Hertz means one wave per second.⁵
- 3.6 The radio-frequency spectrum (referred to as 'spectrum' hereafter) is a small part of the electromagnetic radiation spectrum, generally regarded as being the electromagnetic radiation spectrum between 3 Hz and 300 GHz (gigahertz, or one billion Hertz a second).⁶
- 3.7 Spectrum is used for communication technologies from free to air radio and television to wi-fi.⁷ The Radio Regulations ensure that the spectrum is used internationally in a manner that will prevent harmful interference in communications by allocating each form of communication a separate part of the spectrum.⁸

² NIA, para 12.

³ NIA, para 2.

⁴ BBC, *The Spectrum and Its Uses*, September 2006, p. 4.

⁵ BBC, *The Spectrum and Its Uses*, September 2006, p. 4.

⁶ BBC, *The Spectrum and Its Uses*, September 2006, p. 4.

⁷ BBC, *The Spectrum and Its Uses*, September 2006, p. 5.

⁸ NIA, para 4.

Satellites

- 3.8 As identified above, the Radio Regulations also regulate satellite orbits. In practice, the ITU uses the Radio Regulations' allocation of spectrum as the mechanism for administering satellite orbits.⁹
- 3.9 In relation to satellites, Article 44 of the Constitution states:
- In using frequency bands for radio services, Member States shall bear in mind that radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of the Radio Regulations so that countries or groups of countries may have equitable access to those orbits and frequencies, taking into account the special needs of the developing countries and the geographical situation of particular countries.¹⁰
- 3.10 The geostationary orbit, located 35,786 km above the equator, is attractive to telecommunication operators because it permits satellite communication with a significant proportion of the Earth's surface. Surface-based receivers and transmitters can also be fixed because the satellite is always in the same location in the sky.¹¹
- 3.11 To alleviate interference with radio communications, satellites in geostationary orbit must be at least 1,000 km apart. Consequently, there is an upper limit of 1,800 slots in the geostationary orbit.¹²

Proposed Final Acts

- 3.12 Article 13 of the Constitution and Article 7 of the Convention enable the revision of the Radio Regulations at World Radiocommunication

⁹ Louis de Gouyon Matignon, Space Legal Issues, *Orbital Slots and Space Congestion*, June 2019, <https://www.spacelegalissues.com/orbital-slots-and-space-congestion/>, viewed on 16 February 2021.

¹⁰ *Constitution of the International Telecommunication Union*, hereafter the Constitution, Article 44.

¹¹ Louis de Gouyon Matignon, Space Legal Issues, *Orbital Slots and Space Congestion*, June 2019, <https://www.spacelegalissues.com/orbital-slots-and-space-congestion/>, viewed on 16 February 2021.

¹² Louis de Gouyon Matignon, Space Legal Issues, *Orbital Slots and Space Congestion*, June 2019, <https://www.spacelegalissues.com/orbital-slots-and-space-congestion/>, viewed on 16 February 2021.

Conferences, held every three to four years, largely to reflect technical advances.¹³

3.13 The proposed Final Acts contain the revisions to the Radio Regulations agreed at the WRC-19.¹⁴

3.14 Ms Rachel Blackwood from the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) told the Committee:

The outcomes of WRC-19 aligned with Australia's overarching objective for the conference, which was to ensure that the radio regulations are consistent with the rational and efficient use of Australia's sovereign assets in the radio frequency spectrum. As outlined in the National Interest Analysis, the revisions agreed at WRC-19 contain numerous changes to the radio regulations that are expected to benefit Australia by supporting continued development and roll out of communication services.¹⁵

3.15 Ms Blackwood continued:

We have identified no disadvantages to Australia consenting to the revisions to the radio regulations and taking the proposed treaty action. Australia retains its sovereign right to control transmissions within its territory and to protect Australian users from interference from foreign systems.¹⁶

Obligations

3.16 The NIA identifies revisions to the Radio Regulations agreed at the WRC-19 relevant to Australia:

- Spectrum has been allocated globally for use by 5G mobile broadband services. Australia, along with 67 other countries and Region 2 countries, has been allocated spectrum in the 47.2-48.2 GHz band for 5G mobile broadband.¹⁷
- Spectrum has been allocated globally for transmissions of High-Altitude Platform Stations (HAPS) (such as aircraft) and their associated ground stations. Specifically, spectrum in the 31-31.3 GHz and 47.2-47.5 GHz

¹³ NIA, para 3.

¹⁴ NIA, para 3.

¹⁵ Ms Rachel Blackwood, Assistant Secretary, Department of Infrastructure, Transport, Regional Development and Communications (DITRDC), *Committee Hansard*, Canberra, 22 February 2021, p. 6.

¹⁶ Ms Blackwood, DITRDC, *Committee Hansard*, Canberra, 22 February 2021, p. 6.

¹⁷ NIA, paras 15 and 16.

bands has been allocated on a primary basis for HAPS. Spectrum in the 38-39.5 GHz band has been allocated on a primary basis for ground station to HAPS communications and on a secondary basis for HAPS to ground station communications.¹⁸

- Spectrum between 275-450 GHz has been allocated for land mobile and fixed service applications. This spectrum allocation is expected to enable new technologies using high bandwidth point-to-point transmissions over short distances, such as at ticket gates or within computers. Conditions have been applied to parts of this band to protect Earth exploration satellite services and radio astronomy applications.¹⁹
- Conditions for radio local area networks, such as wi-fi in the 5150-5250 MHz band of the spectrum, have been relaxed to allow for limited outdoor transmissions provided the transmission power is low.²⁰
- A second satellite system has been added to Appendix 15 of the Radio Regulations to facilitate the provision of Global Maritime Distress and Safety System (GMDSS) services. As part of the same change, the maritime mobile-satellite service allocation in the 1621.35-1626.5 MHz band has been upgraded to primary status, and provisions have been put in place to protect services operating in that and adjacent bands. These changes have been made to accommodate updates made to the GMDSS by the International Maritime Organization.²¹
- In response to the proliferation of Autonomous Maritime Radio Devices (AMRDs), such as those fitted to buoys, regulations have been developed permitting AMRDs to use spectrum between 156.525 MHz, 161.975 MHz, and 162.025 MHz for navigation safety and spectrum at 160.9 MHz for uses unrelated to navigation safety.²²
- Additional spectrum has been allocated to enable the satellite component of the Very High Frequency Data Exchange System, which provides extended coverage for maritime communications.²³
- New conditions have been imposed on non-geosynchronous orbit²⁴ satellites to align with those that apply to satellites in geosynchronous

¹⁸ NIA, para 17.

¹⁹ NIA, para 18.

²⁰ NIA, para 19.

²¹ NIA, para 20.

²² NIA, para 21.

²³ NIA, para 22.

²⁴ Note that this is a different type of orbit to the geostationary orbit discussed above.

orbit. Satellites providing fixed-satellite, broadcasting-satellite or mobile-satellite services would need to be deployed for 90 continuous days within a seven-year period to be brought into use.²⁵

- Non-geosynchronous orbit satellite systems in certain bands and services, which use a number of satellites for the same purpose, must also have at least:
 - 10 per cent of the system's satellites deployed within three years of the initial seven year milestone;
 - 50 per cent of the system's satellites deployed within five years of the initial seven year milestone; and
 - 100 per cent less one of the system's satellites deployed within seven years of the initial seven year milestone.²⁶
- Global conditions for the operation of Earth Stations in Motion (ESIM) in the 17.7-19.7 GHz and 27.5-29.5 GHz bands have been imposed to support the provision of satellite broadband to moving vehicles, such as aeroplanes and ships.²⁷
- Gateway earth stations²⁸ have been allocated additional spectrum in the 51.4-52.4 GHz band for transmission to satellites to support broadband satellite systems.²⁹
- Emission limits have been imposed on mobile-satellite³⁰ service transmissions in the 399.9-400.05 MHz band, and ground stations used by Earth exploration-satellite and meteorological-satellite services in the 401-403 MHz band. This is to protect low-power satellite data collection systems, which are used for weather and climate data. Existing mobile-

²⁵ NIA, para 23.

²⁶ NIA, para 24.

²⁷ NIA, para 25.

²⁸ Gateway earth stations are ground stations telecommunications companies use to emit and receive signals from communication satellites. For instance, an international mobile phone call might be routed through a satellite by gateway earth stations. For an example, see Brian Karlovsky, ARN, *NBN Co satellite ground station network nears completion*, September 2014, <https://www.arnnet.com.au/article/555268/nbn-co-satellite-ground-station-network-nears-completion/>, viewed on 3 May 2021.

²⁹ NIA, para 26.

³⁰ A mobile-satellite system refers to a mobile phone service that transmits and receives mobile phone services by satellite (generically called a 'satellite phone'), rather than using a terrestrial mobile service. See Radio Regulations, Article 1.25.

satellite systems have a transition period of five years to meet the new emissions limits.³¹

- New special conditions have been agreed for short duration mission satellite systems (systems of less than 10 satellites with a mission length of up to three years) to better reflect the short build, launch and de-orbit timeframes of these systems.³²

3.17 According to the NIA, the principal benefits for Australia arising from the revisions are:

- the provision of more bandwidth supporting 5G mobile broadband services;
- improved connectivity on aeroplanes and ships;
- increased global satellite broadband availability and competition in the non-geostationary satellite orbit market;
- expanded capacity and coverage, particularly in Polar regions and in the provision of GMDSS satellite services; and
- improved protection for radio astronomy and earth observation sciences, including projects of national interest such as the Square Kilometre Array and earth observation satellite missions.³³

Reservations and declarations

3.18 The NIA confirms Australia made a general reservation to the proposed Final Acts at the WRC-19. Australia reserved the right to take measures it might deem necessary to safeguard its interests if another Member State fails to respect the conditions in the Final Acts or if reservations made by any Member State are prejudicial to radiocommunication services in Australia or its full sovereign rights.³⁴

3.19 In relation to the reservation, Ms Blackwood from DITRDC stated:

That's a general reservation that is pretty common in terms of member states' approaches to the World Radiocommunication Conference [WRC] and aligns with a similar reservation that we have lodged over the years at successive WRCs. It essentially preserves our right to take actions that might be required if other jurisdictions do not comply with their obligations under the Radio

³¹ NIA, para 27.

³² NIA, para 29.

³³ NIA, para 5.

³⁴ NIA, para 7.

Regulations or we need to do things that conflict with the regulations to deal with interference suffered within our territory.³⁵

- 3.20 In addition, the NIA states that Australia joined with Canada, New Zealand and the United States at the WRC-19 in supporting a Ukrainian declaration on the claimed annexation of Crimea by Russia. The declaration supported a United Nations Resolution calling upon all States, international organisations and specialised agencies not to recognise any alteration in the status of Crimea. It also encouraged the ITU Secretary-General to take all necessary actions to assist Ukraine ensure its telecommunications resources are used in accordance with the ITU Constitution and Convention, and the Radio Regulations.³⁶
- 3.21 Ms Blackwood from DITRDC noted that the declaration concerning Crimea was similar to that made at the previous World Radiocommunication Conference in 2015.³⁷
- 3.22 Finally, the NIA states that Australia joined a declaration with 32 other countries at the WRC-19 opposing Colombia's reaffirmation of the Bogota Declaration of 1976. The declaration advised that the claims in relation to the Bogota Declaration cannot be recognised by the Conference. The Bogota Declaration was an attempt by equatorial countries to claim sovereign rights over the geostationary satellite orbit above their geographical location.³⁸
- 3.23 DITRDC advised that the position Australia took at the WRC-19 in relation to the Bogota Declaration was consistent with previous seven World Radiocommunication Conferences and was developed in consultation with the Department of Foreign Affairs.³⁹

Implementation

- 3.24 According to the NIA, most of the revisions from the WRC-19 apply to Australia provisionally from 1 January 2021, and would only formally enter into force if Australia notifies the Secretary-General of the ITU of its consent

³⁵ Ms Blackwood, DITRDC, *Committee Hansard*, Canberra, 22 February 2021, p. 7.

³⁶ NIA, para 9.

³⁷ Ms Blackwood, DITRDC, *Committee Hansard*, Canberra, 22 February 2021, p. 8.

³⁸ NIA, para 10; and DITRDC, *Submission 2*, pp. 1 and 2.

³⁹ DITRDC, *Submission 2*, p. 2.

to be bound or if consent is deemed because Australia has failed to provide notification of its decision within 36 months – by 1 January 2024.⁴⁰

- 3.25 However, the NIA advises that some of the WRC-19 revisions relating to Australia came into force immediately following the Conference:

These revisions related to international satellite regulation and maritime safety communications; some provisions for satellite and mobile technologies; a provision relating to the [intended] use of 4800-4900MHz by a number of countries for the purpose of international mobile telecommunications (IMT)...⁴¹

- 3.26 A further revision that sets out global conditions for the operation of ESIM in certain bands, came into force on 1 July 2020.⁴²
- 3.27 In accordance with the ITU Constitution, the general reservation made by Australia would remain in force provided that Australia maintains the reservation when notifying the Secretary-General of its consent to be bound.⁴³
- 3.28 The NIA provides that Australia's obligations under the Radio Regulations are implemented through the Australian Radiofrequency Spectrum Plan (ARSP) in accordance with section 30 of the *Radiocommunications Act 1992*. Amendments will need to be made to the ARSP if Australia consents to be bound by the revisions.⁴⁴

Costs

- 3.29 There are no identifiable direct costs to Commonwealth, State or Territory Governments arising from the proposed Final Acts.⁴⁵

Conclusion

- 3.30 The Committee acknowledges the reservations and declarations made by Australia at the WRC-19 and notes they are consistent with the position Australia took at previous World Radiocommunication Conferences.

⁴⁰ NIA, para 3.

⁴¹ NIA, para 3.

⁴² DITRDC, *Submission 2*, p. 1.

⁴³ The Constitution, Article 54(5ter).

⁴⁴ NIA, para 33.

⁴⁵ NIA, para 34.

- 3.31 The Committee is satisfied that the WRC-19 revisions to the Radio Regulations are in Australia's national interest and recommends that binding treaty action be taken.

Recommendation 2

- 3.32 **The Committee supports the *Partial Revision of the 2015 Radio Regulations, as incorporated into the Final Acts of the World Radiocommunication Conference 2019* and recommends that binding treaty action be taken.**

4. Tax Information Exchange - Timor-Leste

Agreement between Australia and Timor-Leste on Taxation Information Exchange

Introduction

- 4.1 This chapter examines the *Agreement between Australia and Timor-Leste on Taxation Information Exchange* (the proposed Agreement). The treaty action was signed by Australia in Canberra on 28 November 2019 and signed by Timor-Leste in Dili on 20 March 2020.¹ The proposed Agreement was tabled in the Parliament on 2 February 2021.
- 4.2 According to the National Interest Analysis (NIA), the purpose of the proposed Agreement is to allow Australia and Timor-Leste to exchange information for the purpose of administering taxes affected by, or brought into existence as a consequence of, Annex D of the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the Maritime Boundaries Treaty). This includes

¹ National Interest Analysis [2020] ATNIA 12 with attachment on consultation, *Agreement between Australia and Timor-Leste on Taxation Information Exchange* [2020] ATNIF 15, hereafter the NIA, para 1.

exchanging information to ensure the avoidance of double taxation and the prevention of fiscal evasion in relation to affected petroleum activities.²

- 4.3 The Maritime Boundaries Treaty came into force on 30 August 2019, revoking the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* (the Timor Sea Treaty) and establishing new maritime boundaries between the Parties. Certain oil and gas fields in the Timor Sea have now transitioned to Timor-Leste's exclusive jurisdiction in accordance with the Maritime Boundaries Treaty.³

- 4.4 Mr Simon Winckler from the Department of the Treasury (Treasury) informed the Committee:

The impacted projects are those that were formerly part of the Joint Petroleum Development Area [JPDA] established under the Timor Sea Treaty as well as the Buffalo field, which was previously within Australian jurisdiction. While the affected petroleum fields are all now within the exclusive jurisdiction of Timor-Leste, the companies involved in them will continue to have Australian tax characteristics that are relevant to their past and current operations in the former JPDA and the Buffalo field.⁴

Reasons for Australia to take the proposed treaty action

- 4.5 The NIA states that the proposed Agreement 'is necessary to implement the Parties' obligations under the Maritime Boundaries Treaty to provide affected companies with conditions equivalent to those in place under the Timor Sea Treaty' and 'reflects the Parties' interest in ensuring that transitioned petroleum operations continue with minimal uncertainty, including in relation to taxation administration.'⁵
- 4.6 It was noted by Mr Winckler from Treasury that the proposed Agreement is needed as '[t]here is no tax information exchange agreement built into the text of the maritime boundaries treaty, unlike the former Timor Sea treaty which it replaced.'⁶

² NIA, para 3.

³ NIA, para 4.

⁴ Mr Simon Winckler, Director, Special Tax Regimes, Corporate and International Tax Division, Department of the Treasury (Treasury), *Committee Hansard*, Canberra, 22 February 2021, p. 10.

⁵ NIA, para 9.

⁶ Mr Winckler, Treasury, *Committee Hansard*, Canberra, 22 February 2021, p. 10.

- 4.7 Mr Winckler further advised the Committee that '[w]e don't have a bilateral information exchange agreement with Timor-Leste that generally applies for tax affairs.'⁷
- 4.8 According to the NIA, the proposed Agreement would ensure that the exchange of taxation information in relation to affected petroleum activities continues in accordance with the arrangements in place prior to the Maritime Boundaries Treaty.⁸
- 4.9 The NIA also states that the proposed Agreement would help Timor-Leste to fully realise the tax revenue benefits of the resources now falling within its jurisdiction under the Maritime Boundaries Treaty, and further strengthen Australia's bilateral relationship with Timor-Leste.⁹

Obligations

- 4.10 Article 1 of the proposed Agreement obliges the Parties to:
- ... exchange such information as is necessary for carrying out the provisions of Annex D of the Maritime Boundaries Treaty or of the domestic law of the Parties as in force from time to time concerning the administration of taxes affected by, or brought into existence as a consequence of, Annex D of the Maritime Boundaries Treaty ... in particular for the prevention of avoidance or evasion of such taxes.¹⁰
- 4.11 However, Article 2 of the proposed Agreement provides that a Party is not required to carry out administrative measures or obtain and supply information that would be contrary to the domestic laws, administrative practice or public policy of that Party.¹¹
- 4.12 Article 1 further requires the Parties to treat any information received under the proposed Agreement as secret, in the same manner as information obtained its domestic laws. Information may also only be disclosed where permitted by the proposed Agreement.¹²

⁷ Mr Winckler, Treasury, *Committee Hansard*, Canberra, 22 February 2021, p. 11.

⁸ NIA, para 6.

⁹ NIA, para 8.

¹⁰ *Agreement between Australia and Timor-Leste on Taxation Information Exchange* [2020] ATNIF 15, hereafter the proposed Agreement, Article 1.

¹¹ NIA, para 12.

¹² NIA, para 13.

- 4.13 Pursuant to Article 4 of the proposed Agreement, Australia's obligations would be limited to tax information relating to the Joint Petroleum Development Area activities 03-12, 03-13, 06-105 and 11-106, and permit area WA-523-P.¹³
- 4.14 The proposed Agreement would terminate on the commercial depletion of the oil and gas fields to which the proposed Agreement applies or by agreement between the Parties.¹⁴

Implementation

- 4.15 According to the NIA, no changes to Australian legislation would be required to implement the proposed Agreement. The NIA notes that the Commissioner of Taxation or an authorised representative is already permitted by law to collect and disclose information on taxation matters with a foreign country under an international agreement.¹⁵
- 4.16 The Committee was informed by Mr Winckler from Treasury that most of the projects to which the proposed Agreement would apply are already underway and 'not held up by the commencement of this information exchange agreement.'¹⁶
- 4.17 In relation to the domestic processes Timor-Leste need to complete to bring the proposed Agreement into force, the Department of Foreign Affairs and Trade informed the Committee that:

On 27 August 2019 the Government of Timor-Leste published Resolution 22/2019 in the *Jornal da Republica* approving the Taxation Information Exchange Agreement. Our Embassy in Dili is awaiting information from Timor-Leste on what domestic processes, if any, Timor-Leste has left to complete in order to be in a position to bring the Agreement into force.¹⁷

Costs

¹³ NIA, para 14.

¹⁴ NIA, para 19.

¹⁵ NIA, para 15.

¹⁶ Mr Winckler, Treasury, *Committee Hansard*, Canberra, 22 February 2021, p. 11.

¹⁷ Department of Foreign Affairs and Trade, *Submission 1*, p. 1.

- 4.18 The NIA states that no financial or regulatory costs would be incurred by Australia in relation to the proposed Agreement.¹⁸

Conclusion

- 4.19 The Committee notes that the proposed Agreement would ensure Australia satisfies its obligation under the Maritime Boundaries Treaty by enabling petroleum activities entered into under the terms of the revoked Timor Sea Treaty to continue under equivalent conditions.
- 4.20 The Committee also acknowledges the benefits of the proposed Agreement in ensuring the avoidance of double taxation and preventing fiscal evasion in relation to affected petroleum activities.
- 4.21 The Committee supports the proposed Agreement and recommends that binding treaty action be taken.

Recommendation 3

- 4.22 The Committee supports the *Agreement between Australia and Timor-Leste on Taxation Information Exchange* and recommends that binding treaty action be taken.**

- 4.23 Mr Dave Sharma MP

- 4.24 Chair

- 4.25 10 May 2021

¹⁸ NIA, paras 16 and 17.

A. Submissions

Film Co-Production – Malaysia

- 1 Department of Infrastructure, Transport, Regional Development and Communications

Radio Regulations – WRC-19

- 1 Communications Alliance Ltd
- 2 Department of Infrastructure, Transport, Regional Development and Communications

Tax Information Exchange – Timor-Leste

- 1 Department of Foreign Affairs and Trade

B. Witnesses

Monday, 22 February 2021

CANBERRA

Film Co-Production – Malaysia

Department of Foreign Affairs and Trade

Department of Infrastructure, Transport, Regional Development and Communications

Screen Australia

Radio Regulations – WRC-19

Australian Communications and Media Authority

Department of Foreign Affairs and Trade

Department of Infrastructure, Transport, Regional Development and Communications

Tax Information Exchange – Timor-Leste

Department of Foreign Affairs and Trade

Department of the Treasury