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Report 210

Timor-Leste Cooperation in the Field of Defence and the Status of Visiting Forces; Serbia Social Security Agreement

Joint Standing Committee on Treaties

August 2023

CANBERRA

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Terms of reference

The Committee's resolution of appointment empowers 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
 - a Minister
- 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.



Abbreviations

ATNIA	Australian Treaty National Interest Analysis
ATNIF	Australian Treaty Not In Force
ATS	Australian Treaty Series
F-FDTL	FALINTIL-Forças de Defesa de Timor-Leste
IHR	International Health Regulations
IMO	International Maritime Organization
IMO Convention	<i>Convention on the International Maritime Organization</i>
INTERFET	International Force East Timor
ISF	International Stabilisation Force
MSC	Maritime Safety Committee
NIA	National Interest Analysis
SOLAS	<i>International Convention for the Safety of Life at Sea</i>
UN	United Nations
WHO	World Health Organization

List of recommendations

Recommendation 1

- 2.53** The Committee supports the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces and recommends that binding treaty action be taken.

Recommendation 2

- 3.42** The Committee supports the Agreement between Australia and the Republic of Serbia on Social Security and recommends that binding treaty action be taken.



Executive summary

This report contains the Joint Standing Committee on Treaties' review of the following major treaty actions:

- *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces* (Canberra, 7 September 2022) (Timor-Leste Agreement)
- *Agreement between Australia and the Republic of Serbia on Social Security* (Belgrade, 20 January 2023) (Serbia Agreement)

Timor-Leste Agreement

The Agreement establishes a legally binding framework to govern defence cooperation activities between Australia and Timor-Leste. It would facilitate a range of cooperative activities including the conduct of maritime military and other operations; exchanges and exercises; international humanitarian assistance and disaster relief; education and training; and logistic support. Most provisions in the Agreement reflect those commonly found in Australia's existing status of forces agreements.

This would be the ninth country with which Australia has negotiated a defence cooperation and status of forces agreement. As with other such agreements, it does not create an alliance or any alliance-type obligations, neither does it provide for either force to conduct activities in the territory of the other Party without consent.

The Agreement embodies Australia's strengthening diplomatic and defence ties across the region and provides for mutually beneficial defence engagement between Australia and Timor-Leste. It represents the maturing of the long-standing bilateral relationship and will contribute to the future expansion of military cooperation and training.

The committee supports the Agreement and recommends binding treaty action be taken.

Serbia Agreement

The Agreement is based on a model agreement and would allow each Party to pay a benefit that reflects a person's association with that Party's social security system. For Australia, the Agreement covers the age pension; for Serbia, it covers pension and disability insurance. The Agreement would also allow for a claim for a benefit to be lodged in either Party and provides for the sharing of information between Parties.

The Government believes that the following groups of people may be able to benefit under the Agreement: Australian residents who wish to move to Serbia in their retirement (including

those born in Serbia or with Serbian ancestry); Australian residents who have previously worked in Serbia; former Australian residents living in Serbia and Australian employers temporarily seconding workers to Serbia who will not be subject to double liability.

The Government further believes that the Agreement would help maximise the income of Australian residents, which would have a positive flow-on effect within the Australian economy; further strengthen bilateral relations between Australia and Serbia; provide choices in retirement for individuals who migrate between Australia and Serbia during or after their working lives and bring economic and social benefits to Australia.

The committee supports the Agreement and recommends binding treaty action be taken.

The report also contains the Committee's examination of four minor treaty actions:

- amendments to the *Convention on the International Maritime Organization*
- Resolution MSC.188(79)REV.1—Revised Performance Standards for Water Level Detectors on Ships Subject to SOLAS Regulations II-1/25, II-1/25-1 and XII/12
- Resolution MSC.496(105)— Amendment to the *International Convention for the Safety of Life at Sea, 1974* (radiocommunications)
- amendments adopted by the 75th World Health Assembly to the International Health Regulations (2005).



1. Introduction

- 1.1 This report contains the Joint Standing Committee on Treaties' (JSCOT) review of the following major treaty actions:
 - Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces (Canberra, 7 September 2022) (Timor-Leste Agreement)
 - Agreement between Australia and the Republic of Serbia on Social Security (Belgrade, 20 January 2023) (Serbia Agreement)
- 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 or referred by a Minister.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure ratification is in the national interest, and that unintended or negative effects on Australia do not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a National Interest Analysis, prepared by the Australian Government. This document considers 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 The Committee takes account of this document in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.6 A copy of the treaties considered in this report and the associated documents may be accessed through the Committee's website at:
 - www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/SOFATimor-Leste
 - www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/SSASRB
- 1.7 This report also contains the Committee's review of four minor treaty actions:
 - amendments to the *Convention on the International Maritime Organization*
 - Resolution MSC.188(79)REV.1—Revised Performance Standards for Water Level Detectors on Ships Subject to SOLAS Regulations II-1/25, II-1/25-1 and XII/12
 - Resolution MSC.496(105)—Amendment to the *International Convention for the Safety of Life at Sea, 1974* (radiocommunications)

- amendments adopted by the 75th World Health Assembly to the International Health Regulations (2005).

Conduct of the Committee's review

Timor-Leste Agreement

- 1.8 The Agreement was published on the Committee website on 22 March 2023. Submissions were requested by 11 April 2023. Five submissions were received.
- 1.9 The Committee held a public hearing in Canberra on 19 June 2023. The transcript of evidence from the public hearing can be accessed through the Committee's website.
- 1.10 A list of submissions received is at Appendix A and a list of witnesses who appeared at the public hearing is at Appendix B.

Serbia Agreement

- 1.11 The Agreement was published on the Committee website on 10 May 2023. Submissions were requested by 31 May 2023. No submissions were received.
- 1.12 The Committee held a public hearing in Canberra and by videoconference on 6 July 2023. The transcript of evidence from the public hearing can be accessed through the Committee's website.
- 1.13 A list of witnesses who appeared at the public hearing is at Appendix B.



2. Australia–Timor-Leste defence cooperation

Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces

Introduction

- 2.1 The *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces* (the Agreement) establishes a legally binding framework to govern defence cooperation activities between Australia and Timor-Leste.¹
- 2.2 Timor-Leste would be the ninth country with which Australia has negotiated a status of forces agreement.² The provisions in the Agreement are similar to those in Australia's other status of forces agreements, such as those with Japan, France, Philippines and New Zealand.

Background

Australia's defence engagement with Timor-Leste

- 2.3 Australia has had significant defence engagement with Timor-Leste since 1999. This has occurred bilaterally, and as part of United Nations (UN) missions or in support of UN missions, including the International Force East Timor (INTERFET) and the

¹ *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces* (Canberra, 7 September 2022) [2023] ATNIF 1, hereafter Australia-Timor-Leste Defence Cooperation Agreement

² The other countries with which Australia has status of forces or visiting forces agreements are: France, Japan, Malaysia, New Zealand, Papua New Guinea, Philippines, Singapore, and the United States of America. Department of Defence, 'Directorate of International Government Agreements: Visiting Forces Agreements', <https://defence.gov.au/legal/digaaalinks.asp>, viewed 21 May 2023

International Stabilisation Force (ISF). Australian police and civilian advisers, in addition to military personnel, have been involved in various engagement activities.³

2.4 Australia considers Timor-Leste a key strategic defence partner and currently operates a comprehensive Defence Cooperation Program (DCP) with the FALINTIL-Forças de Defesa de Timor-Leste (F-FDTL). The DCP is delivered by in-country advisers through mentoring, infrastructure development, participation in Australian Defence Force exercises and training, and direct service-to-service training.⁴

2.5 Under the Pacific Maritime Security Program (part of the DCP), Australia is scheduled to gift two Austal-built Guardian class patrol boats to Timor-Leste in 2024, and to support their ongoing operations and maintenance.⁵ The Department of Defence expects the patrol boats will enable Timor-Leste to effectively manage its exclusive economic zone and combat illegal fishing.⁶

2.6 According to the Department of Defence:

We have warm people-to-people links, and we are committed to building the Timor-Leste Defence Force's capability and capacity. By our reckoning, over 1,000 members of the Timor-Leste Defence Force have received training from Australia.⁷

Reasons for Australia to take the treaty action

2.7 The Department of Defence told the Committee that enhanced defence cooperation under the Agreement would 'contribute to the meeting of shared regional security challenges ... Strengthening engagement with the Indo-Pacific with our partners will help maintain peace, security and prosperity in our region'.⁸

2.8 The Department of Defence added that the priorities under the Defence Strategic Review 'are to increase our diplomatic and deepen our defence relationships and partnerships. Part of this process is through enabling our defence cooperation

³ Department of Veterans' Affairs, 'Australian peacekeepers in East Timor from 1999 to 2013', <https://anzacportal.dva.gov.au/wars-and-missions/peacekeeping/summaries/east-timor-1999-2013#7>, viewed 20 April 2023

⁴ National Interest Analysis [2023] ATNIA 1 with attachment on consultation, *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces* (Canberra, 7 September 2022) [2023] ATNIF 1, hereafter referred to as NIA, paragraph 3

⁵ Department of Defence, *Portfolio Budget Statements 2022-23 Budget Related Paper No. 1.4A: Defence Portfolio*, Commonwealth of Australia, 2022, pages 104-105; Department of Foreign Affairs and Trade (DFAT), 'Timor-Leste country brief', www.dfat.gov.au/geo/timor-leste/timor-leste-country-brief, viewed 20 April 2023

⁶ Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 6

⁷ Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 1

⁸ Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 1

agreements'.⁹ Such bilateral tools 'enable peace, prosperity and frameworks by which we can coordinate and cooperate'.¹⁰

2.9 The Department of Defence also highlighted the current arrangements for the deployment of Australian defence personnel which are governed by a 2002 exchange of diplomatic notes.¹¹ This was intended to be an interim arrangement and the presence of Australian personnel in Timor-Leste outside the Defence Cooperation Program requires ad hoc approval from the Government of Timor-Leste.¹² The Department of Defence stated:

Since 2002, defence cooperation between Australia and Timor-Leste has grown in breadth and depth, rendering the current arrangements as less than ideal, due to their complexity and temporary nature, as well as the fact that they only apply to Australian personnel in Timor-Leste and not Timor-Leste personnel in Australia.¹³

Obligations

2.10 The National Interest Analysis (NIA) stated the Agreement would establish a legally-binding framework for mutually beneficial defence cooperation that would:

- enable Australia to participate in more frequent and sophisticated bilateral military activities
- provide a clear pathway to expand and improve the quality of defence engagement
- reinforce Australia's close bilateral defence relationship.¹⁴

2.11 The key obligations that the Agreement covers are outlined below.

Defence Cooperative Activities

2.12 The Agreement is intended to facilitate defence relations through the undertaking of cooperative activities 'related to defence' between Parties.¹⁵ Article 2 of the Agreement lists a number of cooperative activities that may be undertaken including:

- joint or unilateral visits and military exchanges, operations, exercises and other activities
- international humanitarian assistance and disaster relief

⁹ Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 2

¹⁰ Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 2

¹¹ Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 2

¹² Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 2

¹³ Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, pages 2

¹⁴ NIA, paragraphs 3, 7–9

¹⁵ Agreement, article 2(1). See also: Australia-Japan Agreement, article II, Australia-France Agreement, article 2

- joint or unilateral education and training of military personnel
- maritime military operations, exercises, training and education
- logistic support
- exchange of information, including classified information and defence intelligence information
- activities to enhance the interaction of the respective military cultures
- other cooperative activities related to defence as mutually determined.¹⁶

Facilities

- 2.13 As with other status of forces agreements, the Agreement details how requests for facilities and related services will be addressed. The NIA notes that the Parties are to mutually determine arrangements, including financial arrangements, for the use of such facilities and services.¹⁷
- 2.14 The Agreement is silent on which Party is responsible for the overall control of the facilities and areas made available to the visiting force and civilian component. The Department of Defence advised:

In the absence of a provision which cedes some sort of control or authority over a facility in the receiving state, then the receiving state's jurisdiction and control will continue to apply. So the default position, as it were, is that the receiving state will retain control of facilities and access and like issues.¹⁸

Status of forces

- 2.15 Annex 1 deals with a range of issues concerned with the movement of personnel, materiel and other effects into, within and from the territory of the receiving state; arrangements within the receiving state for the visiting force; and local laws, disciplinary matters, and criminal jurisdiction.¹⁹
- 2.16 Article 1 of Annex 1 outlines that the visiting forces, civilians and dependents are subject to, and must observe, the laws and regulations of the receiving state, subject to some disciplinary and criminal jurisdiction matters.²⁰
- 2.17 Article 2 provides that the sending state retains responsibility for administrative and disciplinary matters over members of the visiting force and civilian component. The receiving state may request a person be repatriated to the sending state for the administration of any punishment.²¹ The sending state has the right to maintain

¹⁶ Australia-Timor-Leste Defence Cooperation Agreement, article 2(2)

¹⁷ Australia-Timor-Leste Defence Cooperation Agreement, article 2(6)

¹⁸ Air Commodore Patrick Keane, Director General Military Legal Services, Department of Defence, *Committee Hansard*, 19 June 2023, page 3

¹⁹ NIA, paragraph 15

²⁰ NIA, paragraph 16

²¹ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 2

military police for the maintenance of good order and discipline within the visiting force.²²

- 2.18 Article 4 provides for entry and departure conditions for visiting forces, civilian components and dependents, and notes that the agreement does not provide any permanent residence rights for the visiting forces.²³
- 2.19 Article 5 deals with diplomatic clearances, movements, harbour and airport charges, and fees. In general, providing the specified requirements are met and procedures are followed, military aircraft and vessels and official motor vehicles may enter and depart the receiving state in connection with activities mutually approved by the Parties.²⁴
- 2.20 Article 5 states that, subject to respect for local laws, individual members of the visiting force and civilian component are to have freedom of movement in the territory of the receiving state for the purpose of lawful activities.
- 2.21 Article 6 specifies conditions for import of certain personal effects for members of the visiting force, civilian component and dependents, free of duty, providing specified conditions are met.²⁵ It also outlines a range of items which can be imported free of duty by the visiting force.²⁶
- 2.22 The Agreement specifies the terms under which certain items imported by the visiting force and civilian component are to be exported, or in very limited circumstances, disposed of in the receiving state.²⁷ These arrangements closely follow those found in other agreements such as the Australia-New Zealand Agreement and the Australia-France Agreement.²⁸
- 2.23 Article 7 specifies provisions for visiting forces to possess and carry weapons, when authorised and in circumstances previously approved by the receiving state. The Agreement also specifies the arrangements for import, transport, storage and use of weapons, ammunition and dangerous goods, including quantities and types.²⁹
- 2.24 Article 8 details conditions around purchasing of local goods and services and also engagement of local labour.³⁰ The Agreement outlines, where the sending state and its contractors engage local labour in the receiving state, the conditions of employment and work are to comply with the minimum standards required by the laws of the receiving state.³¹

²² Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 11(2)

²³ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 4(5)–4(6)

²⁴ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 5(1)–(3)

²⁵ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 6(4)–6(5)

²⁶ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 6(10). These particular items may also be exported free of duty

²⁷ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 6(7)

²⁸ See: Australia-France Agreement, Annex 1, section 5(5); Australia-New Zealand Agreement, article 7(4)

²⁹ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 7

³⁰ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 8(1)

³¹ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 8(2)

- 2.25 Articles 12 and 13 of Annex 1 make provisions regarding the validity of professional, technical and trade licences and qualifications, driving licences and vehicle registrations of the sending State in the receiving State.³² The Agreement specifies conditions for medical professionals noting that they require the prior consent of the receiving state to provide such services for the benefit of the general public.³³

Communications

- 2.26 Article 14 provides that the installation of a telecommunication system by the visiting force is subject to authorisation from the receiving state, and should not interfere with communication networks in the receiving state.³⁴
- 2.27 The Agreement also requires the receiving state takes reasonable measures to avoid interference by communications or other electrical installations in the receiving state with the communication facilities of the visiting force.³⁵

Environmental, cultural and health considerations

- 2.28 As with the recently signed Australia-Japan Agreement, and the earlier Australia-Philippines Agreement, the Parties are to implement the Agreement in a manner consistent with the protection of the environment, cultural heritage and human health and safety in the receiving state. The sending state, in consultation with the receiving state, is to promptly take appropriate measures to address any damage or potential damage to the environment, cultural heritage, and human health and safety.³⁶
- 2.29 La'o Hamutuk, in its submission, suggested the Agreement should include provisions about protecting the human, political and civil rights of citizens, not only the environment, cultural heritage and human health and safety.³⁷

Criminal jurisdiction

- 2.30 The arrangements for criminal jurisdiction for members of the visiting force, civilian component and dependents within the receiving state closely follow those found in Australia's other status of forces agreements. Article 3 of Annex 1 outlines that Australia would have:
- ...exclusive competence regarding administrative and disciplinary matters over members of the Australian visiting force and its civilian component when they are in Timor-Leste under this Agreement.³⁸
- 2.31 Article 3 also outlines that where a member of the visiting force, civilian component or a dependent is taken into custody, detained or prosecuted by the receiving state, that

³² NIA, paragraph 29

³³ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 13(2)

³⁴ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 14(1)–14(2)

³⁵ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 14(3)

³⁶ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 16.

³⁷ La'o Hamutuk, *Submission 2*, pages 2–3.

³⁸ NIA, paragraph 17.

person is to be accorded all generally accepted procedural safeguards under the international legal obligations of the receiving state and not less than those provided to the nationals of the receiving state. A number of minimum procedural safeguards are specified in the Agreement.³⁹

- 2.32 Article 3 further outlines that any person convicted or acquitted of an offence by one Party, in accordance with the criminal jurisdiction provisions, may not be tried again by the other Party for an offence that is substantially the same.⁴⁰
- 2.33 The Agreement also makes clear that a death sentence is not to be sought, imposed or carried out by either Party over a member of the visiting force, civilian component or dependents.⁴¹

Claims

Claims between Parties

- 2.34 In relation to claims between parties, the Agreement outlines the conditions under which claims can be waived against the other Party. Where an injury or death of a member of a force or civilian personnel occurs in the performance of official duty, the Agreement notes that claims are similarly waived unless there was gross negligence or wilful misconduct.⁴²
- 2.35 Where there is agreement between the two Parties that damage, loss, injury or death was caused by a reckless act, reckless omission, gross negligence or wilful misconduct on the part of a member of a force or civilian personnel, the Agreement states that the Party to whom the member belongs is to be solely responsible for the claim.⁴³
- 2.36 The Parties are to settle all other claims against each other through consultation.⁴⁴

Third party claims

- 2.37 In regard to third party claims, the Agreement provides for the following procedure to apply (subject to conditions):
- claims are to be filed and adjudicated in accordance with the laws of the receiving state
 - claims not adjudicated are, in consultation with the sending state, to be considered and settled in accordance with the laws of the receiving state

³⁹ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 3(10)

⁴⁰ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 3(9)

⁴¹ Australia-Timor-Leste Defence Cooperation Agreement, Annex 1, article 3(12)

⁴² Australia-Timor-Leste Defence Cooperation Agreement, Annex 2, article 1(1)

⁴³ Australia-Timor-Leste Defence Cooperation Agreement, Annex 2, article 1(2)

⁴⁴ Australia-Timor-Leste Defence Cooperation Agreement, Annex 2, article 1(3)

- payment of any amount agreed by the Parties with the claimant or determined by adjudication is to be made by the receiving state in its currency, and is to constitute a binding and conclusive discharge of the claim
- claims paid by the receiving state are to be communicated to the sending state, including the proposed distribution of costs, which is determined according to each Party's responsibility for the incident (as further detailed in the Agreement).⁴⁵

2.38 Where claims arise from acts or omissions not in the performance of official duty, they are to be settled or adjudicated in accordance with the laws of the receiving state.⁴⁶ The Agreement notes that the sending state is not to claim immunity from the civil jurisdiction of the courts of the receiving state in respect of any act or omission by a member of the military or civilian personnel and their dependents in the receiving state.⁴⁷

Views on third party claims

2.39 In the past, Australian forces deployed to Timor-Leste have, through vehicle accidents, caused the injury of, and in one case, caused the death of, Timorese citizens.⁴⁸ According to Professor Clinton Fernandes, the status of forces agreement for the ISF exempted Australian personnel from local laws and judicial systems. In effect, this meant Timorese citizens could not take effective action to resolve complaints against Australian personnel.⁴⁹ The same issue was raised by La'o Hamutuk.⁵⁰

2.40 Professor Fernandes stated:

The Department of Defence later admitted that between 2008 and mid-2010, Australian soldiers in Timor-Leste had been in nine vehicle crashes in which civilians were injured. It paid no compensation to the victims because under the Status of Forces Agreement it was Timor-Leste's responsibility to do so.⁵¹

2.41 In response, the Department of Defence told the Committee that under the Agreement, members of the visiting force and civilian component would be subject to the laws and regulations of Timor-Leste. The Department of Defence stated:

...the default position, unless there's any other carve out within the treaty, is that they're subject to the local law and would be subject to any issues in relation to civil claims, like the ones that were raised in some of the submissions.⁵²

⁴⁵ Australia-Timor-Leste Defence Cooperation Agreement, Annex 2, article 2(1)-2(3)

⁴⁶ Australia-Timor-Leste Defence Cooperation Agreement, Annex 2, article 2(3)

⁴⁷ Australia-Timor-Leste Defence Cooperation Agreement, Annex 2, article 2(2)

⁴⁸ L Murdoch, 'Hurt Timorese left with no recourse', *The Sydney Morning Herald*, 6 August 2010; Senate Foreign Affairs Defence and Trade Legislation Committee, *Official Committee Hansard: Estimates*, Monday 31 May 2010, pages 149–52

⁴⁹ Professor Clinton Fernandes, *Submission 1*, pages 1–3

⁵⁰ La'o Hamutuk, *Submission 2*, page 2

⁵¹ Professor Clinton Fernandes, *Submission 1*, pages 1–3

⁵² Air Commodore Patrick Keane, Director General Military Legal Services, Department of Defence, *Committee Hansard*, 19 June 2023, page 3

- 2.42 The Department of Defence stated it recognised that it might be difficult for a Timor-Leste citizen to pursue a civil remedy against a foreign defence force, and as such:

These kinds of treaties make particular provisions about that imbalance between a citizen of the receiving state and having to take an action against a foreign government, which can be a difficult thing. It is why they, in general—and this one is an example—provide for things like that claims are adjudicated in the receiving state and that payments of amounts are made by the receiving state in its currency.⁵³

Views of submitters on the historical relationship between Australia and Timor-Leste

- 2.43 Two submissions to the inquiry suggested Timorese experiences with Australia had been both positive and negative. La’o Hamutuk (Timor-Leste Institute for Development Monitoring and Analysis) explained that INTERFET played an important role in stabilising Timor-Leste, and that ‘well-trained and well-disciplined Australian troops provided a clear contrast to the Indonesian military’.⁵⁴ They noted that the Australian Government had responded to a request from Timor-Leste for international assistance that resulted in the ISF.⁵⁵
- 2.44 La’o Hamutuk also stated the ‘troublesome history of Australian military activities has left deep scars’ suggesting that there was a view the ISF could have departed earlier.⁵⁶ La’o Hamutuk contend that insufficient acknowledgement and compensation for injuries caused by vehicle accidents involving Australian forces remained an issue.⁵⁷
- 2.45 Sister (Dr) Connelly stated that while ‘many Timorese happily testify to the kindness, generosity and genuine friendship offered by Australian soldiers’ and other Australians, past mistakes had been made and it was important to acknowledge these matters to ensure ‘strong, trustworthy, future relationships’.⁵⁸
- 2.46 La’o Hamutuk also suggested Australian behaviour during the negotiation of the maritime boundary between Australia and Timor-Leste demonstrated the fair resolution of disputes between the two countries may require assistance from a third party.⁵⁹

⁵³ Air Commodore Patrick Keane, *Committee Hansard*, 19 June 2023, page 3

⁵⁴ La’o Hamutuk, *Submission 2*, page 2

⁵⁵ La’o Hamutuk, *Submission 2*, page 1

⁵⁶ La’o Hamutuk, *Submission 2*, page 1

⁵⁷ La’o Hamutuk, *Submission 2*, page 2

⁵⁸ Sister Susan Connelly, *Submission 3*, page 3

⁵⁹ La’o Hamutuk, *Submission 2*, page 2

Consultation

- 2.47 According to the NIA, the Department of Defence consulted the Department of Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, and the Attorney-General's Department, none of which identified any concerns.⁶⁰
- 2.48 State and territory governments were consulted through the Commonwealth-State-Territory Standing Committee on Treaties. The NIA states the Department of Defence has not received any requests for further information or comments, and no action to implement the Agreement would be required of state and territory governments.⁶¹

Conclusion

- 2.49 The Agreement with Timor-Leste adds to Australia's existing network of defence cooperation and status of forces agreements and represents the strengthening of Australia's diplomatic and defence ties across the region.
- 2.50 The Committee notes evidence from the Department of Defence that agreements such as this mark a mature and deep relationship.⁶² The Committee agrees that having the forces of another country in one's own sovereign territory represents a significant degree of trust, closeness, and cooperation.
- 2.51 The Committee believes that where Australian military and related civilian personnel are present in another country through a status-of-forces agreement, the Government must ensure that fair, appropriate, and timely responsibility is taken for the impacts on local citizens of accidental, negligent, or unlawful conduct; being mindful in some cases that domestic legal processes may not be easy to access, and being wary of the potential for the disparity in legal and other resources between the Australian Government and a local claimant to delay or otherwise influence the achievement of a just outcome.
- 2.52 The Committee supports the ratification of the treaty and recommends that binding treaty action be taken.

Recommendation 1

- 2.53 The Committee supports the *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces* and recommends that binding treaty action be taken.**

⁶⁰ NIA, page 10

⁶¹ NIA, page 10

⁶² Brigadier Nerolie McDonald, *Committee Hansard*, 19 June 2023, page 2

3. Australia-Serbia Social Security

- 3.1 The *Agreement between Australia and the Republic of Serbia on Social Security* (the Agreement),¹ which is based on a model agreement, would allow each Party to pay a benefit that reflects a person's association with that Party's social security system.
- 3.2 For Australia, the Agreement covers the age pension; for Serbia, it covers pension and disability insurance. The Agreement would also allow for a claim for a benefit to be lodged in either Party, and provides for the sharing of information between Parties.

Background

- 3.3 Social security agreements potentially benefit people who move between countries. Many countries have either social insurance or social welfare-type social security schemes. Social insurance schemes, like Serbia's, typically require compulsory contributions from the working population, and a person generally is required to make a minimum number of contributions prior to receiving a benefit. Access to social welfare schemes, such as Australia's age pension, usually depends on residence and financial circumstances.²
- 3.4 People who move between countries may not be able to make sufficient contributions to a social insurance scheme or may not satisfy residence requirements for a benefit. Additionally, even when a person may otherwise meet the requirements for a benefit, some countries will only pay benefits to citizens or residents or will reduce the rate of payments to non-residents.³
- 3.5 In practice, social security agreements require: the payment of a benefit in the other party on a non-discriminatory basis; specified alternative means by which a person may satisfy residence and/or contribution requirements to qualify for a benefit (called totalisation); and an established method for calculating the rate of payment.
- 3.6 Australia currently has bilateral international social security agreements with the following 31 countries: Austria (2015), Belgium (2002), Canada (2001), Chile (2003), Croatia (2003), Cyprus (1992), Czech Republic (2009), Denmark (1999), Estonia (2015), Finland (2008), Germany (2000), Greece (2007), Hungary (2011), India

¹ *Agreement between Australia and the Republic of Serbia on Social Security* (Belgrade, 20 January 2023) [2023] ATNIF 9, hereafter the Social Security Agreement

² A Reibelt, 'International social security agreements – Australia in the wider context', *Social Security Journal*, June 1995, page 129

³ A Reibelt, 'International social security agreements – Australia in the wider context', *Social Security Journal*, June 1995, page 129

(2014), Ireland (2005), Italy (1993), Japan (2007), Korea (2006), Latvia (2019), Malta (2004), Republic of North Macedonia (2009), the Netherlands (2001), New Zealand (2016), Norway (2005), Poland (2009), Portugal (2001), Slovak Republic (2010), Slovenia (2002), Spain (2002), Switzerland (2006), and the United States of America (2001).⁴

3.7 While Australia’s social security agreements are based on a model agreement, these agreements are determined through negotiation between countries with different social security systems. This negotiation occurs in a context where matters beyond social security may influence negotiations which may result in different agreements.

Potential economic impacts of the Agreement

3.8 For Australia, the Agreement covers the age pension. For Serbia, it covers pension and disability insurance.⁵ The Agreement also contains provisions to prevent double liability for superannuation/social insurance in cases where workers are temporarily seconded.⁶

3.9 For Australia, depending on individual circumstances, the National Interest Analysis (NIA) states the following people may be able to benefit under the Agreement:

- Australian residents who wish to move to Serbia in their retirement (including those born in Serbia or with Serbian ancestry)
- Australian residents who have previously worked in Serbia
- former Australian residents living in Serbia
- Australian employers temporarily seconding workers to Serbia who will not be subject to double liability.⁷

3.10 The table below summarises key statistics contained in the NIA.

Table 2.1 Australia-Serbia social security agreement: key statistics

Category	Details
Serbian-born residents in Australia	25,000
People in Australia with Serbian ancestry	94,997
Estimated number of new Australian age pensions to be paid in the <u>first three years</u> of the Agreement	1,000
Estimated number of new Serbian pensions to be payable in Australia	No estimate available

⁴ Date of signature in parentheses. Department of Social Services, ‘Current International Social Security Agreements’, www.dss.gov.au/about-the-department/international/international-social-security-agreements/current-international-social-security-agreements, viewed 5 May 2023

⁵ Social Security Agreement

⁶ Social Security Agreement, Articles 2, 8

⁷ NIA, paragraphs 11, 14

Impact on taxation revenue of the removal of double liability for superannuation contributions	Negligible
Estimated administered cost of the Agreement	\$9 million over forward estimates from 2021-22 to 2024-25
Departmental costs to administer two social security agreements (Serbia and Bosnia Herzegovina)	\$9.8 million over forward estimates from 2021-22 to 2024-25

Source: National Interest Analysis⁸

Reasons for Australia to take the treaty action

3.11 According to the NIA, the Agreement would serve to reinforce Australia’s political, business and strategic interests.⁹

3.12 The Agreement, according to the NIA would also:

- help maximise the income of Australian residents, which would have a positive flow-on effect within the Australian economy
- further strengthen bilateral relations between Australia and Serbia
- provide choices in retirement for individuals who migrate between Australia and Serbia during or after their working lives
- bring economic and social benefits to Australia.¹⁰

Obligations

3.13 Part I (Articles 1 to 5) sets out general provisions of the Agreement including:

- legislative scope (Article 2)
- personal scope (Article 3)
- obligation for equal treatment (Article 4) and
- where benefits will be paid.¹¹

Coverage

3.14 Part II (Articles 6 to 10) of the Agreement concerns coverage including provisions to avoid double liability for superannuation or insurance contributions in respect of the same work of an employee. Article 6 (Purpose and Application) sets out the purpose

⁸ NIA, paragraphs 11-14, 26-27

⁹ NIA, paragraph 8

¹⁰ NIA, paragraph 8

¹¹ NIA, paragraph 15

of this Part, which is to ensure that employers and employees are subject to the legislation of only one Contracting Party in respect of the same work.¹²

Provisions for benefits under the legislation of Australia

3.15 Part III (Articles 11 to 13) of the Agreement applies to benefits under the legislation of Australia. For the purposes of Article 11, Part III of the Agreement only applies to Australian social security law related to the age pension.¹³ Article 13 specifies how the rate of a benefit (age pension) will be calculated under the proposed Agreement and how this applies to a person who is inside or outside Australia.¹⁴

Provisions for benefits under the legislation of Serbia

3.16 Part IV (Articles 14 and 15) of the Agreement applies to benefits under the legislation of Serbia. Article 14 outlines that certain periods of Australian working-life residence will be taken into account by Serbia for the purpose of meeting minimum insurance periods under Serbian legislation, provided the periods do not overlap with the person's periods of insurance accumulated in Serbia.¹⁵

3.17 Article 15 specifies how the amount of benefit is calculated.

Miscellaneous and administrative provisions

3.18 Part V of the Agreement (Articles 16 to 22) sets out various obligations relating to the administration of the Agreement.

Transitional and final provisions

3.19 Part VI (Articles 23 to 25) of the Agreement contains transitional and final provisions. Amongst other things, Article 23 does not establish a right to a benefit for any period prior to the date on which the Agreement enters into force but ensures Serbian periods of insurance, periods of Australian residence and periods of Australian working life residence completed before the Agreement enters into force will be taken into account when determining entitlements to benefits under the Agreement.¹⁶

3.20 Article 24 sets out the arrangements for the entry into force of the Agreement. Article 25 sets out the duration of the Agreement and arrangements for continued entitlement to benefits under the Agreement in the event of its termination.¹⁷

3.21 The Agreement does not contain a specific provision in relation to amendment of the Agreement or for the negotiation of future legally binding instruments. In the absence

¹² NIA, paragraph 16

¹³ NIA, paragraph 17

¹⁴ NIA, paragraph 18

¹⁵ NIA, paragraph 19

¹⁶ NIA, paragraph 21

¹⁷ NIA, paragraph 23

of specific procedures, the Contracting Parties may amend the Agreement by mutual agreement at any time in accordance with Article 39 of the *Vienna Convention on the Law of Treaties*.¹⁸

- 3.22 Article 22 of the Agreement obliges the Contracting Parties to meet to review the Agreement within six months of the request of either Contracting Party.¹⁹

Withdrawal or denunciation

- 3.23 The Agreement contains no specific provisions for withdrawal from or denunciation of the Agreement by either Party but contains instead a termination provision (Article 25).²⁰
- 3.24 Any termination of the Agreement by Australia would be subject to Australia's domestic treaty-making process.²¹

Implementation

- 3.25 According to the NIA, the *Social Security (International Agreements) Act 1999* gives effect in domestic law to Australia's bilateral social security agreements, which are set out in schedules 2 to 32. A new schedule containing the full text of the Agreement would be added as a legislative instrument pursuant to regulations made under sections 8 and 25, following consideration by the Committee.²²
- 3.26 The NIA advises that pursuant to section 27(e) of the *Superannuation Guarantee (Administration) Act 1992* and Regulation 12 of the *Superannuation Guarantee (Administration) Regulations 2018*, the provisions of Australia's bilateral social security agreements relating to double superannuation coverage are automatically given effect in Australian domestic law once the relevant agreement is added as a separate schedule to the *Social Security (International Agreements) Act 1999*.²³

Consultation

- 3.27 Following signature of the treaty on 20 January 2023, letters were sent to various stakeholders between 1 and 7 February seeking feedback to be provided by 13 February 2023.²⁴

¹⁸ NIA, paragraph 28

¹⁹ NIA, paragraph 29

²⁰ NIA, paragraph 31

²¹ NIA, paragraph 33

²² NIA, paragraph 24

²³ NIA, paragraph 25

²⁴ NIA, attachment on consultation, paragraphs 1-12

- 3.28 The Department of Social Services (DSS) sent letters to a range of stakeholders in February 2023, explaining the Agreement and requesting feedback. The stakeholders and responses were:
- all state and territory governments—one responded and raised no concerns
 - 12 welfare, seniors and multicultural organisations—three responded and welcomed the Agreement; one noted the Agreement would not cover the Australian disability support pension and contained no requirement for indexation of Serbian benefits paid in Australia
 - 5 Serbian community groups—three responded and welcomed the Agreement, including one that noted the Agreement would not cover Serbians who were born or worked in the Republic of Montenegro, and highlighted the importance of providing appropriate information and support services for Serbian Australians to understand the Agreement
 - 9 financial services organisations, business and union groups—one responded and raised no concerns.²⁵

Issues

Sharing of information

- 3.29 The NIA provides information on the cost of the Agreement for Australia but does not provide information regarding the cost of the Agreement on the Serbian side. DSS explained that there was no obligation on Serbia to provide this information.²⁶ They did however note that once the Agreement is operational there will be an exchange of data between Australia and Serbia which will provide insight into the number of individuals accessing payments under the Agreement.²⁷

Value of social security agreements

- 3.30 DSS explained that the overall value and numbers of social security agreements for Australia are exchanged on a yearly basis and for the 2022 estimate ‘
- it's about \$1.1 billion that comes into Australia, and that's approximately 229,000 Australian pensioners in Australia, and around \$500 million goes to 17,600 people under agreements in Australia and about 60,500 people under agreements overseas.²⁸

Consultation

- 3.31 The Social Security Agreement featured a period of stakeholder feedback only after the Agreement was signed and the period of time less than a fortnight, which could

²⁵ NIA, attachment on consultation, paragraphs 1-12

²⁶ Mr Troy Sloan, Department of Social Services, *Committee Hansard*, Canberra, 6 July 2023, page 2

²⁷ Mr Troy Sloan, *Committee Hansard*, Canberra, 6 July 2023, page 2

²⁸ Mr Andrew Seebach, Department of Social Services, *Committee Hansard*, Canberra, 6 July 2023, page 2

be seen to be a truncated period for feedback. DSS notes that this is the way these agreements have always been undertaken, with the Government signing the agreement and then consultation taking place afterwards. They said that this was because of the confidentiality of those negotiations between governments until they are finalised.²⁹

- 3.32 DSS agreed that consultation can be undertaken in general terms without compromising the confidentiality of negotiations and that where it is practical to do so it would happen, but that it did not happen in the case of the current Agreement.³⁰
- 3.33 DSS said that the Agreement has been broadly well received and that if significant concerns were raised, it would be a matter for the Government as to whether they wanted to discuss this with Serbia.³¹

Waiting periods

- 3.34 In relation to the different waiting periods that apply between Australia and Serbia for access to the age pension, DSS explained that there is a 10-year qualifying period to qualify for the Australian age pension, as either an Australian citizen, or a permanent visa holder residing in Australia for at least 10 years, with five of those years being continuous. DSS said:

The Serbian agreement ... allows individuals who do not yet have 10 years residence in Australia to add periods of insurance contributions in an agreement country—in the case of this agreement, in Serbia—to meet that 10-year requirement.³²

Indexation

- 3.35 Regarding indexation, DSS explained that Serbia indexes their pensions both domestically and abroad. DSS confirmed that the current Agreement does not require indexation, but that it is currently applied by Serbia as indexation policies sit within the Serbian domestic legislation and stated:³³

it is our expectation, consistent with that legislation—and there's been no indication otherwise—that pensions coming in from Serbia would be indexed consistent with their legislation.³⁴

Conclusion

- 3.36 The Committee notes that ratification of the Agreement would improve Australia's ability to provide greater access to social security benefits, particularly for people who

²⁹ Mr Andrew Seebach, *Committee Hansard*, Canberra, 6 July 2023, page 2

³⁰ Mr Andrew Seebach, *Committee Hansard*, Canberra, 6 July 2023, page 2

³¹ Mr Troy Sloan, *Committee Hansard*, Canberra, 6 July 2023, page 2

³² Ms Kate Yuille, Department of Social Services, *Committee Hansard*, Canberra, 6 July 2023, page 3

³³ Ms Kate Yuille, *Committee Hansard*, Canberra, 6 July 2023, page 3

³⁴ Mr Andrew Seebach, *Committee Hansard*, Canberra, 6 July 2023, page 2

migrate between countries. Australia will also likely receive economic and social benefits; and the Agreement expands Australia's range of cooperative arrangements with other countries.

- 3.37 The Agreement will improve the bilateral relationship between Australia and Serbia on social security issues and more generally. The Agreement will further enable Australia and Serbia to cooperate in providing social security to residents of both countries.
- 3.38 As noted, Australia currently has bilateral international social security agreements with 31 other countries. While the agreements are based on a model agreement, they are each determined through negotiation between countries with different social security systems. This Agreement will add to these existing agreements.
- 3.39 The Committee notes support for ratification from Government. At the public hearing, the Committee explored key issues relating to the Agreement, including a lack of consultation prior to signing the treaty, the sharing of information and indexation. The Committee considered that the majority of these issues have been addressed adequately by the Inquiry.
- 3.40 In relation to the lack of consultation prior to signing the treaty, the Committee considers that some form of principle-based consultation would not compromise the confidentiality of those agreements and that as a general principle, undertaking consultation after signing an agreement is not best practice for informing agreements where input of relevant stakeholders should be sought. It is not reasonable for the responsible Department to suggest that such consultation could be the practical basis for immediately reconsidering an agreement that has only just been agreed, negotiated, and signed.
- 3.41 The Committee supports the ratification of the treaty and recommends that binding treaty action be taken.

Recommendation 2

- 3.42 The Committee supports the *Agreement between Australia and the Republic of Serbia on Social Security* and recommends that binding treaty action be taken.**



4. Minor treaty actions

- 4.1 Minor treaty actions are generally technical amendments to existing treaties that do not significantly affect the national interest.
- 4.2 Minor treaty actions are presented to the Committee with an explanatory statement and are published on the Committee's website unless a request for confidentiality is received and agreed to by the Committee.
- 4.3 The Committee can choose to formally inquire into these treaty actions or accept them without a formal inquiry. Once considered they are incorporated into a report of the Committee at the next opportunity.
- 4.4 The Committee has been asked to consider the following minor treaty actions.

Amendments to the Convention on the International Maritime Organization

- 4.5 At meetings of the IMO in 2019 and 2021, Member States agreed to several amendments to the IMO Convention.¹ The amendments are to the composition of the IMO Council and the addition of three official languages to the IMO Convention, namely Arabic, Chinese and Russian.²
- 4.6 Specifically, the amendments are:
 - increase in Council size from 40 to 52 (Article 16)
 - the distribution of the 12 additional members across the three categories of Council membership (Article 17). The totals should include:
 - 12 states with the largest interest in providing international shipping services
 - 12 states with the largest interest in international seaborne trade and
 - 28 states not elected under other categories that have a special interest in maritime transport or navigation and whose election would ensure the representation of all major geographic areas of the world
 - extension of the term of Council Members from two to four years (Article 18)
 - increase in the number of members necessary to form a quorum to 34 (Article 19(b))
 - addition of the languages of Arabic, Chinese and Russian as official languages of the IMO Convention (Article 81).

¹ Explanatory Statement 1 of 2023, page 1

² Explanatory Statement 1 of 2023, page 1

- 4.7 These amendments would enter into force 12 months after two-thirds of IMO Member States accept them and will then apply to all Members unless the Member State prior to the amendments taking effect lodges a declaration that they do not accept the amendments.³
- 4.8 The Explanatory Statement said that the practical, legal, and financial effect of the amendments is negligible,⁴ and that they do not necessitate any legislative or regulatory amendments.⁵ The Office of Impact Analysis has said that no Impact Analysis is required.⁶
- 4.9 Australia is the originator of these amendments therefore it should accept them early and encourage other Member States to follow.⁷ Australia actively promotes reform of the IMO and has sought to improve transparency, increase access to information and amend the Council structure and membership, as well as increase the role of the Council to form policy for the IMO.⁸

Resolutions adopted by the International Maritime Organization Maritime Safety Committee to amend the *International Convention for the Safety of Life at Sea, 1974*

- 4.10 On 15 June 2023, the Assistant Minister for Foreign Affairs, the Hon Tim Watts MP, referred two resolutions adopted by the IMO MSC that would amend SOLAS:
- Resolution MSC.188(79)REV.1—Revised Performance Standards for Water Level Detectors on Ships Subject to SOLAS Regulations II-1/25, II-1/25-1 and XII/12
 - Resolution MSC.496(105)— Amendment to the *International Convention for the Safety of Life at Sea, 1974* (radiocommunications).

MSC.188(79)REV.1—Revised Performance Standards for Water Level Detectors on Ships Subject to SOLAS Regulations II-1/25, II-1/25-1 and XII/12

- 4.11 The minor treaty action is Australia’s acceptance of amendments relating to revised performance standards for water level detectors.⁹
- 4.12 Water level detectors are systems consisting of sensors and alarms that detect and warn of water ingress in cargo holds and other spaces.¹⁰ The amendments:
- establish the performance standards for detectors, including what constitutes a water level detector, where such detectors are to be placed, and requirements as to their accuracy, corrosion resistance, and compatibility with the cargo carried

³ Explanatory Statement 1 of 2023, page 2

⁴ Explanatory Statement 1 of 2023, page 1

⁵ Explanatory Statement 1 of 2023, page 2

⁶ Explanatory Statement 1 of 2023, page 1

⁷ Explanatory Statement 1 of 2023, page 2

⁸ Explanatory Statement 1 of 2023, page 2

⁹ Explanatory Statement 6 of 2023, page [1]

¹⁰ Resolution MSC.188(79)/Rev.1, Annex, article 2

- specify alarm system requirements, including visual and audible alarms on the navigation bridge, alarm override devices, and arrangements for malfunctions and muting
 - detail obligations for testing and manuals.¹¹
- 4.13 The resolution, which is an amendment to an existing resolution (MSC.188(79), was adopted on 28 April 2022. It would take effect from 1 January 2024.
- 4.14 According to the explanatory statement, Australia’s acceptance of the amendment would ensure Australia continues to apply standards in compliance with the performance standards of SOLAS. Further, the explanatory statement advises consistency between the rules for Regulated Australian Vessels and those applicable internationally may have financial benefits for vessel owners.¹²

MSC.496(105)— Amendment to the *International Convention for the Safety of Life at Sea, 1974* (radiocommunications)

- 4.15 The treaty action is Australia’s acceptance of an amendment to SOLAS that replaces the existing Chapter IV on radiocommunications with a reorganised text that:
- sets out regulations with regard to a range of matters including functional requirements, provision of services, radio installations, equipment to be used in various sea areas, energy sources, performance standards, maintenance requirements, personnel, records and position updating
 - makes minor consequential changes to SOLAS chapters II-1, III, V and the Annex.¹³
- 4.16 According to the explanatory statement, Australia’s acceptance of the amendment would ‘ensure Australia continues to comply with SOLAS’s radiocommunications standards, including more readily adopting standards to comply with any future SOLAS standards’.¹⁴
- 4.17 Further, the explanatory statement advises consistency between the rules for Regulated Australian Vessels and those applicable internationally may have financial benefits for vessel owners.¹⁵

Conclusion

- 4.18 The Committee agreed that the following resolutions adopted by the IMO MSC be endorsed as minor treaty actions:
- MSC.188(79)REV.1

¹¹ Explanatory Statement 6 of 2023, page [1]
¹² Explanatory Statement 6 of 2023, page [2]
¹³ Explanatory Statement 7 of 2023, page [1]
¹⁴ Explanatory Statement 7 of 2023, page [2]
¹⁵ Explanatory Statement 7 of 2023, page [2]

- MSC.496(105).
- 4.19 It was unnecessary for the Committee to consider whether binding treaty action be taken in relation to resolution MSC.496(105) as the amendment had already been deemed accepted.
- 4.20 The Committee recommended binding treaty action be taken in relation to MSC.188(79)REV.1.

Amendments adopted by the 75th World Health Assembly to the International Health Regulations

- 4.21 The proposed minor treaty action is tacit acceptance of amendments to article 59 of the IHR, concerning entry into force, and rejection and reservation periods for amendments to regulations in the IHR. As a consequence of the article 59 amendments, other minor consequential amendments are required to articles 55, 61, 62 and 63.¹⁶
- 4.22 The key amendments:
- require countries to advise of a rejection or reservation to any amendment to the IHR within 10 months from the date of notification (currently 18 months)
 - establish a period of 12 months from the date of notification for entry into force for amendments to the IHR (currently 24 months)
 - provide an additional 12 months (beyond entry into force) for a state to comply with amendments to the IHR, providing it submits a declaration identifying the outstanding adjustments required to domestic legislative and administrative arrangements, and achieves these within 12 months after entry into force of the amendments
 - reduce the time period for a state to object to another state's reservation to an amendment from six months to three months.¹⁷
- 4.23 The amendments were adopted by the World Health Assembly on 28 May 2022. Under the IHR, the amendments enter into force on 31 May 2024. Parties may reject or make a reservation to any of the amendments by 1 December 2023.¹⁸ If Australia does not lodge a rejection or reservation by this time, it will be bound to the amendments.¹⁹

¹⁶ Explanatory Statement 5 of 2023, paragraph 1

¹⁷ World Health Organization, 'Amendments to the International Health Regulations (2005)', https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_R12-en.pdf, viewed 3 July 2023. See also: Explanatory Statement 5 of 2023, paragraphs 2–3

¹⁸ IHR, articles 55(3), 59(1-2), 61, 62(1-3); Explanatory Statement 5 of 2023, paragraphs 8–9

¹⁹ World Health Organization Constitution, article 22; IHR, articles 55(3), articles 59–64

- 4.24 The amendments were proposed by the United States of America, and Australia co-sponsored the resolution proposing the amendments.²⁰
- 4.25 According to the explanatory statement:
- Australia supports revising the IHR to ensure it is adaptive to global health threats
 - acceptance of the amendments supports international efforts to reform the global health architecture
 - support for the amendments is consistent with Australia's current policy to be a leader in global health reform
 - Australia's position is consistent with the foreign policy priorities to support key allies, including the United States of America.²¹
- 4.26 The amendments are expected to have negligible legal, financial, or practical impact on Australia.²²
- 4.27 The Committee agreed that the Amendments adopted by the 75th World Health Assembly to the International Health Regulations (2005) be endorsed as a minor treaty action and that binding treaty action be taken.

Conclusion

- 4.28 It was unnecessary for the Committee to consider whether binding treaty action be taken in relation to resolution MSC.496(105) as the amendment had already been deemed accepted.
- 4.29 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 for the remaining three treaties.

Mr Josh Wilson MP
Chair

3 August 2023

²⁰ Explanatory Statement 5 of 2023, paragraph 7

²¹ Explanatory Statement 5 of 2023, paragraph 10

²² Explanatory Statement 5 of 2023, paragraph 4



A. Submissions

Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces

- 1 Professor Clinton Fernandes
- 2 Timor-Leste Institute for Development Monitoring and Analysis (La'o Hamutuk)
- 3 Sister Susan Connelly
- 4 Northern Territory Government
- 5 Department of Defence



B. Witnesses

Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces

Monday, 19 June 2023

Canberra

Department of Defence

Department of Foreign Affairs and Trade

Agreement between Australia and the Republic of Serbia on Social Security

Thursday, 6 July 2023

Canberra (and by videoconference)

Department of Foreign Affairs and Trade

Department of Social Services

Treasury