

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

**Report 20**

**Two Treaties Tabled on 26 May 1998,  
the Bougainville Peace Monitoring Group Protocol and  
Treaties Tabled on 11 November 1998**

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**COMMITTEE MEMBERS**

The Hon Andrew Thomson MP (Chairman)	Senator Barney Cooney (Deputy Chairman)
The Hon Dick Adams MP	Senator Vicki Bourne
The Hon Bruce Baird MP	Senator the Hon David Brownhill
Mr Kerry Bartlett MP	Senator Helen Coonan
The Hon Janice Crosio, MBE MP	Senator Bill O'Chee
Mrs Kay Elson MP	Senator the Hon Margaret Reynolds
Mr Laurie Ferguson MP	Senator the Hon Chris Schacht
Mr Gary Hardgrave MP	
Mrs De-Anne Kelly MP	

**Secretariat**

Grant Harrison (Secretary)

Bob Morris

Jon Bonnar

Elizabeth Halliday





## CONCLUSIONS AND RECOMMENDATIONS

### **Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction**

The Minister for Defence should formulate the decision making principles referred to in subsection 8(3) of the *Anti-personnel Mines Convention Act 1998* as soon as possible (paragraph 2.24).

The Minister for Foreign Affairs should ensure that, in appropriate international fora, the Australian Government puts a strong position against the development of replacement weapons technologies which have indiscriminate and inhumane effects similar to those possessed by anti-personnel mines (paragraph 2.30).

The Committee supports the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction* (paragraph 2.35).

### **Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia**

The Committee supports the *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia* (paragraph 2.48).

### **Protocol concerning the Peace Monitoring Group for Bougainville**

The Committee supports the *Protocol concerning the Peace Monitoring Group for Bougainville* and the continuation of Australia's aid program to Bougainville (paragraph 3.14).

### **General Agreement on Development Cooperation between Australia and the Republic of Indonesia**

The Committee supports the *General Agreement on Development Cooperation between Australia and Indonesia* and recommends that binding treaty action be taken (paragraph 4.16).

**Agreement between Australia and Ukraine on Trade and Economic Cooperation**

The Committee supports the *Agreement between Australia and Ukraine on Trade and Economic Cooperation* and recommends that binding treaty action be taken (paragraph 4.27).

**Agreement between Australia and Malaysia Concerning the Status of Forces**

The Committee supports the *Agreement between Australia and Malaysia Concerning the Status of Forces* and recommends that binding treaty action be taken (paragraph 4.37).

**Agreement relating to the Movement of Nationals between Australia and France**

The Committee supports the *Agreement relating to the Movement of Nationals between Australia and France* and recommends that binding treaty action be taken (paragraph 4.49).

**Agreement to amend the Agreement on Health Services between Australia and the United Kingdom**

The Committee:

- (a) supports the Agreement to amend the *Agreement on Health Services between Australia and the United Kingdom*;
- (b) recommends that binding treaty action be taken;
- (c) recommends that when negotiating medical treatment agreements in future, the Department of Health and Aged Care undertake a rigorous assessment of the cost of the agreement to both parties; and
- (d) recommends that the results of such cost assessments be reported to the Parliament in the National Interest Analyses prepared in support of future medical treatment agreements (paragraph 4.67).

# CHAPTER 1

## INTRODUCTION

### Purpose of the report

1.1 This report contains advice to the Parliament on the review by the Joint Standing Committee on Treaties (the Committee) of the following treaties:

*Treaties tabled 26 May 1998*

- *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction; and*
- *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings with the European Community;*

*Treaty tabled on 30 June 1998*

- *Protocol concerning the Peace Monitoring Group for Bougainville;*

*Treaties tabled on 11 November 1998*

- *Development Cooperation Agreement with Indonesia;*
- *Status of Forces Agreement with Malaysia;*
- *Trade and Economic Cooperation Agreement with the Ukraine;*
- *Agreement with France relating to the Movement of Nationals between the Two Countries; and*
- *Amendment to the Health Services Agreement with the United Kingdom.*

1.2 We have previously provided interim comments on the two treaties tabled on 26 May 1998 (see our *Fifteenth Report* (June 1998)). This report contains the final comments on these treaties.

### Structure of the report

1.3 The report is in three parts: the first dealing with the two treaties tabled on 26 May 1998; the second dealing with the *Protocol covering the Peace Monitoring Group for Bougainville*; and the third dealing with the treaties tabled on 11 November 1999.

1.4 The report refers to, and should be read in conjunction with, the National Interest Analysis prepared for each treaty. These analyses are prepared by the government agency responsible for the administration of each treaty and are tabled in Parliament as aids to parliamentarians when considering the proposed treaty action.

1.5 Copies of each of the treaties considered in this report, and the National Interest Analysis prepared for each treaty, can be obtained from the Treaties Database maintained on the Internet by the Department of Foreign Affairs and Trade ([www.austlii.edu.au/au/other/dfat/](http://www.austlii.edu.au/au/other/dfat/)) or from the Committee secretariat.

### **Conduct of the Committee's reviews**

1.6 Our reviews of each of the treaties considered in this report were advertised in the national press and on our web site (<http://www.aph.gov.au/house/committee/jsct/>).<sup>1</sup> A number of submissions were received in response to the invitations to comment contained in the advertisements. A list of submissions is at Appendix 2.

1.7 We also gathered evidence on these treaties at a series of public hearings. Appendix 3 contains lists of witnesses who gave evidence at those hearings. Transcripts of the evidence taken at these hearings can be obtained from a database maintained on the Internet by the Department of the Parliamentary Reporting Staff ([www.aph.gov.au/hansard/joint/commtee/comjoint.htm](http://www.aph.gov.au/hansard/joint/commtee/comjoint.htm)) or from the Committee secretariat.

1.8 In the normal course of events we aim to consider and report on each treaty within 15 sitting days of the treaty being tabled in Parliament. On this occasion, our decision to present interim findings on the treaties tabled on 26 May 1998, the dissolution of Parliament for the October 1998 general election and the fact that the Committee was not reappointed in the 39<sup>th</sup> Parliament until 9 December 1998, combined to prevent us from tabling within the 15 sitting day period for each of these treaties.

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1 The Committee's reviews were advertised as follows:  
· two treaties tabled 26 May 1998 (*Weekend Australian*, 30 May 1998);  
· the *Protocol concerning the Peace Monitoring Group for Bougainville* (*Weekend Australian*, 4 July 1998); and  
· the Treaties tabled on 11 November 1998 (*Weekend Australian*, 30 January 1999).

## CHAPTER 2

### TREATIES TABLED ON 26 MAY 1998

#### **Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction**

##### **Background**

2.1 The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction* (the Ottawa Convention) was tabled in Parliament on 26 May 1998.

2.2 The former Committee took evidence on the Convention at a public hearing in June 1998 and reported, in its *Fifteenth Report* (June 1998), that it intended to take further evidence from non-government organisations and report to Parliament at a later date.<sup>1</sup>

2.3 The Committee also noted that Commonwealth legislation would be required to implement the Convention's provisions in domestic law and indicated that, although it wished to take further evidence, it did not wish to delay ratification of the Convention. Accordingly, the Committee stated that it would:

... have no objections to binding action being taken by the Government before we report again.<sup>2</sup>

2.4 As events transpired, the Committee did not have an opportunity to conduct further public hearings before the dissolution of Parliament for the October 1998 general election. We did, however, receive ten written submissions on the proposed Convention. The submissions are included in the list at Appendix 2.

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1 Joint Standing Committee on Treaties (JSCT), *Fifteenth Report* (June 1998), p. 63  
The Committee also considered the use of landmines in its *Fifth Report: Restrictions on the use of Blinding Laser Weapons and Landmines* (February 1997), which contained the recommendation that 'Australia destroy its stockpile of anti-personnel landmines, except for a small number to be retained for training purposes to ensure that the Australian Defence Force retains its skills' (see p. 39 of the *Fifth Report*).

2 JSCT, *Fifteenth Report* (June 1998), p. 63

## Recent developments

### *Enactment of the Anti-personnel Mines Convention Act 1998*

2.5 On 12 November 1998 the Minister for Foreign Affairs, the Hon Alexander Downer MP, introduced into Parliament the Anti-personnel Mines Convention Bill to give effect to Australia's obligations under <sup>the</sup> Convention.

2.6 The Bill was debated at length, and in a very constructive manner, in both the House of Representatives and the Senate. The Bill has been passed by both Houses and received Royal Assent on 21 December 1998.

### *Ratification of the Convention*

2.7 On 15 January 1999 the Minister for Foreign Affairs announced that Australia's instrument of ratification had, on that day, been deposited with the United Nations Secretariat.<sup>3</sup>

## Issues raised in submissions

2.8 Four main issues were raised in the written submissions received by the Committee:

- concerns about the terms of the proposed 'national declaration' to be submitted along with Australia's formal instrument of ratification;
- concerns about the timetable for the destruction of surplus landmines;
- concerns about the effectiveness of the Convention's monitoring and compliance regimes; and
- the importance of monitoring closely the development of replacement technologies.

### *Concerns about the 'national declaration'*

2.9 A number of submissions expressed concern about the terms of the 'national declaration' the Government proposed to submit along with the formal instrument of ratification. It was argued that the declaration

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3 The Hon Alexander Downer MP, *Media Release*, 15 January 1999, p. 1

represented a dilution of Australia's commitment to the Convention and to the principle of universal application of the Convention.

2.10 The national declaration states, in part, that:

... the participation by the Australian Defence Force ... in military activity conducted in combination with the armed forces of States not party to the Convention which engage in activity prohibited under the Convention would not, by itself, be considered to be in violation of the Convention.<sup>4</sup>

2.11 This declaration is given effect in Australian law by subsection 7(3) of the *Anti-personnel Mines Convention Act 1998*.

2.12 In its submission AUSTCARE stated that it was:

... dismayed at the proposed declaratory statement as an apparent example of delay and dilution of both the principles of universality and of a total ban. Our suggestion is that any strategic alliance that would depend on such a level of obedience in such detail could not reflect Australia's best interests.<sup>5</sup>

2.13 Similar concerns were also expressed by the Medical Association for the Prevention of War (Australia), the Australian Network of the International Campaign to Ban Landmines, World Vision Australia and Bruce Gray.<sup>6</sup>

#### *Timetable for destruction*

2.14 While all submissions applauded those provisions of the Convention that require the destruction of domestic stockpiles of landmines, some argued that it was important that the process and timetable for the destruction of domestic stockpiles of landmines be published.

2.15 The Medical Association for the Prevention of War (Australia), World Vision Australia and Bruce Gray all submitted that a transparent process and clear timetable for the destruction of domestic stockpiles

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4 National Interest Analysis for the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction*, p. 3

5 AUSTCARE, *Submission No. 7*, p. 4

6 Medical Association for the Prevention of War (Australia), *Submission No. 6*, pp. 1-2; the Australian Network of the International Campaign to Ban Landmines, *Submission No. 10*, p. 2; World Vision Australia, *Submission No. 5*, p. 3; and Bruce Gray, *Submission No. 4*, p. 3

would greatly assist in maintaining the credibility of Australia's commitment to the Convention.<sup>7</sup>

#### *Monitoring and compliance*

2.16 A strong theme in several submissions was the need to ensure that the monitoring and compliance regimes in the Convention operate effectively.

2.17 Bruce Gray, for example, proposed that the Convention should be reviewed at an early date to ensure that the Convention's compliance regime was sufficiently robust, and that the effectiveness of the Convention was not being undermined by definitional problems or inadequate monitoring.<sup>8</sup>

#### *Replacement technologies*

2.18 It was also suggested in some submissions that the Australian Government needs to be vigilant to ensure that any technologies that are developed to replace the military use of landmines do not have similarly indiscriminate effects.<sup>9</sup>

### **Committee comments**

#### *Comments on the national declaration and subsection 7(3)*

2.19 We are reassured by the remarks made by the Minister for Foreign Affairs during parliamentary debates on the Anti-personnel Mines Convention Bill that neither the national declaration, nor subsection 7(3) in the Act, represent a diminution of the Government's commitment to the Convention.

2.20 The Minister explained that subsection 7(3) does not provide a blanket decriminalisation of the offences created by the Act. It is intended to provide that:

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7 Medical Association for the Prevention of War (Australia), *Submission No. 6*, p. 1; World Vision Australia, *Submission No. 5*, p. 6; and Bruce Gray, *Submission*, p. 2

8 Bruce Gray, *Submission No. 4*, p. 2. See also Australian Council for Overseas Aid, *Submission No. 9*, p. 2; AUSTCARE, *Submission No. 7*, p. 4; and Australian Network of the International Campaign to Ban Landmines, *Submission No. 10*, p. 5

9 World Vision Australia, *Submission No. 5*, p. 4; Medical Association for the Prevention of War (Australia), *Submission No. 6*, p. 1; Australian Council for Overseas Aid, *Submission No. 9*, p. 2; and Australian Network of the International Campaign to Ban Landmines, *Submission No. 10*, p. 5



... a person to whom the Act applies will not be guilty of an offence merely by reason of participation in such combined exercises [that is, military exercises with the armed forces of a country which is not a party to the Convention]. However, it does not provide a defence in circumstances where such a person actually carries out one of the prohibited acts in the course of those combined operations.<sup>10</sup>

2.21 We accept that this provision does not sanction breaches of the Convention, but merely allows Australian Defence Force personnel to participate in combined operations with countries like the United States of America and perform routine tasks (such as refuelling aircraft) without risking prosecution.

*Comments on a timetable for destruction*

2.22 In relation to the destruction of domestic stockpiles of landmines, we note that subsections 8(3) to 8(6) of the Anti-personnel Mines Convention Act provides that:

- (a) the Minister for Defence must formulate principles to guide the retention of mines for Defence Force training purposes; and
- (b) the principles so formulated shall be presented to Parliament as disallowable instruments.

2.23 These principles should be formulated and presented to Parliament as soon as possible. By examining these principles, Parliament and the community will be able to gain an insight into the process and timeframe for the destruction of those mines not required for defence force training purposes.

**2.24 The Minister for Defence should formulate the decision making principles referred to in subsection 8(3) of the *Anti-personnel Mines Convention Act 1998* as soon as possible.**

*Comments on monitoring and compliance*

2.25 The existence of a robust and effective system for monitoring compliance with the Convention is essential if a comprehensive and lasting solution to the landmine crisis is to be achieved.

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<sup>10</sup> The Hon Alexander Downer MP, *House of Representatives Hansard*, 26 November 1998, p. 748

2.26 The First Conference of States Parties to the Convention will be held in early May 1999 and we note the recent statement by the Minister for Foreign Affairs that participants at the conference will:

... focus on increasing adherence to the Convention, putting in place measures to ensure compliance with the Convention's provisions and further action by the international community to assist the rehabilitation of landmine victims and to remove mines still in the ground.<sup>11</sup>

2.27 These are worthy initiatives.

2.28 We also applaud the Government's intention to take a leading role in international moves to have the Conference on Disarmament negotiate a universal ban on the transfer, export and import on landmines. This action will target those countries which remain outside the Ottawa Convention and is another step towards the goal of a total, worldwide ban on landmines.<sup>12</sup>

*Comments on replacement technologies*

2.29 We agree that the Australian Government must be vigilant in monitoring the development of alternative technologies, to ensure that any new technologies are consistent with existing international limits on the development and use of inhumane weapons.

**2.30 The Minister for Foreign Affairs should ensure that, in appropriate international fora, the Australian Government puts a strong position against the development of replacement weapons technologies which have indiscriminate and inhumane effects similar to those possessed by anti-personnel mines.**

*General comments*

2.31 The enactment of the Anti-personnel Mines Convention Act and the ratification of the Convention are historic events.

2.32 Australia has joined 120 other countries in foreswearing the use, production and transfer of landmines, and has committed itself to destroying its stockpile of mines, consistent with the provisions of the Convention.

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11 The Hon Alexander Downer MP, *Media Release*, 15 January 1999, p. 1

12 The Hon Alexander Downer MP, *Media Release*, 15 January 1999, p. 1

2.33 The ratification of the Convention represents the culmination of many years of diligent work by some extraordinarily committed people in the non-government sector, both in Australia and overseas. Through the efforts of these people, and many others in Government and Parliament who gave their support, significant steps have been made towards finding a long-term solution to the global landmine crisis.

2.34 As Australia's obligations under the Convention have now been enacted into domestic law, and the Government has ratified the Convention, we are of the view that it is not necessary to take further evidence on the Convention.

**2.35 The Committee supports the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction*.**

## **Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia**

### **Background**

2.36 The *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia* (the MRA) is intended to facilitate trade by allowing conformity assessment (testing and certification) of products traded between Australia and the European Community (EC) to be undertaken in the exporting country, rather than at destination.

2.37 From Australia's perspective, this means that businesses can have their products certified as being compliant with regulatory requirements in the EC by Australian conformity assessment bodies, rather than by EC bodies. This process can take place at the same time as domestic approvals are sought, thus streamlining the process and avoiding duplication.<sup>13</sup>

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13 Revised National Interest Analysis for the *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia*, p. 2

*Previous consideration by the Committee*

2.38 The former Committee took evidence on the MRA at a public hearing on 22 June 1998 and provided interim comment on the treaty in its *Fifteenth Report* (June 1998).

2.39 The former Committee was unable to complete its consideration of the Agreement at that time, because of uncertainty about when the Agreement was to come into force and related concerns about whether the Queensland Government was prepared to endorse the procedures proposed in the treaty.

2.40 Concerns were also raised about the operation of Article 4 of the MRA, which precludes the assessment of products not originating in the either Australia or the EC. It was feared that this provision would pose difficulties for Australian companies involved in assembling products from parts originating in other countries.<sup>14</sup>

2.41 While acknowledging these concerns, the Department of Industry, Science and Tourism (DIST) advised the Committee, in a submission dated 26 June 1998, that:

...our understanding of the EU rules of origin would allow such products to be classed as originating in Australia. The EU rules state that origin is conferred on the country where the last substantial, economically justifiable transformation takes place.<sup>15</sup>

2.42 DIST went on to say that ‘under such rules, product assembled in Australia from imported components *would satisfy this requirement*’ (emphasis added).<sup>16</sup>

*Queensland’s support and the date of effect*

2.43 We have since been advised that the Queensland Government endorsed the MRA on 30 November 1998, and that a exchange of notes between Australia and the European Commission took place on the same day, confirming that all domestic procedures for entry into force were complete.

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14 See EMSCI, *Submission No. 2*, pp. 1-2; Officials from the Department of Industry, Science and Tourism (DIST) acknowledged this concern (see DIST, *Submission No. 3*, p. 2)

15 See DIST, *Submission No. 3*, p. 2

16 See DIST, *Submission No. 3*, p. 2

2.44 In accordance with this exchange of notes, the MRA came into force on 1 January 1999.

**Committee comments**

2.45 As described in our *Fifteenth Report*, the quality and timeliness of the information originally provided to us by DIST was not satisfactory and delayed the finalisation of our consideration of the MRA.

2.46 Nevertheless, the MRA will help simplify the procedures faced by Australian companies seeking to export to the European Community. We trust that DIST's understanding of the EU rules of origin is accurate, and that the efforts of Australian companies seeking to export goods assembled in Australia from imported components will not be hampered by the new arrangements.

2.47 We also note that binding treaty action has already been taken and that the mutual recognition procedures are now in place.

**2.48 The Committee supports the *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between the European Community and Australia.***

## CHAPTER 3

### PROTOCOL CONCERNING THE PEACE MONITORING GROUP FOR BOUGAINVILLE

#### Background

3.1 On 10 October 1997, the parties to the Bougainville conflict signed a truce agreement at Burnham Military Camp, New Zealand. The Burnham Truce called for the establishment of a neutral Truce Monitoring Group (TMG) to monitor the terms of this truce.

3.2 The TMG was formally established in December 1997 as a result of the *Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville* (the Head Agreement).

3.3 The mandate of the TMG was to monitor and report on the compliance of the parties to the Burnham Truce, to promote and instill confidence in the peace process, and to provide the people of Bougainville with information on the truce and peace process.<sup>1</sup> Australia has played a significant role in the peace process, contributing both civilian and Defence Force personnel to the TMG's operations in Bougainville.

3.4 In January 1998, the parties to the conflict again met in New Zealand (at Lincoln University in Christchurch), and agreed to extend the truce until 30 April 1998, when a 'permanent and irrevocable' ceasefire on Bougainville would take effect.

3.5 As a result, the parties to the Head Agreement decided that new treaty action was necessary to ensure that the legal basis and protections afforded to the TMG were extended to a new body: the Peace Monitoring Group.

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1 National Interest Analysis for the *Protocol Concerning the Peace Monitoring Group made pursuant to the Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu Concerning the Neutral Truce Monitoring Group for Bougainville*, p. 1

### **Proposed treaty action**

3.6 The *Protocol concerning the Peace Monitoring Group for Bougainville* was signed for New Zealand, Australia, Papua New Guinea, Fiji and Vanuatu in Port Moresby on 29 April 1998. The Protocol amended the Head Agreement by:

- updating the terminology in the Head Agreement to take into account the progression from truce to ceasefire; and
- replacing the Truce Monitoring Group with the Peace Monitoring Group.<sup>2</sup>

3.7 The Protocol entered into force on 1 May 1998. On the same day, the Minister for Foreign Affairs, the Hon Alexander Downer MP, wrote to the Chairman of the Committee explaining the urgent need for the Protocol to come into force.

### **Obligations imposed by the proposed treaty action**

3.8 The Protocol requires the parties, including Australia, to make various commitments to the peace process, including:

- to establish and maintain the Peace Monitoring Group;
- to provide regular reports on the implementation, progress and success of the peace process;
- to offer good offices in supporting the maintenance of peace; and
- to require that peace monitors respect local laws and maintain strict neutrality.<sup>3</sup>

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2 National Interest Analysis for the *Protocol concerning the Peace Monitoring Group made pursuant to the Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville*, p. 2

3 National Interest Analysis for the *Protocol concerning the Peace Monitoring Group made pursuant to the Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville*, p. 3

3.9 Other than base salaries, the deployment of Australian service personnel on Bougainville is expected to cost A\$25.97m per year.<sup>4</sup>

### **Committee comments**

#### *Evidence at the hearing*

3.10 At our hearings on 15 February 1999, we took evidence on:

- the number of Australian personnel working in Bougainville as part of the Peace Monitoring Group (250 civilian and unarmed Defence Force personnel out of a total foreign contingent of 307 people);<sup>5</sup>
- the scale of the devastation caused by the Bougainville conflict (which has included the almost total destruction of the local economy, the displacement of villagers, the destruction of local leadership structures and systems of provincial government and the destruction of plantations and health and education services);<sup>6</sup>
- the fragile state of the peace process and absence of Francis Ona from the process;<sup>7</sup> and
- the Australian Government's aim of helping secure peace and delivering a 'peace dividend' to the island communities (as a result Australia is coordinating a substantial and growing aid program on Bougainville, involving the provision of medical supplies and construction materials, the re-establishment of Radio Bougainville, the construction of hospitals and schools, and plans for a major program of road rebuilding).<sup>8</sup>

3.11 We were also told of the smooth and secure development occurring as part of the Chevron Gas Pipeline project, from Papua New Guinea to Queensland.<sup>9</sup>

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4 Senator the Hon Robert Hill, Response to Question No. 1204, *Senate Hansard*, 11 July 1998

5 David Ritchie, *Transcript of Evidence*, 15 February 1999, p. TR33

6 David Ritchie, *Transcript of Evidence*, 15 February 1999, p. TR34 and p. TR36; Colonel Malcolm Rerden, *Transcript of Evidence*, 15 February 1999, pp. TR34-35 and pp. TR36-37

7 David Ritchie, *Transcript of Evidence*, 15 February 1999, p. TR35 and p. TR37

8 Dereck Rooker-Smith, *Transcript of Evidence*, 15 February 1999, p. TR33

9 David Ritchie, *Transcript of Evidence*, 15 February 1999, p. TR37



*Conclusion*

3.12 Although it is too early to say lasting peace has been secured for Bougainville, all parties are to be congratulated for their efforts to date and encouraged to continue to invest time and energy into the peace process.

3.13 Given the nature and scale of the devastation caused by the conflict, there is much work to be done to restore even the most basic of services to the people living on the island. Australia's aid program will continue to play a crucial role in helping people re-establish their lives and communities; in helping re-establish services and infrastructure; in helping build new systems of administration; and in helping restore a functioning economy on the island.

**3.14 The Committee supports the *Protocol concerning the Peace Monitoring Group for Bougainville* and the continuation of Australia's aid program to Bougainville.**

3.15 We also recognise that it was necessary for the Protocol to enter into force, and for the Peace Monitoring Group to be deployed urgently before parliamentary consideration of the Protocol was complete.

## CHAPTER 4

### TREATIES TABLED ON 11 NOVEMBER 1998

#### Development Cooperation Agreement with Indonesia

##### Proposed treaty action

4.1 The proposed *Agreement on Development Cooperation with Indonesia* (the Agreement) provides a generic legal framework for Australia's development cooperation program with Indonesia. It is an Umbrella Agreement under which project specific subsidiary arrangements will be entered into.

4.2 The proposed Agreement will standardise and give covering authority to all subsidiary aid arrangements in areas such as the responsibilities of the respective Governments; the privileges and immunities applying to project personnel; and the importation of project equipment.

4.3 The proposed Agreement is designed to simplify the negotiation of Memoranda of Understanding (MOU) for individual aid projects undertaken within Indonesia. Previously, each aid project required its own MOU that covered not only project specific activities and responsibilities, but also generic obligations of the respective Governments.<sup>1</sup>

##### Obligations imposed by the proposed treaty action

4.4 The proposed Agreement sets out the broad terms under which Australia's development cooperation aid is delivered in Indonesia. Consequently, the obligations under the Agreement are general in nature, including commitments to:

- promote a program of development cooperation with Indonesia;
- participate in Joint Project Coordinating Committees to monitor project activities;

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1 National Interest Analysis for the *General Agreement on Development Cooperation with Indonesia*, p. 1

- cover expenditures related to Australian project personnel and to projects;
- sign contracts for the purchase of project related goods or commission services financed by the Australian Government; and
- take responsibility for claims arising from the conduct of Indonesian personnel in Australia, except where the liability arises from a criminal act, gross negligence or wilful misconduct.

4.5 There are no foreseeable direct financial costs to Australia arising from the proposed Agreement.<sup>2</sup>

#### **Date of binding treaty action**

4.6 The proposed Agreement will enter into force from the date of an exchange of notes by which the two Governments notify each other that they have completed their domestic requirements for entry into force. This is expected to take place as soon as practicable in the first half of 1999.

#### **Committee comments**

##### *Evidence presented*

4.7 At our hearing on 15 February 1999, we were advised that the purpose of the Agreement is to promote a generic legal framework for all project specific aid agreements with Indonesia and that the Agreement does not specify the amount of aid Australia currently provides, or will in future provide, to Indonesia.<sup>3</sup>

4.8 We took evidence on:

- the interaction between the Commonwealth Government's purchasing policy (with its focus on 'value for money' rather than 'buy Australian' considerations) and the procurement of goods under the aid program;<sup>4</sup>

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2 National Interest Analysis for the *General Agreement on Development Cooperation with Indonesia*, p. 2

3 Ernst Huning, (AusAID), *Transcript of Evidence*, 15 February 1999, p. TR2

4 Tony Blythe and Ernst Huning, (AusAID), *Transcript of Evidence*, 15 February 1999, pp. TR3-4

- the fact that nothing in the proposed Agreement would limit the capacity of the Australian Government to negotiate with the Indonesian Government for the provision of a specific aid package for East Timor, should East Timor become an autonomous, self-governing region within the Republic of Indonesia;<sup>5</sup>
- the similarities between the proposed Agreement and other development cooperation agreements with the Asia-Pacific region;<sup>6</sup>
- the scope and effectiveness of AusAID's monitoring and accountability procedures;<sup>7</sup>
- the proposal to establish subsidiary legally binding arrangements for the protection of intellectual property;<sup>8</sup>
- the difficulties faced by aid workers in delivering project aid safely and effectively, given the current economic and political instability in Indonesia<sup>9</sup>; and
- the capacity of the Australian Government to ensure that Australian aid resources are directed to projects that reflect our strategic interests and standards of probity, and not just those of the Indonesian authorities.<sup>10</sup>

4.9 We also sought information at the hearing on the nature of the intellectual property protection arrangements described in the proposed Agreement. In a subsequent written submission, AusAID advised that the intellectual property provisions in the Agreement are consistent with arrangements administered by the World Intellectual Property Organisation and the rules established by the World Trade Organisation

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5 Ernst Huning, (AusAID), *Transcript of Evidence*, 15 February 1999, p. TR5

6 The Committee was advised that there were no significant differences between the proposed Agreement and the development cooperation agreement signed in the Philippines in 1994 (see Blythe and Huning, (AusAID), *Transcript of Evidence*, p. TR6)

7 Tony Blythe, (AusAID), *Transcript of Evidence*, 15 February 1999, pp. TR9-10 and Ernst Huning, (AusAID), *Transcript of Evidence*, 15 February 1999, p. TR7

8 Ernst Huning, (AusAID), *Transcript of Evidence*, 15 February 1999, p. TR8

9 Ernst Huning, (AusAID), *Transcript of Evidence*, 15 February 1999, pp. TR8-9

10 Ernst Huning, (AusAID), *Transcript of Evidence*, 15 February 1999, p. TR6 and pp. TR9-11

sponsored Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).<sup>11</sup>

4.10 AusAID explained further that the purpose of the intellectual property provisions in the proposed Agreement is to draw attention to the issues which the contracting parties should consider when negotiating project specific MOUs.

In this way, the GADC [General Agreement on Development Cooperation] does provide a framework for the better protection of Australian intellectual property since the parties contracting under it are required to consider and determine how various kinds of intellectual property inputs and outputs are to be treated, particularly so far as ownership and exploitation are concerned.<sup>12</sup>

4.11 The Australia-Indonesia Business Council indicated, in a written submission, that it supported the aims and intent of the proposed Agreement. In particular, the Council expressed support for:

- those measures which would result in simplified arrangements for the negotiation of MOUs;
- the increased level of protection for Australian intellectual property in Indonesia;
- the proposed annual meeting of government officials; and
- provisions requiring the governments to notify each other of changes to any relevant laws.<sup>13</sup>

4.12 The Council noted, in conclusion, that the success of the Agreement will depend on how it is ‘implemented by both the Indonesian and Australian Governments.’<sup>14</sup>

### *Conclusion*

4.13 The *Development Cooperation Agreement with Indonesia* is a useful and sensible document. It will simplify the project development processes for both governments and for the non-government organisations commissioned to run aid projects in Indonesia.

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11 AusAID, *Submission No. 5*, p. 1

12 AusAID, *Submission No. 5*, p. 1

13 Australia-Indonesia Business Council, *Submission No. 1*, pp. 1-2

14 Australia-Indonesia Business Council, *Submission No. 1*, p. 2

4.14 At a time of great social and political unrest in Indonesia, the Agreement also sends a timely message to the citizens of that country that Australia stands ready to assist them in the transition to a modernised economy and more open society. The transition is proving to be traumatic and it is important that Australia, as a near neighbour, takes a supportive long-term view of the relationship and builds structures, such as the Development Cooperation Agreement, which point towards a continuing and cooperative relationship.

4.15 Nevertheless, it is important that individual aid projects negotiated under the generic terms of the Agreement reflect Australia's strategic and development objectives, and that we are not just responsive to project suggestions made by the Indonesian authorities. It is important also that AusAID's project monitoring and review mechanisms are rigorous and that the accountability and probity standards expected by the Australian community are applied to projects sponsored in Indonesia.

**4.16 The Committee supports the *General Agreement on Development Cooperation between Australia and Indonesia* and recommends that binding treaty action be taken.**

## **Agreement between Australia and Ukraine on Trade and Economic Cooperation**

### **Background**

4.17 In 1994, the newly independent nation of Ukraine requested that a bilateral trade and economic cooperation agreement be negotiated with Australia. The intent was to establish the legal basis for a new commercial relationship with Australia.

4.18 There is a small, but growing commercial relationship between the Australia and Ukraine. Trade between the two nations has doubled since 1995, amounting to just over \$A14 million in 1998. This figure includes \$A8 million of exports from Australia and \$A6 of imports from Ukraine.<sup>15</sup>

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15 National Interest Analysis for the *Trade and Economic Cooperation Agreement with Ukraine*, p.1; and Robert Walters (DFAT), *Transcript of Evidence*, 15 February 1999, p. TR12

### **Proposed treaty action**

4.19 The proposed Agreement will provide an improved institutional framework for the development of the commercial relationship between Australia and Ukraine. It aims to facilitate trade by measures such as:

- encouraging and facilitating the negotiation of commercial contracts;
- encouraging the development of industrial and technical cooperation;
- facilitating the holding of, and participation in, trade and technology exhibitions and fairs;
- encouraging commercial partners to have regard to the protection of intellectual property in their commercial relations; and
- requiring the parties to grant each other Most Favoured Nation treatment in all respects concerning customs duties, internal taxes or other charges imposed on or in connection with imported goods, in the issue of import and export licences and any provision of foreign exchange connected to such transactions.

### **Obligations imposed by the proposed treaty action**

4.20 Both parties will be obliged to further the aims of the proposed Agreement and undertake such trade promotion and facilitation activities as are sanctioned by the Agreement.

4.21 Although there are **no direct financial costs to Australia imposed as a result of the Agreement, some costs may be associated with the facilitation of commercial and technical cooperation, and the conduct of trade fairs and exhibitions. The National Interest Analysis suggests that these costs would be met from existing departmental resources.**<sup>16</sup>

### **Date of binding treaty action**

4.22 This Agreement will enter into force after both parties have notified each other that domestic procedures for bringing the Agreement into force have been completed. It is proposed that Australia's notification take place as soon as practicable in the first half of 1999.

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16 Robert Walters, (DFAT) *Transcript of Evidence*, 15 February 1999, p. TR14

## Committee comments

### *Previous consideration of similar agreements*

4.23 The former Committee have reviewed and reported on a number of similar trade and economic cooperation treaties, including agreements with Romania, Mexico, the Czech Republic, Lebanon and Malaysia.<sup>17</sup> In each case the Committee recommended that the Agreements be ratified.

4.24 In its *Eleventh Report* (November 1997) the former Committee also reported on a proposed Economic and Commercial Cooperation Agreement with Kazakhstan. It found that there were reasons to be concerned about the integrity and reliability of the commercial practices adopted by the Kazakhstan authorities and, accordingly, recommended that the Agreement should not be ratified **until Kazakhstan demonstrated good faith in its trade and investment relations with Australian companies. The Agreement has not yet been ratified.**<sup>18</sup>

### *Evidence at the hearing*

4.25 At our hearing on 15 February 1999, we took evidence on:

- the need for Australian companies seeking to trade in Ukraine to be cautious in dealing with intellectual property considerations, as Ukraine is not a member of the World Trade Organisation (WTO) and thereby not a signatory to the WTO's trade related intellectual property agreement;<sup>19</sup> and
- the symbolic and practical advantages that can be expected to flow from the proposed agreement.<sup>20</sup>

4.26 We were also advised that there were no reasons to be concerned that the Ukraine Government would display the same lack of commercial integrity that had undermined the proposed Economic and Commercial Cooperation Agreement with Kazakhstan.<sup>21</sup>

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17 See JSCT, *First Report* (August 1996) for comment on the Agreement with Romania; JSCT, *Eighth Report* (June 1997) for comment on the Agreement with the Czech Republic; and JSCT *Eleventh Report* (November 1997) for comment on the Agreement with Malaysia.

18 See JSCT, *Eleventh Report* (November 1997), pp. 14-16

19 Robert Walters, (DFAT) *Transcript of Evidence*, 15 February 1999, p. TR15

20 Robert Walters, (DFAT) *Transcript of Evidence*, 15 February 1999, pp. TR14-16

21 Robert Walters, (DFAT) *Transcript of Evidence*, 15 February 1999, p. TR15



## *Conclusion*

**4.27 The Committee supports the *Agreement between Australia and Ukraine on Trade and Economic Cooperation* and recommends that binding treaty action be taken.**

## **Agreement between Australia and Malaysia Concerning the Status of Forces**

### **Background**

4.28 A Status of Forces Agreement (SOFA) is an internationally recognised method of regulating matters arising from the presence of one country's visiting forces in the territory of another country. Australia has SOFA arrangements with the United States of America, Papua New Guinea and Singapore. A similar agreement has recently been negotiated with New Zealand.

4.29 Since 1971, Australia and Malaysia have been members of the Five Power Defence Agreement (FPDA) which provides some SOFA-type coverage for Australian Defence Force personnel visiting Malaysia. However, in recent years the FPDA has not adequately covered bilateral defence activities beyond the scope of the FPDA, particularly in the area of personnel exchanges.<sup>22</sup>

### **Proposed treaty action**

4.30 The proposed SOFA with Malaysia will facilitate a range of defence activities by establishing standard conditions for the presence of Malaysian and Australian visiting forces on issues including legal jurisdiction, claims, immigration requirements, customs duties and quarantine requirements.

4.31 The proposed SOFA complements the FPDA, which will remain in force covering mutually determined five-power defence arrangements.<sup>23</sup>

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22 National Interest Analysis for the *Status of Forces Agreement with Malaysia*, p. 1

23 Peter Bleakley (Department of *Department of Defence*), *Transcript of Evidence*, 15 February 1999, p. TR17

### **Obligations imposed by the proposed treaty action**

4.32 The proposed SOFA describes a range of standard conditions concerning the rights of, and access to facilities used by, Malaysian and Australian Defence Force personnel, and the status of these forces, when visiting each country. The conditions are extensive and include:

- authorisation to use predetermined land and sea areas, air space and training facilities;
- authorisation to operate telecommunication systems;
- a commitment to purchase local goods and commodities;
- the waiver of government to government claims for damage arising out of or in the course of the performance of official duties and for damages for injury or death while engaged in the performance of official duties; and
- a duty to respect local laws.<sup>24</sup>

### **Date of binding treaty action**

4.33 The proposed Agreement will enter into force on an exchange of notes between the Parties confirming that all domestic requirements to give effect to the Agreement have been met. It is anticipated that this exchange of notes will take place as soon as practicable in 1999.

### **Committee comments**

#### *Evidence presented*

4.34 We were advised at our hearing on 15 February 1999, and through the National Interest Analysis, that:

- Australia has a long-standing and very close Defence relationship with Malaysia;<sup>25</sup>
- the proposed SOFA is consistent with Government policy on the development of our Defence relationship with Malaysia;<sup>26</sup> and

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24 National Interest Analysis for the *Status of Forces Agreement with Malaysia*, p. 3

25 Peter Bleakley (Department of *Department of Defence*), *Transcript of Evidence*, 15 February 1999, p. TR17

26 National Interest Analysis for the *Status of Forces Agreement with Malaysia*, p. 1

- the proposed SOFA is consistent with the provisions of the other SOFA's to which Australia is a party.<sup>27</sup>

**4.35 During the course of the hearing we also took evidence on:**

- the numbers of Defence Force personnel typically involved in exchanges between Australia and Malaysia (there are about 200 Australian Defence Force personnel in Malaysia and 100 Malaysian personnel in Australia);<sup>28</sup>
- the value to Australia of the close Defence relationship with Malaysia, including the ability to operate from the Royal Malaysian Air Force Base at Butterworth and the high-level access afforded by the placement of an Army Lieutenant-Colonel in Malaysian Defence Headquarters;<sup>29</sup>
- the stability and continuity of the relationship between Australian and Malaysian Defence force personnel, even at times when the political relationship between governments might be tense;<sup>30</sup> and
- the security precautions imposed when foreign Defence forces engage in military exercises on Australian territory or in Australian airspace.<sup>31</sup>

*Conclusion*

4.36 Australia's Defence relationship with Malaysia is of special significance. Not only is it enduring and stable, but it provides us with an invaluable presence in a region that is of paramount economic and strategic interest. The proposed SOFA with Malaysia will help secure one of the fundamental planks of the relationship (that is, defence force personnel exchanges). To this end, it represents a useful enhancement to Australia's Defence relationship with Malaysia.

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27 National Interest Analysis for the *Status of Forces Agreement with Malaysia*, pp. 1-2

28 Feargus O'Connor (*Department of Defence*), *Transcript of Evidence*, 15 February 1999, p. TR18

29 Feargus O'Connor (*Department of Defence*), *Transcript of Evidence*, 15 February 1999, pp. TR17-18 and p. TR20

30 Feargus O'Connor (*Department of Defence*), *Transcript of Evidence*, 15 February 1999, p. TR20

31 Feargus O'Connor (*Department of Defence*), *Transcript of Evidence*, 15 February 1999, pp. TR18-19

4.37 **The Committee supports the *Agreement between Australia and Malaysia Concerning the Status of Forces* and recommends that binding treaty action be taken.**

## **Agreement relating to the Movement of Nationals between Australia and France**

### **Proposed treaty action**

4.38 The *Agreement between Australia and France relating to the Movement of Nationals* is intended to secure France's waiver of visa requirements for Australian short term visitors to France (and its overseas departments and territories), in exchange for Australia's extension of the Electronic Travel Authority (ETA) system to French short term visitors to Australia.

4.39 The National Interest Analysis for the Agreement describes the ETA system as providing a computer-based link between the Commonwealth Department of Immigration and Multicultural Affairs and more than 20 000 participating international airlines and travel agents. The system allows tourists and short term business travellers to apply for an electronic travel authority at the same time as making a travel booking. In a matter of seconds, the personal details of the traveller are matched against the Commonwealth's Movement Alert List and against the list of 900 000 suspect travel documents and, if no concerns are flagged, an ETA is provided. Under this system, a traditional visa label is no longer issued.

4.40 Including France, there are now 29 countries authorised to use the ETA system.<sup>32</sup>

### **Obligations imposed by the proposed treaty action**

4.41 The proposed Agreement allows citizens of France and Australia to enter each other's country (and in the case of Australian citizens, to enter New Caledonia, Wallis and Futuna Islands, and French Polynesia) on presentation of a valid passport, not physically bearing a visa.

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32 National Interest Analysis for the *Agreement between Australia and France relating to the Movement of Nationals between the two Countries*, p. 1. See also Andrew Metcalfe (Department of Immigration and Multicultural Affairs), *Transcript of Evidence*, 15 February 1999, pp. TR26-27 for an overview of the countries that have access to the ETA.

4.42 In general terms, there will be no fee charged for entry for visits of up to three months for holiday or business purposes. Visa requirements and charges will apply for visits exceeding three months.

4.43 Waiving the requirement for French business visitors to Australia to obtain a visa, for business visits of up to three months and to pay the \$50 visa charge will result in a loss of Commonwealth revenue. The National Interest Analysis argues, however, that the loss of revenue will be small and will be 'more than offset by the foreign exchange savings exceeding \$A13 million per annum from the elimination of visa charges for Australian short term visitors to France.'<sup>33</sup>

#### **Date of binding treaty action**

4.44 The Agreement provides that the arrangements will enter into force on the first day of the second month following notification that all domestic procedures for entry into force have been satisfied. It is proposed that Australia's notification be lodged as soon as practicable in the first half of 1999.

4.45 While awaiting entry into force, the Agreement was implemented on a provisional basis from 1 August 1998. This provisional clause was put in place so that French passport holders would not be required to pay a new \$50 charge for non-ETA visas which came into force on 1 July 1998. The Committee was advised by the Minister for Foreign Affairs, in a letter dated 13 July 1998, that:

The Government considered it inappropriate to introduce the new charges on travellers from France at a time when both countries had signalled at a political level their intention to make travel easier. At the same time the Government was keen to eliminate, as soon as possible, the inconvenience and cost to Australians of obtaining visas for France.<sup>34</sup>

#### **Committee comments**

##### *Evidence presented*

4.46 At our hearings on 15 February 1999, we took evidence on:

- the Australian Government's decision to maintain visa requirements for foreign nationals seeking to travel to Australia

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33 National Interest Analysis for the *Agreement between Australia and France relating to the Movement of Nationals between the two Countries*, pp. 2-3.

34 Letter, Hon Alexander Downer MP to Chairman Joint Standing Committee on Treaties, 13 July 1988.

and the action taken by the Department of Immigration and Multicultural Affairs to ensure, through the implementation of the ETA system, that the visa requirement is administered efficiently;<sup>35</sup>

- the international coverage of the ETA system (95% of all tourist and short term business travellers from ETA eligible countries secure their travel authorities through the ETA system);<sup>36</sup>
- concerns within the domestic travel industry about the disincentives created by foreign-based travel agencies when they impose a \$40 to \$50 charge for access to the ETA system;<sup>37</sup> and
- the Department's intention to monitor closely the overstay rates of travellers from French territories in the South Pacific.<sup>38</sup>

4.47 After the hearing, we received further information from the Department about:

- the results of the 1996 international visitor survey conducted by the Bureau of Tourism Research, which indicated that visitors to Australia had a high level of satisfaction about Australia's visa requirements even before the introduction of the ETA system; and
- the agreement between Australia and the United States which resulted in the extension of the ETA system to US citizens

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35 Andrew Metcalfe (Department of Immigration and Multicultural Affairs), *Transcript of Evidence*, 15 February 1999, p. TR24

36 Andrew Metcalfe (Department of Immigration and Multicultural Affairs), *Transcript of Evidence*, 15 February 1999, p. TR24

37 Andrew Metcalfe (Department of Immigration and Multicultural Affairs), *Transcript of Evidence*, 15 February 1999, p. TR25 and p. TR27. It was explained that this was not a charge levied by the Commonwealth Government on users of the ETA system, but a charge imposed by international travel agents on their customers. The transaction costs associated with the operation of the ETA system are in fact met by the Department of Immigration and Multicultural Affairs, and amount to \$1.75 per transaction (see Andrew Metcalfe (Department of Immigration and Multicultural Affairs), *Transcript of Evidence*, 15 February 1999, p. TR26).

38 Andrew Metcalfe (Department of Immigration and Multicultural Affairs), *Transcript of Evidence*, 15 February 1999, p. TR27

travelling to Australia and the participation of Australian citizens in the US Visa Waiver Pilot Program.<sup>39</sup>

### *Conclusion*

4.48 The new border control arrangements described in this Agreement will be beneficial for citizens of both countries: offering far more convenient and, in many cases, less costly border clearance procedures for holiday-makers and business travellers.

**4.49 The Committee supports the Agreement relating to the Movement of Nationals between Australia and France and recommends that binding treaty action be taken.**

## **Agreement to amend the Agreement on Health Services between Australia and the United Kingdom**

### **Background**

4.50 Bilateral medical treatment agreements provide for reciprocal access to public health facilities for residents of one country travelling temporarily in the other country. Such agreements contribute to a safer travel environment for Australians travelling abroad on business or holiday.

4.51 Australia has concluded bilateral medical treatment agreements with eight countries that have health systems of an equivalent standard to Australia. There are agreements in place with Finland, Ireland, Italy, Malta, New Zealand, the Netherlands and Sweden, as well as with the United Kingdom.

4.52 The Agreement on Health Services with the United Kingdom came into force on 1 July 1986. The Agreement (known as the 1986 Agreement) requires each country to provide visitors from the other country with:

- any immediately necessary treatment as a public patient in the public hospital system; and

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<sup>39</sup> See Department of Immigration and Multicultural Affairs, *Exhibit No. 1* and Department of Immigration and Multicultural Affairs, *Submission No. 4*, p.1

- access to subsidised medical services for out-of-hospital services and to subsidised prescription drugs.

4.53 The 1986 Agreement does not cover medical treatment that is prearranged or elective, or for which there is no immediate medical necessity.<sup>40</sup>

#### **Proposed treaty action**

4.54 The proposed amendments are intended to clarify the operation of the 1986 Agreement. They do not alter the scope or operation of the Agreement.

4.55 There are two proposed amendments to the 1986 Agreement:

- the first, to more clearly define the level of health care available to visitors from the United Kingdom in Australia (that is, as a public patient in a public hospital); and
- the second, to extend the available period for health care for a United Kingdom visitor, from six months to the duration of their temporary stay in Australia. This amendment reflects practices already in place since 1989.<sup>41</sup>

#### **Obligations imposed by the proposed treaty action**

4.56 The proposed amendments do not impose further obligations or costs on Australia.

#### **Date of binding treaty action**

4.57 The proposed amendments will enter into force on a date to be advised by Australia, through diplomatic channels, once all domestic requirements have been fulfilled.

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40 National Interest Analysis for the *Agreement on Health Services between Australia and the United Kingdom*, pp. 1-2

41 National Interest Analysis for the *Agreement on Health Services between Australia and the United Kingdom*, p. 2



## Committee comments

### *Previous consideration*

4.58 We and our predecessor Committee have previously reviewed and reported on the medical treatment agreements with Malta, Ireland and New Zealand. While we have, in each case, supported the respective agreements, we have also expressed concerns about the cost impact of medical treatment agreements and the fact that it is the health services operated by State Governments that bear these costs.<sup>42</sup>

### *The cost of medical treatment agreements*

4.59 At our hearing on 15 February 1999, we again sought information from the Department of Health and Aged Care about the costs to the Australian community of such agreements - in particular about the costs associated with the 1986 Agreement with the United Kingdom. We were advised that:

- medical treatment agreements are negotiated with countries where there are similar numbers of people travelling to and from Australia;<sup>43</sup>
- in 1997, ‘400 000 Britons came here and 320 000 Australians went to the United Kingdom’;<sup>44</sup>
- in 1997, 32 000 visitors from the United Kingdom enrolled in Medicare (there are no equivalent figures for the numbers of Australian visitors enrolled in the National Health Service);<sup>45</sup>
- based on ‘some discussions with the UK’ it seems that the costs to each party are ‘similar’;<sup>46</sup> and

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42 See JSCT, *Eleventh Report* (November 1997) for comment on the agreement with Ireland; JSCT, *Thirteenth Report* (March 1998) for comment on the agreement with Malta; and JSCT, *Report 19: The Fifth Protocol on the General Agreement on Trade and five treaties tabled on 30 June 1998* (March 1999) for comment on the agreement with New Zealand.

43 Craig Rayner (Department of Health and Aged Care), *Transcript of Evidence*, 15 February 1999, p. TR 31

44 Craig Rayner (Department of Health and Aged Care), *Transcript of Evidence*, 15 February 1999, p. TR 29

45 Craig Rayner (Department of Health and Aged Care), *Transcript of Evidence*, 15 February 1999, p. TR 30

46 Mark Burness (Department of Health and Aged Care), *Transcript of Evidence*, 15 February 1999, p. TR 30. The National Interest Analysis advised that ‘in 1996/97, health services to the

- the cost of the Agreement to both parties has not been the subject of consideration in the past ('we have not actually sat down and exchanged detailed data with them [that is, the United Kingdom health authorities]').<sup>47</sup>

4.60 In a subsequent written submission the Department argued that it is not possible to make an exact comparison of costs, given the differences in the cost structures of each countries health system. In the Department's opinion a better comparison can be obtained by looking at the number of visitors who use the health systems and deriving average utilisation costs for each category of visitors. This view was explained as follows:

For example, the average utilisation of Medicare by Australian residents is \$350 per person per year. This includes all people, young, old, healthy, chronically ill, etc. The travelling population, however, are relatively health, so their average utilisation will be much lower. In 1996, this was \$91.00 per person for UK [travellers in Australia]. Also, there are similar numbers travelling between Australia and the UK. If we assume that a similar proportion of visitors in either country needs medical care, there will be similar numbers using the health system in each country.<sup>48</sup>

4.61 While the Department has estimated the average utilisation cost for United Kingdom travellers in Australia (that is, \$91 per person per year), we were not provided with equivalent information about the average utilisation costs of Australian travellers in the United Kingdom.

### *Conclusion*

4.62 We do not object to medical service agreements in principle. Indeed, such agreements are of considerable benefit to Australians travelling overseas.

4.63 We remain concerned, however, about the adequacy of the costing information upon which such agreements are based. The community should not be expected to subscribe to medical service agreements without a complete and credible analysis of the likely costs of such agreements. While the Department may be correct when it asserts that

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value of \$2.9m were provided to visitors from the United Kingdom under the terms of the 1986 Agreement. ... based on similar numbers travelling to each country, it is expected that, on average utilisation, costs incurred in both countries would be similar' (See National Interest Analysis for the *Agreement on Health Services between Australia and the United Kingdom*, p. 2).

47 Mark Burness (Department of Health and Aged Care), *Transcript of Evidence*, 15 February 1999, p. TR 30

48 Department of Health and Aged Care, *Submission No. 3*, p. 1

such agreements are cost neutral, it is not good enough to enter into legally binding international agreements supported only by a ‘guestimate’ of the likely costs of the agreement.

4.64 We acknowledge there is little financial incentive for the Commonwealth to attend to such costings (given that health services are provided by State governments), but we believe it is irresponsible for the Commonwealth to continue to impose these costs unilaterally without improving the quality of the cost assessments being made.

4.65 We also acknowledge that the costings information provided in relation to the Agreement on Health Services with the United Kingdom is more detailed than that provided in relation to the other health services agreements we have considered. Nevertheless, the information is still incomplete – it gives only gives a partial picture of the cost impact of the agreement and does not enable the costs to both parties to be compared effectively.

4.66 While we do not intend to recommend against ratification of the proposed amendment, we do wish to signal a strong interest in ensuring that any future medical treatment agreements are based on a far more rigorous assessment of the likely costs to Australia and of how those costs compare to the costs likely to be borne by the other party.

4.67 **The Committee:**

- (a) **supports the Agreement to amend the *Agreement on Health Services between Australia and the United Kingdom*;**
- (b) **recommends that binding treaty action be taken;**
- (c) **recommends that when negotiating medical treatment agreements in future, the Department of Health and Aged Care undertake a rigorous assessment of the cost of the agreement to both parties; and**
- (d) **recommends that the results of such cost assessments be reported to Parliament in the National Interest Analyses prepared in support of future medical treatment agreements.**

**ANDREW THOMSON MP**  
Committee Chairman

23 March 1999

## **APPENDIX 1**

### **EXTRACT FROM RESOLUTION OF APPOINTMENT**

The Joint Standing Committee on Treaties was reconstituted in the 39th Parliament on 9 December 1998. The Committee's Resolution of Appointment allows it to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- (b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - (i) either House of the Parliament, or
  - (ii) a Minister; and
- (c) 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.

## **APPENDIX 2**

### **LIST OF SUBMISSIONS AND EXHIBITS**

#### **Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Landmines and on their Destruction**

1. Tasdec
2. International Christian Peace Movement
3. Amnesty International Australia
4. Bruce Gray
5. World Vision Australia
6. Medical Association for Prevention of War (Australia)
7. AUSTCARE
8. Australian Federation of Business & Professional Women Victoria  
Division Inc
9. Australian Council for Overseas Aid
10. International Campaign to Ban Landmines Australian Network
- 10a. International Campaign to Ban Landmines Australian Network  
(Supplementary submission)

#### **Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings, between the European Community and Australia**

1. Nulite Systems International
2. ElectroMagnetic Compatibility and Systems Integration Pty Ltd
3. Department of Industry, Science and Tourism

#### **Treaties Tabled 11 November 1998**

1. Australia - Indonesia Business Council Ltd
2. Robert Downey

3. Commonwealth Department of Health and Aged Care
4. Department of Immigration and Multicultural Affairs
5. AusAID

## **Exhibits**

### **Treaties Tabled 11 November 1998**

1. Sbragi, A, *International Visitor Survey*, Bureau of Tourism Research, 1996.

## **APPENDIX 3**

### **LIST OF WITNESSES**

**Monday, 22 June 1998**

**Treaties tabled on 26 May 1998**

**Convention on the Prohibition of the Use, Stockpiling,  
Production and Transfer of Anti-personnel Mines and their  
Destruction**

**Attorney-General's Department**

Dr Rosalie Balkin, Assistant Secretary, Office of International  
Law, Public International Law Branch

**Department of Defence**

Lieutenant Colonel Glenn Fenton, Manoeuvre Support,  
Combined Arms Training and Development Centre

Lieutenant Colonel Phillip Gibbons, Acting Director of  
Preparedness, Army

Adrienne Jackson, Director General, Major Powers and  
Global Security, International Policy Division

Lieutenant Colonel Michael Kelly, Directorate of Operations  
and International Law

**Department of Foreign Affairs and Trade**

John Griffin, Director, Conventional and Nuclear  
Disarmament Section

Kathy Klugman, Landmines Desk Officer, Arms Control and  
Disarmament Branch

Deborah Stokes, First Assistant Secretary, International  
Security Division

**AusAID**

Alison Gillies, Assistant Director-General, Africa and  
Humanitarian Relief Branch

**Agreement on Mutual Recognition in relation to Conformity  
Assessment, Certificates and Markings between the European  
Community and Australia**

**Department of Industry, Science and Tourism**

Drew Andison, Manager, Standards and Conformance Policy,  
Business Environment Branch, Industry Policy Division



Vicki Brown, General Manager, Business Environment Branch, Industry Policy Division

**Department of Foreign Affairs and Trade**

Jeffrey Hart, Executive Director, Treaties Secretariat

Gregory Lemmon, Manager, Europe Office, Australian Trade Commission

Dr Damaso Marengo, Desk Officer, European Union Section

**Monday, 15 February 1999, Canberra**

**Treaties tabled on 30 June 1998**

**Protocol concerning the Peace Monitoring Group for Bougainville**

**Department of Defence**

Peter Bleakley, Director of Agreements, Defence Legal Office  
Feargus O'Connor, Executive Officer, Malaysia, Singapore, Brunei Section

Colonel Malcolm Rerdon, former Chief of Staff, Peace Monitoring Group

**Australian Federal Police**

Stephen Polden, Manager, United Nations and Other Overseas Commitments

**Department of Foreign Affairs**

John Michell, A/g Director, Papua New Guinea Section, New Zealand and Papua New Guinea Branch

David Ritchie, First Assistant Secretary, South Pacific, Africa and middle East Division

**AusAID**

Dereck Rooker-Smith, Director, Infrastructure & Reconstruction, Papua and New Guinea Branch

**Treaties tabled on 11 November 1999**

**Attorney-General's Department**

Mark Zanker, Assistant Secretary, International Trade and Environment Law Branch, Attorney-General's Department

**Department of Foreign Affairs and Trade**

David Mason, Executive Director, Treaties Secretariat,  
Department of Foreign Affairs and Trade

Adrian White, Executive Officer, Treaties Secretariat,  
Department of Foreign Affairs and Trade

**General Agreement on Development Cooperation between Australia and the Republic of Indonesia;****AusAID**

Tony Blythe, Country Program Manager, Indonesia Section  
Ernst Huning, Assistant Director General, Indonesia, China  
and Philippines Branch

**Agreement between Australia and Ukraine on Trade and Economic Cooperation****Department of Foreign Affairs and Trade**

Michelle Manson, Desk Officer, Bilateral 2 Section, Europe  
Branch

Robert Walters, Director, Europe Bilateral 2 Section, Europe  
Branch

**Agreement between Australia and Malaysia Concerning the Status of Forces****Department of Defence**

Peter Bleakley, Director of Agreements, Defence Legal Office  
Fergus O'Connor, Executive Officer, Malaysia, Singapore,  
Brunei Section

**Agreement relating to the Movement of Nationals between Australia and France****Department of Foreign Affairs and Trade**

Peter Gregg, Director, Europe Bilateral 1 Section

**Department of Immigration and Ethnic Affairs**

Andrew Metcalfe, First Assistant Secretary, Border Control  
and Compliance

Karen Stanley, Director, Visa Strategies

**Agreement to amend the Agreement on Health Services  
between Australia and the United Kingdom of Great Britain  
and Northern Ireland**

**Department of Health and Aged Care**

Mark Burness, Director, Medicare Eligibility Section

Craig Rayner, Adviser, Medicare Eligibility Section