

Protocol concerning the Bougainville Transition Team

Introduction

- 6.1 The purpose of the *Protocol, done at Sydney on 30 June 2003, concerning the Bougainville Transition Team made pursuant to the Agreement, done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol, done at Port Moresby on 29 April 1998* (the Protocol) is to establish the Bougainville Transition Team (BTT) and provide for the phasing out of the Australian-led Peace Monitoring Group (PMG). The Protocol also provides the mandate and legal framework for the BTT's activities and for the participation of personnel.
- 6.2 The BTT is a small civilian team created to continue the work undertaken by the PMG¹ and its predecessor, the Truce Monitoring Group (TMG)², in promoting, facilitating and instilling confidence in the peace process on Bougainville and in the transition towards

1 The Peace Monitoring Group (PMG) was created under the *Protocol concerning the Peace Monitoring Group made pursuant to the Agreement between Papua New Guinea, Australia, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville, done at Port Moresby on 5 December 1997* (the 1998 Protocol).

2 The Truce Monitoring Group (TMG) was created under the *Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville, done at Port Moresby on 5 December 1997* (the 1997 Agreement).



autonomous government.³ The mandate of the BTT also requires it to support the United Nations Observer Mission on Bougainville until that body withdraws at the end of 2003.⁴

6.3 The Protocol further amends the 1997 Agreement between Australia, Papua New Guinea (PNG), New Zealand, Fiji and Vanuatu concerning the neutral TMG on Bougainville, as amended by a 1998 Protocol establishing the PMG.⁵

6.4 There are minimal differences between the proposed new Protocol and the 1998 Protocol.⁶ By example, Mr David Lewis from the Department of Foreign Affairs and Trade (DFAT) drew attention to:

The deletion of a clause which called for the establishment and running of the Peace Process Steering Committee, which involved the nations involved and Papua New Guinea – all the signatories to the treaty. That was deleted on the basis that it had not met for a number of years and, if the Papua New Guinea government as the chair decided to call a meeting we would attend, so there was no need to formalise that process.⁷

6.5 Mr Lewis further advised that minor amendments reflect the BTT being a civilian operation, as opposed to the previous military PMG operation.⁸

6.6 According to the NIA, the Protocol provides the same legal protection to the members of the BTT as was provided to the members of the PMG until they withdrew on 23 August 2003.⁹

6.7 The BTT commenced operations on 1 July 2003 and will remain in place at least until the withdrawal of United Nations observers at the end of 2003.¹⁰ The Committee noted a press release from the United Nations Secretary-General, Mr Kofi Annan, which welcomed the establishment of the BTT and the continued provision of logistical and

3 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

4 National Interest Analysis (NIA), para. 15 and Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

5 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 14.

6 Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

7 Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

8 Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

9 NIA, para. 16, and Department of Foreign Affairs and Trade (DFAT), *Submission*, p. 2.

10 NIA, para. 15.



operational support to the United Nations Political Office in Bougainville.¹¹

Bougainville peace process

- 6.8 The NIA outlines that in October 1997 parties to the nine year Bougainville conflict signed a truce agreement at Burnham Military Camp, New Zealand.¹² PNG and other signatories requested that states in the South Pacific region contribute to a neutral TMG for Bougainville. Under the TMG, Australia contributed civilian and military personnel and logistics support.
- 6.9 *The Agreement between Australia, Papua New Guinea, New Zealand, Fiji and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville*, signed in December 1997, established the legal framework for the TMG's activities and participation of personnel in the TMG.
- 6.10 In January 1998 the parties to the conflict signed the *Lincoln Agreement on Peace, Security and Development on Bougainville*. The Lincoln Agreement provided for an extension of the truce until April 1998, when a 'permanent and irrevocable' ceasefire would take effect.¹³ Accordingly, Australia extended its contribution in the TMG until that date.
- 6.11 Following the Lincoln Agreement, the PNG Government invited States participating in the TMG to constitute a new PMG to monitor the ceasefire.¹⁴ On 29 April 1998 a new Protocol was established to ensure that the same legal basis and protections afforded to the TMG were extended to the PMG.¹⁵
- 6.12 The *Bougainville Peace Agreement*, signed in August 2001, is a comprehensive settlement including provisions for autonomy, a referendum on Bougainville's future and a Weapons Disposal Plan.

11 Press Release, *Secretary General Welcomes Dispatch of regional transition team to Bougainville*, United Nations, 16 June 2003.

12 NIA, para. 8.

13 NIA, para. 10.

14 NIA, para. 11.

15 NIA, para. 11.



- 6.13 Despite Article 330(c) of the *Bougainville Peace Agreement* providing for parties of the PMG to withdraw around the middle of, and no later than the end, of 2002, the PNG Government requested that Australia maintain the PMG beyond the end of 2002. Australia agreed to the request.
- 6.14 Mr Gerald Thomson from DFAT informed the Committee that, in February this year, the Australian Government decided to withdraw the Bougainville PMG, with operations scheduled to end on 30 June 2003.¹⁶ Following requests from the PNG Government and Bougainvillean leaders for a continued regional presence on Bougainville beyond the PMG, the 'Australian government decided in late May that it would be prepared to lead a small civilian team' (the BTT) to replace the PMG on Bougainville.¹⁷
- 6.15 Mr Thomson also informed the Committee that since the *Bougainville Peace Agreement* was signed, the PNG Government and Parliament have approved a change to its constitution to allow for autonomy and a referendum on Bougainville.¹⁸ In addition, the United Nations Observer Mission on Bougainville has confirmed that the second stage of the weapons disposal process is complete, with over 1,900 weapons collected, including 314 high-powered, 309 sporting, 1 069 homemade and 244 World War II weapons.¹⁹

Bougainville Transition Team (BTT)

- 6.16 At the time of the hearing, the BTT consisted of 17 unarmed personnel from Australia, New Zealand and Vanuatu.²⁰ DFAT advised the Committee that the BTT is divided into two parts: one section is responsible for policy work, namely carrying out the mandate of the BTT, and the other section is responsible for logistics.
- 6.17 Mr Thomson noted that, of the nine personnel responsible for policy work, four are Australian (two from DFAT and two from the

16 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15 and NIA, para. 14.

17 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15 and NIA, para. 15.

18 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 16.

19 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15 and Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

20 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.



Australian Agency for International Development [AusAID]), three are from New Zealand, one each from Fiji and Vanuatu.²¹

- 6.18 According to Mr Grant Morrison from AusAID, the logistical section consists of eight personnel managed by an Australian contracting company engaged by AusAID for that purpose. The company, HK Shipping Pty Ltd, has subsequently subcontracted eight specialists in logistical work who are responsible for the overall implementation of the support function, such as:

the identification of necessary equipment; the purchase and transport of that equipment; setting up accommodation facilities; IT capability; transport capability; negotiating with the PMG, which is still in place; the gifting of certain assets; the identification of what else is required; and the oversight of security matters.²²

- 6.19 Further, Mr Morrison noted that the majority of the subcontractors are Australian citizens and the rest are New Zealanders.²³

- 6.20 DFAT advised the Committee of the practical implications of the Protocol:

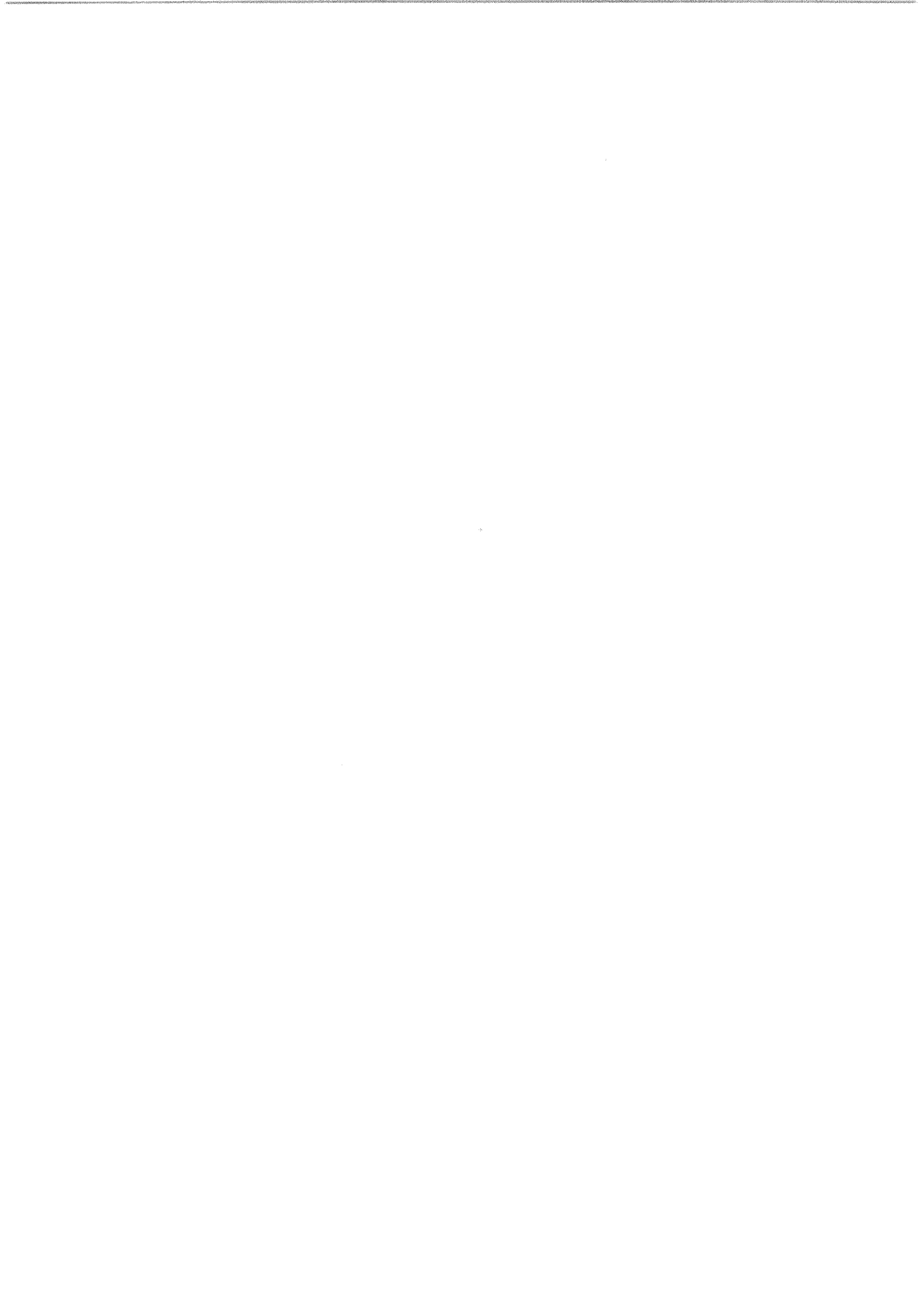
In practice, the protocol means that members of the Bougainville Transition Team are subject to the exclusive jurisdiction of their respective state in relation to criminal matters. They are allowed to establish premises – which they have done in Arawa and Buka on Bougainville – to wear uniforms and to display flags. They are exempt from local taxation, licensing, import and export duties. They are free to use public utilities, transport, infrastructure and locally employed personnel. It is important to note that members of the Bougainville Transition Team are expected to respect the laws of Papua New Guinea.²⁴

21 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 17.

22 Mr Grant Morrison, *Transcript of Evidence*, 18 August 2003, p. 17.

23 Mr Grant Morrison, *Transcript of Evidence*, 18 August 2003, p. 18.

24 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.



Entry into force

- 6.21 The Protocol was signed by Australia, PNG and New Zealand on 30 June 2003, and entered into force for Australia and PNG on 30 June 2003 and for New Zealand on 16 July 2003. The Department advised the Committee that Fiji signed the Protocol on 16 July 2003.²⁵ The Protocol will enter into force for Fiji on the date of notification by that Party.
- 6.22 Mr Thomson advised the Committee that Vanuatu intends to sign the Protocol, but has been delayed due to 'the Solomon Islands situation and their role there'.²⁶

National Interest Exception provision

- 6.23 Generally, after treaties have been signed for Australia they are tabled in both Houses of Parliament for at least 15 days prior to binding treaty action being taken. During this period the Committee normally reviews the proposed treaty action and presents its conclusions and recommendations to the Parliament.
- 6.24 Where it is in Australia's national interest to proceed with an urgent treaty action, however, the 15 or 20 day tabling requirement may be varied or waived. The National Interest Exception provision was invoked in relation to the Protocol concerning the Bougainville Transition Team.
- 6.25 Five days prior to the signing of the Protocol the Minister for Foreign Affairs, the Hon Alexander Downer MP, advised the Committee of the urgent need for the Protocol to be in force to enable Australia to deploy members of the BTT on 30 June 2003. The Protocol was subsequently tabled on 12 August 2003.²⁷
- 6.26 Mr Thomson from DFAT explained that the timing of the decision to establish the BTT, and the short period to finalise and sign the

25 DFAT, *Submission 8*, p. 3.

26 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 17.

27 See *Senate Journal*, 12 August 2003, p. 2089 and *House of Representatives Votes and Proceedings*, 12 August 2003, p. 1064.



Protocol before deployment, militated against following the normal procedures.²⁸ DFAT advised:

We were not in a position to commence detailed negotiations concerning the Bougainville Transition Team, including the protocol, with other signatories to the 1997 agreement as amended, until early June.²⁹

6.27 Further, Mr Thomson noted that as the Government:

wanted to commence deployment of the Bougainville Transition Team on 30 June, the date on which the Peace Monitoring Group was to cease operations, the government felt it necessary for the Protocol to come into force between Australia and Papua New Guinea on or before this date.³⁰

Implementation

6.28 The NIA states that no legislation was required to implement Australia's obligations under the Protocol.

6.29 Article 29.4 of the 1998 Protocol determines that it will expire on the withdrawal of the Group from the Area of Operations.³¹

Consultation

6.30 Annexure 1 of the NIA advises that the Government of PNG and leaders from Bougainville were consulted in the preparation of the Protocol, as were the Attorney-General's Department, DFAT and the Department of Defence.

28 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

29 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

30 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

31 NIA, para. 28.

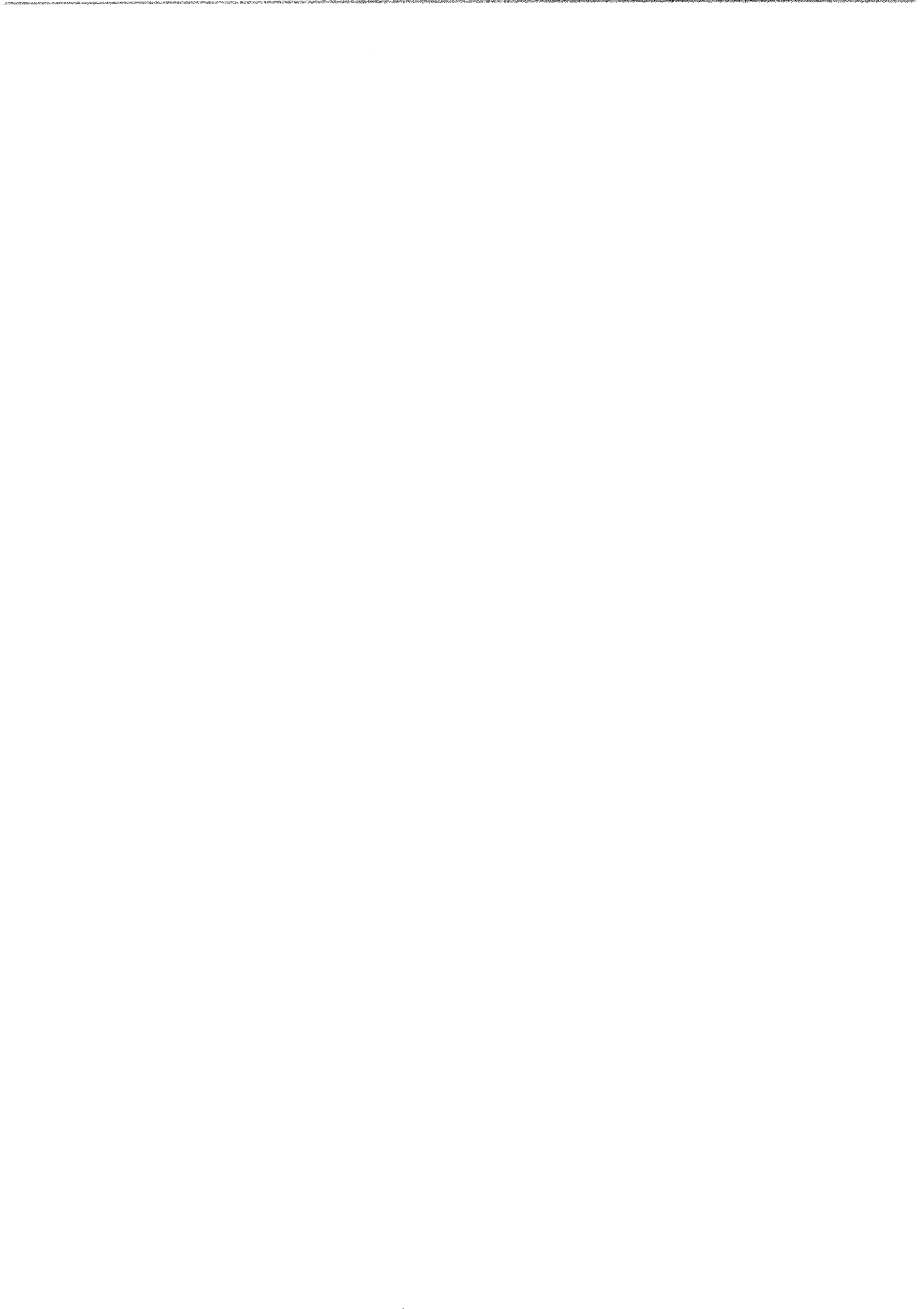


Table Australia's Financial Commitment to Bougainville (FY 1997-98 to FY 2002-03, with forecasts for 2003-04)

	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	Total	2003-04
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m*
Development Assistance								
Health	0.5	0.6	1.4	2.1	1.8	1.8	8.2	1.8
Education	1.1	1.5	2.8	1.3	1.7	1.5	9.9	2.8
Infrastructure (Roads and wharves)	11.1	10.4	6.7	6.5	8.7	11.7	55.1	13.0
Rural Development	0.0	0.4	1.0	2.1	1.6	3.2	8.3	2.0
Civil society (Non-government organisations, Churches)	2.9	0.6	1.3	3.6	1.9	1.9	12.2	2.1
Peace Process **	4.0	6.7	15.2	8.5	4.3	5.4	44.1	6.0
Civilian Monitors †	1.3	1.9	1.8	1.8	1.4	1.1	9.3	7.0‡
Total	20.9	22.1	30.2	25.9	21.4	26.6	147.1	34.7
Defence Expenditure								
OP BEL ISI – Neutral Truce Monitoring Group	8.2	-	-	-	-	-	8.2	-
OP BEL ISI II – Peace Monitoring Group	-	20.6	23.9	20.0	10.0	13.4	87.9	4.0§
Total	8.2	20.6	23.9	20.0	10.0	13.4	96.1	4.0
Total Commitment	29.1	42.7	54.1	45.9	31.4	40.0	243.2	38.7

Source DFAT, Submission, p. 2.

* Figures in this column are estimates only

** Includes funding for peace and reconciliation meetings; an ex-combatants' Trust Account; legal, constitutional, finance and governance advisers; Radio Bougainville.

† Includes civilian monitors for both the Neutral Truce Monitoring Group (TMG) and the Peace Monitoring Group (PMG).

‡ Estimated costs of the Bougainville Transition Team (BTT) to 31 December 2003.

§ Estimated funding required until the withdrawal of the ADF on 23 August 2003, including funds for strategic lift costs.



- 6.31 According to Annexure 1, due to the urgent need to establish a Protocol covering the BTT, it was not possible to consult within Australia prior to the Protocol's entry into force on 30 June 2003.
- 6.32 The States and Territory Premiers' /Chief Ministers' Departments were notified by the DFAT Legal Branch according to the Commonwealth-State/Territory Standing Committee on Treaties process.³²

Costs

- 6.33 Article 6 of the Agreement establishes that each Participating State shall be responsible for the funding of its own participation in the Group.
- 6.34 DFAT advised that the total cost of Australia's development and military assistance to Bougainville from the financial year 1997-98 until FY 2002-03 was \$243.2 million, and it is estimated that the cost of the BTT till the end of FY 2003-04 will be \$38.7 million. The details of Australia's financial commitment to Bougainville are set out in the table opposite.

Conclusions

- 6.35 The Committee supports the Protocol, which extends the same legal protection to members of the BTT as was previously provided to the members of the PMG and the TMG, while promoting, facilitating and instilling confidence in the peace process on Bougainville and its transition towards autonomy. The Committee also affirms the BTT's role supporting the United Nations Political Office in Bougainville.
- 6.36 The Committee acknowledges the urgent need for the Protocol to be in force on or before 30 June 2003 when the BTT was deployed, prior to the treaty action being tabled in Parliament and to parliamentary consideration of the Protocol.

Ms Julie Bishop MP
Chair

³² Consultations Annex (Annex 1), tabled with treaty text.

