



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE ON TREATIES**

**Reference: Australia-Indonesia Maritime Delimitation Treaty**

**DARWIN**

**Wednesday, 8 October 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

## JOINT STANDING COMMITTEE ON TREATIES

### Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz  
Senator Bourne  
Senator Coonan  
Senator Cooney  
Senator Murphy  
Senator Neal  
Senator O'Chee

Mr Adams  
Mr Bartlett  
Mr Laurie Ferguson  
Mr Hardgrave  
Ms Jeanes  
Mr Tony Smith  
Mr Truss

For inquiry into and report on:

Australia-Indonesia Maritime Delimitation Treaty.

**WITNESSES**

<b>CLARK, Mr Paul Scott, Curator, Maritime Archaeology and History, Museum and Art Gallery of the Northern Territory, GPO Box 4646, Darwin, Northern Territory 0801</b>	<b>129</b>
<b>FFOULKES, Dr David, Asian Links Coordinator, Department of Primary Industry and Fisheries, Darwin, Northern Territory 0800</b>	<b>112</b>
<b>JONES, Mr David, Business Development Manager, PGS Exploration Pty Ltd, Level 4, IBM Centre, 1060 Hay Street, West Perth, Western Australia 6005</b>	<b>78</b>
<b>JONES, Mr David, Business Development Manager, PGS Exploration Pty Ltd (Petroleum Geo Services), Level 4, IBM Centre, 1060 Hay Street, West Perth, Western Australia 6005</b>	<b>111</b>
<b>MELLON, Mr Colin David, Officer in Charge, Foreign Fishing Operations, Department of Primary Industry and Fisheries (AFMA), GPO Box 990, Darwin, Northern Territory 0801</b>	<b>112</b>
<b>NUNN, Dr Eric Edward, Director of Energy, Northern Territory Department of Mines and Energy, PO Box 2901, Darwin, Northern Territory 0801</b>	<b>63</b>
<b>NUNN, Dr Eric Edward, Director of Energy, Northern Territory Department of Mines and Energy, PO Box 2901, Darwin, Northern Territory 0801</b>	<b>112</b>
<b>PYNE, Dr Rex Rondon, Acting Deputy Director Fisheries, Fisheries Division, Department of Primary Industry and Fisheries, GPO Box 990, Darwin, Northern Territory 0801</b>	<b>63</b>
<b>PYNE, Dr Rex Rondon, Acting Deputy Director Fisheries, Fisheries Division, Department of Primary Industry and Fisheries, GPO Box 990, Darwin, Northern Territory 0801</b>	<b>112</b>
<b>STACEY, Ms Natasha Ellen Tanya , Anthropology, School of Southeast Asian and Australian Studies, Northern Territory University, Darwin, Northern Territory 0909</b>	<b>104</b>
<b>WESLEY-SMITH, Mr Robert, Spokesperson, Australians for a Free East Timor and Australian Coalition for a Free East Timor, PO Box 2155, Darwin, Northern Territory 0801</b>	<b>91</b>
<b>WOOD, Mr Alexander Gibson, Head, Operations Support—N.T., Santos, Santos House, 91 King William Street, Adelaide, South Australia 5000</b>	<b>78</b>

JOINT STANDING COMMITTEE ON TREATIES

*Australia-Indonesia Maritime Delimitation Treaty*

DARWIN

Wednesday, 8 October 1997

Present

Mr Taylor (Chairman)

Senator Murphy

Mr Hardgrave

Mr Tony Smith

The committee met at 9.06 a.m.

Mr Taylor took the chair

**CHAIRMAN**—Before we get into the actual hearing we need to mention a couple of housekeeping matters. We have a motion that submissions Nos 9 to 14 be accepted as evidence.

This hearing is the fourth hearing conducted by this committee into the Australia-Indonesia Maritime Delineation Treaty. The treaty is of particular importance as it further establishes maritime and seabed boundaries between both countries. Previous public hearings have been held in Canberra where evidence was taken from line departments involved in negotiation of this treaty and in Perth where we took evidence from the Solicitor-General of Western Australia, from the Western Australian government and from interested individuals.

Following today's hearing the committee will be travelling to Christmas Island late this afternoon to take evidence tomorrow. We have one or two quite interesting submissions. At this stage the final hearing into the treaty will be held in Canberra on 20 October after which we will prepare and table the report in both houses.

If there is anybody here this morning who is not at this stage officially listed to give evidence and who wants to give evidence, they are quite welcome to do so. The secretariat will keep an eye on this during the remainder of the day to make sure that anybody who wants to give evidence today has the opportunity to do so. We are flexible enough today to do just that.

**NUNN, Dr Eric Edward, Director of Energy, Northern Territory Department of Mines and Energy, PO Box 2901, Darwin, Northern Territory 0801**

**PYNE, Dr Rex Rondon, Acting Deputy Director Fisheries, Fisheries Division, Department of Primary Industry and Fisheries, GPO Box 990, Darwin, Northern Territory 0801**

**CHAIRMAN**—Welcome. Thank you very much, gentlemen. I understand that Dr Pyne wants to make an opening statement. Dr Nunn, you will just take questions?

**Dr Nunn**—That is correct.

**CHAIRMAN**—Dr Pyne, would you like to make your opening statement.

**Dr Pyne**—Thank you, Mr Chairman. If I may, there are actually two parts to my opening statement. There are two matters that I would like to put before the hearing today. The first matter relates to fishery resources management issues, as they relate to the treaty line. The second matter is in relation to marine pollution. I would like to preface my opening statement by saying that we do not have problems with the treaty line and the treaty arrangements. We have concerns relating to the consequences of that treaty arrangement.

Let me refer to the first matter, which is a resource management issue, and just briefly place it in total perspective. The area that I am referring to in this evidence is all waters relevant to the Northern Territory to the east and west of the Northern Territory as defined by the petroleum submerged lands boundaries which are defined in schedule 2 of the Petroleum (Submerged Lands) Act 1967, and to the north by the former provisional fisheries surveillance and enforcement line, and now the agreed exclusive economic zone, that is, the water column boundary between the continent of Australia and the Indonesian archipelago. So that is the area that I am referring to.

I am referring to the application of the Northern Territory Fisheries Act, which I have a responsibility in the Northern Territory for administering. I am also referring to the offshore constitutional settlement arrangements. There are five of these entered into between the Commonwealth of Australia and the Northern Territory governments and they came into force on 1 February 1995. These can be found in the Northern Territory Government Gazette No. S7 of 1 February 1995.

These five arrangements include, firstly, an arrangement between the Commonwealth and the Northern Territory in relation to the northern shark fishery. This is a joint authority fishery managed under Northern Territory law. Secondly, there is an arrangement between the Commonwealth and the Northern Territory in relation to the demersal and Timor Reef fishery, again, under a Northern Territory joint authority managed under NT law. Thirdly, there is an arrangement between the Commonwealth and

the Northern Territory in relation to fish and other aquatic life resources in waters relevant to the Northern Territory; and, in respect of that arrangement, it is managed solely under NT law, not as a joint authority arrangement.

The remaining two arrangements entered into, namely, for tuna and tuna-like species, and for the northern prawn fishery, are both managed under Commonwealth law. I refer, also, in administering fisheries, to the four memoranda of understanding that flowed from those offshore constitutional settlement arrangements. These include a memorandum of understanding between the Northern Territory government and the Queensland government to manage straddling, cross-border, or highly migratory species between Queensland and the Northern Territory. There is a similar memorandum of understanding between the Northern Territory government and the Western Australian government to manage the same. And, there are two memorandum of understanding with the Commonwealth government to take account of the northern prawn fishery which is under its law and the management of tuna and tuna-like species.

Among other matters, these MOUs provide the basis for cooperation in the area of resource management, so that we can manage fish in an ecosystem, rather than along political boundaries. We can accommodate joint research and we can also mirror our compliance requirements.

I would like to point out that all Northern Territory fisheries are managed and we are proud of our management record. The major outcome areas which drive the future directions of the fisheries division relate to ensuring ecologically sustainable, economically optimal and socially just development of fish resources, on the one hand, while protecting biodiversity and facilitating growth of our aquacultural industries, on the other.

The concerns we have relate to the three fisheries which are managed under the two offshore constitutional settlement arrangements under joint authorities, namely, the Timor Reef and demersal fisheries, and the shark fishery. In all three instances, those fisheries border the delimitation line with Indonesia and there are clearly shared stocks. Having managed our fish in the Australian fishing zone very stringently, we are aware that on the other side of the boundary, with a different culture of people, with a different class of people, a different program of activity is applied. That program of activity, unfortunately, does not fall within the categories of orderly management. As a consequence of that, it places our heavily managed fisheries in quite a bit of biological strife. It also places our fishermen under quite a deal of economic stress.

The implication of what is happening is that on the Indonesian side there would appear to be unlimited or uncontrolled access to fish resources. The consequence of that is that when you harvest your fish down very low you pull the fish from the Australian side, where you have reasonable concentrations, across the border. Hence, our fish are moving across the border. At the same time, because our concentrations of fish are at a higher level and more attractive, that makes it attractive for boats to come illegally across the

border and harvest our fish on our side.

The point I would like to make is that as a state, or territory in this case, we have jurisdiction for matters within Australia; we do not have international responsibilities. Our concern lies with who is responsible in terms of the treaty arrangements for dealing with Indonesia in terms of encouraging a greater responsibility for managing fish resources, for administering their vessels, for attempting to reduce the incidents of illegal transgressions across the line, and hence, hopefully, providing the Australian industry with a greater deal of security of investment, of tenure, et cetera, in Australian fisheries.

As the Northern Territory government, we have taken on the responsibility, on behalf of Australia, to manage these fisheries and hence we are taking on a significant cost. However, that cost is blowing out by the impacts that are occurring from the north. That is all I have to say on the first item, Mr Chairman.

**CHAIRMAN**—Finish both areas and then we will come back because Dr Nunn will be involved perhaps in some of the second matter.

**Dr Pyne**—Thank you, Mr Chairman. The second matter I wish to draw to the attention of the committee, and show some evidence of, is net that is coming down in the ocean currents from our north. In my left hand I am holding net which can be clearly identified as net derived from Australian vessels, particularly prawn trawl net. Whilst the estimates vary, we can quite confidently say that the Australian northern prawn industry contributes about 25 per cent of the waste net that does come onto our northern shores.

From the Indonesian side we find a range of material which comes down, some of it very large, and that constitutes about 75 per cent of the net that arrives on our shores.

**CHAIRMAN**—So some of the large stuff would be tuna-type net, would it?

**Dr Pyne**—Tuna or shark, Mr Chairman. I have a series of photos taken from Groote Eylandt recently and it highlights the environmental shame that is occurring along our coastline. Very large amounts of net are coming ashore, in particular amongst marine animals, and the key one is skeletons of turtles.

**CHAIRMAN**—Is the one on the top right-hand side all net?

**Dr Pyne**—That is correct, Mr Chairman. Tonnes upon tonnes upon tonnes are coming down—

**CHAIRMAN**—Over what period of time was that collected?

**Dr Pyne**—I cannot answer that because we have not up until recently had a clean-up operation whereby we have a clean beach and then can assess the rate of accumulation on that beach.



**CHAIRMAN**—But the vast majority of the pollutant is coming from non-Australian sources? Is that correct?

**Dr Pyne**—Our gear technologists advise us that 75 per cent is coming from foreign sources.

**Senator MURPHY**—How did you come to that conclusion—the 75 per cent, 25 per cent ratio? How did you make the assessment?

**Dr Pyne**—Our gear technologists are very familiar with the types of fishing activity across our northern waters—

**Senator MURPHY**—I understand that.

**Dr Pyne**—And also with the gear permitted on Australian vessels.

**Senator MURPHY**—This is just an assessment on volume only? Is that correct?

**Dr Pyne**—Yes.

**Senator MURPHY**—So you have taken a sample of net found and said, ‘Okay, 25 per cent of the volume that we found is what we can clearly identify as Australian net and the rest is Indonesian or from some other foreign vessel.’ Is that correct?

**Dr Pyne**—That is correct. We have taken an area and we have gone through that area. There is a large volume of coastline that we have so our sample is from one specific area, in this case Groote Eylandt.

**CHAIRMAN**—Which would be exclusively Indonesian net?

**Dr Pyne**—No, it is foreign net that we suspect arrived from the Indonesian zone.

**CHAIRMAN**—I see.

**Senator MURPHY**—So it could be Japanese, Taiwanese, or from a whole host of other vessels that may be fishing in Indonesian waters?

**Dr Pyne**—In the foreign zone, our intelligence tells us there are Thai vessels, Taiwanese vessels, Korean vessels, Chinese vessels, and Indonesian vessels. There are even some European vessels operating.

**CHAIRMAN**—But your technical experts have got enough expertise to be able to differentiate. It is somewhat subjective but nevertheless it is an empirical assessment of the breakdown between foreign and indigenous. Is that correct?

**Dr Pyne**—That is correct. I must say it is empirical, but we do hope that at the end of the project we can be less subjective. The project has been funded by the northern prawn fishery and the Australian Fisheries Management Authority as the prime movers. That industry has contributed \$30,000 to assist the Anindilyakwa Land Council on Groote Eylandt to clean up beaches in that area.

**CHAIRMAN**—Let us get your opening statement. We will not interrupt again.

**Mr HARDGRAVE**—Can I ask one question. What does this really prove? Does it prove that foreign fishing vessels in our region are three times more plentiful than Australian fishing vessels, or does it prove that they are less likely to maintain the nets that they cast out and, as a result of tides, weather or whatever, these unmaintained nets wash ashore? What does this prove?

**Dr Pyne**—All I am saying is that this net is coming down in the currents. How it gets into the currents I have no idea. The point I am making is that there is a need for the Australian government to take a lead in negotiating with Indonesia to try to stem the tide of this material that appears on our shores.

The real reason that I seek the help of your committee is not wholly and solely because of the damage it does to the aquatic environment, but because in all my dealings with Aboriginal communities spanning the Northern Territory coastline under three land councils, in almost every instance, the councils and the communities are gravely concerned about the volume of this uncontrolled net arriving on their shores.

Eighty-four per cent of our coastline is Aboriginal land down to the low-water mark. They feel distraught that they cannot control this uncontrolled amount of damage that is going on. They feel totally offended. It also contributes quite significantly to their desire to take over the seas, to take over negotiations with Indonesia, to do a lot of things unilaterally simply because they see nothing happening within the state or the Commonwealth.

**CHAIRMAN**—We will come back to that because we have quite a few questions on that particular one. Let us get your opening comments finished and then we will go into the questioning.

**Dr Pyne**—Okay. I would like to sum up, Mr Chairman, by saying that what I have got here is a sample. It occurs from south of Groote Eylandt in the Gulf of Carpentaria right around to the Tiwi Islands which are due north of Darwin. We have had incidents of large trawl nets arriving on our shores in Darwin from the current. They have been identified as foreign nets. The extent of it is unknown. We have only three programs in place, or being put in place, to clean up. We have no finance to be able to do this right across the Territory. One of the three programs is that of the Dhimurru Land Management Aboriginal Corporation, who have done this themselves out of south-east Arnhem Land.

We have put, together with AFMA, a program in place using money from the northern prawn fishery and we are seeking funds in terms of another clan group on Groote Eylandt, the Umbakumba group. We are seeking funds to help them over the next three years to do a similar clean-up around their area of beach. The remainder of this net is just left. There is no mechanism in place to clean it up. Mr Chairman, that is all I would like to present.

**CHAIRMAN**—Thank you. Dr Nunn, at this stage, you do not want to make any comment?

**Dr Nunn**—No.

**CHAIRMAN**—All right, we will come back. The bottom line for you, Dr Pyne, and for the NT government is, first of all, you have no difficulty with the boundaries. Those boundaries have been established under this treaty, but what you are saying is that the operational administrative consequences of those boundaries are, in your view, going to become increasingly difficult to manage. Is that what you are saying?

**Dr Pyne**—That is correct, Mr Chairman.

**CHAIRMAN**—What is the link between your government departments and DPIE through AFMA? The Department of Defence also has an element of responsibility indirectly in this whole area. What you are saying to us is that the Fisheries Management Authority needs to really come to grips with what this means in terms of the administration of those new zones. Is that what you are saying?

**Dr Pyne**—Not directly, Mr Chairman. I am concerned that AFMA is dealing with fish within the Australian fishing zone. We have a very good relation with AFMA and that is not in question. The question that I am posing is: who is responsible for the external matters relating to the delimitation line with Indonesia and the implications of that? At the moment nobody seems to be putting their hand up in terms of really making a concerted effort on the Indonesian side of maybe introducing the concepts of resource management and of vessel restrictions. That is not part of the culture of Indonesia at the moment. I do not see a short-term answer, but what I do see is the total decimation of our outer boundary fisheries at the expense of Australia.

**CHAIRMAN**—It is a national issue with state and territory overtones, but are you saying to us that it is up to the federal government to come to arrangements with the Indonesian government to ensure that the administration and management of those external areas are optimised to the benefit of both countries? That is what you are basically saying, is it?

**Dr Pyne**—That is what I am leading to.

**CHAIRMAN**—But at the moment that all seems to have fallen down the crack or

has the potential to fall down the crack if, in fact, somebody does not take hold of it?

**Dr Pyne**—That is my concern.

**CHAIRMAN**—Are you suggesting that DPIE and DFAT would be involved too? DFAT and DPIE need perhaps to have some bilateral discussions with the appropriate foreign ministry in Jakarta and the equivalent of DPIE to make sure that the ramifications of this in terms of the fisheries resource are managed accordingly. Is that what you are saying?

**Dr Pyne**—That is correct.

**Senator MURPHY**—I am curious about the claim you make with regard to the management in so far as Indonesian fishermen or the Indonesian fishing industry are concerned. What information do you have and, more, I suppose, what facts do you have to support the claim that they are not operating a sustainable management regime in terms of their fishery? They may well argue that they are. For us, it is important. For the Commonwealth, even as part of a treaty arrangement, to seek to put in place some agreement about that, we first have to have some information that what you are saying is correct.

**Dr Pyne**—Could I answer that, Mr Chairman, by making two points. The first point is that the concerns I have, I believe, extend eastward in terms of the Queensland-Indonesian border boundary and westward in terms of the Western Australian-Indonesian boundary, but I cannot speak for them. The second point I would like to make is that we in the fisheries division engage Dr Carl Walters from Vancouver, an eminent population dynamicist. We have engaged him twice now, in 1996 and 1997, to come out and give us an independent report card on our fisheries and the status of our management. Dr Walters, in his opening address this year at a public meeting, said:

Let me just tell you very generally what we have found in those assessments.

\* There is an opportunity for growth in a few of the fisheries, particularly the red snapper fishery in deeper offshore waters. . .

\* And there is one sad story of a fishery that is very likely to be overfished in the near future, not by Australians, but by Indonesians. Goldband snapper move back and forth across the border of Indonesia, and are likely to face overfishing by developing fisheries in the Indonesian sector.

To definitively answer your question: I do not have the evidence, but we have enough superficial knowledge of what is going on. My statement is not a criticism of the Indonesian approach; it is simply an observation of how they deem their resources to be exploited and what level they deem that.

**Senator MURPHY**—This is the critical point, is it not: for the Commonwealth

government to talk to the Indonesian government about this problem? You have an example there that relates to one species; I can probably give you a number of examples that would relate to Australian fishermen doing exactly the same thing in Australian waters over a period of time. I accept that. We are now beginning to employ some better management practices. But in so far as this treaty is concerned, Mr Chairman, for us to raise an issue that goes to the question of Indonesian fishery management, we would have to do so in a way that showed there was some reasonable degree of evidence of a problem. I think you would understand the difficulty that the Commonwealth government could confront in making accusations or even seeking to open a discussion on the basis of some management of their fishery.

**CHAIRMAN**—In terms of the migratory dimension of the problem, which way do they go? Surely it is two-way traffic. I know nothing about fish but it seems to me that they do not necessarily come south; they will go north as well. Is that true?

**Dr Pyne**—Yes. But in this particular case, when you have a higher density here and a lower density there, and you have the same ecosystem, they will obviously spread out. That is the concern and it is happening. Yes, fish do move. The reason we have the offshore constitutional settlement arrangements and the MOUs in place is simply to manage ecosystems. If we manage ecosystems on a lateral basis across northern Australia, I believe it is clearly evident from what I am saying that, unless there is a proper arrangement going north, you have a problem. I did not want to spell that out too strongly but that is precisely what I am saying.

**CHAIRMAN**—Sure.

**Senator MURPHY**—Has your minister sought any discussions with the federal minister, either for foreign affairs or primary industries, to see how this problem might be broached?

**Dr Pyne**—It has most certainly been taken up at officer level with AFMA in Canberra and with the Department of Primary Industries and Energy in Canberra. But, at the moment, there is not a great deal of—could I use the word ‘observable’- activity going on that may give our industry some degree of confidence. In fact, our industry is looking at the prospect, if they do not amortise their investment in the Timor Reef fishery within 10 years, of that fishery not being there. I do not know if I can put it in any stronger terms. We are investing our money but there is no other money being invested from the Australian side to help us deal with the foreign side.

**Senator MURPHY**—The question was on two fronts really: one relating to the net problem—that is, the rubbish problem, if you like—and the other relating to the fishery management of particular species, which can go to very specific species that need some cooperative management on both sides of the line. So other than at officer level there has been no discussion?

**Dr Pyne**—No, at this moment there has not.

**Mr HARDGRAVE**—Where do the fish stock that are in the region we are talking about breed? They would breed along the Territory and Western Australian coast, would they not? Would the findings from that professor from Vancouver back that up?

**Dr Pyne**—They do not necessarily breed along the coast per se. The stock that I am referring to in terms of the Timor Reef stock is probably a stock that is going to be shared between the Northern Territory, Western Australia and Indonesia, flowing towards the Ashmore-Cartier region. The point I make is that we have MOUs in place to manage that within the Australian zone jointly with Western Australia but we have nothing to manage it north. Hence, if I could make a reference to Western Australia, you will see very little if any development on the Western Australian side at the moment—perhaps wisely so.

**Mr HARDGRAVE**—Do you think maybe the Indonesians understand as well as you and your department understand what is happening with the fish stock and that it might well be a deliberate tactic to literally farm more strongly on their side of the line, which the fish would never understand, so that that vacuum is filled by your fish stock? It could be a deliberate tactic I would have thought.

**Dr Pyne**—A very good hypothesis, which I would not like to comment on at this stage.

**Mr HARDGRAVE**—I would have been interested if you had. You foresee, down the track, a future treaty; for instance, having to talk about compensation from Indonesia to Australian fishing enterprises for this sort of devastation of stock?

**Dr Pyne**—I would prefer to think that we could work as responsible persons on both sides, maybe in the form of subsidiary MOUs of some sort in declared areas to work together. I am sure from the Australian side there is an interest in doing research, with the Indonesians on the other side, to work with them in terms of tagging and to understand the movement across the lines. A whole range of activities could be entered into and I believe that is really what we should be heading towards.

**CHAIRMAN**—In terms of the involvement of DFAT and DPIE, which are obviously the two major departments involved, are you suggesting to this committee—which, at this point in time, I think personally I tend towards—some sort of MOU in terms of the management of the fisheries as a result of this treaty? Is that what you are saying?

**Dr Pyne**—That is correct. That is where I would like to think—

**CHAIRMAN**—And that is what needs to be developed on a bilateral basis?

**Dr Pyne**—Yes.

**Mr HARDGRAVE**—So you are obviously prescribing a couple of stitches in time because, down the track, if this continues we are going to see, from what you have said this morning, the idea of some kind of compensation and some kind of argument over that turning into something quite significant as far as a future treaty is concerned.

**Dr Pyne**—I would have to say that, in the first instance, we would be looking at compensation from the Commonwealth in terms of our own fishery. That is the first position we would take and that happens up here now. Where we have to phase out a fishery we buy back the licences and where we do not have control over the particular instant we would probably, in the first instance, seek this from the federal government. Hence, I believe it is a federal government matter to look at matters in relation to the other side of the border fairly urgently in terms of the MOU.

**Mr HARDGRAVE**—With matters such as that for resources like fish, these sorts of things do tend to get worse pretty quickly before they get better, do they not?

**Dr Pyne**—Yes.

**CHAIRMAN**—With regard to this particular treaty—it is not groundbreaking; it is water breaking in terms of its scope—in terms of the seabed and the water column, is the fishery problem just a water column problem or is it a seabed problem as well?

**Dr Pyne**—It is a water column problem only at this time.

**CHAIRMAN**—A water column problem only?

**Dr Pyne**—Yes.

**Mr HARDGRAVE**—You have said you have no great problem with the treaty line and the arrangements as such but these factors are very important, I suspect. If nothing else, if we can draw them out before we have to start talking about some rather drastic repair work, we are better off pursuing it now. So what suggestions do you have—other than obviously diplomatic—for Australia to police this fish stock, this resource management problem on the other side of this line? Do you have any other suggestions at all?

**Dr Pyne**—I really do not have any concrete suggestions. The enforcement side as it relates to illegal transgressions is fairly well in hand at the moment. For those who may not be aware, as of yesterday there were 19 vessels, I believe—it is our office that manages it for the Commonwealth—in the Darwin harbour and there are 250 to 300 illegal fishermen in Darwin harbour, so that is the size of the problem. But that is being handled at that level. What we do not have in place I believe is a strong enough program

to actually work with the Indonesian government on the resource management, illegal fishing and pollution debris problem. It is not seen, unfortunately, as a high enough profile task and I am putting it to the committee that, unless we take this on board now, I believe it could have longer term ramifications, because if they are coming south now to acquire seafood for whatever reason, be it for economic gain or subsistence purposes, once they rape and pillage ours, what is the next step? I do not know.

**CHAIRMAN**—That is very helpful.

**Mr HARDGRAVE**—Just one last question in relation to recent events: there is something like \$1 million per trawler in buyback arrangements, isn't there, for some of these Indonesian vessels? I think I heard it on the news. I should not believe what I hear or read in the news, but—

**Dr Pyne**—You are just about correct on that one. We bonded four vessels yesterday. They were Thai built vessels, managed by an Indonesian consortium. They were all of the 25-metre size range and were stern trawlers. They were bonded and we sent them and the 100 crew out for in excess of \$1 million.

**CHAIRMAN**—I see.

**Mr TONY SMITH**—Just what does that mean—bonded and sent out? I do not know what it means.

**Dr Pyne**—It is still to be charged in the courts, but we do not want to be responsible for housing them in Darwin harbour so they place a bond on them pending final court action.

**Mr TONY SMITH**—They are actually sent back, are they, to Indonesia? With what funds and how are they sent back?

**Dr Pyne**—They are sent back with sufficient food, water and fuel to reach Indonesia.

**Mr TONY SMITH**—They are sent back on the ships that they are apprehended in?

**Dr Pyne**—Yes.

**Mr TONY SMITH**—But a bond has been obtained from somewhere, a money bond?

**Dr Pyne**—From the Indonesian owners. I may say I am getting beyond my depth on that line of questioning. I do not have a direct responsibility; we have a team of four



that is responsible for that. I just wanted to answer that broad question.

**CHAIRMAN**—I think it would be helpful before we finish these proceedings today if we get some idea. That is important evidence if they are being sent back in situ with the vessels and this bond is being held. I think we need to make quite sure what that is all about, because it is important in terms of the overall problem. I wonder whether we could get somebody, even if we have to do it later this afternoon, from your department, or whoever, to give us some evidence on that—or maybe you could take it on notice and give it to us. We need it quickly because, as you understand, this committee is tasked with reporting back to the parliament within 15 sitting days. In this case we will not quite get there, but just about. So speed is important in this whole process but at the same time we have got to get all the facts before we are prepared as a committee to say to the parliament, and therefore to the executive, ‘Ratify’. You have raised this morning some very important operational administrative consequences of this treaty.

**Mr TONY SMITH**—You may not wish to comment on this question but do you believe that that is an adequate process—the actual sending back of a vessel which will, presumably, go back to fishing legally or illegally? Do you think that is an adequate process? I always thought that they used to scuttle these vessels or sell them or do something with them, and the fishermen responsible were jailed frequently for it.

**Dr Pyne**—May I answer that by saying I would like to take this matter on notice and I certainly will undertake to provide a written response to that whole matter in consultation, first, with the officers here and, second, with the Australian Fisheries Management Authority in Canberra which actually manage the officers. But to briefly answer your question: no, not all vessels are sent back. A large number of the smaller vessels are forfeited to the Crown—and that is a policy of the Commonwealth government. They are destroyed on shore by burning.

**CHAIRMAN**—Ideally, could we have somebody back this afternoon to do that. If that is not feasible then, of course, you take it on notice and give it to us urgently. But if you could, get somebody back on the record this afternoon.

**Dr Pyne**—Yes.

**Mr TONY SMITH**—On your comment about the movement of fish across this notional border: you said that as this area was being fished out on their side our fish are going to move back into that area. Why is that? Is that just the natural migration of fish—it is not a cause and effect thing is it?

**Dr Pyne**—It is cause and effect, resulting from a lowering of the density of fish in one area; and, obviously, things move out into the less dense areas. Fish are also area dependent and if you have fish in a dense area and manage them so that you have got a sustainable yield, and you wipe that down, other fish will move in. That is just an

example. Even within Australian waters that happens. We are doing it on this artificial line—we have tried to teach the fish to read but so far we have not succeeded—that we have put on the water and they just move backwards and forwards from higher density to lower density.

**Mr TONY SMITH**—Can you tell me how this treaty will affect the problems that you have outlined? What difference does this treaty make or can it make? Is there any connection between this treaty and something that we, as a committee, can recommend or do which will somehow prevent the problems that you have outlined arising—or minimise those problems?

**Dr Pyne**—I think we spoke about it before and I draw the analogy with the relationship between Queensland and the Northern Territory, and the Northern Territory and WA. We have a line separating our jurisdictions there but we have a memorandum of understanding that enables us to manage a fish resource, a fish stock, on an ecosystem basis. Therefore, we are able to talk to our partners in the east and west. But we do not have such an MOU under the treaty arrangements with the people in the north, and I think that is what I am leading to.

**Mr TONY SMITH**—So, if we did not have the treaty at all, we would be a lot worse off?

**Dr Pyne**—We would be very much worse off, yes.

**CHAIRMAN**—I think what we will do, Dr Pyne, is excuse you from evidence. If you could go away and get somebody else involved we will get you back.

**Senator MURPHY**—Just before we go, there is also some other information I would like Dr Pyne to provide us with. I would like to ask three questions. You said the Canadian doctor that you employed to do some study work for you was employed in 1996 and 1997. That would indicate to me that the problem has not been one recognised for a long time rather than you having got to a point where you say, ‘Okay, we have got a problem, we need to get some research done.’ How long has it been a problem for you?

**Dr Pyne**— Perhaps you have misinterpreted what I was trying to say. We simply brought in Dr Carl Walters to sit down and utilise all the data and information we had, and let him make his own judgment as to how we had previously interpreted the data and were currently interpreting it, and apply it in a management prescription for a particular fishery. In other words, we brought him in and he is giving us a health check. He was quite critical in some areas. He interpreted a different way, and told our scientists that, and that has subsequently been taken up by the managers.

**Senator MURPHY**—With regard to the data that you had over a long period of time that related to the problem along the boundary line, what suggestions did he make, if

any, on how you might resolve that problem?

**Dr Pyne**—He made suggestions very clearly that we need to work with Indonesia in doing joint tagging experiments so that we can monitor the movement of fish. That was one key area. The second key area was to work with the Indonesian government or authorities to establish the amount of fish that they are taking from the ecosystem which we are jointly working or exploiting our fish from.

**Senator MURPHY**—What steps has the NT government taken in light of this report? What steps have they now taken to commence those discussions?

**Dr Pyne**—We have, as a government, unilaterally met with some of the regions immediately to the north. We have also had discussions through DFAT and our embassy in Jakarta. But there has been—if I might put it in my words—insufficient emphasis and priority given to the matter; particularly, without wishing to be derogatory, I believe the Commonwealth government has not given it the priority that we see, as a state, needs to be given to that area.

**Senator MURPHY**—Can you provide this committee with information pertaining to those meetings: how many meetings have there been; when did they take place; and if your department has a report arising out of those meetings, can we be provided with some of the outcomes of the meetings in so far as they have been progressed thus far?

**CHAIRMAN**—That reaffirms, Dr Pyne, the rationale for bringing you back this afternoon. Could we ask you to go away and talk about some of these things within the department and get whatever advice you want? If you could come back some time after 2 o'clock we will get you, at the end of the session, to pick up the loose ends in terms of the fishery resource in particular. Dr Nunn, if you would not mind staying, we will bring Santos and others up to the table alongside you, if you have no objection to that?

**Dr Nunn**—No.

**CHAIRMAN**—I think it is appropriate, because we have Santos and PGS, and we may have BHP as well, with all of whom it would be advisable to have you sitting there, from a departmental point of view. Do you have any problems with that?

**Dr Nunn**—No.

**CHAIRMAN**—Dr Pyne, could you go away and do that and then come back later on.

**Dr Pyne**—Certainly.

**CHAIRMAN**—That is your task. I am sorry for that.

**Dr Pyne**—Can I have lunch, Mr Chairman!

**CHAIRMAN**—You can have lunch. Thank you very much.

[9.54 a.m.]

**JONES, Mr David, Business Development Manager, PGS Exploration Pty Ltd, Level 4, IBM Centre, 1060 Hay Street, West Perth, Western Australia 6005**

**WOOD, Mr Alexander Gibson, Head, Operations Support—N.T., Santos, Santos House, 91 King William Street, Adelaide, South Australia 5000**

**CHAIRMAN**—Welcome. We will invite you both to give us a little opening statement. Mr Wood, would you like to start?

**Mr Wood**—I was asked to provide a short preamble on the company. Santos is an oil and gas exploration and producer, with its head office at 91 King William Street, Adelaide. Santos's Darwin office manages the logistic support of its operational activities in the Timor Sea, including an airfield at Truscott in the far north Kimberley region of Western Australia.

Santos is operator on behalf of various joint ventures in various Timor Sea permits, including: NT/RL 1 and WA-6-R, over which we hold retention leases and which contain the Petrel gas field; WA-222-P; WA-18-P, which contains the Tern gas field which we are about to appraise with the Tern No. 5 well; AC/P 15, a new block in which we will drill four exploration wells over the next 12 months; WA-199-P1 and WA-199-P2, the first mentioned of which we will drill Kittiwake No. 1 exploration well during January 1998.

We are also joint venture partners in the following blocks: WA-242-P, which is operated by Woodside Petroleum and which will be tested by an exploration well Psepotus No. 1, due in November this year; and ZOCA blocks 91-01 and 91-12, both operated by BHP and the latter of which has yielded discoveries at Elang, Kakatua, Kakatua North and Undan. As joint venture partners with BHP and others, we share production through the FPSOs *Jabiru Venture* and *Challis Venture* from licensed production areas AC/L1, AC/L2 and AC/L3 in the Ashmore-Cartier territory.

**CHAIRMAN**—What I should have mentioned first, to both PGS and Santos, is that while we would prefer to stay on the public record there is an avenue to go in camera, if it is appropriate, to discuss some aspects that might be commercial-in-confidence. This committee has some commercial-in-confidence material which we have access to, but we would prefer to keep as much on the open record as we possibly can.

**Mr Jones**—PGS Exploration Pty Ltd is a service company which conducts contract and multi-client marine 3D seismic surveys for oil companies, using leading edge technology and a multi-stream of technologists. This provides oil and gas exploration companies with the essential data necessary for finding prospects, positioning wells on those prospects, assessing the hydrocarbon reserves within any discoveries and understanding the reservoir characteristics within the existing fields for optimal field

development.

The traditional way of shooting 3D seismic surveys is of a proprietary nature for an individual oil company: they make a discovery, then they shoot a 3D survey over that particular field. The advantages of MC 3D is that PGS covers a large region, not only prospects but a whole sedimentary basin, with 3D seismic data. This has significant advantages and repercussions for the number of discoveries and the rate of success of discoveries for oil companies. Also, because we shoot such a large area, there are economies of scale and the data is a lot cheaper to buy, so we get a significant input from smaller oil companies and a more efficient exploration program.

Starting in November 1997, PGS Exploration will be conducting the largest 3D seismic survey acquired to date in the Vulcan sub-basin of the Timor Sea. This survey, comparable in size to those conducted in some of the world's most prolific hydrocarbon producing areas, covers a total area of 9,200 square kilometres, 1,600 square kilometres of which falls within the Indonesian exclusive economic zone. PGS has two purpose-built, state-of-the-art, high streamer capacity vessels which will be carrying out seismic operations between November 1997 and May 1998.

PGS would like to raise the following issues of concern with regard to the current regulations of the maritime delimitation treaty and how this has impact on PGS carrying out its business.

Under the current legislation, PGS is required to provide the Australian government with notification of the extent of the survey within the EEZ three months prior to commencing its operations. PGS finds this lengthy notification period of three months restrictive in conducting its business, because adjustments in survey area size prior to the commencement of the survey becomes a fairly common occurrence as operational considerations and oil company requirements change.

Once the survey area is finalised, PGS will have to wait a further three months before it can commence operations. During this period it is conceivable that further extensions of the survey into the EEZ may be required by oil companies, rendering the previous notification to the government invalid. This can only serve to hinder the exploration effort, causing costly delays in the drilling and development of any new discoveries, and ultimately delays in economic benefits to the region.

This notification period can also be disruptive to PGS in terms of delays in chartering its seismic vessels. As such, PGS would like to see this notification period reduced to four weeks, so the inherent flexibility required in planning multi-client 3D seismic surveys can be maintained.

Other issues that may affect PGS's business under the current EEZ legislation and which are potentially disruptive to the operations include Indonesian fishing activities,

Indonesian military exercises and fixed installations and obstacles in that zone. Notification of the above activities and obstacles within or nearby the survey area will be required from the Indonesian government well in advance of our operations. PGS follows the strictest health, safety and environmental procedures, and cooperation from the Indonesian government will be required in establishing contacts within the EEZ in the event of any incident.

PGS during its operations in the EEZ will be conducting varied and numerous activities with other chartered vessels and equipment: helicopters, for instance, off-loading data. Cooperation from the Indonesian government will be necessary for PGS to fulfil its work program in an efficient manner so that exploration as a whole will benefit.

That is my statement. We really have problems with the three-month notification period.

**CHAIRMAN**—Okay, thank you. The first question for both you and Dr Nunn is: were you satisfied with the degree of consultation that took place in relation to this treaty arrangement, in the case of PGS and Santos, either individually or through your peak body—and hopefully your peak body consulted individual companies concerned—and at the bureaucratic level as well? Are you all satisfied that consultation took place to the level that you think it should have done, albeit that you are not satisfied with the lead time in terms of the point that you raised? Would each of you like to make a comment on that? Dr Nunn, you have been sitting there; perhaps you might have the opening comment.

**Dr Nunn**—I am not sure how to answer that question. The states were represented by the WA Attorney-General, as I understand it, and I am not aware to what extent the Western Australian Attorney-General talked to the other states. Certainly the Department of Mines and Energy was not involved.

**Senator MURPHY**—It was not involved?

**Dr Nunn**—No.

**Senator MURPHY**—That makes the national interest analysis interesting reading.

**CHAIRMAN**—Yes, that is the reason I am raising it. We can come back to DPIE on that one later, as well.

**Mr Wood**—I first heard of it through our head office. They received a package advising them of the previous information meeting—I do not know what to call it. Apparently a group of Commonwealth solicitors travelled to Perth and Darwin and held a meeting here. I was forwarded documents from our head office and asked if I could attend to find out what it was all about.

**CHAIRMAN**—Was this with Mr Campbell from Attorney-General's?

**Mr Wood**—Yes, Mr Campbell. We were briefed and given a copy of the documentation. My further involvement in this has only arisen in discussions with Craig—

**CHAIRMAN**—Sorry, I will interrupt you there. There was no consultation with you representing Santos, with Mr Jones representing PGS or, indeed, with whatever the peak body for petroleum exploration is?

**Mr Wood**—APPEA.

**CHAIRMAN**—Right. There was no consultation and no information coming forward from your peak body on this?

**Mr Wood**—Not unless it went directly to our head office; and I am sure the people who forwarded the documentation to me would have advised me if such were the case.

**CHAIRMAN**—Mr Jones?

**Mr Jones**—I am a relative newcomer to this company, PGS, but I am pretty sure PGS have been talking to APPEA this year.

**CHAIRMAN**—I have to say to you that this is not the first inquiry that we have done in which it is pretty obvious to me, and I am sure it is obvious to my colleagues, that the degree of consultation has not been satisfactory. We keep on making this point in our reports to the parliament and therefore to the executive: just one word, and that one word is 'consultation'. In this case, it is pretty clear that that consultation has not taken place to the degree that it should have.

**Dr Nunn**—Could I make one clarification, just in case there is uncertainty? We did not have any consultation, to my knowledge, until the recent visits of DFAT—not before the treaty was signed.

**CHAIRMAN**—The machinery with this committee is that when these treaties are tabled, they are tabled together with what is termed a national interest analysis, an NIA. That NIA reflects the consultative processes that take place with state and territory governments, with non-government organisations, et cetera. There was nothing in the NIA—and I am sure Senator Murphy is making this point—to indicate that the appropriate consultation had not taken place. Yet what we are hearing here this morning pretty clearly indicates to me, and I think to all of my colleagues, that that consultation is less than satisfactory. Is that a fair assessment?

**Mr Wood**—That is my view.



**Senator MURPHY**—In terms of the three-month question, what was the period of time prior to this treaty?

**Mr Jones**—Maybe Eric Nunn could help me here. I think it was probably three months as well. We are only talking about the EEZ here.

**Senator MURPHY**—Yes.

**Dr Nunn**—I will take it on notice.

**Senator MURPHY**—I am curious about that, because I thought it was three months as well, and I just wondered why it became a problem now.

**Mr Jones**—Because what we are doing in Australia is new to the Australian exploration scene. The multi-client way of doing 3D seismic surveys has really been born in the North Sea and the Gulf of Mexico; and now we are bringing this to Australia, which is a relatively unexplored area for petroleum, oil and gas.

The way we do multi-client 3Ds, we cover a huge area and we attract many oil companies into the survey as sponsors because they get the data a lot more cheaply than they would if they just did proprietary surveys. There is constant change as we get nearer to the start of shooting, if you like—the start of the acquisition of the data. As you get nearer, more companies may be tempted to come on board with us and say, ‘Yes, we would like you to extend your survey into this area here where we hold this permit.’

I can foresee the situation where we might be just about to start acquiring data and another oil company could come in and say, ‘Oh, you are so close to our permit. Can you shoot another 200 or 300 square kilometres here?’ Then we would have to say, ‘Well, we have to go to the government and give them three months notification that we intend to do this.’ That could radically affect our operations—the direction in which we shoot the data. The actual economic model for making it worthwhile for PGS and the oil companies could easily break down.

**CHAIRMAN**—Is that three-month period commercially unrealistic? Is that what you are saying?

**Mr Jones**—It is commercially unrealistic for PGS and it could be catastrophic for the exploration program if we have to wait around. We cannot have a boat waiting around for three months; we would have to take it to another country.

**Senator MURPHY**—I also want to know about the starting point. Just then you were talking about add-ons, and when another company says, ‘Well, look, you are here; you are close to us. Can you extend that coverage to take in our lease?’ or whatever. Is the three-month period just a problem from the start? For instance, if you come to work

for Australian oil companies—and let us say that you start with one—is the three-month period a problem from the outset or does it just become a problem when you get other companies asking to be included in that as well?

**Mr Jones**—Yes, it is then when it becomes a problem.

**Senator MURPHY**—So it is not a problem from the outset?

**Mr Jones**—No, if it was a proprietary survey for an oil company, for BHP, Santos or Woodside, it would be planned some months ahead and the survey area would be fixed: this is the survey; this is what we are doing. But with a multi-client situation, there are adjustments.

**Senator MURPHY**—That is the problem. Given the technology that you now have and its capacity, maybe there needs to be some modification to allow you to make some extensions to that. I think you said that, if you seek to extend it, it makes the original permit null and void. Is that correct? You say that, if you want to include another company, you have to get a whole new permit, so it is another three-months wait before you can actually—

**Mr Jones**—We have to get notification for the three months from the government. We also have to get permission from any other oil companies in the area to go through their area. But that is another issue; they just have to say yes or no.

**Dr Nunn**—You asked me about the current situation with approvals of seismic surveys. Basically, there is no statutory requirement for time of notice. We would normally expect at least two weeks because we have to notify the Canberra people and they do some checks. We also notify our colleague in the department of fisheries. It is not usual to get any concerns back from Fisheries, but they do notify quite a lot of other people. So we encourage people to give us at least two weeks notice. It is not unknown for there to be variations of that and we would then deal with those. It certainly will be unworkable if three months notice is required and no variations are allowed.

**Mr HARDGRAVE**—I was wondering whether any of the witnesses could put themselves in the mind of, say, the Indonesian government, if you would not mind. It is a little hypothetical; I apologise for that. Why do you think they would want three months notice? Are you finding that fishing vessels get out of the way? Are you finding that military exercises are not conducted as a result of the three months notice? I mean, is there an advantage in your operation as a result of the three months or are you not noticing any great difference?

**Dr Nunn**—I think the idea of the three months came in the context of exploration permits which are granted for six years with options for renewal or for production licences which are 21 years currently. Perhaps it was not realised that this would also apply to

things like special prospecting authorities or scientific investigation authorities.

**Mr HARDGRAVE**—This is a misapplication of this particular obligation, do you think?

**Dr Nunn**—I think so.

**Mr HARDGRAVE**—So we have no evidence of the Indonesians jumping in ahead and doing the surveys that you are about to do somewhere in that three-month period?

**Mr Wood**—No, I do not think that is a problem for us.

**CHAIRMAN**—Before we break for morning tea, I would like to get on the record a response of the department and the two non-government organisations, the private area, to the following question: there is no suggestion, is there, that this treaty should not be ratified?

**Dr Nunn**—This is correct.

**Mr Jones**—No.

### Short adjournment

**Mr HARDGRAVE**—The particular area in these things is always the overlapping zone, if you like. Fish may not be able to understand where there is a line in the sand or a line that passes through the water and I would not imagine that oil or other natural resources would either. How do you handle these overlapping zones? Do you have more of a policy of ‘don’t go’ or do you just rely on the Australian government to get an agreement like this right with Indonesia before you venture there?

**Dr Nunn**—I think I will try and handle that one. It is certainly correct that petroleum in the ground will move, once you start producing it, from, say, one side of a boundary. The Petroleum (Submerged Lands) Act of the Commonwealth provides that, where petroleum resources overlies or underlies two areas of administration, those two authorities will get together and determine how the combined resource can be managed and produced. So to that extent, that is the same whether it lies across the Northern Territory-Western Australia administration or Northern Territory-Commonwealth or Northern Territory-ZOCA, as some fields do, or Western Australia-ZOCA, as some fields do, and into Indonesian waters as some probably do.

**Mr HARDGRAVE**—Does this sort of treaty provide greater certainty, though, from an operational point of view?

**Dr Nunn**—It does not provide greater certainty than is normally the case.

Whenever fields cross jurisdictional boundaries like this, basically the two authorities have to get together and work out how they are going to manage it. They enter into agreements in relation to that. There are some cases in the North Sea where these agreements have taken a long time with things like royalty sharing. Certainly, where fields go into ZOCCA waters where you have two totally different fiscal regimes, that could well take time to sort out. Certainly, where fields extend into Indonesian waters, those things can be expected to take quite a while to sort out.

**Mr HARDGRAVE**—Mr Wood, do you have anything to add to that?

**Mr Wood**—I think Dr Nunn has explained that very well.

**Mr HARDGRAVE**—Mr Jones, do you have anything to add?

**Mr Jones**—No. I think that what Dr Eric Nunn has said is correct. From the PGS point of view, of course, we are not involved in drilling prospects. We are just involved in defining them. Whether they cross the border into Indonesia and where a particular prospect will lead really is of no direct concern to us.

**Mr HARDGRAVE**—Could I just walk through the process with you, Dr Nunn? Are we finding the companies talking to the Australian bureaucracy and then the Australian bureaucracy talking to the Indonesian bureaucracy where there is this overlap, or are you encouraging the companies to negotiate directly with Indonesia so that, essentially, they have a stake on both sides of the line?

**Dr Nunn**—We would encourage the companies to talk to Canberra. We do not get involved in the fiscal regime. Our administration is basically of technical titles. Resource rent tax, for example, is held in Canberra so, to the extent that these things involve fiscal matters, then they will fall to Canberra.

**Mr HARDGRAVE**—There is no instance where an Australian company is also operating in Indonesia so that they could literally be both sides of the line?

**Dr Nunn**—Yes, there are situations.

**Mr HARDGRAVE**—How many companies? Would it be a majority or a minority of companies?

**Dr Nunn**—I cannot answer that. I do not know.

**Mr HARDGRAVE**—Do you have a rough guess?

**Dr Nunn**—I know there are at least one or two.

**Mr TONY SMITH**—Mr Jones, on your point about the three-month notice and the particular exploration you are doing in November, I noticed that it was a very large area of 9,200 square kilometres, 1,570 of which falls within the Indonesian exclusive economic zone. Couldn't you cast your area broader to cover those contingencies? Couldn't you say that as a matter of caution you will cast the net to 18,000 square kilometres, or does that risk the problem that it might be knocked back because you have cast it too far?

**Mr Jones**—Every time we construct a program, we obviously go through a business plan. We have to go through the government and the various oil companies in those permits to say that we intend shooting through there. We need sponsors or participation from the oil companies. If we just went ahead—

**Senator MURPHY**—Do you need their permission?

**Mr Jones**—Yes. We need their permission, too.

**Senator MURPHY**—That is probably answering Tony's question.

**Mr Jones**—Yes. Of course, there is some risk that people will not buy the data. Obviously then it becomes a non-commercial proposition for PGS to acquire it. If we cannot sell it, we do not want to acquire it. We have to be fairly sure that when we design a survey, we are going to get a fairly decent amount of participation from the oil companies in the area.

**Senator MURPHY**—But you cannot just submit a survey plan without the permission of the companies who have the rights.

**Mr Jones**—That is right. We have to get permission from the companies and, more often than not, that is not a problem because they do not have to buy the data.

**Mr TONY SMITH**—I am trying to see whether there is a way around the present impasse. Couldn't you say to them, 'In case of contingencies, could we just extend that a bit so that if you change your mind and you want us to go further north, south, east or west, we can cover that without having to be caught by the three-month rule?'

**Mr Jones**—There is possibly room for something like that. I would not like to commit myself on that point at the moment. I would have to go back and do some talking with the company.

**Senator MURPHY**—It is not a three-month rule, actually; it is at least a three-month, two-week rule, according to what I understand.

**Dr Nunn**—Yes, because the application would come into us and we would send it

to the Commonwealth to notify all the other people.

**Senator MURPHY**—It was previously a two-week rule where you notified the Commonwealth and the permit was granted, and now you have a three-month rule that nobody—even the department here—seems to have any knowledge of what the reasoning is behind three months. Is that a fair comment?

**Dr Nunn**—That is correct.

**Senator MURPHY**—Mr Chairman, that is something we have to establish.

**CHAIRMAN**—Yes.

**Mr TONY SMITH**—But I take it, though, that you could find yourself in some difficulty. This three-month notice, or the permit that basically comes from the companies, as well as a notification: is it a notification rule, as well? Are you, in fact, getting permission from the government, or is it more a notification?

**Dr Nunn**—It is approval. There is a contrast in the two situations. If you have permittees who have the exploration rights and they want to engage someone like PGS to do a seismic survey, the three-month rule then does not apply. That company can engage a PGS, get our approval within two weeks, and go ahead and do it. But if PGS wants to do one of these multi-client surveys, then the three-month rule applies, so there is an inconsistency.

**Mr TONY SMITH**—Yes.

**CHAIRMAN**—Mr Wood, perhaps, you might like to just talk to the Santos diagrams and, in particular, address the associated problems as a result of your drawing certain lines this morning.

**Mr Wood**—I thought that these maps may have been of some use to the committee since they show the geographical area. They also show the—

**CHAIRMAN**—These are not commercial-in-confidence, or anything like that?

**Mr Wood**—No. They show the licence areas that have been issued by various state and federal governments. This morning I decided to plot some of the points of the new delineation line on the map just to give an idea of what areas of the already issued exploration and production leases were affected by this treaty. I offer those as an indication as to where the main overlapping area is and the effect that it has. It turned out to be some of the more prospective areas apparently.

**CHAIRMAN**—Just let me jump in there. What was the particular problem with

AC/P 15?

**Mr Wood**—In AC/P 15, as I said in my preamble, we have an exploration program coming up shortly. To satisfy that we have had a vessel out there within the last two weeks doing a seabed survey to establish what the seabed looks like for our anchoring patterns and things like that. During the course of that work, an Indonesian naval vessel arrived on the location and challenged our contractor's right to be operating there, and halted the works. It did not eventuate into any great battle, or anything like that, but it is indicative of what can happen out there along the borders.

**CHAIRMAN**—This is a reflection of the administration of this treaty and the potential that this treaty has in terms of the operational administrative consequences.

**Senator MURPHY**—I want to go back to the three-month rule because I think we have to get a very clear understanding that it is a problem. There are inconsistencies in it. I am still curious as to how we got to a point where we have a treaty that has written in it a period of time that has the potential effect of making it very difficult from a commercial point of view for Australian companies to get on with their job. That is something maybe DFAT and the people who are supposed to have conducted the consultative process will have to inform us of.

**CHAIRMAN**—Dr Nunn, could we have your view of this consultation or, more importantly, the lack of consultation? When we get Primary Industries and Fisheries back this afternoon we will ask the same question again. But from a Department of Mines and Energy perspective, would you say that the consultation in terms of this was unsatisfactory?

**Dr Nunn**—Yes, I believe that it was unsatisfactory.

**CHAIRMAN**—The lead was taken by Western Australia in this, was it?

**Dr Nunn**—Yes.

**CHAIRMAN**—On behalf of the Territory and Western Australia, was it?

**Dr Nunn**—On behalf of all the states and territories.

**CHAIRMAN**—Of all the states associated with this. But your general comment would be that the process of consultation was unsatisfactory?

**Dr Nunn**—Yes.

**CHAIRMAN**—We will ask the same question of Primary Industries this afternoon.

**Senator MURPHY**—Mr Wood, in your submission you raised a number of matters but one problem I was particularly interested in was the question of an exclusive zone for rigs et cetera. Can you outline what that problem is and why? Is it just a problem that has developed now or has it been a problem in the past?

**Mr Wood**—I do not think that it is a problem if everyone knows that that zone is there. I think it is a matter of communication to the Indonesian authorised activities within that overlapping area so that they know and are aware of these hazard zones and the requirement to stay clear of a drilling rig or a floating production facility merely for safety reasons.

**Senator MURPHY**—Has that been a problem of the past or is it a developing problem?

**Mr Wood**—I can only give you anecdotal evidence. A couple of years ago within the zone of cooperation a traditional vessel, I guess you might say, arrived unannounced alongside the rig during the night hours. I think they were in difficulty in actual fact, but there have been other anecdotes going around. There have been other vessels entering these areas around drilling rigs and it is hazardous for them. I alluded in my letter to the fact that should some of the 75-metre trawlers, for example, that the previous witness discussed get out there in amongst flow lines and seabed floor lines and other seabed equipment for producing oil wells, you could have a reasonably big ecological problem on your hands, not to say a commercial problem for the operators.

**CHAIRMAN**—Coming back to the consultation again, we have covered Mines and Energy from the territory. Would it be, again, fair to say as far as Santos and PGS is concerned that, from where you sit at this point in time, the consultation was unsatisfactory or would you prefer to think about that one?

**Mr Jones**—I would prefer not to commit PGS on a comment on that at the moment.

**Mr Wood**—To my knowledge, the only consultation that there has been is attendance at a meeting here in Darwin, a subsequent discussion with Mr Evans and then this meeting here.

**Mr TONY SMITH**—What date was the meeting?

**Mr Wood**—I do not know if I have reference to that, but I think it was on 4 July.

**Mr TONY SMITH**—Were you at the meeting?

**Mr Wood**—I was at the meeting here, yes.



**Mr TONY SMITH**—How long did the meeting go for?

**Mr Wood**—Perhaps an hour and a half.

**Mr TONY SMITH**—Were you told about it rather than asked, ‘What do you think of this’?

**Mr Wood**—Yes, there was no discussion, really. It was ‘Here is this treaty document’—it was on view graphs—and the guy just walked through it and said, ‘This is what it is.’

**Mr TONY SMITH**—That is what you term as consultation, do you? It is not your term; that was the consultation?

**Mr Wood**—It is not my term for consultation; I went to a lecture.

**CHAIRMAN**—Sorry to be preoccupied with this consultative thing, but it is disturbing—I have to say—to find that once again this is unsatisfactory. I wonder if I could ask both of you if you might check, within both Santos and PGS, as to whether there was any contact with either or both organisations and the petroleum exploration—in other words, your peak body.

**Mr Wood**—Yes.

**CHAIRMAN**—We would be interested—I do not know if you have mobiles, or what you could do before we finish—if you could give us something on that so that we can actually get it on the record because, on the face of it, I think we are all in agreement here that, once again, consultation is very much less than satisfactory. Thank you very much indeed. Could you perhaps get back to us on that? We might just have to recall you onto the record to make those points, particularly Mr Jones and Mr Wood. Dr Nunn, is it possible for you to come back this afternoon when Primary Industries comes back as well—just in case—so that we have the two again? Is that inconvenient?

**Dr Nunn**—That is fine.

**CHAIRMAN**—That will be some time after 2 o’clock. I cannot be more specific than that.

[10.59 a.m.]

**WESLEY-SMITH, Mr Robert, Spokesperson, Australians for a Free East Timor and Australian Coalition for a Free East Timor, PO Box 2155, Darwin, Northern Territory 0801**

**CHAIRMAN**—Welcome. The committee has received your written submission dated 2 October. For the record, are there any errors of omission or editorial changes to that submission?

**Mr Wesley-Smith**—I am not quite sure which one you have in front of you. I did bring in a corrected one this morning. If you have not got that, I would certainly appreciate it if that could be the one that is considered. At the top of each page I have got 'correct 8/10/97'. Unfortunately the first one I sent, and which has been on the bench there, had the top two lines missing off most of the pages when I printed it out.

**CHAIRMAN**—Yes, I see. All right. Let us get some copies of that.

**Mr Wesley-Smith**—It is very important to get the correct one. I apologise for that. I did it on e-mail, printed it out and just sent it off.

**CHAIRMAN**—And what is the date of that?

**Mr Wesley-Smith**—It says 'correct 8/10/97' on the top.

**CHAIRMAN**—Okay, we will go ahead on that basis.

**Mr Wesley-Smith**—There was a small change. I have also clarified something in there, half way down page 2, to try and demonstrate the claim that international law indicates it is illegal, rather than just asserting it. I think I have strengthened the demonstration.

**CHAIRMAN**—All right, we will formally bring that in when we get copies in a moment. Would you like to make an opening statement?

**Mr Wesley-Smith**—Yes, I would briefly like to take you through the submission.

**CHAIRMAN**—Yes, please do.

**Mr Wesley-Smith**—Perhaps I might just mention in relation to the previous evidence that there is quite a lot of information about the fishing situation in the report on Australia's relations with Indonesia by the Joint Standing Committee on Foreign Affairs, Defence and Trade; and also, of course, about East Timor. Also, Dr Pyne mentioned about teaching fish to read; they should send them to fish schools.

I will just take you through this submission. Firstly I talk about legal and secondly about moral grounds. I tried to demonstrate there that there is a connection between the Australian-Indonesian Maritime Delimitation Treaty and the Timor Gap Treaty: the area of sea which rightly is the jurisdiction of the East Timorese people.

It is an hypocrisy in relation to the negotiation of these treaties that the Australian government is prepared to ignore international law, and does not recognise the rights of the Timorese people. It is a particular hypocrisy because the Australian government uses international law to negotiate treaties when it suits them, but ignores international law in relation to matters of the Timorese people, particularly in the Timor Gap Treaty. This has been the subject of worldwide campaigns for 22 years.

It is illegal to enter into treaties in relation to the resources of an illegally occupied territory. This is the point which I have strengthened half-way down page 2. Unfortunately, I do not believe that Australia has got the legal right to enter into treaties which remove the legal right of the Timorese people to control their own resources, nor is it proper for it to do so. I point out that Australia is the only country in the world that explicitly recognises Indonesia's occupation of East Timor.

In the section starting at the bottom of page 2, on the moral issues, I take people through the fact that it is quite clear that the decision to go with Indonesia rather than international law is simply based on following Richard Woolcott's advice to observe pragmatism rather than principle. This is leaving us isolated in the world. As well as that, it reduces our power to negotiate with Indonesia on a decent basis. There are many such things I have heard this morning already. We need negotiations based on law, but also on principle, and with an influence on the government which can be to the good for conservation issues, fish resource management and so on. I mention there that these fires which are in the region now are a clear demonstration that Indonesia has no interest in proper resource management. They even deny that they are to blame.

I have given a bit of background of East Timor. The consequences of Australia's attitude on East Timor have been horrific. As Paddy Kenneally, under the heading 'The friends Australia abandoned', said:

through our governments we have waded through a sea of Timorese blood, and climbed over a mountain of Timor's dead, to sign the Timor Gap Treaty for economic gain with Timor's invaders. This is how we repaid the people of East Timor.

I would like to give the committee a copy of a book called *Human Rights Violations in East Timor*, which is rather horrific.

Resolved (on motion by Mr Hardgrave):

That this committee authorises publication of the written submission from Mr Wesley-Smith corrected as of 8 October, and that the booklet *Human Rights Violations in East Timor* be accepted as an exhibit.

**Mr Wesley-Smith**—It came to my attention last night that, regarding Timor, 56 people at least have been murdered in the last two weeks alone in Timor. Getting information in and out is almost impossible at the moment. The massacres continue, the rape of their resources continues and unfortunately these treaties only encapsulate that.

Probably the most substantial part of my submission is the second part of the legal side of it, starting on page 4. I will not read those points, but they are taken from the book, *International Law on the Question of East Timor*, which I have got here with me. It shows that the question of the rights of Timor is primarily a conflict between the international community and Indonesia. As I mentioned earlier, it is really only Australia that supports Indonesia. The right of the East Timorese to self-determination is enshrined in a number of United Nations documents and so on. There is a whole page of detail there.

Down the bottom of page 4, Australia argues that regardless of Indonesian illegality in invading East Timor, Australia is entitled to recognise that that illegal title has been 'consolidated' into a legal one. This position is contrary to modern international law, which Australia helped to create, which requires states not to recognise territorial acquisition brought about by aggression. This is reconfirmed by the international court decision over the Timor Gap treaty which found that East Timor has, as yet, an unfulfilled right to self-determination. Therefore, third parties such as Australia cannot legally negotiate East Timor boundaries or matters intrinsically affecting it.

I think Australia is a disappointment to progressives on these sorts of matters. We should be leading by example and not following the worse excesses of South-East Asian dictators. Because I have argued that the treaty is illegal, I have not really dealt with a lot of aspects that could have been dealt with. Being an agricultural scientist myself and having been in the Department of Primary Industries and Fisheries for nearly 30 years, I have taken an interest in fish marine management, the issues of oil exploitation and, very importantly, the issues of Indonesian military forces and their rights and practices in these areas, particularly in relation to drilling and military exercises and so on, and the right under the Timor Gap treaty to station Indonesian military in Darwin. I have not dealt with those because I think the whole treaty process is wrong.

**CHAIRMAN**—Thank you very much. The first observation I would make is that the judgment by the International Court of Justice in the East Timor-Portugal-Australia case does not really confirm your view. It does leave up in the air the Australian government. The view, as in fact you have indicated in your submission, of both sides of the political fence in Australia has been that whilst I do not think anybody likes the way it happened, it is accepted now that East Timor is part of Indonesia. Whilst that is something that my government accepts and the previous government accepted, that is not to say that Australia would not continue to criticise Indonesia in the terms of a strong bilateral relationship on some of the human rights transgressions. Some of the documentation you have provided is, in anybody's terms, horrific and people who do that sort of thing should

be condemned. Nevertheless, the important thing is that, even at the ICJ level, there is some disagreement with your personal assertions, quite apart from government decisions across the political fence.

**Mr Wesley-Smith**—I think the ICJ said that it could not rule on the Timor Gap treaty because Indonesia was not part of it, but it did quite clearly say that Timor has an as yet unfulfilled right of self-determination. So it definitely disagreed with the Australian government's position on East Timor being part of Indonesia. That is very clear. Unfortunately, that is fudged a lot by people, because the Australian government tries to pretend that that did not happen, but it did happen. The ICJ determination definitely supported my position.

**CHAIRMAN**—To be fair, I do not think governments of either political hue argue that it did not happen. It happened and the circumstances are still, in some people's minds, up in the air as to what exactly happened, but it did happen and, taking a very pragmatic approach—in your case you would say unethical approach, I think were the words that you have used—then you would not agree with that.

**Mr Wesley-Smith**—The ICJ did not agree, Sir. I will have to—

**CHAIRMAN**—Well, that is your reading of the judgment.

**Mr HARDGRAVE**—Mr Wesley-Smith, we do not have a mechanism available to us as a country to negotiate with the East Timorese, do we?

**Mr Wesley-Smith**—Unfortunately, Australia has been the country that has most accepted and supported Indonesia in this regard and had we changed our view 22 years ago, firstly we could have stopped it happening and, secondly, we could have supported the United Nation's resolutions, which we never have. Maybe we would have been in a completely different position now in relation to negotiating the East Timor situation or their situation might have been completely different. And I would certainly argue that we should now, even though we have got a 22 year immoral history, change that point of view and support the United Nation's processes.

**Mr HARDGRAVE**—It is a bit of a 'baby out with the bathwater' scenario you are painting, isn't it?

**Mr Wesley-Smith**—It is not, from our point of view. People would have said that about Russia. There are just as many countries where people thought the situation was lost and it has changed. The fact is that all around the world more and more people and more and more countries are becoming supportive of the rights of the East Timorese, even the United States which has limited some arm sales on those grounds and Japan where there are about 15 Australian and East Timor support groups. Japan is the most important foreign aid supplier. If we could just convince Japan to cut off their foreign aid to

Indonesia, which is an incredible amount—over \$2 billion—or use it as a lever on East Timor, this could have a major effect.

**Mr HARDGRAVE**—Mr Chairman, for the record I should state I am a member of the parliamentary group which supports East Timor's ongoing struggle.

I guess because of the business before us here today, trying to find a mechanism to properly negotiate access to resources and so forth, your best scenario is basically to leave it in the ground, leave it alone until the East Timorese situation is settled.

**Mr Wesley-Smith**—Yes. Use anything that you can in this respect to pressure Indonesia over East Timor. Also, do not just say no, be proactive. There are little things we can do along the way. For example, if we said that we could not negotiate the Timor gap area until the United Nations was satisfied with self-determination in East Timor, that would put pressure on Indonesia to sort the thing out.

**Mr HARDGRAVE**—But do you think there is perhaps a little bit too much idealism, in that we have heard examples this morning of very poor fishing management practices on the Indonesian side of this line and the void then being filled by Australian fish stocks swimming over. If we were not negotiating these treaties, if we were not trying to draw lines on the map, despite the East Timor question still hanging, don't you think the Indonesians would simply just come in and take, rather than wait?

**Mr Wesley-Smith**—Probably. They have, after all, in quite a few places. We do need good relations with our neighbours. We need treaties. Maybe elements of it could be provisional. Maybe it should be put to the UN. I am not sure how to resolve it because we are faced with a parlous situation that no-one has really got the answer to and I sympathise with present day politicians, particularly those members of Parliamentarians for East Timor. Congratulations to you, but what can we do? How can you endorse illegal treaties?

**Mr HARDGRAVE**—I guess what I am driving at here is that there are lines on the map. There are these treaties being negotiated for a quite valid reason which is to lay a stake from Australia—from the nation's point of view—for resources which literally could be just simply floating out there and being taken from our potential grasp by Indonesia. So we had a role to play as a country in negotiating these treaties, surely.

**Mr Wesley-Smith**—We definitely need management regimes in place, and I think you have heard that there is not much proactive management going on in the area. I would suggest that as we have been neighbours for a long time and we have not had the treaties in place the management regimes are probably more important than these legally binding treaties. We should be able to find management regimes which cover the problems that we have, particularly on marine resource management—not so much the oil—which do not necessarily require us to make illegal treaties.

**Mr HARDGRAVE**—Just to finish off my questioning and contribution to this, I think there is not a member of parliament sitting at this table—nor a member of the federal parliament, full stop—who would not be concerned about human rights violations, particularly in our neighbourhood. But I also think that we do have a role to play in ensuring that there are negotiations, there is an understanding about boundaries, and there is an understanding about access to resources. Whilst I support your concerns—and have said so—I can understand why we have needed to get on with the job of negotiating these treaties. I think you have conceded that you can understand that too.

**Mr Wesley-Smith**—I understand that it is ironic that 22 years ago the Australian government was saying that East Timor could not be a viable nation because it did not have resources, and here we have treaties which are exploiting their resources and stealing them—and they are massive resources. The resources of the already built Christmas Island casino—just to throw that one in—are an example of the theft of Timor resources that have gone into that.

But with regard to the oil and gas, everyone has known about them since the year dot: the Timorese have used it themselves in a small way; BHP was exploring there at least in the 1960s or early 1970s; and I know several people who have worked with BHP. Everybody knew about it long before the situation of Indonesia invading East Timor took place. I could talk for hours on this.

**CHAIRMAN**—Is the bottom line for you and your organisation that we should not ratify? You said it is unacceptable on legal and moral grounds.

**Mr Wesley-Smith**—Yes.

**CHAIR**—But is it the bottom line for you that this treaty should not be ratified?

**Mr Wesley-Smith**—I believe it should not be ratified. How it is dealt with beyond that I am not quite sure—whether there can be some provisional aspects of it put in; or maybe the word ‘provisional’ is put in. I have heard people talk about lack of consultation. You can be sure that there has been no consultation with the people of East Timor.

**CHAIRMAN**—In the consultative process there has been no discussion with non-government organisations like yours?

**Mr Wesley-Smith**—We were briefed by department officers, as I mentioned in my submission.

**CHAIRMAN**—Mr Campbell and others.

**Mr Wesley-Smith**—Yes, and Greg Polson. We appreciated that. They gave us

plenty of their time. We had quite fascinating interaction, but it was not as though that was before the treaty. That was after the treaty had been signed.

**CHAIRMAN**—Yes, but the big divide was that you said it was illegal and they said it was legal. Is that the big divide?

**Mr Wesley-Smith**—I do quote on my last page some very fascinating answers that they gave to three points that I made. In the conclusion section of my paper, when I asked what would happen, for example, if control of East Timor leaves Indonesia, they said they did not know, and I honestly got the impression that they had to operate under the policy of the Australian government. I think if one scratched the surface one would find that they did not necessarily agree with it.

**CHAIRMAN**—With due respect, you have raised the ‘what if’, and the ‘what if’ could be applied anywhere and to any situation.

**Mr Wesley-Smith**—Except East Timor.

**CHAIRMAN**—What if the President of the United States were to fall under a bus or whatever? I think you are drawing a pretty long bow in putting too much emphasis on that. Of course they do not know—nobody knows. It is a hypothetical situation, surely.

**Mr Wesley-Smith**—But the UN is negotiating at the moment the question of the future of East Timor. This is not a normal situation. The negotiations could result in East Timor having a completely different legal status from what it has now. We all hope it will.

**Senator MURPHY**—I totally agree with the approach of Australia doing something with regard to East Timor but, on the other hand, as far as this treaty is concerned, it is a treaty specific to the interests of this nation. Whilst it is an agreement or a treaty between Indonesia and Australia, I think we would probably not serve the national interests of this country very well and that has to be taken into account, as well as not putting to one side the interests of the East Timorese people. I think we can pursue both in parallel, rather than excluding the interests of this country.

**Mr Wesley-Smith**—Yes. Unfortunately the interests of the Timorese people is never pursued.

**Senator MURPHY**—Look, I accept that. That is a fair criticism.

**Mr Wesley-Smith**—I mentioned a couple of things there where this present government has reduced the level of resources going into East Timor—even the matter of aid. They have reduced it and they do not even fund language programs and all sorts of things. I think it could be argued that Australia could have got a much better deal with



East Timor controlled by the East Timorese—and it is not just the area of the Timor Gap. It is the hegemony of the waters and the skies surrounding that whole area. If we went back to square one, the situation could be very different and to Australia's advantage, particularly if we had built on the goodwill which we established in World War II.

**Senator MURPHY**—You may well be aware that the European Union were taking a position from an economic point of view that economic agreements had to take account of human rights issues. That is a matter that I think has some merit. But, by the same token, Indonesia does not think that and I think in so far as this particular treaty is concerned—and you point to the Timor Gap Treaty—it also has an impact on this country. It also has an impact on this country's natural resources and the management of them, and there is the environmental point of view as well.

I have some other problems with regard to this treaty in so far as the consultative process has been concerned. What exactly does it really mean? It seems that a lot of these treaties are being developed without too much meaning. I do accept that it is a fair criticism to say that, maybe, human rights issues ought to be part of the negotiation. But I still think that, to some degree, we have to look at some of them taking account of our national interest as well.

**Mr Wesley-Smith**—It is very hard to define national interest because we have not tried an approach which really tries to look after the interests of the East Timorese and Australia and Indonesia. We have rolled over for Suharto too much and we have lost our bargaining power. If we stood on a matter of principle, there would be some glitches, but my attitude is—and I have spelt this out quite a lot in this inquiry of Australia's relations with Indonesia—that you do not just say, 'Bang, we will stop something.' You have to devise a package; you have to offer a whole lot of things. You might offer vastly improved resources into constructive management of the fisheries area, for example, to offset a thing where we say that we cannot by international law make this a final endorsed agreement. Maybe it has to have the status of a provisional agreement or something like that. We have to let the Indonesians know that we are joining the world community and not just hanging in there with Indonesia.

**Mr HARDGRAVE**—In the final page of your submission, you acknowledge your appreciation of the opportunity to have met with the Foreign Affairs and Trade's Greg Polson and the Attorney-General's Bill Campbell earlier this year in Darwin. When did that meeting take place?

**Mr Wesley-Smith**—I guess it was July. I heard Alex Woods say 4 July—I could look in my diary. It was the same day, or two days, and they met with several groups. But as I say, it was after the treaty had been signed.

**Mr HARDGRAVE**—How do you feel having met with them after the treaty itself essentially had been signed?

**Mr Wesley-Smith**—It was a waste of time in a way. It was interesting to get an explanation so, from my point of view, I appreciated it. I have never experienced that before where a delegation of top bureaucrats came to explain the situation. I have used that briefing to help write my submission, for better or for worse.

**CHAIRMAN**—Maybe they have been listening and there will be a consultation on behalf of this committee, albeit a little late.

**Mr HARDGRAVE**—I guess I asked that because it again emphasises the process of consultation after the fact, not before. You would have preferred to have seen a treaty—I guess—where consultation took place prior to a document being put before Ali Alitas and Alexander Downer for signing.

**Mr Wesley-Smith**—Definitely. Also, it is very hard for amateur groups like ours to necessarily cover all the issues in something like that. I think that some resources might be required for community groups to brief lawyers to deal with some of the grave implications involved.

**Mr HARDGRAVE**—So an opportunity to consult after the fact or, as a witness earlier today said, to receive a lecture on the treaty—

**Mr Wesley-Smith**—It was not a lecture for us; it was a discussion. It was an advisory thing. It was not a consultation in advance, that is clear. Nevertheless, it was a step forward.

**Mr HARDGRAVE**—And yet there is nothing in the document put before the two foreign ministers to suggest anything you had to say was, in fact, listened to anyway.

**Mr Wesley-Smith**—I do not know when that national interest document was actually done. There is no way that they could accept our points because they were acting under the direction of the Australian government policies. There have been surveys which show that something like 70 per cent of Australian people do not agree with the Australian government's policies on East Timor. I daresay that if you take an international law lawyer of high repute, he would think that even more so.

**Mr HARDGRAVE**—You would prefer to see this committee noting its concern about these matters and suggesting that these sorts of East Timor related issues should be included in negotiations?

**Mr Wesley-Smith**—Definitely. The process and the treaty should reflect international law and the United Nations efforts. Nelson Mandela said that Indonesia and East Timor is being discussed in all the corners of the earth, and Australia buries its head in the sand and pretends that we cannot change a thing. Just because Whitlam and Fraser and all the rest of them have made certain decisions, it is wrong that it should obligate the

rest of us, even though it hurts and we know it is illegal and improper. Somewhere someone has to stand up and say, 'No. This is wrong. We have to take a new tack.' Whether the maximum that your committee could do would be to recommend it be a provisional treaty, or that it be renegotiated, I am not sure. The outcome is beyond my competence, really.

**Mr TONY SMITH**—I am also on that parliamentary group and you know my interest on East Timor. Wouldn't you say, in answer to the so-called pragmatic approach, that in the long term it would serve Australia's best interest not to bargain over rights that really you do not have the power to bargain over? You are bargaining in a sense. The analogy is that it is someone else's piece of land and two people are bargaining over someone else's piece of land.

**Mr Wesley-Smith**—I would. You cannot expect international respect if you operate illegally. Furthermore, we are just demonstrating a lack of interest in many regional issues at the moment, for example, the lack of acceptance of the greenhouse effect and these forest fires which are a reflection of the overall problem. Indonesia's attitude with its present military government is an exploitative one. They do not care about the resources.

I have been putting out a few statements lately. The *Inside Indonesia* magazine of 1988 had the front cover on the forest fires—this was the previous El Nino year—which devastated huge areas. In 1983, the previous El Nino devastated Kalimantan to the point where something like 3½ million hectares of rainforest and peat forest were destroyed. It was said to be the greatest single ecological disaster in the history of mankind. The Indonesians deny it. They do not accept that these things are a problem. They promised to have firefighting resources available, and they are not available to date. It does not make sense for us to put our trust in this regime.

**Mr TONY SMITH**—Would you suggest that we look at making some sort of a stand in relation to the East Timor situation? For example, should we suggest that perhaps there need to be negotiations with East Timorese people as part of this process—at the very least, they should be involved in some of this consultative process? Would you say that?

**Mr Wesley-Smith**—I would. If the parliament is distinct from the executive then the parliament should stand on principle and say these things. Whether the executive take any notice is up to them.

**CHAIRMAN**—The rationale behind the NIA is that all appropriate authorities, whether they be government or non-government, are consulted. From what we have heard this morning, not only has that not taken place at the governmental level but clearly it has not taken place to a satisfactory level at the non-government level; that is, in your groups and in other cases with other non-government organisations. So I think it is a valid

criticism to make that the appropriate consultation has not taken place, and that is the sort of comment that we continue to make in this committee.

On Monday week, I will be tabling the 10th report of this committee in less than 12 months over 90 to 100 treaties, which gives you an indication of the sort of detail, spectrum of interest, et cetera that we have to cover. It is something that we have made over and over again. Yes, this is the first time that this mechanism, as you would know, has ever existed. It is a step forward but, as I said to a number of my colleagues during the break, consultation is not just a word: consultation is a process and that process has broken down. Clearly, in this one, it is not satisfactory and we will have to say so in the context of our report to the parliament.

**Mr Wesley-Smith**—I think the Australian government would have a philosophical and legal position against consultation with the genuine people of East Timor. They would say we only have to talk to Indonesia and—

**CHAIRMAN**—No, I disagree with you. If true consultation is to take place then it does not matter who the groups are. The rationale for this committee and the advertisement in the public press is that anybody can come along. That is the reason you are sitting here. The point that all of us are making is that you have not been consulted early enough in the process, and you make the point that that should have been before the signature between Downer and Alitas and, certainly, in advance of an NIA being produced. That, clearly in your view, has not taken place and I suspect we will hear from others that that has not taken place. I can assure you we will reflect that in the report to the parliament.

**Mr TONY SMITH**—Are you saying that, because of the support out there in the general Australian population, there is that support which is against Indonesia's takeover of Timor? The polls seem to suggest that, if nothing else. Are you saying that, in reality, it is not in the public interest to be seen to be engaging in a process which, arguably, on one side of the coin amounts to further grovelling to Indonesia and on the other side of the coin is pragmatic politics?

**Mr Wesley-Smith**—I am glad you used that word 'pragmatic' rather than me because it is usually me who uses it. I am an agricultural scientist and I am very much a pragmatist. I would argue that the pragmatic view of dealing with Indonesia and East Timor is to adopt the world view—the internationally legal view. There would be a glitch in relations with Indonesia but, let us face it, we are also supporting the democratic process in Indonesia.

By signing treaties on behalf of occupied and oppressed people we are hardly supporting those millions of Indonesian pro-democracy organisers who are trying to get a democratic process into Indonesia. This is an even bigger thing, in a wider sense, than East Timor. We must, at some point, go back to being legal. When I say the 'pragmatic view' I mean the benefits to us of a decent government that would reflect the genuine

wishes of the people and that would look after the resources of the area instead of just exploiting them for the most rapid gain possible, which does not benefit anyone except a handful of the Indonesian elite. We would be far better off to take the pragmatic view and go for the democratic outcome and legal outcome.

**Senator MURPHY**—In your submission you say Indonesia is in breach of many UN laws and articles. You may not be able to answer this but I am curious about whether or not you are aware of the United Nations Convention on the Law of the Sea, which establishes these exclusive economic zones. Do you know if they recognise East Timor in that?

**Mr Wesley-Smith**—I could not answer that.

**Senator MURPHY**—I am just curious about that because, if they do, it places a much stronger legal obligation than the point you go to.

**Mr Wesley-Smith**—It is quite possibly covered in this book, *International Law on the Question of East Timor*. I could possibly even find out an answer to that from one of our lawyer support people, if they are available.

**CHAIRMAN**—We can get that from Attorney-General's anyhow.

**Senator MURPHY**—I am sure that, under that convention, they would recognise the states to which the convention applied.

**CHAIRMAN**—You can make a comment if you want to. It is an aspect that we will pursue with Attorney-General's as well, but you make whatever comment you think is appropriate.

**Mr Wesley-Smith**—I could look in this book and I could ask a lawyer, but if you are going to get an answer I will probably leave it to you.

**Senator MURPHY**—It would be interesting if the UN on the one hand says, 'Indonesia is in contravention of . . . ' et cetera.

**Mr Wesley-Smith**—As you would know there are two UN Security Council resolutions, which still apply, both telling Indonesia to get out of East Timor; and eight General Assembly resolutions, plus an annual human rights declaration, telling them to get out and complaining about the human rights abuses. It is an ongoing thing. You have the Secretary-General actively organising discussions between Portugal and Indonesia over East Timor. So it is definitely up there as an issue and it has not been resolved. It is sort of having your head in the sand to pretend that it has been resolved. I have a brother who is a professor of constitutional law and when he read my first submission he said, 'You have asserted something but you have not argued it on one point,' so I have slightly

strengthened it. I hope I satisfied him. It is the same with the Australian government: they assert and they do not prove or argue that our attitude on East Timor is correct.

**CHAIRMAN**—I think we have finished. Do you have any final comments you want to make before you leave us? Please feel free to do so.

**Mr Wesley-Smith**—I am very happy with being received and some of the remarks that came out. I do think you had better check that International Court of Justice ruling.

**CHAIRMAN**—Thank you very much.

[11.40 a.m.]

**STACEY, Ms Natasha Ellen Tanya , Anthropology, School of Southeast Asian and Australian Studies, Northern Territory University, Darwin, Northern Territory 0909**

**CHAIRMAN**—I would like to welcome the witness from the Northern Territory University. Please state the capacity in which you are appearing before the committee.

**Ms Stacey**—I am appearing as a private individual. I should correct what was said earlier; I am not appearing for the Northern Territory University.

**CHAIRMAN**—Dr Walters was the signatory to that one and that has already been accepted into evidence submission No. 11 anyhow. We need not formally endorse that if you are appearing as a private citizen. Would you like to make an opening statement?

**Ms Stacey**—I would. I am an anthropologist. I have been conducting research into Indonesian fishing in the Australian fishing zone since 1991 and since 1993 I have been conducting doctoral research into the issue. Over the last five years I have travelled extensively through eastern Indonesia and I spent approximately 18 months living in some of the communities where some of the so-called traditional Indonesian fishers hail from in south-east Sulawesi, in the Tukang Besi Islands, and on the island of Roti. I will quickly run through the main issues of my research—

**CHAIRMAN**—I am sorry to interrupt you, but does that extend to the traditional fishermen who frequent the Ashmore island area?

**Ms Stacey**—That is what the focus of my research is on: one group of traditional fishers, the Bajo people or sea nomad people, who hail from eastern Indonesia and their historical, past and present, fishing activity, and looking at the whole social, cultural and economic organisation surrounding their fishing voyages as well as the political, economic and legal issues from the Australian side and such things as the effect of maritime expansion by Australia, the 1974 memorandum of understanding, legislation and policy treatment and so on towards traditional Indonesian fishing. In my submission I have made four main points—

**CHAIRMAN**—I am sorry to interrupt you again, but we now have your submission and I should ask you if there are any errors of omission or editorial changes, prior to accepting it into the evidence?

**Ms Stacey**—No, there are none.

**CHAIRMAN**—Thank you.

**Ms Stacey**—In my submission I outlined three main points specifically with regard

to implications of the extension of the boundary around Ashmore Reef from the 12-nautical mile radial boundary of the provisional fisheries surveillance enforcement line and MOU boundary to 24 nautical miles under the treaty. My last point concludes that some of the issues that I have raised, and probably other people have raised, concerning the treaty are issues that are closely linked to the whole issue surrounding legal and illegal Indonesian fishing in Australian waters, and particularly in regard to the 1974 memorandum of understanding regulating traditional Indonesian fishing activity inside waters now claimed by Australia.

The main point I would like to make in regard to the treaty and some of these broader issues is that, to date, there has not been enough research into some of these wider social and cultural issues affecting Indonesian fishing in Australian waters, and this could probably be applied to some of the issues raised from the treaty; and that, in order for some of these complex vexed problems to be addressed in the future, a lot more consultation, negotiation and understanding need to be undertaken.

**CHAIRMAN**—Thank you. On the three points you make with regard to the amendment from 12 to 24, informing Indonesian fishers and the enforcement ramifications, I think it might have been before you came in that we did discuss with Territory Primary Industries and Fisheries that clearly there needs to be some sort of machinery set up to make sure not just that this treaty exists but that it is reasonably implemented. The word you mentioned again—I did not—was ‘consultation’ and that that consultation should have taken place a little better, to put it mildly, and needs to continue to take place. Would they be the points you are making?

**Ms Stacey**—Yes, that is one of the main points. For example, there has not been any detailed research to date undertaken into Indonesian fishing in Australian waters. This is something that has been going on for centuries, and obviously in the last few decades. I find that quite surprising, that we have such a complex situation happening in the northern waters and the government spends large amounts of time, money and energy looking at these issues, and we really have a very limited understanding of what is happening in eastern Indonesia—the ethnic diversity, the different reasons why certain groups of fishers come down and fish in Australian waters, and of looking at broader, culturally informed issues to assist in what has become a very costly, tragic exercise for both sides.

**Senator MURPHY**—There is one question I would like to ask you with regard to informing Indonesian fishers. You say there is only Bahasa Indonesia being used—

**Ms Stacey**—No; the point that I am raising is whether Bahasa Indonesia is an adequate language for conveying information to the various different ethnic groups.

**Senator MURPHY**—Are you sure that that is the only language that is used for that purpose?



**Ms Stacey**—I am saying: is it adequate?

**CHAIRMAN**—You are saying that maybe it is not.

**Ms Stacey**—Maybe it is not. Perhaps—

**Senator MURPHY**—I understand that. I am not aware of whether or not they do use local village language to convey the message. I am just asking if you are aware of it being the case that Bahasa is the only language that is used to convey information?

**Ms Stacey**—No. If we want to break it down into the three main groups of traditional fishers that operate inside the MOU, the Bajo have their own language; the people that live at Papela are a mixed ethnic group so they are using traditional Rotinese language as well as some other Butonese languages; and the Madurese, from Madura, East Java, have their own languages as well. So you would probably say that amongst themselves they would be communicating in their own languages, or other ethnic languages from Indonesia, rather than in Bahasa Indonesia, and that not all fishermen are fully competent Bahasa Indonesia speakers. Therefore, if you were handing out pamphlets, making speeches or lectures, or whatever, I do not think it would be possible to say that the message was delivered if you were just using Bahasa.

**CHAIRMAN**—Sure; that is an important point.

**Senator MURPHY**—We accept that. I thought maybe you were saying in your submission that the information that is circulated is only circulated in Bahasa Indonesia.

**Ms Stacey**—Information on what?

**Senator MURPHY**—About the treaty or previous treaties.

**Ms Stacey**—As verbal information, you mean?

**Senator MURPHY**—Verbal or written.

**Ms Stacey**—The pamphlets, maps and so on that Foreign Affairs have handed out on previous educational campaigns to Australia have been in English and Indonesian language. In most cases, the majority of fishermen, in my opinion, do not really understand or comprehend the written word and the maps.

**Senator MURPHY**—You are really raising a question, not making a claim?

**Mr HARDGRAVE**—I have a similar line of questioning. You have travelled through various parts of the Indonesian archipelago. In your experience, have you seen Jakarta regularly circulating edicts, official doctrines or whatever in all these various

languages?

**Ms Stacey**—Never.

**Mr HARDGRAVE**—So what is the information circulated in?

**Ms Stacey**—The only information that the traditional fishermen—

**Mr HARDGRAVE**—Not just to fishermen—just general community briefings.

**Ms Stacey**—or local village heads and so on have is information that they have received via Foreign Affairs or via the contract vessels stationed out at Ashmore Reef or via fisheries and naval officers handing out maps. There has been some information that the Australian government has handed out that has been generally copied by the Indonesian government and fisheries, written in Indonesian language and handed out in a few places. But that has been in Indonesian language, not in local languages.

**Mr HARDGRAVE**—So it is a language that is not necessarily easily comprehended by those who are actually out there fishing?

**Ms Stacey**—Yes.

**Mr HARDGRAVE**—This raises an amazing situation where we have Canberra negotiating with Jakarta about something which affects, say, Darwin based people, Christmas Island based people and a whole bunch of other people in all sorts of places—I probably could not even imagine what they are called—particularly on the Indonesian side of the line. The argument could be really out of step, perhaps without any consultation with the locals. Is that a fair analogy?

**CHAIRMAN**—Perhaps communication is a better word than consultation, in that case, because they do not appear to be conveying the information from Jakarta to their own citizens in a language which they understand. Is that what you are saying?

**Ms Stacey**—Yes.

**Mr HARDGRAVE**—I guess it is not your place to say, but the question in my mind is that, while we here in Australia are being consulted, albeit a bit late, by the department and the treaties committee comes along to mop up and assess how well it is being done, you suspect that there is probably not much happening on the other side of the line—that would be the suspicion you have. I have not been to Indonesia—and perhaps, after this line of questioning, I will never be allowed in!—but is there a regular form of communication that you can recall from your visits between Jakarta and these other provinces? Or does Jakarta just do a Canberra and say, ‘This is what happens’?

**Ms Stacey**—I do not think it is really my place to comment on those sorts of issues. That is opening up a much wider—

**Mr HARDGRAVE**—Obviously you want to get back to Indonesia yourself. I think I will leave it there, Mr Chairman.

**Ms Stacey**—What I could say is that in terms of maritime agreements and the whole complex area of Indonesian fishing in Australian waters, depending on what side of the fence you stand on, there needs to be a lot more joint work done with Indonesia particularly to identify and get a better understanding of just who are the people that are fishing in Australian waters and whom these sorts of issues are affecting. I do not know if Indonesia has the budgets, time and people to be able to take on that sort of role itself.

**Mr HARDGRAVE**—I guess where we have reached is we have all these problems. We have got problems with nets drifting onto Groote Eylandt. We have got problems with fishing trawlers rolling up alongside floating oil rigs, apart from the sorts of diplomatic problems about where lines are and what that all means. Some of these problems could exist because there is not a lot of communication of agreements on processes and approaches to fishing in this area. Is that a fair assessment?

**Ms Stacey**—Yes. But I think it is important to remember that there are many different groups of fishers from Indonesia fishing in the Timor and Arafura seas. What happens is that the whole gamut and diversity gets put under one big umbrella so you have the so-called traditional fishers in wooden sail-powered boats operating in areas they have traditionally fished in for decades placed in the same basket as large-scale commercial industrial fishing boats like the ones we have sitting out in Darwin harbour at the moment. Similar sorts of treatment and strategies are used, whether you do have a historical right to fish and have been given access to fish like the traditional fishers have in Australian waters as opposed to those who have no historical right but are operating in the capitalist global economy that is pushing the hunt for marine resources out of places like Hong Kong and Singapore.

**CHAIRMAN**—From your perspective, do you oppose the ratification of this treaty?

**Ms Stacey**—It is a very difficult question.

**CHAIRMAN**—Well, it is a fundamental question, I know.

**Ms Stacey**—I would not oppose it if there were some changes made.

**Mr HARDGRAVE**—What changes?

**CHAIRMAN**—What sort of changes?

**Ms Stacey**—Well, particularly in relation to the area around Ashmore Reef.

**CHAIRMAN**—So you want to come back into the 12 rather than go out to the treaty?

**Ms Stacey**—Well, changes in respect of Indonesian access.

**CHAIRMAN**—In matters of administration or in matters of the boundary?

**Ms Stacey**—It would be administration.

**CHAIRMAN**—Right, that is what I thought you were going to say. This morning, that has been a common theme, that it is the operational and administrative after-effect of this whole treaty.

**Mr HARDGRAVE**—Chairman, the other thing is would these treaties tend to be negotiated and renegotiated? Would you prefer to see an element of proof that the treaty and its ramifications on local fishers were in fact being communicated? Would you prefer to see Australia trying to draw Indonesia, Jakarta, out on that?

**Ms Stacey**—Absolutely. Obviously, you have to go through Jakarta, but I think there should be a lot closer consultation at the local and provincial level with various fisheries departments, village heads, governors, parties and so on.

**CHAIRMAN**—Tony, did you have a question?

**Mr TONY SMITH**—With respect, it seems to me to be an impractical suggestion. If the Indonesian government decides that it has covered the base, so to speak, how do you say, ‘Well, have you consulted with the fishermen in Woop Woop?’ How can you, as a matter of practicality, ask the Indonesian government whether they have consulted with all the fishermen in the local area. Do you know what I mean? It is a difficult concept.

**CHAIRMAN**—If I could just jump in on that, it might be difficult but it is not insurmountable; it is not unreasonable for this committee to raise that issue through people like you and we have DFAT to do that sort of thing, to negotiate with Jakarta. I do not think it is unreasonable for us at the diplomatic level to make the point that, in talking from our end in the pre-ratification process, some of their citizens had not been satisfactorily communicated with.

**Mr HARDGRAVE**—Mr Chairman, this also highlights where consultation has failed through the process. If this sort of matter had been brought before the departmental people, before they drafted something which was presented to the foreign ministers to sign, we might all be saying, ‘Yes, it has all gone well.’

**Ms Stacey**—At the same time, I think it is very difficult to compare how our processes of consultation happen in Australia with somewhere like Indonesia that is culturally miles apart from us, apart from the incredibly large population of 200 million people, the diverse ethnic groups and the whole class and—

**Mr TONY SMITH**—Ultimately, you are going to have to rely on Indonesia anyway to say, ‘Well, yes, we have consulted them.’

**CHAIRMAN**—Your evidence has been very helpful and we thank you for that. Did you want to make a final comment before you left us?

**Ms Stacey**—No, thank you for the opportunity.

[12.00 p.m.]

**JONES, Mr David, Business Development Manager, PGS Exploration Pty Ltd (Petroleum Geo Services), Level 4, IBM Centre, 1060 Hay Street, West Perth, Western Australia 6005**

**CHAIRMAN**—Thank you for being recalled. We do not want to hold you up unnecessarily. What was the result of your consultation in terms of the peak body?

**Mr Jones**—I have talked to PGS in Perth. The consensus there is that the communication with APPEA has been fairly minimal.

**CHAIRMAN**—I see.

**Mr Jones**—But there again, the PGS management is totally new to Australia and the office has expanded this year. So they may be some of the reasons for that. But they feel it has been minimal with APPEA.

**CHAIRMAN**—Okay, thank you very much. I am sorry to hold you up. Unless you want to make any other points, we do not really need you again.

**Luncheon adjournment**

[1.55 p.m.]

**FFOULKES, Dr David, Asian Links Coordinator, Department of Primary Industry and Fisheries, Darwin, Northern Territory 0800**

**MELLON, Mr Colin David, Officer in Charge, Foreign Fishing Operations, Department of Primary Industry and Fisheries (AFMA), GPO Box 990, Darwin, Northern Territory 0801**

**PYNE, Dr Rex Rondon, Acting Deputy Director Fisheries, Fisheries Division, Department of Primary Industry and Fisheries, GPO Box 990, Darwin, Northern Territory 0801**

**NUNN, Dr Eric Edward, Director of Energy, Northern Territory Department of Mines and Energy, PO Box 2901, Darwin, Northern Territory 0801**

**CHAIRMAN**—Welcome. As Dr Pyne has told you no doubt, we need a bit of additional information. Dr Pyne, you might like to open the batting.

**Dr Pyne**—Thank you, Mr Chairman. Perhaps I can throw it back at yourself and suggest that Colin Mellon would be very happy to answer any questions on illegal foreign fishing matters in Australian waters. That is the matter he is primarily responsible for.

**CHAIRMAN**—This morning we had what you could argue was anecdotal evidence that about 75 per cent of the problem was associated with non-Australian fishers. Can you talk about illegal foreign fishing vessels in the area and also their extent, both inside the AFZ and outside it?

**Mr Mellon**—Yes. To be more accurate, the percentage you gave of 75 per cent is probably a little bit out of date. It would be closer to 99 per cent these days being sourced from Indonesia. In those vessels flying other flags, specifically those of Taiwan, they have at least 50 per cent of their numbers in crew operating under Indonesian masters. The four vessels which were the subject of a press release yesterday and today were built in Taiwan. They are the subject of an agreement between a Thai company and two Indonesian fishing companies. They are flying Indonesian flags—

**CHAIRMAN**—Just to interrupt you, were they built in Taiwan?

**Mr Mellon**—Built in Thailand.

**CHAIRMAN**—Thailand? You said Taiwan.

**Mr Mellon**—I am sorry.

**CHAIRMAN**—So built in Thailand, but operated by an Indonesian company.

**Mr Mellon**—That is correct. And they also have on board an overseer—I suppose that would be a good term for it—of Thai nationality. He oversees the whole operation to be a protector of the investment that Thailand has made with Indonesian companies.

The numbers of boats have been steadily increasing over the last couple of years. We first became aware of the problem in 1988, when a large number of boats were apprehended between October and the end of December. I understand the figure was 47 within those three or four months. We believe that this was simply because Australia had severed licensed fishing arrangements with both Taiwan and Thailand, although the Thailand joint venture did not finish for a couple of years after that.

In 1987, Australia severed licensed fishing operations with vessels of Taiwan. The reasons I was given at the time for that were that we became aware that the effort the Taiwan people were placing into the fishery had almost doubled for the same amount of catch, which told the scientists that the resources were in decline. I am not a scientist; I cannot attest to the accuracy of that information because it was largely hearsay. Nevertheless the licence arrangements with Taiwan ceased. At the same time, Indonesia entered into a licensed fishing arrangement with the same boats from Taiwan and they licensed 210 boats at about the same time.

Those fishing boats then conducted their operations in generally the same areas where the more traditional and sustenance fishermen were operating; and, we believe, forced them out of their own areas, so they had to come further afield to eke out a living from their fishing operations.

We believe that to be the case because it was at the same time that we found there were a lot more Indonesian boats coming down across the line of the AFZ. In the previous five or six years we had five boats—an average of one a year. From that point forward we have been averaging something over 100 per year. Last year we had 65 boats from Indonesia apprehended within the Australian fishing zone—that is for the full calendar year. So far this year we have had 54, and one was released on the basis of there not being enough evidence to support a prosecution.

Getting back to the subject of your comment earlier, the four vessels were released under an article of the United Nations Convention on the Law of the Sea, specifically article 73, which is now embodied within Australian statutes in the Maritime Legislation Amendment Act 1994. It does not specifically refer to Australia, but we are signatories to that treaty, and they must be released promptly upon payment of a satisfactory financial security or bond. That is what we did.

The four subject vessels were assessed by an independent surveyor—shipwright and machinery surveyor. Those valuations were then provided to us and we then



negotiated with the company representatives, having the Indonesian consulate and a lawyer present at those negotiations. We did not bend too far from the valuations which were provided to us by the assessor. It took them some 10 days to make that payment good, but they agreed to pay it. It was paid on Friday, 3 October, and shortly after the payment was made the boats were technically released into the custody of the masters.

**CHAIRMAN**—When you say it was paid, was it deposited into an Australian bank account or into an Indonesian bank account?

**Mr Mellon**—It was paid into the trust account of the Australian Government Solicitor in Darwin.

**CHAIRMAN**—So the money is actually here in Darwin.

**Mr Mellon**—Yes.

**CHAIRMAN**—And the ramification of that, should they not appear, is that they forfeit the bond.

**Mr Mellon**—In these circumstances, the defendants agreed to appear. As I said, the boats were technically released into the custody of the master. Their lawyer agreed that the defendants would appear on Monday, and they did. The charges were found absolute and the vessels, the catch and the gear were forfeited to the Commonwealth.

Following that, the Australian Government Solicitor, through the principal legal officer, Mr Terry Gardiner, drafted a letter which I understand is to be delivered today into the hands of their lawyer, indicating that they have 30 days from Monday to deliver the boats up to a place—in this case it will be Darwin—and that if that is not done then the money will be forfeited to the Commonwealth.

**CHAIRMAN**—So the crews and boats have actually gone back, but under the terms of this arrangement they have to bring them back. What about the catch?

**Mr Mellon**—The catch was part of the valuation.

**CHAIRMAN**—But the catch has disappeared. The catch would be a little on the nose, to put it crudely.

**Mr Mellon**—These boats are freezer boats.

**CHAIRMAN**—So everything is still on board.

**Mr Mellon**—Yes.

**CHAIRMAN**—They were sealed?

**Mr Mellon**—We assessed the species composition and determined the value of that marine product on the Singapore market. We cannot sell it in Australia unless we sell it for rendering as fishmeal. Even then we would be competing with Australian fishermen in the same area, and that is not our business.

**CHAIRMAN**—Is the amount of the bond public knowledge, or is that confidential?

**Mr Mellon**—No, I will tell you. It was \$1,025,000.

**CHAIRMAN**—It is not peanuts. It is a lot of money.

**Mr Mellon**—Yes, it is. I think I should explain that this sum of money is to be read in context with the number of boats—that is, four boats. It has been similar over the last seven or eight years. We also should remind everybody that before the provisions of article 73 became a part of Australian statutes we were applying those provisions anyway.

We thought that that was the way to go for two reasons. One would be that it takes a lot of financial burden from the Australian taxpayer in maintaining boats and maintaining crews. Because there are no provisions for imprisonment and such within the Fisheries Management Act, it would not be fair—indeed, we would be acting out of context—if we were to detain them unnecessarily.

**CHAIRMAN**—Does that money eventually go to DPIE or into consolidated revenue?

**Mr Mellon**—Consolidated revenue. I understand that at the expiration of the 30-day period Mr Gardiner will be drafting a cheque from his trust account. He will send it to the Australian Fisheries Management Authority people in Canberra who will then, under an agreement they have with Treasury, lodge it in consolidated revenue.

**CHAIRMAN**—With the level of the illegals you were talking about, what percentage of that is traditional and what percentage is powered and large? Is it a mixture?

**Mr Mellon**—Yes. I do not have accurate figures with me, and I apologise for that. But the greater proportion of the boats—I would say something greater than 75 per cent—would be commercially based operations. These days we always attempt to err on the side of caution in respect of more traditional boats. We allow them perhaps more flexibility than we would in other circumstances in operating within the MOU area.

**Mr HARDGRAVE**—Does this work as a deterrent? Are you seeing repeat offenders forfeiting their boats?

**Mr Mellon**—Yes, we are. We have had some come back seven or eight times.

**Mr HARDGRAVE**—They have come back seven or eight times, paying over a quarter of a million, or a million, or half a million?

**Mr Mellon**—The value of the smaller boats is manifestly less than these larger boats. The smaller boats average around \$2,500 each. They are generally small and poorly constructed boats. They are very wet with mould, with wet rot in the timbers, and the machinery is generally very poor. For the larger boats—that is, boats over 15 metres in length—we fetch a better price. The average for those is about \$A30,000, depending on the amount of the catch and the value of the catch.

**Mr HARDGRAVE**—Does it work? Obviously, with some coming back seven or eight times, the concept of running the risk of being caught and paying a bond and whatever else does not seem to work as a deterrent, does it?

**Mr Mellon**—In some cases it does, and in others it does not. Where these captains or recidivists are punished on return cruises into the waters, some are not deterred by Australian prisons. Let me just recap before I go on. They generally lack the wherewithal or the resources to pay a fine, so we try and avoid that. I know the judiciary tries to avoid the imposition of a fine, because they know they cannot pay it and it means they must serve it out in default, in prison. But after the first couple of dozen went to prison, they found they were getting paid for being there. I think it is only \$2.30 a day, but that is about the amount they would earn in a day's fishing anyway, so they go back with a pocketful of money. As Australian prisoners—I have never been in an Indonesian prison, so I cannot comment, but I would suggest—

**CHAIRMAN**—Please don't!

**Mr HARDGRAVE**—So getting caught may be part of their business plan.

**Mr Mellon**—No, I do not think that is the case. I think they are prepared to run the gauntlet because there are rich rewards based on their financial structure, rather than otherwise. I am sure that they consider that.

**Mr HARDGRAVE**—Do you have any appreciation or understanding of whether or not they actually realise they are breaching rules? Are they doing it quite deliberately, or is it an inadvertent thing? There seems to be some evidence before us that there are some communication difficulties with various parts of the Indonesian archipelago—that people do not fully understand where that line on the map might be.

**Mr Mellon**—In almost every case—and there are some exceptions to this—the Indonesian fishermen know generally where they are. They do not have sophisticated navigational aids such as we do, and very few of the boats are fitted with global

positioning systems and the like; but we are finding more of that now, and most of the boats which are operating just outside our waters of jurisdiction are fitted with such equipment. They sit right on the line, and they know. They will come just so close—sometimes within one hundred yards. That is the accuracy of the system.

Others, and particularly the more traditionally built boats coming from more traditionally oriented family groups, possibly know that they are within a radius of a point, but they do not know exactly where they are. That is why we allow them so much latitude.

**Mr HARDGRAVE**—So you say that from a commercial operator's point of view, running the risk is probably worth the risk.

**Mr Mellon**—I cannot answer for them, but it would appear that way.

**Mr HARDGRAVE**—So would you guess that we are getting most of them, or are we missing most of them that are coming into our waters?

**Mr Mellon**—I would suggest that the efficiency of the Coastwatch system is very good. I think that we are getting better than 80 per cent.

**CHAIRMAN**—In terms of this treaty, are you able to make a comment, or provide a judgment, as to what additional surveillance measures are needed, and how effective we will be in doing that under this delimitation treaty arrangement?

**Mr Mellon**—I wish I had the answer. I do not.

**CHAIRMAN**—Has there been consultation between AFMA and your equivalent in Indonesia?

**Mr Mellon**—Yes. I have personally been on two trips throughout the Indonesian archipelago talking to the various villages and fishermen in those villages. Two of my staff have conducted one trip—in one case, two trips—through the archipelago with the people from the embassy in Jakarta and with Indonesian fisheries officials. We have spoken to the local governors, the mayors and authorities in various regions in principle—military authorities, the whole lot.

**CHAIRMAN**—In your view, do they understand? We had some evidence this morning—quite important evidence, I think, which is a very important point—that there is, perhaps, a lack of communication from Jakarta to some of these areas where they do not speak Bahasa Indonesia anyhow. Is that a problem as far as you have seen it?

**Mr Mellon**—In the times that I have been there and have spoken to these people we did not experience any communication difficulties.

**CHAIRMAN**—OK.

**Mr Mellon**—I do not know what would happen between Jakarta and the other people.

**Senator MURPHY**—We asked earlier about this problem and the fact that there have been discussions at an officer level. It does not seem to have progressed very much in so far as getting something done is concerned, or making progress to actually getting something done. How long ago did you go to Indonesia with regard to talking to the different groups?

**Mr Mellon**—My first trip was about three years ago. In fact, there is a lady with the people behind me who would know precisely what date. She was there on my first visit. But I think it would be about 2½ to three years ago that I first went. Another one of my officers has been through there on two occasions and another officer returned last month from doing a similar trip through the provinces.

**Senator MURPHY**—And that includes meeting with the bigger commercial operators?

**Mr Mellon**—Yes.

**CHAIRMAN**—So, in terms of the administration of this delimitation arrangement, do you see merit in some sort of formal mechanism at official level, quite apart from the continuing of the governmental links, to make quite sure that the administration and operation of this in terms of the fishing resource is satisfactorily covered? For example, do you see potential, as a result of this delimitation treaty, for the whole thing to get out of hand?

**Mr Mellon**—I do.

**CHAIRMAN**—And that mechanism is not in place at the moment to correct that?

**Mr Mellon**—It has not worked so far.

**CHAIRMAN**—All right. That is the point that we raised with Dr Pyne this morning and he was not in a position to answer; and that is why we are appreciative of you coming back.

**Senator MURPHY**—What do you think we should do to fix it?

**Mr Mellon**—If I had the answer to that—and pardon me for being frivolous—I would make a lot of money. I would market it. I just do not know.

**Senator MURPHY**—I am asking you in your capacity as an officer. In terms of discussions about working out a strategy for dealing with the problem, I know that there is no quick fix and there probably is not a fix in the total sense of the word, but if we had to put in place some arrangement that might assist the process of dealing in a more comprehensive way with the problems that we are confronting, what would you do?

**Mr Mellon**—That would depend on the value that the government authorities placed on the resource. As you said, there is no quick fix, and we have adequate patrol and response resources. They could possibly be expanded somewhat to stop the problem, but all the efforts we have made so far—and we have tried several different approaches—have not worked.

**CHAIRMAN**—What about this, for example. A gentleman sitting down the back is from the Timor Gap authority. Would you see something like that—a formal mechanism—being set up to monitor at both ends the administration and operation of this particular limitation treaty, both in terms of the fishing resource and in the case of the minerals area, just to keep an eye on it? Dr Nunn, do you have a view on that?

**Dr Nunn**—To be honest, I have not thought about that, but I did note in the treaty that there is a provision relating to shared petroleum resources.

**CHAIRMAN**—But that is just the petroleum; that is not the administration of the area. What we are getting at is a fundamental monitoring mechanism to make sure—as Mr Mellon has indicated (albeit it is a personal view, I suppose, although as a technical expert) that it has the potential to get out of hand. Am I putting too much on it, Mr Mellon? Is that what you are saying?

**Mr Mellon**—We have tried the administrative watchdog arrangement at both ends. We have had Indonesian fisheries officers come to Australia and we have attempted to get them onto Australian patrol boats, but for security reasons that was not able to be accomplished. That does not say it will not be, because we are working on getting around those problem areas now. We have also had arrangements and negotiations in place with fisheries officials in Kupang, for example, who attempted to keep boats other than local boats out of the area. He could not do it because there were just so many of them. At one stage there were 250 boats from other provinces in Kupang harbour.

**CHAIRMAN**—We have asked the same question of all the witnesses so far and had the same answer, with the exception of, I suppose, the free East Timor movement. You are not suggesting that we should not ratify this agreement—or are you?

**Mr Mellon**—I do not have either a personal or a professional answer to that question. Those decisions were made at a much higher level than me.

**CHAIRMAN**—Dr Pyne, did you want to add anything to what has been said?

**Dr Pyne**—I would just like to clarify a point that you made earlier, Mr Chairman. You referred to the 75-25. I did want to clarify that for the purposes of the record. I was simply referring to debris that is transiting in the ocean, be it in the Arafura, Timor or Gulf of Carpentaria region, that is ending up on our shores. An assessment of that by a trained officer, namely a gear technologist, indicated that, of that debris, we could identify about 25 per cent as having arisen from Australian sourced vessels operating in the area, and I can take that down narrower to northern prawn fishing vessels. That is very clear and that is the material out there.

**CHAIRMAN**—The document you have now brought to us is the report by Dr Walters, is it not?

**Dr Pyne**—That is correct.

Resolved (on motion by **Mr Tony Smith**):

That the report by Dr Walters be incorporated as an exhibit.

**CHAIRMAN**—That is what that report reiterates, is it?

**Dr Pyne**—No, that report reiterates the quote that I made concerning Dr Carl Walters from Vancouver, who said that we are faced with a problem in terms of the Timor Reef fishery. That is the quote in that document.

**CHAIRMAN**—Just for *Hansard*, it is a transcript of an address and some supplementary comments by Carl Walters from the Fisheries Centre, University of British Columbia, Vancouver.

**Senator MURPHY**—I am curious. The evidence you have given us today says if this treaty is ratified it will make the existing problem worse. Is that a fair comment?

**Dr Pyne**—Mr Chairman, I would disagree with that. I believe, and in my evidence this morning as I presented it it is quite clear, that we have no difficulty with the treaty and in fact we would like to see it ratified. What we are concerned about, however, is the consequences of the treaty—not the treaty, the consequences of it and the things that flow. The treaty in itself will not deal with the problems that I raised and tabled this morning. The treaty itself will not deal with the illegal vessels coming across. We need some mechanism. I know the question was directed at Mr Mellon, and it is a difficult one for him because he is simply carrying out a task as an agent for and on behalf of the Commonwealth, but we do need a mechanism in place. You raised it with my colleague from Mines and Energy as to whether you needed a high-level body that could administer arrangements on either side so that we could better control vessels and resources and provide a vehicle in which we could work together in cooperation.

**CHAIRMAN**—Dr Nunn, I understand you want to correct something that was on the record this morning. Can we do that first?

**Dr Nunn**—We spoke this morning about the time taken for approval of seismic operations. I want to clarify that. I am reading from the directions which were served on titleholders. It says that geological or geophysical surveys such as a seismic survey shall not be carried out and any modification which constitutes a significant change to the area or duration of the survey previously approved shall not be made without prior approval, and that an application for approval to carry out one of these surveys shall be made not less than one month or such other period as is approved before commencing the survey.

I did indicate this morning that the normal practice is a couple of weeks; it is probably closer to three weeks. The actual range is from about one week, which we do not encourage, to three months—certainly the best case.

**CHAIRMAN**—There is the point that Senator Murphy raised.

**Senator MURPHY**—I still have some difficulty. This committee is here to deal with issues arising out of the ratification of this treaty. If there are difficulties that are going to arise as a consequence of the treaty enhancing an existing problem then that is an issue arising. That was my interpretation of what was being said.

I still would like to know from your department—as the people that generally would look at a problem and say, ‘How might we fix it?’—how we might address it in a better way. Increased surveillance and so on might achieve it in part but if there is another process that you might have some views on then I would be interested to hear them. I am sure if you, both at an NT government level and in consultation with the Commonwealth government, are going to progress to a resolution we need to know about it and what might be suggested as ways and means of improving the existing situation.

**CHAIRMAN**—The committee members are thinking that we need some sort of more formal mechanism to overcome the very problems of implementation to which you refer. What we are seeking from anybody who wants to make a comment is what might be the optimum solution.

**Dr Nunn**—We did refer this morning to an MOU arising out of the signing of the treaty. I see that as a vehicle, provided it is endorsed at a senior enough level—and that I take as a Commonwealth-Indonesian level—and then it slowly filters back down.

**CHAIRMAN**—Would that be enough? If, as Mr Mellon indicates, and it was also my impression from some evidence this morning, we really need to have an ongoing monitoring of the situation, is a piece of paper, another MOU, necessarily going to fix the problem? Maybe not—I do not know. I think you perhaps need something that is not necessarily day to day but is a continuing mechanism, don’t you?



**Dr Pyne**—I would have to agree with you entirely. What that vehicle would be I cannot say. I respect where the senator is coming from. But, to be honest with you, I do not have the legal framework and I would need to work with somebody else to come up with a structure that was really effective—

**CHAIRMAN**—We will think about that as a committee.

**Dr Pyne**—But I think that is where we are really coming from.

**Senator MURPHY**—This really affects two states and one territory.

**Dr Pyne**—Yes, it does.

**Senator MURPHY**—You ended up with a process of consultation, or whatever it might be described as, where you had the Western Australian Attorney representing Queensland and the Northern Territory. I am curious as to how we got to the point where some of these matters were not pursued by the representative state. Either they were not fleshed out or they were not discussed prior to that representation being made. I would then have to say there was a shortfall or someone was not doing their job somewhere to actually get these issues up to the table before now.

**CHAIRMAN**—For example, you indicated this morning that the Attorney-General in Western Australia was the lead authority for this whole thing. Is that what you said?

**Dr Pyne**—No, I am sorry—that evidence was not presented by me.

**CHAIRMAN**—Somebody said that.

**Dr Nunn**—I might have indicated that that was my understanding.

**CHAIRMAN**—I am sorry—it was Dr Nunn. Maybe there is something wrong with the mechanism between the states and territories before you get anywhere else. If there is a lead state or territory on some of these issues and it is not reflecting the collective view, then there is something wrong with that consultation, quite apart from the consultation between that as a collective view and the preparation of a national interest analysis.

I am interested in whether Mr Mellon, for example, in any way was consulted in the preparation of the national interest analysis on this about what the likely ramifications might be? Was there any consultation with AFMA here in this area as to what it all might mean? From what you are saying here today it has the potential, if we do not watch it, to get out of hand. Implicit in what you are saying—and correct me if I am wrong—is that you really were not consulted.

**Mr Mellon**—That is correct. I was not consulted directly. However, one of the compliance staff in Canberra phoned me on one occasion and asked me to demonstrate whether or not there were any problem areas which I could foresee as a consequence of the treaty being established. I merely made the same comments to him as I have made here today; and my comments came from looking at it from a resource protection viewpoint.

**Mr HARDGRAVE**—Do you remember roughly when that might have been?

**Mr Mellon**—Not offhand, no.

**Mr HARDGRAVE**—Was it July this year, June last year, March this year?

**Mr Mellon**—It was last year; it was not this year.

**Senator MURPHY**—I would like to see if we can get our own processes right first. Can you tell me what involvement your department had in the development of the submission that the Western Australia Attorney would have put to the Commonwealth officers in so far as the development of this treaty was concerned? Was there a submission that was put together by the Queensland, Western Australia and Northern Territory departments?

**Dr Pyne**—To answer your question very specifically, I have no recollection—and I have been in the Territory for 20 years and I was on the original delimitation negotiating team representing the Northern Territory in the 1970s—of any recent discussions in relation to the treaty and its relationship to the Western Australia Attorney-General, from a fisheries perspective.

**Senator MURPHY**—That worries me a bit. It is like having a solicitor who does not know the story going to represent you. You have to get the arguments right, so you ought to know what they are before you go to do any representation and development of what is a fairly important treaty in some respects. At some point in time, maybe we will have to ask the department, our Commonwealth department, about what discussions they have had with the Western Australian Attorney.

**Dr Pyne**—Could I answer you and expand on what I said? We have had some discussions in recent years—and that is why I have brought along Dr David Ffoulkes—directly and indirectly with the Commonwealth, and directly and indirectly with Indonesia, in an attempt to try and overcome some of the difficulties that I tabled this morning in my evidence. Our discussions started back in the early 1990s. With your permission I would like to call on David to briefly outline for you some of the discussions and some of the contacts that have been made involving both Indonesia and the Commonwealth and maybe where those discussions and consultations have led us to at this point in time.

**Dr Ffoulkes**—What I have is a chronology of the development of fisheries collaboration between the Northern Territory and Indonesia. It started with a draft discussion paper, which was prepared in January 1995, on eastern Indonesia and northern Australia collaborative fisheries technology cooperation strategies. It was prepared by one of our fisheries officers after visiting Kupang, I believe.

Following that, in April 1995, a Northern Territory working party, with our department of industries and development at that time, was developing an investment opportunity for snapper fishery development, in the eastern province of NTT, which was based on the proposal prepared by a fisheries officer and also on a visit by that officer and an industry member to some areas in eastern Indonesia to assess the snapper fishery. A feasibility study to develop this proposal further was approved by the provincial governor at that time. But problems arose because the provincial government could not find any funding to help us with this project, because it was believed that it would be a shared funding project. This was the point when, with my experience with Indonesia, I became involved.

My advice at the time was that you needed to have the support of the central fisheries department in Jakarta to get any collaborative projects going because, in the end, the provincial governments will seek funding from the central government. The way we progressed on that was that we formed an international collaboration document for the department.

**Senator MURPHY**—When you say the department, I gather you are talking about our department of foreign affairs?

**Dr Ffoulkes**—No, I am talking about—

**Senator MURPHY**—Your Northern Territory—

**Dr Ffoulkes**—Yes—the Department of Primary Industries and Fisheries.

**Senator MURPHY**—Wouldn't you have to have sought similar agreement from the federal government to enter into any external agreements with Indonesia?

**Dr Ffoulkes**—At the time I was asked to help in developing this document. I cannot answer for any other—

**Senator MURPHY**—I am sorry—please continue.

**Dr Ffoulkes**—On 21 March 1995 I met with the director of fisheries planning and discussed our department's interest in collaborative work with Indonesia, and particularly this proposal. I got a bit of a rap on the knuckles by him because, as I thought, he said, 'You shouldn't really be approaching the provincial governments. You should be

approaching Jakarta first if you want to do any collaborative work.' But, anyway, in May I met informally with the director and the staff of the central research institute for fisheries in Jakarta, and we discussed each other's work. It was an informal meeting. He was very keen to set up some collaborative research work with our department at that time.

In June 1995, according to my files, our director of fisheries and a fishery officer met the Indonesian director of fisheries planning at a meeting in Perth. It turns out that the Indonesian director was very keen on this project in the eastern islands. At that time it was decided that the best approach would be to send a delegation over from our fisheries officers to try to develop some proposals for collaboration. So project proposals were prepared and sent to Indonesia. The meeting took place on 5 and 6 March. Accompanying us was a Commonwealth representative from—

**Senator MURPHY**—Can you recall from where? From DFAT?

**Dr Ffoulkes**—From Primary Industries and Energy. It was a very fruitful meeting. We discussed our various proposals and got them down to four distinct projects. We signed a statement of outcome at the meeting. We also, at the same time, met with AusAID and ACIAR at the embassy, and we met with UNDP and FAO to try to canvass some funding and some support for these collaborative projects.

On 14 April this year we were informed by the Commonwealth representative, who was here at a meeting prior to going over to Indonesia, that two proposals from this suite of proposals that we had been discussing in Jakarta had actually been listed in Indonesia's 1997 blue book of projects. There was one large project which the Commonwealth representative thought could be included in the AusAID sectoral package, and the smaller project would possibly be partly funded by ACIAR or by the government sector linkage program. Our deputy secretary met with the AusAID representative in Jakarta in April this year and he was also advised to submit the small project into the government sector linkage program. We did that. That was in May this year and we have not heard anything since.

**Senator MURPHY**—That is fine in so far as you have some external processes going, and there seems to be some understanding of at least part of it by the Commonwealth Department of Primary Industries and Energy or a person in there. Where there seems to be some breakdown is that, when officers at a Commonwealth level and at a national government level in Indonesia sit down to negotiate a treaty, they do not seem to be aware of it, which takes me back to this. There was, supposedly, a representative process and there was a discussion between the Queensland, Northern Territory and Western Australian governments, whether or not that information that you have just put on the record here was passed on to your person representing the NT in the discussions I assume were had. That being the case, there seems to be a block somewhere because much of the information that you have and the problems that you have outlined here have not filtered through. Would that be a fair comment?

**Dr Pyne**—I would like to comment on that. I would say that is a fair criticism and I have been very reluctant—and very deliberately so—in presenting evidence this morning to point fingers in any one direction. Most importantly, I am not saying that Indonesia, on the other hand, is raping and pillaging. What I am saying is that there is no process in place for dealing with this total program, and my area specifically, in relation to fisheries, which is consequential upon the delimitation line that it is efficient and effective.

My concern, and the concern of this government, is such that by the time such a program gets in place, the problem will have gone because we will not have any fish, or any resource out there to worry about, and that would be a crying shame. What we are lacking is a process. While the three states have had talks on this matter as recently as May this year, we do not seem to be able to link into a central Commonwealth process. That is not a destructive criticism; it is constructive. They, in turn, do not seem to have a linkage into the Indonesian system at the right level which then, in turn, comes back down to the regional level. We have gone to the regions. They are very willing and cooperative, but their social, cultural and other systems are totally different from ours and we do not seem to be able to come to grips with the problem.

**CHAIRMAN**—Dr Pyne, thank you for that. That is very helpful evidence. I think, really, that we are going around a bit in circles repeating ourselves. Consultation, obviously, has broken down—that is the bottom line. Dr Nunn, do you have any further comments on that consultative process? Do you want to make any other comments from your department's point of view?

**Dr Nunn**—There is nothing further from what I have said.

**CHAIRMAN**—All right, Mr Mellon, thank you very much for your evidence.

**Mr TONY SMITH**—I was not here for it, but you mentioned something about getting repeat offenders, I am told. Is this involving the same vessels that have been released?

**Mr Mellon**—In a few cases, yes, but in most cases, no. The repeat offenders are getting a bit street-smart in this context because they will come back on a different boat as crew members and they will have a nominated captain for the trip, whereas the fellow who was a previous captain on another boat will merely make up part of the crew, so he does not get banged again. But now we have become a little bit more aware of this and we have been keeping very comprehensive files and details on each member of the crew.

**Mr TONY SMITH**—I have no doubt that if we were doing this in Indonesian waters, they would just blow us out of the water. They turn away refugee boats from Vietnam and push them out to sea again and say, 'Go to Australia.' That is my information about it. Really, is it the case that we are just not strong enough on this problem? If we get tough, surely that is going to send a message to the deliberate process

involving these fishermen and the cartel behind them. There is something quite big operating here and we are just basically falling into line, it would seem, in terms of penalties. I mean, we are giving back the boats and keeping money. What is money? It is the boats.

**Mr Mellon**—We make those boats available back to the captains, or the owners, under a provision of an international treaty which Australia is a signatory to and which has been embodied within Australian statutes. We must do it.

**CHAIRMAN**—That is right.

**Mr Mellon**—The on-cost provisions generally are advisory, even though we are a signatory to them. But when they are embodied within Australian statutes—in this case, the Maritime Legislation Amendment Act 1994—we must follow them, and we do. I do not think that we should be shooting anybody over a fish. There must be some other mechanism whereby we can be a little stronger. Yes, we are not flexing our muscles. There is no doubt about that. The navy people become very frustrated when an order to stop is given and the captains of these boats thumb their noses at them, and in some cases worse. They even ram the naval patrol boats. There are careers and valuable assets at stake here, and the navy is powerless to do anything about it. If the boats do not stop, they cannot do anything.

**Mr TONY SMITH**—Powerless because of what?

**Mr Mellon**—Because of restrictions which are coming down from higher levels of government whereby they cannot fire their weapons at, near or onto those vessels. I am not suggesting we should.

**Mr TONY SMITH**—We have to stop them somehow, though.

**CHAIRMAN**—So are you saying that they cannot exercise hot pursuit?

**Mr Mellon**—They can exercise hot pursuit, but they cannot exercise force beyond certain limitations.

**CHAIRMAN**—They are just dependent on persuasion in terms of that hot pursuit?

**Mr Mellon**—I am pleased you asked me that, because we are presently developing another instrument which might stop the boats from running away, and that is what we are trying to do. And as passive—

**Mr HARDGRAVE**—So, literally, you are chasing them back out into international waters, and that is the end of it. If they do not stop, they are back out into the open sea and off they go.

**Mr Mellon**—For the time being, and then they are back tomorrow.

**CHAIRMAN**—Thank you very much. I think it was very valuable to get you back. I am sorry for that, but I think it has rounded the picture for us.

[2.46 p.m.]

**CLARK, Mr Paul Scott, Curator, Maritime Archaeology and History, Museum and Art Gallery of the Northern Territory, GPO Box 4646, Darwin, Northern Territory 0801**

**CHAIRMAN**—Welcome, Mr Clark. Have you any comments to make on the capacity in which you appear?

**Mr Clark**—I have undertaken research in areas related to Indonesian maritime culture.

**CHAIRMAN**—You have not so far made a written submission, have you?

**Mr Clark**—No, I have not.

**CHAIRMAN**—Would you like to make an opening statement?

**Mr Clark**—I would like to read, if I may, from a submission that I have prepared here.

**CHAIRMAN**—How long is it?

**Mr Clark**—It is one page.

**CHAIRMAN**—That is fine. I was worried it was going to be 20 pages.

**Mr Clark**—I will be quick. I wish to make a submission to the committee in relation to the right of access of Indonesian fishers to Australian waters as defined in the 1974 MOU. The views expressed in this submission, however, are my own and not necessarily those of the Museum and Art Gallery of the Northern Territory or of the Northern Territory government.

It is my view that the islands and reef systems in the area defined by the MOU, and in particular Ashmore islands and reef complex, together with Cartier Island, should be managed by Australian authorities. However, this management should not necessarily be at the expense of Indonesian fishers, who have had access to and utilised resources from this region before European arrival in Australia. It is my view that the future management decisions by Australian authorities need to consider the right of access and the needs of these people and that these decisions be made in the same spirit of fairness that was applied to the 1974 MOU.

One immediate change that the proposed treaty will have on Indonesian fishers will be to deny them access to the Hibernia reef system. Hibernia is currently outside the



provisional fisheries surveillance and enforcement line. However, once the treaty is ratified, Hibernia will become part of Australia's exclusive economic zone and, since it is not part of the area included in the 1974 MOU, it will become closed to Indonesian fishers.

It is my view that the Hibernia reef system should be managed collectively by Australian authorities with the Ashmore and Cartier systems and that this management should continue to include the rights of Indonesian fishers to utilise the marine resources in these areas. Therefore, any future proposals regarding the status of Hibernia, or discussions regarding changes to the 1974 MOU, should include this question.

The proposed treaty also has the potential to affect the current access by Indonesian fishers to the area defined by the MOU. The new exclusive economic zone has been extended by 12 nautical miles to 24 nautical miles around the Ashmore islands, and this creates an anomaly.

Most Indonesian fishers departing from Papela on the island of Roti will therefore have to sail through a 12 nautical mile zone where fishing is prohibited before entering the MOU where they are permitted to fish. In order to simplify the management of the MOU and the Ashmore islands and reef system, I believe that the MOU's northern boundary should be the same as the exclusive economic zone proposed by the treaty. Apart from the consideration of these two issues, I believe the treaty is a fair and equitable one.

**CHAIRMAN**—Thank you very much for that. Is the reef that you are talking about to the east of Ashmore?

**Mr Clark**—Yes, that is correct.

**CHAIRMAN**—Right, and that now falls inside?

**Mr Clark**—Yes, that will now fall inside the EEZ.

**CHAIRMAN**—Natasha Stacey raised that issue this morning. It is something that we will obviously have to think about as a committee. Now that we have heard some views, we will have to make a decision about what to say on that one. Implicit in what you are saying is this need for consultation. You have heard what was said just a moment ago.

**Mr Clark**—Yes.

**CHAIRMAN**—It was said ad nauseam this morning. Maybe as a result of that consultative machinery that may continue or may be put in place, a certain amount of discretion can be exercised, particularly where it comes to traditional fishermen. In the treaty itself, it talks about flexibility in terms of some of this for traditional fishermen:

would they have sail-powered craft or motor-powered craft?

**Mr Clark**—In which context—the fishermen from Papela or the fishermen from other parts of the Indonesia?

**CHAIRMAN**—The reef area that you are specifically referring to.

**Mr Clark**—The people that would be sailing down from Papela to fish in the MOU—

**CHAIRMAN**—So that is sail only?

**Mr Clark**—They would be sail only.

**CHAIRMAN**—Okay. That is one of the criteria for ‘traditional’ anyhow. Maybe there is a little bit of flexibility in there, but we will wait and see. The point has been well made both by you and Natasha. We will have a look at that, and see what we can come up with. It certainly would be injected into the report; we will see where we go from there. From your final comment, you are not suggesting that this treaty should not be ratified?

**Mr Clark**—No, I think it is in the interests of both Australia and Indonesia.

**CHAIRMAN**—The points you have made were raised this morning; I am sorry that you have had to wait so long. Whilst the last view about the ratification might be a little different from one or two others, that is the general view anyhow.

**Senator MURPHY**—We share the view that you have put forward.

**CHAIRMAN**—It would be fair to say that we share the view. There being no further questions, I thank you for appearing today.

Resolved (on motion by Senator Murphy):

That the committee authorises publication of the evidence given before it at public hearing this day.

**Committee adjourned at 2.53 p.m.**