



COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 3 March 1998

CANBERRA

Monday, 9 March 1998

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 McGauran
Mr Tony Smith

For inquiry into and report on:

Treaties tabled on 3 March 1998.

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Present

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Mr Adams

Senator Murphy

Mr Bartlett

Mr Hardgrave

Mr McClelland

Committee met at 10.03 a.m.

Mr Taylor took the chair.

McGINNESS, Mr John, Principal Legal Counsel, International Civil Procedures Section, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600

CHAIRMAN—Welcome. Did you want to make a short opening statement in relation to this agreement, the Agreement on Judicial Assistance in Civil and Commercial Matters and Cooperation in Arbitration with Thailand?

Mr McGinness—Yes, I have a brief opening statement, Mr Chairman. As you have indicated earlier in the hearing, this is one of the format type agreements. Since the 1930s, Australia has been a party to a number of bilateral treaties with European countries which provide for cooperation between courts in civil legal proceedings. The main purpose of these treaties is to provide for courts in these countries to cooperate in the service of documents and the taking of evidence for civil legal proceedings.

In 1995, the Thai justice ministry indicated an interest in negotiating one of these agreements with Australia. In a meeting in Bangkok in November 1995, Thai justice ministry officials and officials of the Commonwealth Attorney-General's Department prepared a draft treaty. The treaty was then subject to consultation in both countries before it was signed by the Thai justice minister and the Commonwealth Attorney-General in October 1997.

This is the first such agreement which Australia has negotiated with a country in the Asia-Pacific region. There are three main benefits of having these agreements. The first is that Thailand is a civil law country. It regards the service of documents and the taking of evidence by foreign lawyers or foreign courts within its territory as a breach of its sovereignty. Therefore, it is particularly useful to Australian legal practitioners to have an agreement which provides for Thai government officials to cooperate in the service of documents and the taking of evidence on behalf of Australian courts.

The second benefit of the agreement is that it provides for the cooperation between Thai and Australian authorities directly between justice departments and, therefore, it avoids the delays involved in sending documents and requests through the diplomatic channel.

The third benefit of the agreement is that treaties such as this do provide clear legal procedures for lawyers in both countries so that they can understand what is required if they want to serve documents or have evidence taken in another country. We know from inquiries from legal practitioners around Australia that that is a cause of particular cost and delay to them if these procedures are not set out clearly in a treaty, which they can get access to.

Finally, I would just like to mention the question of consultation. A copy of this agreement was provided to the Attorneys-General for each state and territory in January

1996, together with an invitation to comment. All states and territories received a copy of the agreement.

No state had any comment, apart from South Australia, which raised a point about the question of the cost of implementing the agreement. South Australia asked whether the costs involving using state government lawyers to take evidence on behalf of Thai courts would be recoverable under the agreement. The Commonwealth Attorney-General wrote to the South Australian Attorney-General to assure him there was a clause in the agreement which would allow for this.

Also, a copy of the agreement was sent to the Law Council of Australia which represents the major law firms involved in international civil litigation, and the law council indicated its agreement with the proposed agreement and supported its ratification by Australia.

CHAIRMAN—You talked about a formatted agreement. Would it be fair to say that it is a typical agreement, albeit that this is the first time in the ASEAN region that this sort of agreement has been reached?

Mr McGinness—These treaties are quite common around the world. As I said, so far Australia has only had them with western European countries, and this is the first one that we have negotiated with a country in the Asia-Pacific region.

CHAIRMAN—On that one, under the Commonwealth-state arrangements, will there be an authority in each state and territory?

Mr McGinness—That is correct.

CHAIRMAN—Bearing in mind that is centralised in Bangkok, is there going to be a central authority in Australia to deal with Bangkok?

Mr McGinness—We do anticipate most requests will go through the Commonwealth Attorney-General's Department in Canberra, but each of the states will have the registrar of the Supreme Court acting as an additional central authority for Australia. So, if a state particularly wants to deal direct with officials in Bangkok, it will be able to do so through their registrar of the Supreme Court.

Mr HARDGRAVE—Concerning legal aid for Thai nationals in Australia, is that a reality as a result of this?

Mr McGinness—There is a clause in the agreement that mentions legal aid. It is limited to providing that there will be no discrimination against Thai nationals in the allocation of legal aid. It does not guarantee provision of legal aid; it simply says that there will be no discrimination on the basis of Thai nationality. That is the practice

already of legal aid commissions around Australia. They do not discriminate on the basis of nationality. From Australia's point of view, there was no harm in agreeing to that sort of clause in this agreement. It is common to most of these.

Mr HARDGRAVE—Will Australian nationals be given access to court and, for that matter, access to the costs and rights, legal aid, on the same terms as Thai nationals? Who is getting the better end of this deal? Are the Thai nationals in Australia going to be more easily facilitated than the Australian nationals in Thailand?

Mr McGinness—When we were in Bangkok negotiating the agreement we did inquire about the Thai legal aid system and they indicated that it was very rudimentary at present but that it would be developed in future years. I think, as a matter of practice, you could say that this agreement would guarantee more to Thai nationals than it would to Australian nationals in the area of legal aid.

Mr HARDGRAVE—I have a question concerning bonds, and I know for a fact this happens in Canada because I have a constituent who has been presented with this and there is no agreement with Canada on a similar line to this particular one. Are civil matters conducted in Thailand by an Australian national subjected to any bonds imposed by the court as a result of this, or will Australians be treated the same as Thai nationals in all of those sorts of cases?

Mr McGinness—One of the provisions of the agreement is they guarantee that Australian nationals will have access to their courts and be excused from posting bonds and such like, in the same way that Thai nationals are.

Mr HARDGRAVE—Are we proceeding down the track of chasing some of those countries like Canada? This particular constituent had a \$5,000 bond imposed upon him by a court in Ottawa, which was probably more of a tactic of the defendant in a civil matter than anything else? Are we looking at those sorts of things?

Mr McGinness—We are looking at ratifying a multilateral treaty, a convention on the access to justice, which includes such a provision. I understand it is the practice of the Canadian government to enter multilateral conventions in this area rather than bilateral ones.

Mr HARDGRAVE—In relation to the sentencing inconsistencies between the outcomes and likely penalties given by a Thai court for a particular crime and the outcomes and likely penalties given by an Australian court, I am not sure if the death penalty is imposed as a port of call by the Thai courts, but are there any linkages by this agreement between Australia and Thailand as far as trying to get sentencing consistency—as we cannot get it between the states I suppose the answer is probably no—so that our nationals in trouble in Thailand are treated in a similar way to Thai nationals in trouble in Australia?

Mr McGinness—This convention is restricted solely to civil and commercial proceedings. Negotiation of criminal type penalties and agreements is a separate matter from the subject matter here.

CHAIRMAN—Thank you very much. We will now move to the amendments to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

[10.13 a.m.]

EMMETT, Mrs Louise, Director, Marine Section, Environment Protection Group, Environment Australia, 40 Blackall Street, Barton, Australian Capital Territory 2600

TUCKER, Mr Mark, Assistant Secretary, Sustainable Industries Branch, Environment Australia, 40 Blackall Street, Barton, Australian Capital Territory 2600

CHAIRMAN—Mr Tucker, do you have a short opening statement?

Mr Tucker—Yes, Mr Chairman. I would like to make a brief statement on the proposed removal of Australia's non-acceptance of amendments concerning phase-out of sea disposal of industrial wastes under resolution LC.49(16) to annexes 1 and 2 of the London Convention. On 12 November 1993, pursuant to resolution LC.49(16) of the 16th consultative meeting of contracting parties to the London Convention, amendments were made to annexes I and II to the convention to phase out sea disposal of industrial waste by 1 January 1996. The amendments prohibit such dumping as from 1 January 1996 and are legally binding upon acceptance by a party.

On 15 February 1994, a declaration was deposited for Australia with the International Maritime Organisation which stated the following:

Australia accepts the prohibition on the dumping of industrial wastes at sea from 1 January 1996 as envisaged under resolution LC.49(16) for all types of industrial wastes as defined by the resolution with the exception of jarosite . . .

The domestic sea dumping act was amended in June 1997 to give effect to Australia's acceptance of resolution LC.49(16) other than for the ocean disposal of jarosite.

On 1 November 1997, Pasminco, the only company in Australia covered by non-acceptance, introduced measures which no longer require the ocean disposal of jarosite. As a consequence, there is no longer a requirement for Australia to maintain its non-acceptance of this part of the convention. To formally remove this non-acceptance, treaty action is required to bring the amendments under resolution LC.49(16) into force for Australia. The treaty action involves the substitution of instrument of acceptance for Australia's previous declaration of objection, the 12 November 1993 amendments.

Subject to the agreement of parliament, it is proposed that Australia's instrument of acceptance to the 1993 amendments be deposited with the International Maritime Organisation in April 1998, to come into effect immediately upon deposit. The obligations of the acceptance of the 1993 amendments require Australia to ban the dumping of all industrial wastes by Australian vessels or in Australian waters or of waste loaded onto ships in Australian ports. The benefits of lodging an instrument of acceptance of resolution LC.49(16) with the IMO are that Australia will demonstrate that it now intends to fully comply with amendments to annexes I and II agreed to by the 16th consultative meeting

of contracting parties to the London convention. In this International Year of the Ocean, Australia will be seen to have taken a major step to reduce marine pollution. More importantly, Australia's southern ocean will no longer receive continuous tonnages of industrial waste. The outcome will be better protection of biodiversity and the marine environment.

A small amendment to the Environment Protection (Sea Dumping) Act 1981 is needed to remove the note to annex II relating to the cessation of jarosite dumping by 31 December 1997. This amendment will be attended to with other amendments to the sea dumping act in 1998. No further steps to implement the treaty action are required.

In terms of effects on business, as I have said, only one company has been actively depositing jarosite in Australian waters. The company ceased dumping this industrial waste on 29 October 1997 and surrendered their special permit to dump this material at sea on 28 November 1997, well ahead of the deadline of 31 December 1997. No further permits will be issued under the sea dumping act for the ocean disposal of industrial waste in Australian waters.

Let me finish by informing the committee of the consultation processes that we have gone through. The Commonwealth Minister for the Environment has written to the Prime Minister and all relevant Commonwealth ministers, informing them of the intent to submit a declaration of acceptance to the resolution. No objections have been received to the proposed treaty action. The Commonwealth Minister for the Environment has also written to state and territory environment ministers about the proposed treaty action. In response, each state and territory has agreed to the proposed treaty action. The treaty action will also be advised to the states and territories through the Standing Committee on Treaties' schedule of treaty action.

Greenpeace International, the International Union for the Conservation of Nature and Natural Resources, the International Association of Ports and Harbours, the Oil Industry International Exploration and Production Forum, the Central Dredging Association and other relevant non-government organisations have been kept informed of Australia's ocean disposal of jarosite on a regular basis through their participation in relevant meetings of the London Convention.

Australia announced the cessation of ocean disposal of jarosite at the London convention's consultative meeting in October 1997, which was attended by representatives of these organisations. In terms of public information, the Minister for the Environment issued a media release about the cessation of sea disposal of jarosite on 29 October 1997.

Mr ADAMS—Of the other countries that have had an exemption, how many have given up their exemption?

Mrs Emmett—There is only one other country that had an exemption and that was

Russia, and they have been urged to right that situation in this year, the International Year of the Ocean.

Mr ADAMS—I was told that Norfolk Island still pushes its garbage into the sea. Does that apply to this or does it come under domestic?

Mr Tucker—I do not know if you recall, but we appeared before the committee just before Christmas in relation to the 1996 protocol, and we mentioned that particular issue at that time. It is not covered by this particular part of the convention; it is covered by the 1996 protocol coming into effect. Under that protocol, there are still measures that permit that activity in small isolated island states.

Mr ADAMS—Thank you.

CHAIRMAN—On the question of the protocol, this committee will be reporting to the parliament on that. It is the ideal opportunity to dovetail this with that. We plan, at this stage, to table the report covering both—today and the December 1997 hearings—on 6 April. Senator Abetz, do you have any questions?

Mr McCLELLAND—I have one. Does this cover the pumping out of industrial effluent or the taking out by ship and dumping?

Mr Tucker—It is the taking out by ship; it is not the pumping from land sources.

CHAIRMAN—Thank you very much.

[10.20 a.m.]

ALLEN, Mr Kenneth Thomas, Assistant Commissioner, International Tax Division, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2600

TRIGG, Mr Greg Noel, Senior Taxation Advisor, Australian Taxation Office, 2 Constitution Ave, Canberra, Australian Capital Territory 2600

BEARDSLEY, Mr George Richard, Executive Officer, Department of Foreign Affairs and Trade, Barton, Australian Capital Territory

CHAIRMAN—We now turn to the amendments to the double taxation agreement with Finland. Welcome back, Mr Allen. A lot of water has flowed under the bridge since our hearing into the double taxation agreement with Vietnam. For the record, as a committee we are very pleased and very thankful to the ATO and to others for looking at these issues as a result of the Vietnam discussions. We are particularly pleased that you have resurrected the consultative group, and perhaps you might make some comments about that. Would you like to make a short opening statement?

Mr Allen—Certainly, Mr Chairman. This protocol with Finland amends in several minor respects the comprehensive tax treaty that was concluded with Finland in 1984. That 1984 agreement operates to avoid double taxation of the various categories of income flows between the two countries. That agreement applies only in relation to the income taxes of both countries and is typical of the tax treaties concluded by Australia with European countries during the 1970s and 1980s.

The amendments made by the protocol merely update the 1984 agreement to reflect certain changes made to the domestic income tax laws of both countries subsequent to 1984. The protocol was signed by the Treasurer and Finland's ambassador to Australia in Canberra in November 1997, and it was made publicly available at that time.

The protocol has been the subject of consultation with the ATO's tax treaty advisory panel, which includes representatives of the professional and industry bodies. The bodies represented are the Taxation Institute of Australia, the Institute of Chartered Accountants, the Law Council, the Australian Society of Certified Public Accountants, the Minerals Council, the Australian Bankers Association, the International Fiscal Association and the Metal Trades Industry Association. That panel has no difficulties with the protocol, and legislation to give it the force of law is expected to be introduced into the parliament some time this year. With your agreement, Mr Chairman, I would ask Mr Trigg to briefly outline its contents.

CHAIRMAN—Yes, please.

Mr Trigg—Basically, the protocol deals with four areas. It updates the taxes covered by the original agreement; it deals with the most favoured nation clause—it basically removes that most favoured nation clause; and it updates, for Finnish purposes, the elimination of double tax article. The main issue, though, and the one that brought forward the settlement of the protocol by correspondence was dividend taxation, and that is article II of the protocol.

Basically, the position with dividend taxation was that in 1987 Australia introduced an imputation system to remove one level of tax on company tax payments and, in 1990, the Finns also undertook a similar reform. When Australia introduced its imputation system, the aim was to achieve one level of taxation for shareholders in companies. As part and parcel of that reform, dividend withholding tax on dividends that had been taxed at the company level was removed by Australia. When Finland introduced its reforms, it did not remove that extra level of taxation at the dividend withholding tax level but it did indicate to us that it was prepared to do so on a reciprocal basis. We looked at their proposal. Obviously it was in accord with our own position at that stage—that there should not be a second level of taxation on non-resident shareholders—and we agreed to their position on that. The proposal is obviously of benefit to Australian firms operating in Finland, as it removes a level of taxation at the shareholder level.

The opportunity was also taken to update the list of taxes covered. This mainly adds two taxes: the corporate income tax, and tax withheld from interest at source. Finland had a corporate income tax when the original agreement was negotiated, but it was not known as a corporate income tax at that stage. The amendments just bring up to date the list of taxes.

The ‘most favoured nation’ provision is in the protocol to the current agreement. It provides that, if Australia is to negotiate a lower level of dividend withholding tax with another country, Australia go back to Finland and agree a similar provision with Finland. With the removal of dividend withholding tax on dividends, as achieved by article II of the protocol, there is no longer any necessity for that most favoured nation clause.

Finally, the elimination of double taxation article has been amended because Finland has essentially changed the way that it taxes incoming dividends into Finland. The updating of that provision causes Australia no problems either.

CHAIRMAN—Thank you. I think you have probably pre-empted a number of questions from the committee in that opening statement. For that we thank you, particularly in relation to the dividend withholding tax. Could I just take you back to the national interest analysis. I suppose this question is more for the Department of Foreign Affairs and Trade than anyone else. The NIA said in part that this is:

. . . another step in advancing the foreign and trade policy objective of strengthening ties with Europe . . . and encouraging Australian exporters to break into these rich and sophisticated markets.

I just wonder, has the agreement since 1984 achieved those goals? What are the major areas of bilateral trade between Australia and Finland and what is the level of two-way trade?

Mr Beardsley—Thank you, Mr Chairman. Currently the level of two-way bilateral trade for 1996-97 stands at \$A908 million in Australia's favour. The split is about \$600 million of Australian imports versus \$300 million of Australian exports. Major Australian imports are in the area of paper and paper board, telecommunications equipment, civil engineering equipment and mechanical handling equipment.

Our major exports are in the area of nickel ores, inorganic chemicals, telecommunications equipment and alcoholic beverages.

Mr BARTLETT—What about the relative levels of investment?

Mr Beardsley—As of 1996, according to the Bank of Finland, Finnish direct investment in Australia stood at \$17 million.

Mr BARTLETT—And Australian investment in Finland?

Mr Beardsley—Apparently we do not have any official figures on that.

Mr BARTLETT—Does that make it hard to calculate the net benefit or cost to Australia of the changes to withholding tax arrangements?

Mr Trigg—I think the fact that Finland is removing the withholding tax is obviously of benefit to any Australian firms that are currently operating in Finland.

Mr BARTLETT—Is there likely to be any cost in terms of a net reduction in revenue to the Australian Taxation Office because of these changes?

Mr Trigg—No there is not. As I said, when we introduced our imputation system, we removed a level of taxation at the shareholder level so that we had already forgone revenue in that regard for Finnish companies investing into Australia.

Mr BARTLETT—I would like to ask one other question just for my own interest. Article 1, section (b), the church tax in Finland—what does that constitute?

Mr Trigg—My understanding is that it is essentially a levy on the incomes of people living in a certain area and falling under the auspices of the local church.

Mr BARTLETT—So it is not a tax on the church?

Mr Trigg—No.

CHAIRMAN—As there are no further questions, Mr Allen, thank you for the evidence this morning. It is relatively straightforward and, as I said, on the dividend withholding tax you pre-empted a number of questions. We are pleased with that. I reiterate that we are very pleased with what has happened in terms of that advisory committee. We are aware of perhaps 10 or 12 of these double taxation agreements at various stages of development. It seems to this committee that that advisory committee, which, as you recall, became moribund until such time as we took evidence on the Vietnam agreement, has a very important role to play. I welcome the opportunity to talk to that advisory committee, and we hope that the good working relationships between this committee and the ATO and that advisory committee in particular will continue. We thank you.

Mr Allen—Thank you, Mr Chairman, and committee members.

CHAIRMAN—We will now move on to the extradition treaty with Paraguay. We might get the officials from Health and Family Services up at the same time. It might save time, because both are, I would judge, fairly minor amendments. I do apologise to Defence and others in relation to Bougainville. As always with parliamentary committee hearings, we do run a little over time, but we will try to get through this as quickly as possible.

[10.34 a.m.]

MEANEY, Mr Christopher William, Assistant Secretary, International Branch, Criminal Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

CHAIRMAN—We will deal with the Paraguayan treaty first. Mr Meaney, would you like to make a short opening comment on that?

Mr Meaney—Mr Chairman, I am delighted to be back once again before the committee. Basically this is a treaty similar to a long line of extradition treaties that have been before this committee. By way of background, cabinet has approved the negotiation of extradition treaties on the basis of an Australian model and compliance with Australian law. This is another one of those.

I suppose it is a good example of the amount of time it takes to negotiate treaties. I understand it has taken 11 years to get to this stage, principally because there was some lack of enthusiasm, I guess, at certain points in the process on the part of Paraguay. But we are pleased to say that it was signed towards the end of last year, and we are bringing it forward on the basis that it is in accordance with the model treaties, subject to some minor variations but nothing of any significance.

CHAIRMAN—Am I right in saying that there are some regulations to be made under the Extradition Act as a result of this?

Mr Meaney—Yes; that is the way the treaties are given force—by way of regulations under the act.

CHAIRMAN—But, again, quite mechanical?

Mr Meaney—Yes, exactly.

CHAIRMAN—The final question—I do not think we need to ask any other questions on this one—is on the extent to which states and territories were consulted. Did the states and/or territories have any comments to make, anything substantive to add, in terms of the SCOT process?

Mr Meaney—None that I am aware of. Basically, forthcoming extradition treaties are listed as part of the standard process and usually excite very little comment.

Mr ADAMS—Why does it take so long? Why did it take 11 years?

Mr Meaney—It took quite some time for Paraguay to get back to us on certain points of consideration.

Mr ADAMS—Right. You cannot give any other explanation? It just takes a long time?

Mr Meaney—You would need to address your comments to the Paraguayan authorities.

Mr ADAMS—Of course; I just thought you might have an insight into why that took place. Is there anyone there that we are going to bring back here?

Mr Meaney—There are no particular cases that are pending at this stage that I am aware of.

CHAIRMAN—They are known for long siestas!

Mr ADAMS—Nobody was paying anybody not to—

Mr Meaney—I should say that we have had our treaty with companion country Uruguay signed for quite some time. The ratification process is even longer than the negotiation process, it appears, so it could be some time before the treaty is actually brought into force.

Mr ADAMS—So another 11 years and we should have a stamp on it?

Mr Meaney—Perhaps.

Mr HARDGRAVE—I was wondering, just for the benefit of the committee, how many countries there are that we are not having these sorts of cooperative arrangements with, apart from Majorca.

Mr Meaney—We are not having?

Mr HARDGRAVE—Extradition treaties seem to me to be one of those good opportunities for people to be good international citizens and cooperate with the rest of the world. Are there many countries around the world that we do not have a treaty with?

Mr Meaney—We are certainly happy to provide the committee with a comprehensive list of those that we do have. It might be difficult to provide a list off the top of my head of those we do not have. It would be fair to say that we have most of the countries that extraditees are commonly sought from covered by way of extradition arrangements. There are certain countries that we do not have covered, but query, if somebody chose to live there, why you would bother to get them back—I guess would be the bottom line.

The other thing is that we do have certain countries that we are still in the negotiating process with. There can be issues of fundamental policy in the negotiating of

extradition treaties where you can reach something of a disagreement. The most significant one that we have of that ilk is in relation to reaching agreement with those countries that have the death penalty. That does stall negotiations for some time until you can reach an appropriate arrangement.

Mr ADAMS—Could you tell the committee which countries we do not have an arrangement with, in case we need to go somewhere?

Mr Meaney—That is the very reason, with respect, that I sought not to have to table that list.

Mr HARDGRAVE—I suspect that Mr Skase already has that list.

Mr Meaney—I should reiterate that we do have an extradition treaty with Spain.

CHAIRMAN—Bear in mind that it is a formatted type of agreement. We now move on to the Health Services Agreement with Malta.

[10.40 a.m.]

BURNESSE, Mr Mark, Director, Medicare Eligibility, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory 2061

CHAIRMAN—Mr Burness, do you wish to make a short opening statement on this?

Mr Burness—Thank you, Mr Chairman. There are two fairly minor technical amendments being made to the 1988 treaty. There was an exchange of letters on 27 August 1997. There has been some ongoing consultation with the states in the terms of the changes that are being made to this treaty, and they go back as far as August 1996, May 1997 and February 1998; so there has been a fairly lengthy, ongoing process of consultation on that issue.

To our most recent letter, indicating that we had the matter before the committee and we were moving forward to implement the changes, we did get a reply from the state of Queensland. All of the issues raised did not relate to this treaty specifically; they were more setting out their views on the arrangement and the fact that they agreed that the Commonwealth should negotiate these treaties and that they were interested in exchanging data. We have written back to them, agreeing that we are more than happy to cooperate in that respect. They also sought some clarification in relation to the offsetting circumstances of the agreement in terms of the costs, and we have responded to them in terms of our previous discussions before this committee on that issue.

CHAIRMAN—We dealt with a similar one for Ireland in our 11th report. Is there anything different between that one and this one? Is it generally a formal—

Mr Burness—Generally, no. The Irish agreement was a completely new agreement. The significance of this agreement is that it has been in place since 1988 and these are things that have been operating actually in the agreement all the way through in one case, and since 1993 in the other case. These are, therefore, technical amendments to bring the agreement up to date, as it is.

CHAIRMAN—But the general principles of this and the Irish one are the same?

Mr Burness—Yes.

Mr ADAMS—What takes place to inform Malta students who may be studying in Australia that they have to get access to their own health cover?

Mr Burness—When they obtain their visa, a fairly detailed document is provided to them in terms of what they are required to do to enter Australia. One of the aspects in that documentation about obtaining their visa, et cetera, is the aspect of the cover that they

need to take out. They actually obtain it in Malta and they pay for it in Malta.

Mr ADAMS—How many Maltese visitors use our public health system per year?

Mr Burness—I am happy to give the committee the numbers that we have got recorded on the system. I did not bring that with me, but about 8,500 Maltese come to Australia—and vice versa, with Australians going to Malta.

Mr ADAMS—You are telling the committee that it is about equal and that there will be a square-off of them using our public health system and Australians using their health system.

Mr Burness—On average utilisation, yes; that is correct.

CHAIRMAN—Bearing in mind that there are more people of Maltese origin in Australia than there are on the island of Malta, it is not unreasonable for there to be a two-way traffic.

Mr Burness—That is right.

CHAIRMAN—There is a lot of continuing family involvement. Off the top of my head, I would have thought that there would have been compensating numbers; and 8,000 out of 350,000 is roughly the number of people we have of Maltese origin in Australia.

Mr Burness—Those numbers are about right.

CHAIRMAN—As there are no other points, we thank you very much: this has been short and sharp. We now move on to the monitoring of Bougainville.

[10.44 a.m.]

BEHM, Mr Allan, Head, International Policy, International Policy Division, F-1-01, Department of Defence, Canberra, Australian Capital Territory 2600

JOSKE, Colonel Stephen, Commander Land Command Artillery, Land Headquarters (Army), Victoria Barracks, Oxford Street, Paddington, New South Wales 2021

PROCTOR, Mr Murray, Assistant Director General, Papua-New Guinea Branch, AusAID, GPO Box 887, Canberra, Australian Capital Territory 2601

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CHAIRMAN—Thank you very much for appearing, and I do apologise that we are running half an hour over time. Under the circumstances, we have done reasonably well this morning. Before I invite both the Department of Defence and the Department of Foreign Affairs and Trade to make a short statement, on behalf of the committee I take the opportunity to thank Colonel Joske for coming along this morning. I understand you have been on leave. We were very keen to have you come along this morning, and we thank you very much for taking the time away from your leave to come in and, hopefully, fill in a few gaps in terms of the comments on this particular agreement. Do you have any comment on the capacity in which you appear before the committee?

Col. Joske—I was commander of the first contingent to operation Bel Isi, and chief of staff of the Truce Monitoring Group.

CHAIRMAN—Thank you. We now move to opening statements, from Foreign Affairs first and then from Defence.

Mr Ritchie—It is a great pleasure to be here to present the agreement for the committee's consideration. As you will be aware, on 10 October last year, the parties to the conflict on Bougainville held a second meeting at Burnham military camp near Christchurch in New Zealand. That second meeting resulted in agreement and the signature of a truce, which was to apply until 31 January 1998. The truce was to be monitored, with the agreement of the parties, by a neutral Truce Monitoring Group made up of Australia, New Zealand, Fiji and Vanuatu.

The treaty that is for consideration by the committee provides the legal framework for the activities of the Truce Monitoring Group and the participation of our personnel and other personnel in the Truce Monitoring Group. It was necessary to finalise the agreement and for it to enter into force as soon as possible in order to provide a legal basis for that

activity. In fact, the agreement was signed on 5 December last year, and the main body of the Truce Monitoring Group was deployed to Bougainville on 6 December last year, so it was a matter of some urgency. I greatly appreciate—as I know the minister does—the committee's understanding in that regard.

We see the agreement as signifying a major step in the Bougainville peace process. It has brought a measure of stability and order to Bougainville which the island has not enjoyed for many years. The Truce Monitoring Group has performed its task very well and has played a key role in defusing tension on the island. The role of the monitors—and we have 19 civilian monitors and we provide the deputy leader of the Truce Monitoring Group, as well as the ADF personnel—is to monitor the truce, to provide information to Bougainvillians about the Truce Monitoring Group, and to promote and instil confidence in the peace process. Our assessment is that that has been outstandingly successful.

As I mentioned before, the first Truce Monitoring Group was scheduled to withdraw from Bougainville on 31 January. At a meeting at Lincoln University near Christchurch in late January, the parties agreed to extend the truce until midnight on 30 April this year, when it will be replaced by a permanent and irrevocable cease-fire.

Prime Minister Skate wrote to the Prime Minister and the other parties to the treaty on 29 January, officially requesting Australia's involvement in extending the Truce Monitoring Group's term in Bougainville. The extension was from the expiry date, 31 January, until no later than 30 April. The Prime Minister replied that the government was happy for Australia to continue its participation in the Truce Monitoring Group and to agree to the extension of its term in accordance with article 29(3) of the agreement.

We are now discussing with the parties—in fact, I have come this morning from a meeting of the parties here in Canberra—the replacement group for the Truce Monitoring Group. Under the Lincoln agreement, that is to be called the peace monitoring group and is to monitor the cease-fire which takes effect as of midnight on 30 April. We expect the parties this week to settle on some of their preferences for that and to talk to us and others who will be making major contributions to that group in the future. Thank you, Mr Chairman.

Mr Behm—This is another area in which the Department of Defence works very closely with the Department of Foreign Affairs and Trade in the elaboration of the processes here. This treaty represents some very important Australian strategic goals of which, of course, most particularly is the maintenance of strategic stability within the Pacific region where we can achieve that. It is important to note that this treaty has done much to move Papua New Guinea back to a position of effective stability with respect to Bougainville.

Defence's involvement in this particular matter has been both in the negotiation and implementation sides and mostly in the provision of infrastructural support. Defence,

as you would know, has people on Bougainville—I guess we will get to talk about that in a moment—but we have also offered fairly considerable support to the process of getting to where we have got to. This has been mostly through the RAAF airlift capability, which has brought many of the delegates into New Zealand for these negotiations. It is worth the committee's while, I think, to know that we have been doing that.

CHAIRMAN—Obviously, we will need to explore just one or two things on the operational side. But, before we do that, let me just seek clarification of a few points. You are saying that the TMG, on 30 April, will finish?

Mr Ritchie—Finish.

CHAIRMAN—Does the transition from the TMG to the PMG—peace monitoring group—entail a further agreement on a bilateral or trilateral basis?

Mr Ritchie—I would imagine that the existing agreement would continue to apply but will probably have to be modified in some respects. That will depend a bit on what sort of shape, role and structure the parties agree on for the peace monitoring group. My guess is that we will probably have to amend the agreement further as a result of that.

CHAIRMAN—In effect, what you are saying is that the TMG will just change name. What are the differences around the edges?

Mr Ritchie—That is a point that is under discussion this week amongst the parties. The Truce Monitoring Group, in its current form, current deployment and current range on Bougainville, has actually, I think, done a great job. There are some very sensitive issues yet to be negotiated amongst the parties as a result of the Lincoln agreement. My own personal view is that it would be a problem to, or it would be highly desirable not to, change the actual essential structure and role of the Truce Monitoring Group very much for the foreseeable future after 30 April.

Having said that, the parties may decide otherwise. It is really in their hands, to some extent. I know that the Bougainville Revolutionary Army, the Bougainville interim government people—the Papua New Guinea government has agreed to this—would like some form of UN monitoring role as part of that exercise. We and the New Zealanders will also be talking about the relative sizes of our contributions to that and, for example, who leads, what the personnel should be, who provides the helicopters, and all those sorts of issues, over the next while.

But, in terms of its role and its tasking, I think it would be highly desirable, at least for the immediate post-30 April period, for the TMG not to be very different from what it is now.

CHAIRMAN—Does DFAT agree that perhaps, whilst the TMG period has been

very important and quite successful, the hard work is about to start?

Mr Ritchie—Absolutely, Mr Chairman. I actually think that the parties to the Lincoln agreement—and it is a very significant agreement—decided to, firstly, cement the truce by having a permanent and irrevocable cease-fire. The terms of that include, for example, the question of surrender of weapons on the island and the disarming and removal of the PNGDF from the island or, at least, some form of withdrawal of the PNGDF and other security forces from the island. It also provided for the establishment of a Bougainville reconciliation government, through elections by the end of this year; the establishment of a local police force in Bougainville; and the restoration of law and order on the island.

Every single one of those issues is a very difficult issue. During the period that they are being negotiated, leading up to a second leaders meeting which they are supposed to have before the end of June on Bougainville, I think we see a need for a degree of stability in providing that kind of comfort blanket and presence that the Truce Monitoring Group has provided up till now.

CHAIRMAN—There was a seminar held in New Zealand over the weekend, which, in fact, was attended by the secretary to this committee in respect of the committee's role in treaty making processes. His feedback to me this morning was that some of the mood of that meeting, albeit that it was academics and not governmental, although I think there were government people there, was that the issue somewhat turns on Ona and the attitude of Ona to the whole process. Do you have a view at this time?

Mr Ritchie—Mr Chairman, I think Francis Ona is an important factor in the process; I do not think it turns on Francis Ona. I think that tends to be overstated in the exercise. Francis Ona remains the leader of the Bougainville interim government, the Bougainville Revolutionary Army. His presence in the process would immensely enhance it. So far, he has stood out from the process.

There is a lot of speculation, however, as to whether he is in fact standing out from the process because he opposes it, or simply because this is not the right time to come forward and that it is an ace in the hole, as it were. I think that he has kept himself—from the information we have and feedback through the Truce Monitoring Group—pretty closely informed about what is going on. From time to time we hear suggestions that he is opposed to it, or suggestions that he is actually in favour of it. I think the bottom line is that, at the moment, he is neutral on the subject and he has let everything go ahead.

I have one other comment on that. What is happening on the ground in Bougainville—the reality—is that people are proceeding whether Francis Ona agrees or not. Particularly in the south of the island and in the north of the island, the mood of the population—and Colonel Joske can add to this a lot more than I can—is one strongly in

favour of peace. And they are going to hold their leaders to it. In the south of the island in particular they have just gone ahead and created realities on the ground that, whether the leadership agrees or not, the peace process is proceeding in the south.

CHAIRMAN—Just before we get onto the operational side—we will be very pleased and very interested to hear what Colonel Joske has to say—I want to go back to the TMG-PMG transition and the possibility of UN involvement. Is that a likely new dimension to the PMG arrangement?

Mr Ritchie—I think what is likely to happen, Mr Chairman, is that the parties agreed in Lincoln to two things. Firstly, that they would like to have UN endorsement of the peace process that is under way. I know the Papua New Guinea government is proceeding quite quickly to look at ways in which they can get the UN to issue a statement endorsing the process, which I think is important; and we are very happy to assist with that.

Secondly, I think the other thing that they are looking at is providing a small number of UN monitors who can keep track of the peace process and report to the Secretary-General from time to time. I think they are only looking at a very small number of monitors—somewhere in the order of four or five. I do not know that it will actually affect the peace monitoring group which, on 1 May or from midnight on 30 April, will probably still contain 200 or so Australians and New Zealanders, Fijians, Vanuatuans, et cetera.

CHAIRMAN—You have made the point before that these issues are still being canvassed and discussed. But is it likely that the PMG will be done under the imprimatur of the UN or not?

Mr Ritchie—No, Mr Chairman. What the UN is most likely to do is say the regional countries have done a good thing and they would like to give a big tick and say, ‘Keep on doing it, and we are prepared to assist in small ways like keeping track of it and monitoring it.’ In fact, almost certainly the UN will say, ‘You guys keep up what you are doing.’ I think that is the way it will work.

Mr McCLELLAND—I was going to ask Colonel Joske: what is the mood on the ground among Bougainville civilians? In that context, what is the risk to Defence Force representatives? Is it practical to remain unarmed?

Col. Joske—Thank you, Mr Chairman. It is my pleasure to be here—

CHAIRMAN—If I could just interrupt. I forgot to make another point in terms of this meeting in New Zealand, and I emphasise that it was a view of some there, about the inevitability of the group—whatever it might be—having to be armed. I would be interested in Colonel Joske’s reaction to that.

Col. Joske—Let me deal with that issue first, Mr Chairman. Clearly, the decision to go unarmed was the best decision that could have been made in the circumstances. As the commander of the Australian forces, I would admit to you that I had some concerns, but those concerns had eroded completely after the first week of being on the ground on Bougainville.

That really was because of the conversations I had with all the Bougainville Revolutionary Army leaders. They said that it was the most powerful gesture of peace that we could have offered the Bougainvillean people. They clearly took this gesture and turned this into their responsibility for our safety. Certainly at all the regional meetings that we were having with them, we stressed the point that we were there to look after their truce. We were there on their terms and they had a responsibility to look after our safety because we did come unarmed. Fortunately that proved to be very successful. I can unequivocally say that it was a very good decision and, in fact, so good that there are a lot of people taking kudos for making that decision.

Mr Ritchie—Mainly the Department of Foreign Affairs and Trade.

Col. Joske—I was actually going to suggest people across the Tasman. In terms of the feeling on the ground, one of the most rewarding experiences was to see the fear and the uncertainty, the mistrust and the suspicion of the Bougainvillean people quickly evaporate in the first two weeks. The progress made over the three months was nothing short of staggering and exceeded our expectations tenfold. The feeling on the ground is now so powerful that the leaders themselves are under pressure. It is terrific to see this ground swell of public opinion putting pressure on the leaders. The leaders now have one eye behind them, worrying about whether they are bringing their people with them, and one eye into the future, trying to guide the future of Bougainville. I think that is terrific. There can be no better feeling for a soldier than to go unarmed and to have that atmosphere of peace reinforced and sent back to us.

CHAIRMAN—Would you like to go into the operations in a little more detail? Examples might be some of the lessons that were learned and some of the things that perhaps were done well but could have been better and, in terms of the operational continuation training of the ADF, morale within the ADF, the people there and the relationship with the civilian participants. Could you make some comments on all of that?

Col. Joske—Certainly. First of all this is a terrific opportunity for the ADF to get into what I think is going to be the modus operandi for many defence forces around the world. That is to get into peace operations rather than conflict in the traditional sense of the word. This was an opportunity for me, as the commander, to see the way in which the Australian forces quickly adapted to the fact that they were in peace operations. They professionally conducted their task in terms of all the lessons that we learned in Malaya. This effectively was a hearts and minds operations. The whole Truce Monitoring Group got together and quickly understood that success was going to be based on gaining and

building on the trust of the people.

In terms of the treaty, I know that there are six main tasks of the Truce Monitoring Group but they can be encapsulated into four main areas. The first one was to establish the environment of peace and, again, there are no secrets to that—that is just hearts and minds. It is out there pressing the flesh with a broad smile and gaining the confidence of the people. Given the ADF involvement in Bougainville that was not an easy task. But, again, it was very gratifying to see the way in which people responded to the Anzac traditions and the Anzac standards and professionalism.

The second one was that we had to establish and maintain the confidence of the people. Again, I can only stress that that is all about presence in as many locations around Bougainville as we possibly could. The establishment of the four truce monitoring teams in regional areas around Bougainville was a model of success because those people had the mobility to get around and see the people.

The third aspect of the Truce Monitoring Group was to conduct an information campaign. I am sure you are all aware of the way in which the rumours and the propaganda could easily have destroyed the Truce Monitoring Group early in its mandate. I am talking there about issues such as the Australian forces were working for Sandline and that we were employees of BCL. Unfortunately, those sorts of issues in the environment of Bougainville spread very quickly and were very destructive. Propaganda is probably not the right word in this environment but in the traditional sense of the word we are talking about information warfare to get that message out to the people. Again, there can be no substitute for having people on the ground doing that job.

The fourth way in which the Truce Monitoring Group has established its mandate, and been successful, is that we took every opportunity we could—especially the hierarchy of the Truce Monitoring Group—to shape the minds of the Bougainvillean leaders. Each time we met with them we tried to direct their thought processes to what was going to be the strategic end states of Australia and New Zealand.

The morale of the force was extremely good. In fact, it can be put down to professionalism and levels of training. But I do not think there is any way that we can shirk away from the fact that there was no alcohol on Bougainville and that had a major influence. I think it is the first time that an Anzac force has been together overseas where we have not had a beer but we also had no disciplinary action from 380 Anzac soldiers. That is great testimony to their professionalism.

CHAIRMAN—It just increased their thirst!

Col. Joske—Certainly.

Mr ADAMS—You must have come across some difficulties that we can put down

on the record for the future. What were some of the difficulties that you saw that we might do better if we go through this exercise again?

Col. Joske—To be honest, there were not too many problems from the tactical level—and I speak as the commander at the tactical level—in terms of the way in which the Australians conducted themselves and the treaty worked for the peace process. I suggest that one of the things that we could have done better was to have made sure that the committees that the Truce Monitoring Group had to report to were established earlier. In the first instance, the Peace Consultative Committee was not established until right at the end of the first rotation. I think the progress that they have made after just one meeting—part of the Peace Consultative Committee are in Canberra now—demonstrated that, if they had formed a little earlier, it would have made our task a lot easier. So the Peace Consultative Committee was part of the treaty and there was a committee on top of that, the Truce Steering Committee. Again, that committee met late in the mandate and, for obvious and very good reasons, they really could not have met before the Peace Consultative Committee had met. But these two committees would have played a very important role and I think they will continue to play a very important role in the future.

Mr ADAMS—So our personnel under your command accepted that they were there unarmed doing a peace role, without any issues?

Col. Joske—I can honestly say that there were no issues from the soldiers. As the commander, I reiterate that there were some concerns early on. But, by the time the main body deployed to Bougainville, I could stand in front of the Australian contingents and tell them that it was the best decision that they had made and that their force protection—that is, the protection of those lives on Bougainville—was actually enhanced by being unarmed. We were able to take certain measures and one of those was the securing of the Loloho site, which was where the logistics base was established. To have that firm foot on the ground where we could extract the force, if it was ever going to be necessary, again gave us a degree of confidence that I relied on.

CHAIRMAN—Just on the Defence Force and civilian relationship, and how AusAID was linked into this, could you give us a breakdown of the composition of the TMG in terms of Defence Force people, Australian and New Zealand civilians and where those civilians came from?

Col. Joske—At the height of the numbers of the Truce Monitoring Group, there were 378 personnel all up. That consisted of 217 New Zealanders, 124 ADF members, 20 Australian civilian monitors, 10 Fijians and seven from Vanuatu. Those figures were reduced over the period of the first six weeks of the Truce Monitoring Group mandate. The figures were reduced because we were established to provide the engineering support that was needed to get established. As we became more aware of what was required to successfully complete our mandate, we reduced the numbers from 378 to 251 over that period.

In terms of the composition of the civilian monitors, they came from a number of departments. Again, I was concerned about the locations that these civilian monitors went to early on in the mission but, fortunately, they were extremely successful in producing the environment of peace that we were looking for. To send unarmed soldiers is one thing but to send unarmed civilians into this situation was again a very powerful message that we reinforced to the hierarchy on Bougainville. You should be aware that those civilian monitors included women. Again, that was a very powerful gesture that was picked up on by the leadership—that, if we were prepared to send our women unarmed into this environment, we were committed to peace; we did not have any tricks and we were there for the long haul.

CHAIRMAN—On that, were those people AFP or AusAID? I am interested in the link with AusAID, and Murray may want to make a comment in due course.

Mr Ritchie—They came from all agencies, basically. There were some women in the ADF team as well. But, amongst the 85 civilian monitors, we had about 20 women including the deputy leader. There were a number of DFAT women monitors, some AusAID women monitors and some Defence women monitors. In fact, we have one in attendance today, Sari Sutton.

One of the most important things, and I am glad Colonel Joske raised this, about having women is that Bougainville is a matriarchal society. I might say that there was quite a degree of resistance from some quarters to having women monitors. We found very quickly that the women were being invited into the villages by local women's groups to talk to them about peace and so forth. In fact, by the end of the first rotation, Brigadier Mortlock, who was the overall New Zealand commander of the TMG, was complaining to me when I was up there in February that we did not have enough women and that we had not sent enough in the second rotation. It proved to be very successful.

Mr Proctor—As David Ritchie has pointed out, the actual composition of the Truce Monitoring Group is quite varied and there are a small number of AusAID people. The most direct link with Australia's aid program has been the support through the program for the peace process, including support for various matters to do with peace talks, and the transport and add-on costs of the civilian component for the TMG.

Because of the TMG process, and the establishment of the Peace Consultative Committee, the ability to undertake rehabilitation works in Bougainville is infinitely better than it was 12 months ago. There are a number of links between general Australian aid program work in Bougainville and the TMG. The most specific ones are some participants from AusAID and the funding of some of the arrangements.

Mr HARDGRAVE—As the hearing has progressed, the number of questions I had has been whittled to zero. I would like to say to Colonel Joske, if he is an example of those who led by example in Bougainville, 'Thank you very much for the wonderful job

you have done there.'

Col. Joske—Thank you very much.

CHAIRMAN—Are there any final comments, particularly at the operational level, Colonel Joske, that you want to elaborate on?

Col. Joske—The only thing I would do is reiterate what Mr Ritchie has said about the period of consolidation. While we should be pleased about the success of the Truce Monitoring Group, I do not think we can underestimate the importance of the job ahead of us. Clearly, the feeling on the ground in the initial month was that this was going to be another false start for the peace on Bougainville. We need to make sure that we have a long-term focus and I agree that the hard work is still to come. We need to maintain the pressure on the leaders to make sure that they do not deviate from what the people on the ground have asked of them—that is, that they do not pick up weapons again. I can assure you that we do need a period of consolidation now. In Melanesian time frame, this has been just a nano-second. We really need to think in those terms.

CHAIRMAN—Allan, did you want to make any final comments?

Mr Behm—No, thank you, Mr Chairman.

CHAIRMAN—David?

Mr Ritchie—Only to agree entirely with Steve Joske. I think it will be a long-term process. Three months or four months is nothing in a Melanesian time frame. Hopefully, we will be reducing our presence as time passes, and as the local authorities and the constituency in structure and services build up. But I fear that we will be there for some time.

CHAIRMAN—Thank you for the evidence this morning. It has been very beneficial. It will help us in our recommendation to the parliament. I am particularly interested in the transition from TMG to PMG and no doubt we will watch that develop over the coming months. I also take the opportunity to once again thank Colonel Joske. I am sure it was an interesting and quite demanding posting up there for you. In general terms, once again I pay tribute to the professionalism of the Australian Defence Force and also, importantly, the civilian element in this case. I think it is another example of how the ADF, in conjunction with New Zealand and our other South Pacific partners, can work together not only as defence forces but also in a combined civilian, defence force contingent.

Resolved (on motion by **Mr Hardgrave**):

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

Committee adjourned at 11.17 a.m.

