COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 26 May 1998

CANBERRA

Monday, 22 June 1998

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Ms Jeanes
Senator Neal	Mr McGauran
Senator O'Chee	Mr Tony Smith
Senator Reynolds	

For inquiry into and report on:

Treaties tabled on 26 May 1998.

WITNESSES

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Present

Mr Taylor (Chairman)

Senator Cooney	Mr Adams
Senator Murphy	Mr Laurie Ferguson
	Mr Hardgrave
	Mr McClelland

Committee met at 9.08 a.m.

Mr Taylor took the chair

CHAIRMAN—Before we start the hearing, would somebody like to move that we accept two submissions—one from TASDEC dated 19 June and one from the International Christian Peace Movement dated 16 June? Also, we need to accept submissions Nos 5A, 9A, 11A, 11B, 11C, 11D, 14A and 23 to 28 for adoption. Thank you.

Thank you very much, ladies and gentlemen. I apologise for being a few minutes late; politicians obviously get up late on Monday mornings!

BALKIN, Dr Rosalie Pam, Assistant Secretary, Office of International Law, Public International Law Branch, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600

GRIFFIN, Mr John Jerome, Director, Conventional and Nuclear Disarmament Section, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

KLUGMAN, Ms Kathy Kay, Landmines Desk Officer, Arms Control and Disarmament Branch, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

STOKES, Ms Deborah Anne, First Assistant Secretary, International Security Division, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

GILLIES, Ms Alison, Assistant Director-General, Africa and Humanitarian Relief Branch, AusAID, 62 Northbourne Avenue, Canberra City, Australian Capital Territory 2601

FENTON, Lieutenant Colonel Glenn Owen, Staff Officer Grade One, Manoeuvre Support, Combined Arms Training and Development Centre, Tobruk Barracks, Puckapunyal, Victoria

GIBBONS, Lieutenant Colonel Phillip Ross, Acting Director of Preparedness, Army, Department of Defence, Canberra, Australian Capital Territory 2600

JACKSON, Ms Adrienne Mary, Director General, Major Powers and Global Security, International Policy Division, Australian Defence Headquarters, Russell Offices, Canberra, Australian Capital Territory 2600

KELLY, Lieutenant Colonel Michael Joseph, Staff Officer Grade One, Directorate of Operations and International Law, Russell Offices, Canberra, Australian Capital Territory 2600

CHAIRMAN—Before I invite you to make some opening comments, let me just

say a few words about this matter. We are dealing with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. Most of you have appeared before this committee before. This is not a new subject for this committee. It is something that came up in terms of protocol II to the inhumane weapons convention. It featured in our report No. 5. We have come the full circle since that recommendation to government which initially was not accepted.

Subsequently, of course, we had Oslo and Ottawa, and the government in its wisdom decided to comply and to sign. For that I think everybody, not only in this country but right around the world, should be grateful.

In the last sitting week we tabled our 14th report in 14 months. We are getting snowed under with the workload. We will be making some comments in an omnibus report, which will be report No. 15, to be tabled, hopefully, in a couple of weeks time. With this one we will need to talk with NGOs. Sister Pak Poy, as I understand it, is overseas at the moment. At the very least we will want to talk to her and other NGOs about this particular subject of antipersonnel landmines.

What I am saying is that we will not be reporting finally on this particular convention until we have in fact carried out our discussions with NGOs, even though we may not meet the 15 sitting day remit to the parliament. Under the circumstances, I think that is appropriate. Would somebody like to make a short opening statement?

Ms Stokes—I will begin with some comments reflecting views from the Department of Foreign Affairs and Trade, and then Adrienne Jackson from the Department of Defence will speak.

Responding to widespread community concern in Australia and internationally about the humanitarian and economic crisis brought about by the indiscriminate and irresponsible use of landmines, the government announced on 15 April 1996 that it supported a global ban on the use, transfer, production and stockpiling of antipersonnel landmines. At the same time, the government unilaterally suspended the operational use of landmines by the ADF. Since then, building international support for an effective global landmines ban has been and remains one of Australia's key arms control objectives.

Mr Downer signed the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction on behalf of Australia when it was open for signature in Ottawa on 3 December last year. In so doing, Australia joined over 120 other countries forswearing the use, production and transfer of antipersonnel landmines and will also destroy its stockpile, consistent with the provisions of the convention.

Members of this committee will certainly be aware of the scale of the statistics depicting the extent of the landmine problem, so I will not repeat them here. The bottom

line for Australia in reaching its decision to join the Ottawa convention was that, because landmines are so commonplace, so deadly and have been so widely and insidiously misused over recent decades, the only sane humane response was to eliminate them. The antipersonnel mines convention goes a considerable way towards building a global norm against the use of landmines.

Important as the Ottawa convention is, however, it is not the solution to the global landmines problem. While efforts directed at universalisation of the treaty over the next few years will be important, and could well bring Ottawa convention signatories to a numerically high figure, it is our judgment that a hard core of countries that are central to the global landmines equation—that is, major traditional users and producers of landmines—will not be susceptible to such pressure.

The Australian government is determined therefore to use all available means, including the Ottawa convention, to build a lasting solution to the global landmines problem. We are continuing our efforts in the Conference on Disarmament and other fora to ensure that all countries are brought into the process of finding a lasting, effective solution.

Discussions over the past year, including those under way in Geneva under the leadership of Australia's Ambassador for Disarmament as the special coordinator on landmines, have suggested to us that there may be sufficient will among the membership of the Conference on Disarmament to negotiate a ban on the transfer of landmines.A ban on transfers which included major traditional producers of landmines would certainly complement the Ottawa convention by bringing non-signatories some way towards the norm established by that treaty.

I refer briefly to the need for assistance with mine clearance, mine victims and rehabilitation to deal with the immediate threat posed by the millions of landmines currently in the ground and those which will be laid in the future, although we hope that will be at a lesser rate as a result of the convention. While the convention places no legally binding requirements on state parties in this area, the government remains strongly of the view that mine clearance and related activities are an essential and inseparable element of the solution to the global landmines problem. Australia has for many years been a significant contributor to this important work. Mr Downer announced in December 1997 that Australian funding for mine clearance and associated activities was expected to reach more than $100 million by the year 2005.

In conclusion, we will not even begin to see a lasting end to the suffering caused by antipersonnel mines until all countries make a legal commitment to never use these weapons again. In providing a basis for a strong international norm against landmines, the convention is a good start and deserves Australia's strong support. The results of the broad public consultation we have undertaken on Australian ratification of the convention were not at all difficult to read. From school children, to development NGOs, to church groups

and returned soldiers, all who took up the opportunity to have their say on ratification were fully and enthusiastically supportive of the earliest possible ratification.

Ms Jackson—Defence recognises that the indiscriminate use of antipersonnel landmines has caused massive and ongoing human suffering as well as widespread social and economic debt dislocation. For this reason, Defence has played a constructive role in the negotiation of the Ottawa treaty. This treaty is but one step towards achieving an enduring solution to the landmine problem by seeking to eliminate its use as a weapon of war.

As we have said before in hearings before this committee, the Australian Defence Force has not been part of the problem with regard to the indiscriminate use of landmines. The Australian Defence Force has played a role in helping rid the world of antipersonnel landmines through our de-mining activities. We have undertaken a number of operations in countries which are particularly suffering from the indiscriminate use of APL, including Afghanistan, Mozambique and Cambodia.

As committee members know, antipersonnel landmines did represent a significant tactical capability that had a place in ADF plans for the conduct of military operations. In the post-Ottawa environment, Defence now has to look toward developing alternative technologies to take the place that APL played in denying terrain and forming protective obstacles. This will involve a significant research and development cost. Any such alternatives will, of course, comply with the terms of the international arms control treaties to which Australia is a party, including the Ottawa treaty.

Defence is now undertaking steps to change instructions and publications and the ADF doctrine relating to antipersonnel landmines. In this regard, we are developing doctrine to reflect the changes in the operation and tactical environment and are ensuring that all ADF personnel are aware of the relevant Australian obligations and responsibilities as a state party.

The ADF will also be responsible for the destruction of stockpiles of antipersonnel landmines within the period of four years after the entry into force of the treaty for Australia in accordance with article 4. In this regard, we are undertaking work to determine the most efficient and safe disposal method, to account for the cost of destruction of the stockpile, including stock write-off, and to provide personnel for the process.

The work to stop the use of antipersonnel landmines has only just begun with the Ottawa treaty. We support the comments of our DFAT colleagues about pressing on with work in the conference on disarmament to negotiate a ban on the transfer of antipersonnel landmines and, ultimately, their manufacture.

Until all countries sign and ratify the treaty, and the manufacture and trade in landmines is stopped, the indiscriminate use of landmines will continue with innocent

people suffering the most. Defence is prepared to bear the cost of the loss of this capability in the hope that it will lead to an enduring solution to the legacy of the misuse of landmines.

CHAIRMAN—It is a worldwide tragedy from a personal point of view. I will be going to Cambodia next month as part of the observer group—although that has not been announced yet. I will be tiptoeing. I hope that we do not tread on too many of these things, as we move around the country in the lead-up to their election.

Deborah, I ask you to make some comments in two areas. One is in relation to John Campbell's work in Geneva under the CD umbrella. It was first announced by the foreign minister at the end of January, as I recall, in the CD opening address. What progress has John Campbell made since then? There are two, aren't there? There is the fissile material cut-off and antipersonnel landmines, but we only need to deal with the second one this morning. I wonder if, to start off with, you can make some comments as to how much cooperation or lack of cooperation he has had within the CD at this point in time? The second issue is Australia's declaratory statement in relation to this. It gets into the operational area for ADF and ADF might have some comments about that as well. Could you just cover those two?

Mr Griffin—The aim of pursuing both antipersonnel landmines and the fissile material cut-off treaty was announced by Mr Downer at the beginning of the first part of the CD session this year. The CD is bedevilled by a range of political conundrums which we have talked about before. It was only at the very end, on the last day of the first part of this year's session of the CD, that John Campbell was reappointed as special coordinator, so the substantial work he has been undertaking has been in the intercessional period and this second part of the session, which will shortly end—if it has not ended already.

Basically, John Campbell has been making good progress. There does seem to be more willingness than there was last year to engage on this issue. There are a couple of factors there. One is the fact that the Ottawa treaty has been concluded, whereas last year it was work in progress. One of the key obstacles being faced by proponents like us of work in the CD on landmines was a sort of purist approach on behalf of the sponsors of the Ottawa treaty—that is, no sideshow in the CD was going to be allowed to distract attention and momentum from the Ottawa process.

That mind-set is still there to a certain extent. There is suspicion on the part of the Ottawa sponsors that anything in the CD might somehow undermine the absolute standard created by the Ottawa treaty, and detract from it and create an alibi for those who do not want to sign the Ottawa treaty.

We take a pragmatic approach which is quite different—that is, that these hard-core countries are not going to sign the Ottawa treaty. The track record for shaming countries

like China into doing things that they do not want to do is not encouraging. Therefore, we want to create a space in the CD where those countries can move some way towards the absolute norm created by the Ottawa treaty, so that the subject does not go off the boil.

It is a warning we gave to the Ottawans throughout last year—that is, that if they make this make or break effort, it will succeed up to a point, but then will become last year's issue. It will move off the radar screens and the job will be part done. Our efforts are aimed at ensuring it stays on the global arms control agenda and that countries outside the Ottawa treaty move towards that norm incrementally. Once we get a ban on transfers, we can talk about the next stage. It is an ongoing process. I think that halfway through last week John Campbell was optimistic of having a draft mandate for an ad hoc negotiating committee, which might be adopted before the end of this current second part of the CD session for 1998.

CHAIRMAN—The declaratory statement?

Mr Griffin—I might pass to Kathy Klugman to talk about that.

Ms Klugman—You are referring to the declaratory statement that was entered in the national interest analysis statement. This is something Australia would intend to send to the United Nations Secretary-General to lodge with him when we send across our instrument of ratification. It picks up a few issues that we think need to be put down on a piece of paper quite clearly as our understanding of what we are entering into. We think this is all the more important because the negotiations that took place in Oslo on the treaty do not have any formal negotiating record. We were concerned to ensure that our understanding of what the treaty means was set out clearly, so that it was very clear we were operating in conformity with the treaty's provisions.

Going through, the second paragraph tries to pick up the interoperability issue. It talks about Australia's understanding being that, where we are working in cooperation with a state which may not be party to the treaty, just the raw fact of our operating in coalition with that state does not mean that we are not acting in conformity with the treaty. We are thinking about the United States there, obviously.

Then again, for the same purpose basically, we talk about what we mean by the terms 'use', 'assist', et cetera. Again, in the absence of a negotiating record, the meanings of these words were not teased out sufficiently in the negotiations, which were actually less than three weeks in duration—that is a very short time for diplomatic negotiations.So it teases out what we mean by the word 'assist', by the term 'use', et cetera.

It confirms that command detonated munitions—this will not be of any surprise to you—are not covered in the treaty by the definition of 'antipersonnel mine'. Finally, it talks about our understanding of jurisdictional control, the sort of geographical scope of the treaty. That is the intention there.

CHAIRMAN—Does Defence want to add anything to that in an operational situation?

Lt Col. Kelly—Principally our concern is also with the fact that this convention requires legislation that personally criminalises certain of these activities. We are concerned also at the individual liability of members of the ADF. In that case, we were concerned to make sure that no incidental issues would lead to liability on behalf of the ADF. In that respect, these definitions would ensure that no activities that took place in relation to the behaviour of states that have not signed, with which Australia may be incidentally involved in relation to an offshore deployment, would lead to any allegations of criminal liability on the part of members of the ADF.

CHAIRMAN—How far have we progressed with the draft legislation at this stage? Could we expect the draft legislation to come in shortly, in six or 12 months time?

Ms Stokes—We are working as fast as we can. The aim is to do it as quickly as we possibly can. Mr Downer would like it to be finalised very shortly and we are currently looking at the legislation. We are moving as rapidly as we can.

Mr Griffin—Counsel has produced a draft text which we are working on. I might just make a general comment on the question of interpreted statement. The need to do it really arose, as Kathy mentioned briefly, from the fact that the Oslo negotiation was a fairly unusual affair. It was very much NGO driven and there was a certain aversion to the usual way of negotiating treaties in the CD.

Australia pressed for a proper negotiating record—the travaux preparatoires, as they are called—and we were almost howled down with, 'This is not that sort of a negotiation. That is a squalid Geneva thing to do. We're all about momentum and people power.' The result is that there is no negotiating record of the treaty. We pressed the Norwegians, as hosts of the meeting, several times and, finally, again before we actually drafted this thing. It became clear they were not going to produce an authoritative negotiating record, which leaves the odd situation that a treaty that was going to have no reservations, no exceptions and no loopholes could very well be a treaty which has enough loopholes to drive an armoured personnel vehicle through because 120 countries can interpret it as they wish.

In this interpretative statement we have tried to find a reasonable interpretation of the terms involved. If you look at some of the statements made in Oslo by some of the more passionate protagonists of the treaty, you find that if the ADF were engaged in an operation, came across an enemy minefield in the course of an operation and took the minefield, under the Ottawa treaty they would then have to down tools and de-mine it. Clearly, that sort of obligation is just silly. Because there is no authoritative guide to what the negotiators meant, we have had to produce what we regard as a reasonable interpretation.

CHAIRMAN—The declaratory statements where we are dealing with the Convention on the Rights of the Child are an absolute minefield—no pun intended. Is this a new tactic on the part of DFAT cum A-G's, or how often do we have declaratory statements? If we had done it with CROC—without getting into that area too much this morning—if we had some sort of declaratory statement, it would have made it a lot easier in terms of interpretation: what does it mean?

Ms Klugman—In my understanding it is pretty standard for us to do this. I know that in regard to protocol 1V of the inhumane weapons convention, the one on blinding laser weapons, we made a declaration. We responded to an invitation from the International Committee of the Red Cross to make a declaration which basically extended and broadened the scope of that protocol for us, because we wanted it to apply in all circumstances, not just circumstances of international conflict. We thought it should also cover civil conflict. So we made that declaration. On the Ottawa treaty, Canada, for example, has already taken the final step of ratification and it has entered a declaratory statement. The treaty does not permit reservations.

Dr Balkin—I just want to clarify that. As Ms Klugman has said, the treaty does not permit reservations, but the making of declaratory statements is not an unusual procedure in entering into treaties on the part of states. The idea is that the declaration is simply an interpretative statement which has to be compatible with the objects and purpose of the treaty. We have examined these particular declarations and we believe that they are perfectly compatible with the objects and purpose of the treaty.

CHAIRMAN—But the point I am making is this: have we suddenly realised that some of these things get down to interpretation? Again I do not want to harp on CROC, but CROC, for example, obviously means different things to different people. Have we changed tack, or are we just—

Lt Col. Kelly—We have declarations of understanding of a fairly detailed nature in relation to additional protocol 1 to the Geneva conventions as well. In relation to this treaty, given that we did not have the diplomatic record and that this is a very technical treaty in terms of the physical problems that can develop from interoperability with allies who have not signed the treaty, it was important to clarify those positions.

Mr McCLELLAND—I was just having a browse through the provisions regarding fact-finding missions. As I read it, those fact-finding missions can only be sent to one of the states parties. Is that right?

Ms Klugman—Yes, that is correct.

Mr McCLELLAND—Otherwise it would require some sort of intervention of the United Nations, I suppose. Is that something that has been contemplated?

Ms Klugman—This treaty governs the behaviour of states parties to it and that is all. I am probably straying out of my area here, but if you talked to international lawyers you would find there is some argument about when international law becomes customary international law: when is it the case and how many states and which states do you need to have signed up to a treaty for how long to now regard the laws, or the sorts of principles enshrined in that treaty, as being more generally applicable to the world of states? That is my understanding.

Certainly, this is a very young treaty. It has strong adherence but there are significant gaps in adherence also. As far as the immediate and medium term are concerned, this treaty covers states parties to it, and the fact-finding missions, et cetera, all go to the states parties to the treaty.

Mr Griffin—To pick up your point of a more general UN intervention with respect to non-states parties: basically, the only power to do that rests with the Security Council, in which case the use of landmines by a non-state party would have to constitute a threat to international peace and security. So it would have to be pretty grave. It would be an UNSCOM sort of situation.

Mr LAURIE FERGUSON—On the way through the interpretive statement you use the expression 'command controlled' and obviously the chairman knows what that means. I am not too sure what it means. Also, you said that they were not covered. What is Australia saying about the fact that they were not covered, and what essentially are they?

Ms Klugman—I think I will pass that one on.

Lt Col. Fenton—A command detonated munition has an individual in the loop—he can make a decision to detonate the device or otherwise—while a landmine does not have that control. It stands there independently and does not discriminate. A claymore mine, for example, has a wire to a remote device where the soldier can detect whether it is an enemy or otherwise and decide to detonate or otherwise.

Mr LAURIE FERGUSON—You are saying that it is not covered. What are we saying about the fact that it is not covered?

Ms Klugman—We are happy with the fact that it is not covered. The definition in the treaty makes it quite clear: a landmine is something that hurts you, that goes bang, and that is triggered automatically by the presence or proximity of a person or a vehicle. That is where we get into a different class when we talk about claymores or command detonated munitions. I think the Australian Defence Force and defence forces and states around the world were very happy to make that distinction, because what they were after was the landmine because of its indiscriminate effect—the fact that it cannot distinguish between civilian and soldier—whereas this was another class of weapon. Just as you can

point and shoot a gun at a person, you have to pull the trigger, here you have to press a button.

Lt Col. Kelly—That was clearly the understanding of the delegations in Oslo as well.

Mr ADAMS—What about the antitank mines and things that are bigger and set into the ground?

Lt Col. Kelly—They are covered by the conventional weapons convention, in relation to how they are to be placed and managed. That is a key point in relation to this treaty, that while the trend is to have the treaty itself in terms of eliminating the humanitarian problem, there is still a need to regulate the placement of anti-vehicle mines with anti-handling devices.

Mr LAURIE FERGUSON—You referred to manufacturers perhaps not being cooperative. Are we talking just about the usual suspects, or are we saying that some western European manufacturers such as Italy could be difficult? Who essentially are you saying we are going to have difficulties with?

Ms Klugman—There was some speculation. I think that, as far as production and export goes, European countries are pretty fully on board. You identified Italy as a past producer; it certainly was. There was some speculation that Italy itself might be moving its production offshore to, say, Singapore. That does not make sense any more because Singapore has instituted an export ban. There is not much point for the Italian companies to be producing in Singapore if they cannot export it from Singapore.

Mr LAURIE FERGUSON—Why were we so explicit about the possibility of Singapore?

Ms Klugman—Singapore is one of the countries in our region. I guess we are particularly sensitive to what is happening in our own region. Singapore is a country in our region that has not yet made the decision to sign up to the Ottawa convention; they talk about still considering it, generally because it has been a major transhipment centre. So for a lot of export control regimes and sensitive material, Singapore is always somewhere we look to, not necessarily because of production or export from Singapore but because of transhipment.

Mr LAURIE FERGUSON—So it was not generated by any seeming initiatives by Italian companies or anything of that sort?

Ms Klugman—There were rumours to that effect going around. I do not know how well based in fact they were; I think they were based in television documentary.

CHAIRMAN—It was an issue that came up quite extensively when I led a delegation to the Asia-Pacific Parliamentary Forum in Seoul in January. There was a major resolution which went forward and the Singaporeans had something to say about it. Canada led, followed by Australia; we supported them as the seconders. You said that Canada has already ratified. How many other countries have actually ratified, and what is the prospect?

Ms Klugman—Nineteen had ratified as at Friday; something might have happened since then. Forty is the trigger point, and then you have six months and it enters into force. It is difficult to guess, because you have very, very different national systems for ratification and ours is probably one of the more extensive consultative and review processes. We are anticipating a step-up of the pace, a bit of a rush from Europeans ratifying from about now. I think it is about the time when the processes they have to go to are drawing to an end. A lot of countries want to be seen to be an early ratifier.

CHAIRMAN—What about the United States? Again, the United States had quite a lot to say, as indeed did the ROK in terms of the DMZ on this one. I guess John Campbell again is doing a lot of work with the US in Geneva. President Clinton made a similar statement in his opening address to CD, did he not?

Ms Klugman—Yes. It was very interesting. The United States is very much in favour of work in the Conference on Disarmament in Geneva to put in place a transfers ban—a ban on exports, imports and other transfers of antipersonnel mines. We see that as an important way of stemming the supply—putting clamps on the supply of landmines because, after all, there is a long list of countries which have been users, producers or exporters of landmines in the past which are not parties to the Ottawa treaty No. 1. It is trying to get in those countries which are not states party to the Ottawa treaty.

But in another sense, it is more ambitious than that. It is also trying to put the clamps on global supply as far as non-state actors are concerned. When you look at the sort of landmines that are being used on the battlefields of civil wars around the place, often what you pull out of the ground are old Chinese or Russian mines—depending on who has been involved in the civil war—or post-colonial conflicts in those particular countries.

I think that is very important. The United States understands that and it sees this very much as a way to add to the Ottawa treaty, the aims of which they sympathise with, but because of things like Korea, they cannot sign on to at the moment. There was an announcement made by Secretary of State Albright in the context of a meeting that Ali went along to with Mrs Kathy Sullivan—a de-mining meeting. It took place a couple of months ago in Washington.

The United States have restated their commitment to signing up to the Ottawa treaty if and when technological development allows them to do that. At the moment, they

have a target date of 2006 to stop all use of antipersonnel mines everywhere, including Korea. It is 2003 for everywhere but Korea. But the largest question mark I would note is probably still over the mixed munitions system which the United States uses which the United States was trying to have excluded from the scope of the definition of antipersonnel mine in the negotiations in Oslo, but it was unsuccessful in doing that.

I am probably going to offend my colleagues in khaki, but these are basically, as far as I can tell, anti-vehicle mines with antipersonnel mines used in association as part of a system. The antipersonnel mines are to protect the anti-tank mines so the enemy cannot go and grab them and use them against you. It is an anti-handling device, but it is not actually tied on to the anti-vehicle mine. It was decided at Oslo that it did not fit into the terms of the treaty. The United States has got to sort out an alternative to that, which is a really big ask, before they can sign on to the treaty.

CHAIRMAN—Ali, do you want to add anything to that?

Ms Gillies—No.

Mr ADAMS—What do we mean when we say 'write-off'?

Lt Col. Gibbons—'Write-off' is in relation to the actual value of the mines—the value of the stockpile at the moment. When we actually go out and destroy them that is the write-off value.

CHAIRMAN—On that one, the cost, I think, is about $3.4 million?

Lt Col. Gibbons—It is $3.9 million approximately.

CHAIRMAN—Obviously, our stock holdings are classified. How long would you take to destroy them up to that residual level?

Lt Col. Gibbons—We have a period of time in which to do that and it will depend on what method is chosen to most safely, efficiently and economically destroy the stockpile. Until we have actually determined the method of destroying them, it is a bit hard to say.

Mr McCLELLAND—I think it is a four-year period.

Lt Col. Gibbons—There is a four-year period in which we have to do it.

CHAIRMAN—You do not have to take four years though.

Lt Col. Gibbons—We are not going to take four years, clearly. It will happen much sooner than that, but exactly how long it will take has yet to be determined.

CHAIRMAN—What is the feeling at the operational level, irrespective of a policy decision, in terms of the ability of the ADF to carry out its operations? Are you able to talk about that or do you prefer not to?

Ms Jackson—The government has taken the decision.

CHAIRMAN—I know the government has taken the decision.

Lt Col. Gibbons—It is difficult and we are working on it. There are certainly some very significant difficulties and I think, from a professional point of view, people in the services, certainly soldiers in particular, have reservations about that. I am confident that we will find alternative methods.

CHAIRMAN—There is flexibility even within this to enable the continuation of training and all that sort of stuff, surely?

Lt Col. Gibbons—Yes.

Ms Jackson—Only for de-mining and so on. We can no longer train in any operational or tactical use.

CHAIRMAN—In a tactical sense.

Ms Jackson—In fact that has stopped.

Lt Col. Gibbons—Correct. We do not train in the offensive use of mines, but having said that, in order to be able to train to deal with our enemy using mines, there is very little difference. You have to understand how those mines are used offensively in order to be able to deal with them defensively.

CHAIRMAN—What is the ADF therefore doing in terms of alternative technologies?

Lt Col. Fenton—We are working very closely with our allies on research and development. It is as problematic for them as it is for us. We are looking at lethal and non-lethal alternatives to antipersonnel landmines and that therefore would give us flexibility in a wide range of operational scenarios. Indeed, nothing has yet been developed that achieves the same effect that an antipersonnel landmine would provide; that is, it is cheap and achieves that physical and psychological effect. We are looking at a wide range of technologies; all of them have to be Ottawa compliant and we are necessarily expanding our research and development to look at lethal and non-lethal alternatives.

CHAIRMAN—Is there a line within the defence budget that caters for that?

Lt Col. Fenton—Not yet.

Ms Jackson—Not yet. We have to work out what it is going to cost first and it is starting to look a bit expensive.

Lt Col. Fenton—There has been quite a lot of operational analysis modelling and looking at different alternatives.

Senator MURPHY—I would like to ask about some of the alternatives such as heat sensing.

Lt Col. Fenton—All of these alternative technologies will be linked to sensors, different sorts of sensors that work in the different conditions present on the battlefield. Some of them are heat, sound or acoustic—

Senator MURPHY—They are already being used?

Lt Col. Fenton—Those sensors are out there. They are on other sorts of systems.

Lt Col. Kelly—From a legal point of view, it is the command detonated aspect that provides the potential for developing alternatives. That is the angle the Americans are exploring at the present time and it is an option that the South Africans have used in the past for their antipersonnel barrier fields.

CHAIRMAN—You can still kill people, but you kill them differently?

Lt Col. Kelly—It is just that you—

CHAIRMAN—You have to identify them. Sorry, I was not being flippant when I said that.

Lt Col. Kelly—The key to that would be that you would identify an enemy and then, at the end of that deployment where the operation has ceased, it is easier to pack up and take away. They are above ground systems as well.

Mr McCLELLAND—You make a judgment first.

Mr ADAMS—There is some way of clearing them?

Lt Col. Fenton—Indeed, you can either decide to activate and initiate the system or otherwise and it leaves no residual battlefield effect or clutter that mines used to provide.

CHAIRMAN—In terms of CD and the parliamentary secretary's involvement in this process, where do the two link in? With Mrs Sullivan being appointed as whatever she has been appointed, where does that link in with the overall strategy under the umbrella of CD?

Ms Gillies—I am not competent to talk about anything other than the aid program, Mr Taylor.

Mr Griffin—It is a three-part strategy, Mr Chairman: sign and build, if you like—sign the Ottawa treaty but build towards more globalisation of the norm through the CD. But the third problem of the government's policy on this is de-mining and recognition of the fact that, even if we ban them all effectively today, there is a huge legacy to be dealt with. One positive spin-off from Ottawa has been enhanced attention internationally and enhanced funding, or promises of funding, for de-mining. We see in that a danger of competing centres of excellence, competing centres of coordination, everyone wanting to put their name on a program. We think our long track record in the area of de-mining gives us a value added contribution we can make to international thinking about how best to coordinate and disburse these additional funds. That is where AusAID comes in and the Washington conference in particular.

CHAIRMAN—But you have not really answered my question as to what Mrs Sullivan's role is in the overall process. What is she doing that John Campbell or any other multilateral forum is not doing?

Mr Griffin—John Campbell is the CD prong of the strategy; Mrs Sullivan is the third prong of the strategy, so there is no relation between her function and the CD. Given that coordinating international efforts on de-mining is going to be increasingly important, to have a government level person as the key person in the Australian government on that issue, particularly as it involves ADF expertise as well as funding—

CHAIRMAN—So her emphasis is on the AusAID side in terms of assistance to de-mining?

Mr Griffin—Absolutely.

CHAIRMAN—That has not been clear to me in the last few weeks. Since she came back I have not had a chance to ask her.

Mr Griffin—Absolutely, which is why she went to Washington—to lead the Australian delegation.

CHAIRMAN—I turn now to our favourite subject of consultation. With this one, of course, there is limited scope for that, except, very importantly, in the NGO area—and we will be hearing from NGOs on this one, as I indicated in the opening remarks. Are DFAT and Defence both happy that the appropriate consultation has taken place in terms

of this issue?

Ms Stokes—I think we are very happy that appropriate consultation has taken place, but perhaps John might elaborate on the detail.

Mr Griffin—There is some detail given in the NIA, but, basically—as Deborah mentioned in her opening statement—the overwhelming voice of the community and the concerned NGOs has been in favour of signing this treaty. In terms of sections of the community that might presume to have reservations about it, Australian Defence Industries, for instance, entered a nil return when we sought their views. The thrice-yearly publication which the International Security Division puts out, *Peace and Disarmament News*, goes to about 2,700 readers. They were all invited to submit, and I am not aware of any negative. In fact, all of them are urging us to go further, faster and better than the Ottawa treaty itself. If anyone had any reservations it was in the sense of, 'This doesn't go far enough; here's another hurdle to jump over.'

CHAIRMAN—We have NGOs sitting in the background this morning, and, as I indicated in the opening, we will be listening to what they have to say on this one. Shayne, do you have any last-minute comments?

Senator MURPHY—No, Mr Chairman.

Mr ADAMS—I do. In relation to de-mining areas—and some of us have been into Asia and seen the hellish problems that still exist there—is there anything coming out of this convention on allocation of money in any way?

Ms Stokes—As I mentioned in my remarks, the convention does not provide for that. But as John Griffin mentioned, there certainly has been an increase in interest on the part of aid donors to deal with this issue, so there does seem to be some upsurge of funding.

Mr ADAMS—We do not have a national body. Have we an international body that coordinates this?

Ms Stokes—No.

Ms Gillies—Donors who attended the Washington conference on humanitarian de-mining, hosted by the Americans a month or so ago, were very happy for the UN to actually take on the coordination role, but that is not by way of setting priorities itself. There will be a series of assessments done which donors will be invited to undertake, and the priorities for de-mining action will really come out of those assessments. Donors will be free to choose those areas in which they want to participate, and there will be all sorts of historical and other sorts of real world factors which influence donors in their choices.

There was, in fact, an interesting discussion initiated by the Americans at the Washington conference about the possibility of actually carving up countries affected by mines into areas of influence. There was the concept of a circle of friends. We heard about the activities particularly of the South Africans in leading a number of de-mining activities in countries circling South Africa.

But as far as the mood and the decisions of the conference were concerned, donors were not interested in taking that kind of carving up of interests and assigning of explicit responsibilities. That sort of approach did not seem to be a sensible one. Donors were much more interested in collecting really good data on those countries which were affected and concentrating de-mining activities on those minefields which are having the most significant impact on real people—their economies, their lives—rather than perhaps strategic areas, or whatever, which have no particular economic or social consequence.

Lt Col. Kelly—The treaty did address this issue in article 6 on international cooperation and assistance and did express in mandatory terms that states that were in a position to do so were required to provide assistance for care, rehabilitation and also for de-mining activities, and talked about providing contributions to the United Nations voluntary trust fund for assistance in mine clearance and other funds of that nature.

CHAIRMAN—I have one little observation about the NIA. Without wanting to be too self-centred about this committee, we are just a little surprised. Some suggest this committee has achieved nothing since it has come into being. I think we would argue against that because I think we have put everybody on notice as to the whole process. But there is no mention of the fifth report; there is no mention of involvement by this committee in the process. Maybe that would have helped a little in terms of what has gone on behind the scenes. As I say, I do not want to be too self-centred about it. We do note that the fifth report and the lead-up to the fifth report has no mention in the NIA. Are there any other comments? Does Attorney-General's have any final comments?

Dr Balkin—No.

CHAIRMAN—Thank you, very much indeed. We look forward to the NGOs.

[10.10 a.m.]

ANDISON, Mr Drew Cameron, Manager, Standards and Conformance Policy, Business Environment Branch, Industry Policy Division, Department of Industry, Science and Tourism, 20 Allara Street, Canberra City, Australian Capital Territory 2601

BROWN, Mrs Vicki Annabelle, General Manager, Business Environment Branch, Industry Policy Division, Department of Industry, Science and Tourism, 20 Allara Street, Canberra City, Australian Capital Territory 2601

HART, Mr Jeffrey Russell, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

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MARENGO, Dr Franco Damaso, Desk Officer, European Union Section, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

CHAIRMAN—Thank you very much for attending this morning. I invite DIST to make an opening statement on the agreement on mutual recognition in relation to conformity assessment between Australia and the European Community

Mrs Brown—The mutual recognition agreement on conformity assessment between Australia and the European community represents a significant step forward in Australian-EC relations. The MRA is the first agreement of its kind and provides a mechanism to facilitate trade between Australia and Europe without compromising the health and safety of the Australian community. Notwithstanding that the US and Canada both signed mutual recognition agreements with the EC in May this year, those agreements will not deliver the benefits of mutual recognition for some two years. In contrast, the Australian EC MRA will deliver full mutual recognition from the day it enters into force.

The MRA will impact on $8 billion worth of two-way trade between Australia and Europe by reducing the time and cost associated with demonstrating compliance with European regulations. Conservative estimates suggest that the MRA will generate cost savings for Australian exporters of as much as $10 million per annum. The MRA will affect trade in eight sectors which are the subject of intervention by regulatory authorities in Australia and Europe. These sectors are pharmaceutical goods manufacturing practice, medical devices, telecommunication terminal equipment, electromagnetic compatibility, automotive products, simple pressure equipment, machinery and low voltage electrical

equipment.

The essence of the MRA is the requirement for regulatory authorities in both countries to accept without further intervention the results of conformity assessment activities—that is, testing inspection and certification undertaken by specially designated bodies in the exporting country. While the MRA will make existing exports more competitive, the MRA also has the potential to generate new exports. In the past, the time and cost for business in meeting EU regulatory requirements have created an absolute barrier to trade for some small companies. By enabling these companies to have products tested and certified in Australia prior to export, the MRA will have the potential to create new market opportunities for Australian industry. The MRA does not require Australian regulatory authorities to accept products manufactured in accordance with European standards, nor does it oblige us to recognise European regulations as equivalent to our own. In this regard, the MRA will not affect consumer safety in Australia.

All Australian laws and regulations that are currently in place to meet legitimate government concerns with regard to health and safety of the Australian public will continue to be enforced under the MRA. The only distinction is that the MRA offers European exporters the possibility to have the compliance of these products with those regulatory requirements undertaken in Europe by a designated testing and certification body. Further, the MRA does not affect the operation of consumer safety laws in Australia so that, in the unlikely scenario that non-compliance products may appear on the market, authorities will retain the right to protect the health and safety of the community by taking action as set out in legislation—for example, product recalls.

I have made mention of the role of the designated conformity assessment bodies under the MRA. The technical competence of these bodies in both Australia and Europe and the confidence that regulatory authorities in both countries have in their competence are the key to the MRA. The designated conformity assessment bodies are, in a sense, the central economic operators under the MRA responsible for the assessment of products against the regulatory requirements of the importing country. This demonstration of technical competence and establishment of mechanisms to ensure maintenance of these competencies are critical elements of the agreement, and regulatory authorities in Australia have been consulted at every step of this process.

Annex 1 to the MRA sets out the procedures for designating conformity assessment bodies under the MRA. The committee will note that this section is very prescriptive and establishes very specific mechanisms to maintain confidence in the technical competence of conformity assessment bodies. From Australia's perspective, accreditation of conformity assessment bodies is the preferred mechanism for demonstration of technical competence, and Australia will utilise its two key accreditation agencies, NATA and JAS-ANZ, to designate conformity assessment bodies who will undertake the necessary conformity assessment to European markets.

Accreditation is defined as a procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks. NATA and JAS-ANZ, as Australia's primary accreditation authorities, therefore play a key role in the effective operation of this agreement. Similarly, from the European perspective, their accreditation authorities play an equally critical role.

This MRA operates, in effect, through the confidence that the parties have in the operation of the respective accreditation schemes. Under the MRA, accreditation offers a presumption of technical competence when the following criteria are satisfied: accreditation is undertaken in accordance with international standards and guidelines; accreditation bodies participate in mutual recognition agreements where they are subject to peer evaluation—in other words, the government to government MRA is bolstered by accreditation body to accreditation body MRAs.

This model whereby government level agreements are underpinned by technical agreements is a model that Australia has successfully promoted within APEC and is one that also has been promoted to the World Trade Organisation Technical Barriers to Trade Committee. The MRA is, therefore, also a recognition of the world-class status of Australia's accreditation system and the sound international reputation that they enjoy.

For example, NATA is the world's oldest and largest laboratory accreditation body. Its status as Australia's national authority for laboratory accreditation was confirmed by the government in 1996 and is reflected in a revised memorandum of understanding with the Commonwealth which was signed in February of this year. The government considers that this MRA will deliver significant benefits to Australian industry, and seeks your support and endorsement to ensure that it can enter into force as soon as possible.

CHAIRMAN—Thank you very much. Does anybody else want to make any opening comments? Thank you.

Before we go any further, we need to agree to a number of submissions that have come to the committee. The first one is by Nulite Systems International dated 18 June 1998 with associated papers, and there is another one by EMCSI, Electromagnetic Compatibility and Systems Integration Pty Ltd, dated 19 June 1998.

Before we go to questions, I think this committee makes an observation that we have had two NIAs and, as I understand it, later on in the week, the minister will be tabling a regulation impact statement in the House. Rightly or wrongly, I think this committee gets the impression that this issue is being rushed through. We understand the date, we understand what is being attempted, but let me just make it very clear that this committee is not going to rubber-stamp anything unless and until the issues are resolved.

Are we being unnecessarily critical in that observation? The secretariat has had a number of informal discussions with the department. It does not seem as though this

committee's role is being fully appreciated by the department. Is Sir Leon Brittan's visit to Australia driving this, or what is happening?

Mrs Brown—Actually, that could be one aspect. But another aspect is that this whole thing was held up through the Germans actually having some concerns with the MRA. Now that that has all been sorted out, there is an imperative that we actually have this MRA in force because it could have some quite detrimental effects on some small exporting companies throughout Australia because of some new rules and regulations that are going to be implemented in Europe. Mr Andison might be able to go into that in far more detail than I can.

Mr Andison—The MRA would have been in place in the middle of last year had it not been for the intervention by German officials in a confidence building workshop in April last year where, despite the fact that the MRA had been initialled by officials the preceding year, the German delegation raised a number of concerns with respect to annex 1 to the MRA. It took several months to try and find out what their specific concerns were, and several more months to finally resolve the amendment to the text which would satisfy their concerns without undermining some of the basic principles that we thought we had successfully negotiated. That was effectively signed off by Minister Moore when he was in Europe in February of this year.

CHAIRMAN—That is covering the international side of it, but what about the domestic side? It is pretty clear that we have Queensland saying that they have reservations. As a Queenslander, anything goes after the last couple of weeks. But they have not. We now have some fairly pointed criticisms from non-government organisations. As you may or may not have heard in the previous hearing, I reinforce this word 'consultation'. It would appear from what we see already that the appropriate consultation, even with NGOs, has not taken place. Again, am I being unduly critical?

Mr Andison—I think we have. We have been consulting with industry on this agreement since 1994. At every step of the process when there has a been a negotiating round, both before and after each negotiating round, there has been information sought from and provided to industry either by our department or by the regulatory authorities that have been responsible for negotiating their specific sectoral annexes.

Queensland's concerns, with respect, relate only to this German issue and the visit that is taking place as we speak by Australia's accreditation bodies in Germany. That concern arises out of the fact that Germany made the intervention in April last year when there was a representative from the Queensland government participating in the workshop.

CHAIRMAN—If that is the case, is not the department being unnecessarily optimistic in working towards the operative date? I would be interested in my colleagues' comments as to whether we are in a position yet to really be signing off on something as major as this. I do not want to go so far as to say we have in prospect the MRA replacing

the MAI, but it seems that that is in prospect if we do not watch it.

Mr Andison—No, I think this MRA is very specific; it is not related to the MAI.

CHAIRMAN—Yes, I agree with that. The hares will not run to the extent that the MAI ran, but nevertheless the same principle surely is involved.

Mr Andison—I think what we are engaged in with the Germans at the moment is a purely confidence building exercise. The German accreditation system, despite the fact that it is not a participant in accreditation body to accreditation body MRAs, has been operating very successfully in Europe, and without incident as far as we are aware. It enjoys a very high reputation within Europe. It is just that because it is not a participant to the European multilateral agreement between accreditation bodies, our accreditation bodies have no direct knowledge of the way it works other than that it complies with the relevant international standards.

In that sense the visit that is going on now is really more of a confidence building exercise. It was agreed by both the Germans and the European Commission and ourselves earlier this year that it was of a confidence building nature and the outcome of this visit was not a prerequisite to the entry into force agreement, it was purely of a confidence building nature. The Germans would come out in July of this year and have a similar visit with Australia.

Mr Hart—I did want to make one or two comments because we have offered some advice to DIST and played some role in the tabling of a revised national interest analysis. I think it is reasonable that we should, as it were, accept the responsibility for some of that. We were advised by DIST that this was an urgent matter and that as of after the middle of June, because of certain entry into force provisions within the European Union, without the provisions that are provided for within this agreement, there would be costs and significant disadvantage incurred by a number of Australian firms.

We accepted that view at its face value and said that if there was urgency at the end of the day a political decision would have to be taken which would involve relevant ministers, in consultation with this committee, as to whether or not the entry into force should be speeded up. The concern was due to the shortening of the Senate sitting pattern—the Senate will rise before there are 15 days—and that was the reason for the initial tabling. The initial tabling was done when a number of elements were not completed.

The revised NIA was an attempt to put more information before the committee, but there are other elements of the advice that we offered to DIST. The first was in terms of the implementation procedures, that there would need to be clearly, on the record, a firm agreement by all of the states, in writing, before there could be any consideration given to ministers considering, in consultation in the normal course of events, as has happened in

the past, making a proposal to the committee related to the sitting days issue.

I have not had the chance to read the additional submissions that have been made and I therefore cannot really make a comment on them. However, I was really under the impression, I have to be frank, that all that was being done by this was something which was to meet the requirements of certain firms in Australia. Therefore, I assumed there was not a consultation issue, to be perfectly frank with you, in terms of the private sector. I cannot make a comment on that. Of course, we were also conscious that, on the other side, not only consultation but firm agreement with the states was required on the implementation issue. I just wanted to put that information before the committee.

CHAIRMAN—Where does that leave us? My colleagues and I have read the same media report that Sir Leon Brittan is on his way to Australia to sign it.

Mr Hart—That is not the entry into force issue.

CHAIRMAN—No, that is not the ratification, but even the signature is putting the cart before the horse. Is there anything that can be added to that?

Mr Hart—In terms of the signature issue, no. The process was initiated prior to signature because of this problem which occurred over the fact that after 13 June or 14 June there will be significant costs incurred if certain firms wish to export into the European Union. The process was begun before signature.

CHAIRMAN—Regarding Sir Leon Brittan's visit, is the Deputy Prime Minister, the Minister for Trade, sponsoring that, or is it DIST?

Mr Andison—It is part of the normal round of ministerial consultations.

CHAIRMAN—It is not specifically to sign that but while he is here he is going to sign it.

Mr Andison—Yes. It made sense to take advantage of his visit.

CHAIRMAN—Yes, this committee accepts that. We deal with the ratification process but we have this before us, seemingly pushed through. I accept what has been said about the two NIAs and the incremental approach to it. On the other hand you would understand where this committee sits in terms of that as well. We get the impression—and please, committee members, make comments as you wish—that with Sir Leon's visit it is really situating the appreciation in many ways.

Mr HARDGRAVE—Mr Chairman, you are being your usual Christian charitable self and far too generous on this. We heard this morning from Mr Andison who said that this has been on the go since 1994. This committee has been around for over two years,

and here we have another department that has basically forgotten a couple of things. Firstly, it has forgotten that this committee exists and, secondly, it has forgotten that we have a federal constitution which requires all sorts of discussions with the states in the negotiating with countries which are clearly a federation of individual countries, as in the EU.

I submit that the department has failed to come up to speed with the fact that this committee has been around for two years. It has failed in its negotiations since 1994 to correctly bring our constitution into this. It has failed to properly negotiate with states and consider the variety of laws and competing interests that might be in states and their range of views.

I understand the logic behind the excuse this morning of the preliminary NIA and the supplementary NIA and the additional one that will be tabled later in the week, but it is a railroading, late in the day, to cover up the fact that there has been a two-year lag in understanding that there is a committee in town that you are supposed to deal with, and a set of rules.

It is not the first time that DIST has done this. We have had one other in recent days. I can only say to you that there has been absolute systemic failure regarding the rules and regulations that govern the country and the parliament and the procedures that they should be following.

CHAIRMAN—There is another dimension. I am sorry, we are not wanting to put you officials in the hot seat, but there is one other practical consideration in this, in that we do not have a Queensland state government and we do not know who is going to form government. I do not think we can assume anything, whichever side of the political fence actually forms government, but with an alternative government—assuming that Mr Beattie eventually gets the numbers—how confident is DIST that he will actually sign off against this in advance of what we are trying to do?

Mr Andison—I have a reasonable degree of confidence from my discussions with Queensland officials that there is a level of acceptability of this MRA within Queensland. The Queensland officials have been involved in the negotiation of an intergovernmental agreement between the states and the Commonwealth which sets out the rights and obligations of states and territories and the Commonwealth under this MRA. State and territory officials have been engaged in the negotiation of this MRA, with respect to their specific sectoral annexes for which they have regulatory responsibility, since 1994. So I think there actually has been quite full consultation at all stages of this MRA.

With respect to not coming to this committee last year, we did not have a text to come to the committee with. Following the German intervention in April last year, it required an amendment to the MRA to give effect to the German concerns. That amendment of that text was not settled until February this year.

CHAIRMAN—But if the German issue is an issue for Queensland, there is one common element in Queensland and that is the officials. Will the officials have the same reservations that they have at the moment in advance of the German visit in July?

Mr Andison—The German visit in July is, in a sense, a political commitment by us, because the nature of the visit has to be two-way. The real concern that was raised was the fact that the German accreditation system in the regulatory sphere does not participate in the multilateral agreement in Europe, therefore its level of visibility in the world was not great as an accreditation system.

Our domestic accreditation system fully complies with the provisions of the agreement as it was first negotiated. But in order that the solution to the German problem was not seen to be a one-way exercise, there needed to be a signal sent to them that what we were talking about was a confidence building exercise, therefore there would be a two-way visit program.

It is accepted by both European officials and Australian officials that both sides will enjoy a presumption of competence at the commencement of the agreement. This is merely an additional confidence building process that has to be gone through, in the same way that we have gone through other confidence building exercises with Europeans in the past. But because the Germans were not part of the system that we originally went through—the confidence building process over the last three or four years—this is an extra process that has to be gone through just simply to satisfy ourselves. And I believe that the Queensland officials will be more than satisfied with the outcome of the visit that is currently under way.

Mr HARDGRAVE—But Mr Andison, with the greatest of respect, the officials might enjoy that particular viewpoint; I do not believe it for a moment, and I am praying every day that it will not come to pass, but if the One Nation party were to actually be supporting a minority government in Queensland, officials can do whatever they darn well like but, in a political sense, nothing is going to occur with any treaty because they basically want to isolate Australia, as you know.

I am simply saying to you that the stark reality of it all is that you have got officials happy, but unless you are prepared to go through the accountability mechanism—which is through the parliament and this committee—and are prepared to offer stage by stage, or at least accept that we have raised over the last couple of years some very glaring deficiencies from departments in the federal area with regard to their understanding of the constitution, the impact of the High Court on agreements that are signed, and the way the federation works, there are too many treaties being negotiated with a total disregard of the way our quite unique system operates and it is not a simple thing to simply keep officials happy.

Mr Andison—No, and forgive me if I gave that impression. Before each state and

territory can sign the intergovernmental agreement, it has to go through their normal governmental processes. There is no intention of short-circuiting the process just simply by getting officials happy. Each state and territory must go through their normal cabinet procedures in order to be able to sign off on the intergovernmental agreement which gives effect to the MRA. That is a key step that has to be taken before Australia can ratify the agreement.

Mr HARDGRAVE—The other thing is that we are hearing this morning that a couple of Australian companies are going to be financially penalised because they do not have this EC accreditation on their product. We are going to cop it—the people on this side of the table, the politicians, are going to cop it—whereas, obviously, it has been something that has been dragging through the departmental system. To have it presented to us today and to be told that we have to ratify it or else people are going to find themselves in all sorts of economic ruin as a result of not having this certification really does not sit very well with me when it has been on the go for four years, this committee has been on the go for two, and now we are being presented with a sort of 'seconds to midnight' demand that we have to fix this thing up, and fast.

Mr Andison—I guess it looks like that, yes.

Mr HARDGRAVE—It does.

Mr Andison—I guess that is because that it is the way it has turned out. We would have been able to take this agreement through your process and through the normal processes last year in the normal fashion had not the Germans made their intervention in April. From our perspective, the agreement was initialled in July 1996. The minutes of that meeting agreed that there would be a confidence building workshop between the parties to broadly explore in some detail the way in which they would go about the process of designating conformity assessment bodies under the agreement. That workshop took place in April.

Without the German intervention we would have then been able to proceed at an appropriate pace through each of the procedures that need to be gone through. We were in the process of negotiating the intergovernmental agreement with the states and territories, and life would have been an awful lot easier. The Germans intervened. It was not until August last year that the commission told us precisely what the German problem was and gave us some words—

Senator MURPHY—Which was?

Mr Andison—Annex 1, as read in the originally initialled agreement, allowed for accreditation to constitute a presumption of technical competence where it is undertaken in accordance with international standards and where the accreditation body is part of a multilateral agreement where there is a peer review process. Because the German system

is a government system, their law does not allow their accreditation bodies to participate in mutual recognition agreements within the European Community. Therefore, we had to develop some new text to accommodate that specific concern but without undermining those two basic principles which underpin the agreement. The new text says—

Senator MURPHY—You probably said, but when did that new text come forward?

Mr Andison—It was still coming forward in November last year. Our concern was that—

Senator MURPHY—When did we get all of it?

Mr Andison—About February this year, when Minister Moore finally settled.

Senator MURPHY—Given that you have got some intervention from a German point of view, and there is now this obligation on Australian companies to all of sudden meet this now that the Germans have got in the cart, why is it not possible, with regard to the political processes here, for us to be able to seek some extension of time?

Mr Andison—We tried that, as soon as we had been made aware that 14 June was a problem for medical device manufacturers in Australia because of the entry into force of their directive. I will go back one stage: European directives have a period of time between when they are first promulgated and when they become mandatory.

Senator MURPHY—Just to go back to the German thing again, when was the department first made aware of the German problem? And why would the German problem act as a barrier in terms of us continuing to proceed to get this thing sorted out at our own level?

Mr Andison—We became aware that they had a concern in April last year. We did not know what the nature of that concern was until August, when the commission formally advised us of the nature of their concern.

Senator MURPHY—Once you found that out, why weren't you able to make an assessment that that concern was an issue of legal difficulty for them that would not necessarily, except as a requirement for some word change, impinge on the overall thrust of the MRA? It would seem to me that apart from the change in wording to accommodate some legal difficulty that they confronted—which was a national legal difficulty, was it not—

Mr Andison—Yes.

Senator MURPHY—It would seem that nothing has changed the international

time frame between the EU, ourselves and whomever else, for this thing to be put in place. Why didn't the department proceed with the normal practice, given that this committee is set up, of getting the matter before the committee and then advising us: 'The Germans have this problem, but we can continue to proceed on the basis of these things'?

Mr Andison—I would put it down to inexperience and not being familiar with the processes. My understanding was that I would need to put a clean text in front of this committee. So I was proceeding to try and—

Senator MURPHY—We have had plenty of dirty text before that we have had to ask questions about and chase around for things on. I would like to ask some other questions with regard to this process. I want to know how it works. I understand that in, say, the EU or the EC somebody sets some standards. For medical equipment, or whatever it might be that is proposed to be covered by this MRA, they say, 'These are the standards that we expect, and you manufacturers in Australia have now to meet those standards,' and we can say likewise, for whatever reason. Is that right?

Mr Andison—Yes.

Senator MURPHY—I noticed that article 12, subsection (g) mentions facilitating 'the extension of this agreement for further sectors'. What further sectors might be considered in that?

Mr Andison—At the moment, there are a couple of joint declarations that refer to aircraft, aircraft airworthiness and pressure equipment.

Senator MURPHY—To go back to my question about the standards, maybe naively I see the potential for some standards to be set by having something which we do not have being put into a piece of equipment—something that might not necessarily improve its efficiency or its capacity to operate but that could become a technical barrier to trade and that is covered under this agreement.

Mr Andison—Both Europe and Australia are signatories to the WTO TBT agreement, and there is an obligation on us to align with or adopt international standards. I have not looked at the detail of the specific technical standards that cover each of the product sectors. I would assume that, over time, our standards and the European standards would become more closely aligned.

Senator MURPHY—I notice that there is a dispute settling process there. What happens when you have a piece of equipment that somebody says has a slightly different switch? I cannot think of a technical example. Say that the operating light for the operating theatre provides the same amount of light and does everything else the same, but the reflectors are made of a different material. They could say, 'These things must be made of this material, and yours must conform.' Who determines that?

Mr Andison—The MRA and the essential safety requirements in the European directives do not allow for other standards to be used. A manufacturer choosing not to produce a product to a European harmonised standard can use an Australian standard or a US standard or another standard, but must go through a process of testing and certification to demonstrate that the product made to a different standard complies with the essential safety requirements of a particular directive.

Senator MURPHY—Does the MRA not allow this, under subsection 8 of article 12? It reads:

Where a Party introduces new or additional conformity assessment procedures affecting a sector covered by a Sectoral Annex, the Joint Committee shall, unless the Parties agree otherwise, bring such procedures within the mutual recognition implementing arrangements established by this Agreement.

I am not quite sure what that means, but I think it means that you can introduce new and additional conformity standards.

Mr Andison—Not new standards but new conformity assessment: testing and certification procedures. The essence of this agreement is the competence of the testing procedures.

Senator MURPHY—What happens with regard to the assessment procedures? If there is an agreed assessment procedure, one of the things it raises is that there could be a cost to Australian industry—although the cost is going to be better because you can actually have it done here rather than over there—for which you can get charged an exorbitant amount: it is an industry in itself. So, if we get it done here and make it an industry here, what happens when they say over there, 'We want it done differently'?

Mr Andison—I guess we can then debate whether or not we would accept, under the MRA, those new additional conformity assessment procedures.

Senator MURPHY—And if we do not?

Mr Andison—Then they can be dropped out: those new procedures may not be included in the MRA. That is highly unlikely, because then we are starting to say that we do not want to allow those new procedures to be undertaken in Australia.

Senator MURPHY—You might get yourself into the same situation that we might have if this thing is not signed.

Mr Andison—You would end up back in the same situation we were in before the MRA.

Mr HARDGRAVE—You would end up with another situation too, though,

because Australian goods are not going to be sold to Europe. Then you start to wonder again what the point of this whole thing is.

Mr Andison—It is highly likely that we would not accept that any new conformity assessment procedures the Europeans or the Australians introduced would not be included in the agreement, but what we wrote into it is some flexibility to give the parties a chance to look at what new testing arrangements or certification arrangements have been developed, to understand the rationale for why a particular party has gone down that route, and then to allow them to be introduced into the MRA.

Senator MURPHY—It says that 'the accreditation process is conducted in conformance with the relevant international documentation (EN 45000 series of ISO/IEC guides)', which covers the ISO standards for a whole range of things. Have they actually been signed off and agreed to as an international standard?

Mr Andison—The ISO guides that we are talking about are basically those guides that apply to the operation of accreditation bodies, certification bodies and testing laboratories. They would be ISO guide 58 for accreditation bodies, ISO guide 25 for testing laboratories, and ISO guides 61, 62 and 64. These are documents developed through the International Organisation for Standardisation, which is an organisation that operates in the voluntary sector.

Senator MURPHY—In terms of all of the ISO standards that relate to a whole host of things, I did not think they were supposed to come into force until October.

Mr Andison—No; these ISO guides have been in place for a number of years and are continually being revised. They are specifically standards against which accreditation or testing bodies operate.

Senator MURPHY—Why is this MRA limited to technical types of equipment? Why could it not, say, run to agricultural goods, et cetera?

Mr Andison—The scope of the MRA is as open as the parties want it to be, and the inclusion of the sectors within the MRA, as we have it in front of us, was a process of negotiation. The Europeans put some sectors up.

Senator MURPHY—Why could we not run it to things like pig meat?

Dr Marengo—There is such a thing in that area. We are negotiating with the European Union, but we are in deep trouble; the negotiations have come to a standstill. What is called the veterinary agreement is in the process of being negotiated, to try to reach an agreement on certification of standards in the agricultural sector, including pig meat and so on. It is negotiated entirely separately, and DIST is not involved at all in that. It is the DPIE—

Senator MURPHY—I know that.

Dr Marengo—AQIS and DFAT.

Senator MURPHY—I can see that, but I am curious because it seems to me that the very reason that the Europeans and the United States, et cetera, want to segregate all these things out is that we will get a standard here that suits them. But anything that seems to be of value to us from a commodity point of view always gets put on the backburner.

Dr Marengo—Although this is not my area of competence, in this area of course the BSE crisis was fairly major and made the Europeans very jumpy. In fact, we had had the negotiation of this agreement going for two or three years and—

Senator MURPHY—What about forest products, for instance?

Dr Marengo—This covers animal products, agricultural products and fisheries.

Senator MURPHY—Can you just tell me, with regard to the WTO TBT, am I to understand you to say that, if a country sets a standard for a particular product that may not be the same as the standard that applies in this country, in order to export the product that we manufacture, we must meet the other standard that they set? Would it be arguable then to say that the same could apply in terms of environmental requirements?

Dr Marengo—It is covered by another area of the WTO, which is the agreement on the environment, which is not as progressed. With regard to standards, if there is no discrimination—in other words, if the standards apply both to domestic and external products—there is nothing which prevents a country from fixing a certain standard, which it has got to justify—

Senator MURPHY—I will give you a very specific example. In the case of manufacturing this table, we might say that the resource from which this table comes domestically must be managed on a sustainable basis: it must come from forests that are managed on a sustainable and environmentally sound basis. Could we set a standard for imported forest products to meet the same requirements?

Dr Marengo—It is a very difficult area, and I am not competent in environment matters; and, in a certain sense, labour standards fall a little within the same area. For instance, 'This good must not be manufactured by labour which is not paid for.' As you know, this is extremely controversial within the WTO, and I would not like to traverse that ground. But, strictly speaking, I do not know the answer to that. It is outside my area of competence. What is important to understand here is that the agreement we have negotiated with the European Union in certain sectors is an agreement not about standards but about conformity to standards.

Senator MURPHY—I understand that. I am asking a question about another example of how standards apply.

Dr Marengo—It is a legitimate question. I do not think there is an answer to that.

Senator MURPHY—Why not?

Dr Marengo—Because they are different things. There are labour standards and environment standards, and it is an extremely difficult area in which to—

Senator MURPHY—But is it not the same, though? Why isn't it the same if somebody says, 'Our medical equipment must be triple chrome-plated or stainless steel, or whatever the case might be,' but ours is mild steel and single chrome-plated and therefore does not come up to the standard? We say, 'You must do it this way.' It is the same thing.

Dr Marengo—I would say that, if there is not an adequate clarification at international level—

Senator MURPHY—But there is.

Dr Marengo—It would immediately be claimed that the standards fixed by a certain country in an area like the environment are, in fact, discriminatory and are an attempt to prevent the import of certain products. There is the case of the turtle excluding device in net fishing, and there is a decision of the WTO—which has come out against the United States, which tried to set such standards, which you could more or less equate in the environmental area—saying that they were discriminatory against imports from countries which did not have those devices.

It is an area which is not strictly related to what we are discussing here. It is a totally separate area and generally is dealt with under the label of environment. The WTO are far from reaching any kind of comprehensive understanding of the issue and have agreed to standards and a way that these standards can be certified. This is still a very debated issue. But strictly speaking, we are moving on that now.

Senator MURPHY—But don't those technical barriers to a trade agreement say that a country can set a standard that has application in its own country and do it from a domestic point of view, that it can take a view to imports that they should meet the same or similar standards provided that those standards are no higher than those applying to domestic industry? This is what this is about, isn't it?

Dr Marengo—It is not in such a controversial area as the one that you referred to.

CHAIRMAN—Basically, the MRA is a selective document, isn't it? It is just in

certain areas and, Senator Murphy is right, it opens Pandora's box.

Mr HARDGRAVE—It raises it because of our constitution. It raises it because the people can challenge things in the High Court. It raises all of these things. We can see Australian standards across a wide range of industries going out the door as people try to apply European standards. These are the sorts of things that people can try and do. What extra costs are there going to be for compliance monitoring, and so forth? Are we going to see an extra set of paperwork that people have to be confronted with if they want to go about their current businesses?

Mr Andison—No, I would not think so. In the sectors that are covered by this, it is entirely possible that regulators will be able to divert resources away from their pre-market activities to post-market activities because the compliance work is done by a certification body in Europe, rather than by the regulatory authority in Australia.

Mr HARDGRAVE—If the Europeans decide to bring a non-tariff type barrier—in other words, change the requirements of Australian exporters—who bears the cost for our people checking the compliance side of things to travel to Europe and deal with the Europeans? Are we going to see a steady interchange of people flying between Australia and Europe on this sort of thing?

Mr Andison—There is a mechanism built into the agreement through the joint committee to handle matters like that. Most of the work of the joint committee will be done through correspondence, so there should be one annual meeting of that committee per year. There would also be some further interchange between testing and certification bodies in Australia and their counterparts in Europe so that each side is developing a better understanding of how the rules work in each country. Those costs would be met by the individual testing and certification bodies. It is part of the work that they do normally. Our accreditation bodies are in and out of Europe on a fairly frequent basis—again, as part of the normal confidence building work that they do through their own mutual recognition activities. The extent of additional work by government through this should be limited to the joint committee. It should not impose any—

Senator COONEY—I would like to press on with issues that have already been raised, in particular, with process. I think you said, Mr Andison, that you had not quite realised the way this committee works. I just wonder what we could do to overcome that problem. Problems arose with Germany, I gather, but they did not do anything that they were not entitled to be doing.

Mr Andison—Arguably, they were not entitled to raise their intervention in April last year because the agreement had already been initialled. An initialling of the agreement on the part of the commission required them to go through what is called their 113 committee, which is a meeting of member states. They could have initialled the agreement only with the support of the members of the 113 committee. So, arguably, Germany had

already agreed to the text of this MRA prior to July 1996 and then, for some reason, decided to grandstand in April last year.

Senator COONEY—There was no process within the system, if I can put it that way, which was assigned to you that this committee might be interested in the topic at that stage? There was nothing from Foreign Affairs or from the committee itself that put you on the alert that we might want to hear about things here?

Mr Andison—No. My assumption was that when we had concluded negotiating the text of this MRA, we would proceed through this committee as part of the ratification process. Had it not been for advice from industry that there were about to be some major problems stemming from the 14 June introduction of a new medical device regulation in Europe, we would have simply gone through the normal processes.

Senator COONEY—You had nothing from the Department of Foreign Affairs and Trade to tell you that part of the process was to come before this committee?

Mr Andison—I was aware that we had to come before the committee.

Senator COONEY—That is not what I asked. Did you get anything from the Department of Foreign Affairs and Trade to tell you that you had to come to this committee?

Mr Andison—Not before I believed at the time I needed to come through this committee, which was when I settled the text.

CHAIRMAN—I think, Jeff, you are probably going to cover it, but my assessment would be that if we got the first version of the NIA, before we got the revised version, it would have been so imprecise as to be meaningless, wouldn't it?

Senator COONEY—Can I just pursue my question? I am trying to correct a problem that seems to have arisen which is that Mr Andison quite properly says, 'I did all that I considered I should have done. There is a hold-up by Germany, but taking all that into account, I did everything that I thought was appropriate. I did not in any way try to go behind the committee's back, or anybody else's back.' He is saying that nobody put him on notice about the requirements of this committee, neither this committee nor Foreign Affairs and Trade. Would it be helpful if the department got a run-down on what this committee did and where it fitted into the situation so that at least you know what has happened? Would that be of any assistance?

CHAIRMAN—Jeff, do you want to make a comment about it?

Mr Hart—We are speaking about a year ago so I was not here at the time. I advised DIST that we might go forward with the process now, prior to signature, because

of the evolution of the processes of the committee, demonstrated, for example, by the OECD agreement on bribery, and, for example, the MAI, where there was work being done prior to signature.

We cannot engage in revisionist history here. I do not know whether a year ago there had been the case where the committee had considered a draft, although you would have begun the work on CROC. Was there a case at that point where you had considered a draft agreement prior to signature?

CHAIRMAN—No. The first time this committee got one, as you know, was bribery, followed closely by MAI.

Mr Hart—So a year ago our advice would have been that when the document is signed, that would be the appropriate—

CHAIRMAN—The operative thing was the tabling of the NIA. That is the point I am making. It indirectly answers Senator Cooney's question that maybe the NIA would not have been in a format that would have been useful 12 or 18 months ago.

Senator COONEY—Mr Andison is right. He has acted according to the processes put before him. What I am asking about is that, as Mr Hart said, evolutional process. Has he got any thoughts? He might not at this stage; he might want to have an interdepartmental conference about it. Has he got any thoughts that he could, perhaps, put into writing that would improve the situation? It is a bit hard on him to have followed the processes as he understood them. I think that it is quite clear that this committee has not had time to consider the very deep issues that are involved in this.

Senator Murphy, for example, asked a whole series of questions which I thought were very pertinent and it would have been good to know the answers. I was just wondering whether, from the department's point of view, they could give us any idea that might help us to be about our tasks as we ought to be.

CHAIRMAN—You could put this as the third occasion prior to signature. The initialling took place but not the first signature. I guess that first signature will take place when Leon Brittan arrives and the minister signs. I assume Minister Moore will be our signatory, will he?

Mr Andison—Yes.

CHAIRMAN—Well, there you are. You have got the third example and you are right that it is a sort of iterative incremental approach to the treaty making processes within a parliamentary setting by doing that. But it was not until any of us in this committee got the NIA that we had any knowledge of this whatsoever and we only had initialling rather than signature. So it is the third in three months that we have had.

Mr Andison—I will come back and restate a point that had it not been for industry representations to try and get this agreement into place as soon as possible, the normal processes would have been followed—in other words, the normal processes would have taken place rather than the tabling of an unsigned agreement.

CHAIRMAN—Yes. As a committee, we were aware of it several weeks before it was tabled simply because there had been the DIST secretariat approach. But that is not really covering the point that Senator Cooney is raising. It is a two-way street and we are not here to catch you out and you are not there to make sure that you by-pass the system—we have both got to work together.

Mr Hart—From our point of view, obviously we are not experts in the detail of every instrument. But what I am certainly seeking to do is obviously to facilitate the process. I interpreted the committee's objective to be to ensure that full consultation has occurred, that all of the detailed work that departments would need to do before the issue could be recommended for ratification had been done. In this case, virtually all of that substance was going to be available prior to signature, and there was this extra reason possibly requiring some re-jigging, I suppose, of the process. So I felt that my best advice was that we might go forward in this way.

CHAIRMAN—Our situation is exacerbated by the further tabling of this regulation impact statement. We have got an advance copy in confidence, but we cannot use it until such time as it has been tabled. That exacerbates the situation.

Mr Hart—Can I offer a comment about that as well, because this has been the subject of some discussion. It is unfortunate in a sense, in this case, for our DIST colleagues that, in all of these things, they have got difficulties in managing the issue. The RIS issue is one which we have been most concerned with. What has happened is that the Office of Regulation and Review have come forward in recent months to say that, in their judgment, there were a number of treaties matters which should have had RISs done, which were not done, and that was the subject of exchange of correspondence.

Subsequently, there was a meeting to discuss this, and it was agreed that certain processes would be followed. Because there has not yet been a RIS tabled with the treaty, one of the difficulties that we identified was the question about who was going to table the RIS, because the responsible department for the RIS, of course, is the department responsible for the treaty. According to the processes that are being followed by the Office of Regulation Review, a RIS should be tabled when there is any legislation proposed—and that could often be before the treaty consideration.

We agreed that the minister who was primarily responsible for tabling the RIS was, of course, the minister responsible for the legislation, and that was when it would normally occur. If there had been no legislation required in a treaty matter, where nonetheless a RIS was required, then it would be tabled and attached to the NIA, and it

would come before this committee.

For all of that to occur, there had to be an exchange of correspondence between ministers, and with this committee to advise them of all of this. We took the view that that should be completed before a RIS was attached to a document which was tabled before this committee. It was also the case, I think, that the RIS had not been finalised at the date that the revised NIA was tabled, because, again, it was a learning process, as I understand it. We thought it all fitted together. I did not, frankly, quite anticipate the problem. Then there was this additional document which the committee would require and it was going to be cabled to us.

CHAIRMAN—But both DFAT and, in this case, DIST would appreciate the difficulties for this committee in that process, in simply meeting the 15-sitting day rule. That poses a real problem for us.

Senator COONEY—It is a matter of policy, I suppose, but can anybody see any machinery problems in the chair, deputy chair and secretariat of this committee—not the whole committee—being made aware of what is going on right from the start of the process? They can take responsibility, together with others, for getting the matter before the committee.

Mr Hart—No. I think it is a matter of policy. There was a great deal of contact between ourselves and the secretariat on an informal basis, trying to keep ourselves informed of how things are developing.

CHAIRMAN—I think to be fair, the Minister for Foreign Affairs does this—not regularly, but he has done it on a number of occasions with a letter to me. As part of the learning process in a whole new system, it would be helpful if all ministers were aware that this committee is there. To pick up Senator Cooney's point, it is the same sort of thing. Minister Moore, for example, could have written to this committee a few weeks ago or a few months ago.

Mr Hart—Rather than to the Minister for Foreign Affairs?

CHAIRMAN—Well, either; it does not matter. As long as the appropriate ministers are involved in the process. Maybe the best thing to do is to concentrate it through the treaty secretariat in DFAT. Maybe that is the way to do it. Going back the other way, Jeff, what I am saying to you is that it is probably incumbent on you, as the man responsible in DFAT, to put it out to other departments that this is what should happen in future in terms of some of these things. Are you happy with that?

Mr Hart—Sure. Because of the relationship between the minister, as the tabling minister for treaties, and this committee, we have obviously been anxious to ensure that the relationship is an appropriate one. That was why our advice to DIST on this occasion

was that, if there was an urgency matter and if all of the state issues were resolved, a letter from Mr Moore to Mr Downer would provide an opportunity for Mr Downer to consider the arguments and, if they were accepted, to make a proposal to you. That was what we had in mind.

CHAIRMAN—Yes, but there is also the urgency provision anyhow. The urgency provision can be exercised, albeit with some consideration.

Mr Hart—Sure, but we had frankly thought that we did not elect to advise that we use the urgency provision.

CHAIRMAN—I think it would have been inappropriate, in my view.

Mr Hart—Okay; because, to be honest with you, we are not anxious to see the processes diminished in any way.

CHAIRMAN—That is right, yes.

Mr Hart—We thought that, as a matter of principle, the process could be completed with 15 sitting days in one House and less than 15 in the other. That was a smaller derogation of principle and process than the use of the urgency provisions.

CHAIRMAN—Yes. This committee's view would be, I think, that the urgency provisions are there and they should be utilised but they should be utilised sparingly and, in many cases, perhaps, in the main restricted to national security implications. There are others such as fishing agreements, and we have had a couple of those. I agree with you that to extend it into a departmental thing more widely would open up the whole urgency provision to some question. Is that the way you see it, Senator Cooney?

Senator COONEY—Yes. I think that if a culture developed in the department that you had to at least tell the chairman or perhaps the deputy chairman of this committee, as a matter of course, then it would solve a lot of these problems. Mr Andison comes along here and has followed everything he has been told and suddenly he runs into a brick wall. It would avoid that sort of thing. It is not only a matter of having you aware but I think it is a protection for the department itself.

CHAIRMAN—That is right. The links already exist and those links are very satisfactory between DFAT and this committee's secretariat. We are getting lots of information in advance, to be fair, but this one has seemingly fallen down the crack for a number of reasons that have already been outlined this morning.

Senator MURPHY—I really want to understand to the best that I can. I would like to ask for some advice, Mr Chairman. In addition to the WTO TBT that is in place, and which deals with technical barriers to trade, we are now proposing to have an MRA.

There is nothing wrong with that. But the TBT process and the WTO processes can actually deal with the situation if a country feels that there is a technical barrier to trade of its product into another country, so why can we not just use that process?

Mr Andison—The joint committee that is set up under this agreement is really there to look at questions of whether a conformity assessment body is doing its job properly. In other words, if there is a dispute about the competence of a particular conformity assessment body, or of a product's compliance with the market, then the joint committee is there to try to resolve those sorts of matters. If it is a more fundamental question about whether or not the standard that applies in Europe represents a technical barrier to trade then that is a matter to be taken through the WTO.

Senator MURPHY—Does this MRA not allow for country A to say that the standard they require for this type or various types of equipment—medical or whatever—is to be at this level which may not be a level which is being produced in any other country? They say they want you to meet that and, as part of this agreement, you agree to meet these standards that they are setting. To me, that is what it says in there.

CHAIRMAN—It is a fundamental question and it might be best if you took that on notice. I think we need some comments. The EMSCI submission gets a little more specific because it deals with third country involvement. I think, again, we do not want to hold you up unduly here this morning but what we would be interested to have are the comments on that submission which is critical of article 4 in terms of third parties. Could you perhaps pull the two together—the more general fundamental question raised by Senator Murphy and the specifics of the EMSCI?

Senator MURPHY—I would also like some advice with regard to agreements that have been pursued in other areas.

CHAIRMAN—Like the environment and outside the—

Senator MURPHY—This actually does mention the environment, where it implies that things such as the environment and health, et cetera, can be covered, but you have to give 60 days notice, which I think is in conformity with the technical barrier to trade WTO agreement.

CHAIRMAN—I think that calls for comment from DFAT as well. Could you take on notice the specifics of this MRA from DIST and the more general ones from DFAT?

Dr Marengo—Probably from other areas of DFAT. Can I point out one thing? The WTO is explicitly encouraging the conclusion at the international level of an agreement like the one you have concluded with the European Union. In fact ours was a prime specifically encouraged by the WTO to conclude agreement on certification.

Senator MURPHY—Yes, I know that. But what I would like to know in more specific terms as it relates to this agreement and potentially relates to other agreements is: if a country can set a standard that it has, or applies, domestically, can it apply the same or similar standards to goods being imported into the country? This would say to me, yes, but I want to know if, in other areas in the broader sense, we can have the same application?

Dr Marengo—Yes. We need to refer to the question to another area of the department.

CHAIRMAN—That is all right. That is why I think it is appropriate that the more general one goes to DFAT and DIST as well. I am going to wrap up. I do not think we have got any other questions at this stage, other than to make a final point that clearly until such time as we get that information, this committee cannot go forward and therefore the process is, regrettably, in limbo.

There is nothing we can do about that because the system at the moment has in many ways failed. I am not criticising DIST specifically, but it has fallen down the cracks for a number of reasons which we need to address so they can be more fundamentally addressed for future cases. Are you happy with that? DIST could take that on notice and the specifics of the EMSCI criticism. The one by Nulite really is a criticism relating to 14 June and there is nothing much we can do about that. That is not going to be complied with. We cannot turn back the clock. And you can take on notice with DFAT the broader issue that Senator Murphy raised.

But the sooner we get those comments, the sooner we can address them and get the thing resolved in terms of the parliamentary processes. Everybody happy with that? Thank you for attending.

Resolved (on motion by **Senator Cooney**):

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

Committee adjourned at 11.17 a.m.