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Official Committee Hansard

JOINT COMMITTEE ON TREATIES

Reference: Treaties tabled on 30 June 1998

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JOINT COMMITTEE ON TREATIES

Monday, 21 December 1998

Members: Mr Andrew Thomson *(Chair)*, Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Laurie Ferguson, Mr Hardgrave and Mrs De-Anne Kelly and Senators Bourne, Brownhill, Coonan, Cooney, O'Chee, Reynolds and Schacht

Senators and members in attendance: Senators Bourne, Cooney and Schacht and Mr Baird, Mrs Crosio, Mr Laurie Ferguson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Andrew Thomson

Terms of reference for the inquiry:

Review of treaties tabled on 30 June 1998

WITNESSES

Committee met at 2.04 p.m.

BURROWS, Ms Alison, Manager, Services Trade and Negotiation Unit, Trade Negotiations Division, Department of Foreign Affairs and Trade

MacINTOSH, Mr Ian Douglas, Desk Officer, Services Trade Unit, Trade Negotiations Division, Department of Foreign Affairs and Trade

MAHALINGAM, Ms Helen, Executive Officer, Trade Negotiations Division, Department of Foreign Affairs and Trade

PIERCE, Mr Mark, Assistant Secretary, Services and Intellectual Property Branch, Trade Negotiations Division, Department of Foreign Affairs and Trade

JONES, Mr Raymond Gwynne, Manager, Financial Institutions Division, Department of Treasury

SCHUERMANN, Mr Olaf Kirsten, Unit Manager, International Finance Division, Department of Treasury

CHAIR—I welcome witnesses to this afternoon's hearing. For the record, I should say that, although the committee does not require you to give evidence under oath today, these hearings are legal proceedings of the parliament and they warrant the same respect as proceedings of the House of Representatives or the Senate; hence the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament.

The purpose of this ad hoc hearing is to deal with some questions that arose out of the committee's deliberations this morning into the Fifth Protocol to the General Agreement on Trade in Services. It has been arranged at short notice to assist the committee's consideration. As those present will appreciate, the consideration of this matter has taken on some urgency, given that the protocol is only open for acceptance until 29 January 1999. Although this committee will not be able to provide a formal report to parliament before that date, we decided to convene a hearing this morning to expedite our consideration of it.

The purpose of the hearing is really to learn a bit more about the scope and the purpose of the protocol before considering what further action, if any, may be required. In particular, questions arose about the distinction between the parameters of the protocol and Australia's existing policy on banking mergers—the so-called four-pillar policy. We decided this morning to invite representatives back to enable some of our members to clarify the borders between where existing policy stands or where it may be varied in future by a decision by government and where this agreement may restrict such policy flexibility. Mrs Kelly, you had some questions in particular about that. I ask you to open the batting.

Mrs DE-ANNE KELLY—I notice on page 9 of the national interest analysis of DFAT that the protocol is intended to remove the blanket prohibition on foreign takeovers of the four major banks.

CHAIR—It is page 9 of our papers, under the heading of 'Obligations'.

Mrs DE-ANNE KELLY—I am not too sure who the question should be directed to, Mr Chairman. Perhaps you could make a suggestion. I would like one of the people who have come today to explain what the removal of the blanket prohibition means for foreign takeovers of the four major banks. Does that directly or indirectly threaten the four-pillar government policy on not allowing mergers between the four major Australian banks?

Mr Jones—I will try to address that question. Essentially the removal of the prohibition on foreign takeovers of majors merely allows a foreign entity to make an application to undertake a takeover, but that would still be subject to the foreign takeovers provisions and also the legislation covering shareholdings in banks, so it would have to meet the normal assessment hurdles that would be assessed in any takeover of a bank.

Mrs DE-ANNE KELLY—Mr Jones, how successful has the Foreign Investment Review Board been in the past in curtailing investments that might be undesirable to the government of the day?

Mr Jones—In relation to foreign investment matters generally, I am not in a position to answer because I am not from that area, but I can take that on board and get you an answer that would assist. You are really talking across the spectrum which I am not in a position to comment on.

Mrs DE-ANNE KELLY—It has been said though that, if there were a threat to one of the major four banks in Australia, their ability to merge with another bank would deflect such a foreign takeover move. If what I have said is correct, and not just a media supposition, indirectly won't this impact on the government's four-pillar policy?

Mr Jones—I think it would be very hard to give a precise answer unless you knew the nature of a particular proposal that was being made.

Mrs DE-ANNE KELLY—Well, the comment has been made by one of the chief executive officers of one of the major four banks that, were there to be a hostile takeover of their bank, they would be in a better position to deflect that if they were already merged with another major bank. Is that just simply media spin or is that an accurate assessment of their position?

Mr Jones—That sounds to me very much like a media spin with an attempt to create a potential scenario. I do not see it as a logical or necessary consequence.

Mrs DE-ANNE KELLY—All right. So you believe then that the four-pillar policy is absolutely sound, regardless of this?

Mr Jones—I think that the Treasurer and the Prime Minister have made the position on the four-pillar policy fairly clear in recent times.

Mrs DE-ANNE KELLY—It can't be undermined by this protocol at all?

Mr Jones—No.

CHAIR—Could you clarify that a little more for us? Where is the boundary of the protocol and the banking policy? How do you express that more clearly? Why would the protocol not affect that policy? Where does it finish its authority?

Mr Jones—Under the protocol, we have merely stated that we have removed the blanket prohibition. We have not removed consideration of foreign takeovers. They would need to meet the normal foreign investment guidelines and they would have to satisfy the requirements of the provision in the banking legislation that covers shareholdings and takeovers.

Mr HARDGRAVE—So could you assure this committee that there is no chance at a point down the track that the Fifth Protocol to the General Agreement on Trade in Services could be used as a lever in our High Court, as a result of our constitution, to undermine our domestic policy intentions with regard to bank ownership?

Mr Jones—What we have stated in the protocol, as I understand it, is merely noted. We have removed the prohibitions; we have not said that we are going to automatically approve them.

Mr HARDGRAVE—But would domestic law possibly be overridden or do you have any advice to suggest that there is no possibility that domestic law could be overridden by the High Court interpreting matters in certain ways? I am not after you to reflect on the High Court's judgment or otherwise, but I am just wondering if the scenario has been played through and if there has been any evidence gathered by you in assessing that this is a good thing to be part of.

Mr Jones—I think it might be helpful if I could get some advice from some of the other members at the table who are involved in negotiations for this agreement and have a better understanding of its legal implications.

Mrs DE-ANNE KELLY—Mr Chairman, Mr Hardgrave has raised a point Mr Jones made that I would like to explore. How many takeovers then has the Foreign Investment Review Board refused in the national interest in the last two to three years?

Mr Jones—I would have to take that on notice.

Mrs DE-ANNE KELLY—Are there any notable ones that come to mind?

Mr Jones—It is not my area of responsibility. I just do not have that information to be able to answer the question.

Mrs DE-ANNE KELLY—Does anybody else on the panel have that information? So we do not know whether they would be likely to agree or disagree with a major takeover.

Mr Jones—The Foreign Investment Review Board is an advisory body. Decisions of that nature are made by the Treasurer.

Mrs DE-ANNE KELLY—On the recommendations of the FIRB, though.

Mr Jones—Yes.

CHAIR—I think you are casting the net pretty wide in terms of questions, but go ahead.

Mr HARDGRAVE—I am trying to define it a bit further. Are we going to find any of the normally accepted domestic practices, such as a decision to allow investment to proceed or otherwise, undermined perhaps by using the tool of the High Court—somebody appealing a domestic decision citing this particular treaty as a reason for that domestic decision to be overridden? You are aware of the sorts of things that have happened in a general sense, I am sure. I think most Australians would be. I guess what I am looking for is a reassurance from you that consideration of our constitution and the potential use of our constitution has been figured into the negotiations that have taken place. Or was it not even really subject to any sort of rudimentary consideration in these discussions?

Mr Jones—As I understand it the domestic provisions that we have in place which are largely in the form of legislation are in no way curtailed by this. We have basically said that we have changed our previous prohibition and removed that. We have clearly pointed out that there are arrangements through which any potential proposals from overseas have to be considered. In that sense nothing has changed.

Mr HARDGRAVE—I am just trying to help you along here if I can without attempting to lead the witness or whatever they say in these sorts of things. What I am trying to get from you is that this particular agreement in fact complements already stated intentions of the government and also legislative arrangements that have been put in place following the Wallis inquiry. This particular agreement therefore is simply, if you like, an international agreement continuation of what has already been decided as domestic law?

Mr Jones—That is correct.

Mr HARDGRAVE—Thank you.

CHAIR—Any other questions?

Mrs DE-ANNE KELLY—May I ask another question, Mr Chairman?

CHAIR—Yes.

Mrs DE-ANNE KELLY—Mr Jones, what is there to prevent—and this is probably quite a simplistic question—a takeover of one of the major four banks by a foreign entity and the same entity taking over another one of the banks and therefore undermining the four-pillars policy automatically? Would it be up to the Foreign Investment Review Board to refuse the second takeover?

Mr Jones—It would be a case of looking at any of the particular proposals on their own merits as they come through to determine whether they were considered to be in the national interest.

CHAIR—It is up to the Treasurer, as you said before.

Mr Jones—He would take advice from the Foreign Investment Review Board. He would take advice from the Australian Prudential Regulation Authority and he would take advice from the ACCC.

Mrs DE-ANNE KELLY—So it is a matter for the Treasurer of the day?

Mr Jones—Yes.

Mr BAIRD—The current requirement is that foreign takeovers of the four major banks are prevented; is that right? Do the foreign investment guidelines actually prevent the foreign takeover of one of the four major banks or not?

Mr Jones—Currently?

Mr BAIRD—Yes, currently.

Mr Jones—There is no prohibition. It is a basic essential procedure that they have to satisfy.

Mr BAIRD—In terms of saying, 'removal of the blanket prohibition on foreign takeovers,' what does that mean then if there is no such restriction now?

Mr Jones—My understanding of that was that previously it was an indication that under no circumstances would they be approved.

Mr BAIRD—It was not written; it was just understood?

Mr Jones—Yes. It was a policy statement.

Mr BAIRD—And what has changed in that? Is that still understood to be the case?

Mr Jones—I think what they have said is the proposals can come forward and they will be considered. No predetermined decision would be made.

Mr BAIRD—Nothing has changed and everyone understands this so this is just rhetoric, then, is it, in terms of point 4? If everyone understands it is the case—and you are saying, in terms of your own definition, the Foreign Investment Review Board would investigate it all but we all understand it is not going to happen—what is the point of that?

Mr Schuermann—Before there was a blanket prohibition and it was included in—

Mr BAIRD—Was it written?

Mr Schuermann—It was written and it was included in our earlier version of the—

Mr BAIRD—Now it has been removed?

Mr Jones—It will be removed by clause 4.

Mr Schuermann—But you have still got the Foreign Investment Review Board hurdle. Like all foreign takeovers, it has to go over that hurdle. Before, it could not go to that hurdle at all because there was a point-blank prohibition; it could not even get to that.

Mr BAIRD—So this is the clause that removes that in terms of our foreign investment guidelines and now you just come back to national interest.

Mr Schuermann—Yes.

Mr BAIRD—But is it understood that national interest includes not taking over one of the four major banks?

Mr Schuermann—Not in terms of the protocol where you define national interest. It is there—there are the words 'national interest'—but it has not been defined.

Senator COONEY—Is this your national interest analysis? Is this from your department? Can you see this from there? It is a national interest analysis. Listening to Mr Baird, I was wondering whether this was it—'Services Trade and Negotiations Unit, Services and Intellectual Property Branch, Trade Negotiations Division, Department of Foreign Affairs and Trade.' Is that it?

Ms Mahalingam—Yes.

Senator COONEY—Does that set it all out? Is that what Mr Baird was asking about?

Mr BAIRD—I just wonder whether we are into rhetoric or whether this is a significant step forward and this is now, for the first time, removing that blanket prohibition on the takeover of the four by foreign interests.

Ms Mahalingam—It reflects the state of government policy at the time. The schedule reflects the government policy at the time on foreign acquisitions.

Mr Schuermann—Yes, when there was a blanket prohibition.

Mr BAIRD—This takes it out?

Mr Schuermann—It takes it out. It does not mean it will happen, of course.

Mr BAIRD—The national interest might catch it up anyway.

Mr Schuermann—Yes.

Mr BAIRD—In terms of the level of ownership of Australian banks, where have we reached in terms of overseas shareholdings with banks such as the NAB? I understood that it was getting close to where the level of overseas ownership was very significant anyway in terms of foreign shareholdings.

Mr Jones—That is an issue that I would have to take on notice.

Mr BAIRD—If it is very high anyway then this is all somewhat academic, although shareholding is quite different from a takeover.

Mr Jones—It would depend on the nature of a shareholding. If it is just a normal sort of portfolio investment, it is treated—

Mr BAIRD—So there is no restriction on the level of shareholdings that foreign investors can make, just by the straight buying of shares?

Mr Jones—Under the provisions of the legislation covering shareholdings in banks, any shareholding that reaches 15 per cent has to have the approval of the Treasurer.

Mr BAIRD—But, from what I understand from the NAB, they are almost up to 50 per cent now. Is that right or not?

Mr Jones—I do not know the answer to that, I am afraid, but there would certainly be portfolio investments owned by various forms of managed funds.

Senator COONEY—We have the national interest analysis and consultations with the state and territory governments and the Australian financial services industry. You say that at the start of the negotiations in April 1997 state and territory governments were each briefed by visiting Commonwealth government officers from the Department of Foreign Affairs and Trade. When did you brief this committee first? I am not making any point about this; I am just trying to get some procedures in place. Would there be any difficulty in briefing this committee with the same material with which you briefed the state and territory governments or would there be some problems with that? I can imagine there might be, so do not feel shy about saying yes if you feel there would be or if you would want to take this on notice. I am just trying to get some ideas.

What I am getting at is this: in some senses this committee is becoming more and more an interpreter of what is done in treaties and what is done by agreements to the public. To be able to interpret something, we have to be able to understand it ourselves to some extent. We have not got the brilliant financial and economic minds that you and Mr Pierce have, so we need a bit of explanation. I was just wondering whether there was any sort of mechanism to enable us to carry out our business as interpreters. We have other functions as well.

Mr Pierce—We are not exactly sure what it is that you think you are missing out on, but if you think you are missing out on anything substantive we can give it to you.

Senator COONEY—You said that, at the start of the negotiations in April 1977, state and territory governments were each briefed by a visiting Commonwealth government official from the Department of Foreign Affairs and Trade. I am asking this: is there any problem that you can see with us getting the same briefing?

Mr Pierce—You are asking us, if I may put it like this, a question that goes beyond the Fifth Protocol of the GATS to talk about the way in which our ministers deal with the committee during the negotiation—whether we could give you, if you like, work in progress.

Senator COONEY—I will put it in this context. This document, which I understand is yours or you have some property in it, is headed: 'Fifth Protocol, done at Geneva on 12 December 1997, to the General Agreement on Trade in Services, of 15 April 1994—National Interest Analysis: Date of Proposed Binding Treaty Action', so it is within the context of this protocol. I am asking you in that context. But if you would prefer to answer it more widely—

Mr Pierce—I am not trying to be obtuse. There are two answers to your question. The first answer concerning the substance of the Fifth Protocol is a simple one. We are very grateful the committee has reconvened this afternoon to give us a chance to explain it again. We have provided written material but, if there are gaps in it or limits to it that you would like to probe by questions, that is why we are here. We very much appreciate the fact that you have inconvenienced yourselves much more than we have ourselves.

The second question, as I understand it, is that you are asking whether, during negotiations on things like the Fifth Protocol—that being simply an illustrative example—the committee could be given a work in progress commentary.

Senator COONEY—Yes, and specifically in the context of this question, whether you could give us briefings at the same time as Commonwealth government officials from the Department of Foreign Affairs and Trade brief the state and territory governments on any problems—if any, and you may have many, so I am not trying to bind you down. You might not want to answer at this stage.

Mr Pierce—It is very kind of you to give us an out on this, because you are really asking us, in a way, whether it is possible for us in retrospect to say it would have been okay to have given the committee work in progress briefings when to begin with I think that is a question for our ministers to decide about their dealings with the committee, and a question for the committee itself to put to ministers. This is simply one example where I feel, if I may say so, that you are making a more general point with much wider application.

Senator COONEY—Yes, that is right.

Mr Pierce—I think that is for our ministers to answer rather than for officials.

CHAIR—We have a review of this process under way now.

Senator COONEY—I was just wondering whether there was any sort of technical issue. There is one other question I wanted to raise. The government, I think, consulted with the Australian financial services industry, which you would expect—the Australian Coalition of Service Industries and the Insurance Council of Australia. Is there any problem that you can see—and again, you might want to take this on notice—with consulting with, say, the Finance Sector Union?

Mr Pierce—Are you asking whether there were problems with the consultations we had with the financial sector—were there problems thrown up by the financial sector in the consultations we had with them?

Senator COONEY—No, I wondered whether you would have any problems negotiating with the Finance Sector Union in addition. There may be issues of wages and conditions and numbers of people employed. I do not know whether you have had a chance to look at this, but I am reading from the 'National Interest Analysis'. You probably have not seen this.

Mr Pierce—The Fifth Protocol, in our context, follows on from the Wallis inquiry.

Senator COONEY—Right.

Mr Pierce—It follows on therefore logically and sequentially from very extensive public consultation. My Treasury colleagues were being asked before as to whether this makes government policy. It reflects government policy. It is not our job to make government policy in Geneva and the WTO. It is our job to reflect and to embody that policy and to codify it and to try to obtain, as we have here, a deal involving market access, reciprocity and national treatment for our service providers which gives us a better chance to export internationally.

Senator COONEY—Yes, I can understand all of that and I take it that it was done in the department. If someone had not done a national interest analysis as it has been done here, these questions would not have arisen. It is just the way you have done the national interest analysis. It has come before this committee and I think the committee has to have some idea of what it is going to talk about if it does talk about this in the context of, amongst other things, the national interest analysis. That is all I am asking. When I ask a question you say, 'They are very general questions and they go to a wider issue,' and I can understand that. But if they do that, why did you put them in the national interest analysis?

Mr Pierce—Our consultation was as wide and as thorough as we could make it. We found it to be testing and to be genuine. We built on previous consultation and we were lucky enough to do that. As you said, you are making a wider point. We are building up our networks for consultation with business and industry in advance of the resumption of services and negotiations in the WTO, which will come at the end of next year. We are trying to make sure that we have an early warning system for problems that may arise, that we are fully aware of specific practical difficulties which our service providers have in overseas markets, that the consultation is comprehensive and rigorous so that we can draw out the components which go to make up the national interest. If you are not happy with the way the national interest analysis has been done, and you may well not be, then I am sure that we can improve that. If there are suggestions from the committee then we are happy to do consider them.

Senator COONEY—I think you are being supersensitive, if I may say so.

Mr Pierce—No, we are only looking for a way to do it better.

Senator COONEY—We are very thankful that Treasury has come here. We face a problem this morning. This committee is not here to savage Treasury, but we have a duty to perform, and that is to look at treaties and agreements and to give our opinion to the people of Australia—I use that phrase advisedly—on what we think about it. It is up to government to do what they will. If you send us material including, say, national interest analysis, then we are obliged to look at it and see what we can make of it. All I was doing was asking you questions in the context of that analysis. I was not trying to be critical; I was trying to tease out some matters.

Mr Pierce—I appreciate the spirit in which you are asking the question. I was just looking for ways we could improve things. We are doing this together and, if you are not happy with the format of the national interest analysis, tell us.

Mrs CROSIO—I will ask that question more directly. The document says:

Regular consultations were also held with the Australian financial services industry, including the Australian Coalition of Service Industries (ACSI), the Insurance Council of Australia, and the Australian Stock Exchange throughout the negotiations. The Australian financial services industry was fully supportive of efforts to liberalise trade in financial services and was satisfied with the final outcome of the negotiations as set out in the Protocol and its Schedules.

As Senator Cooney asked, in those negotiations were any discussions held with any of the service unions? You are dealing with the industry. Are you dealing with the people involved in it as well? Do they get advised or briefed or anything like that?

Mr Pierce—I do not know because I was not in charge of the branch at that time. Helen Mahalingam was doing those negotiations so I will ask her.

Ms Mahalingam—No, there were not.

Mrs CROSIO—In other words, the answer is no. We only consulted the industry players and we did not consult the industry movers.

Ms Mahalingam—We also consulted with the state and territory governments. One thing that we were very conscious of is that we were only reflecting current government policy in any changes made to the schedule. It is my understanding, and my Treasury colleagues might like to comment further on this, that there were extensive consultations in the preparation—

Mrs CROSIO—Again I blame the room—it is not your fault—but I am picking up only every second word you are saying. I will have to wait until I read *Hansard*.

Ms Mahalingam—I was just saying that the changes made to the schedule only reflected current government policy. We did not go out in advance of current government policy. They only reflected changes made as a result of the Wallis inquiry into the financial system. As I understand—I would have to defer to my Treasury colleagues here—there were extensive consultations on those changes as part of that Wallis inquiry.

Mrs DE-ANNE KELLY—I am grateful to my colleague Mr Baird because he did establish that, going back to point 4, there was a written blanket prohibition on foreign takeovers of the four major banks. Is that what you were saying, Mr Schuermann?

Mr Schuermann—As far as I am aware, it was not in legislation; it was just a government policy decision at that time.

Mrs DE-ANNE KELLY—At which time? Is that current now?

Mr Jones—I understand it was part of the previous government's six-pillars policy; it was associated with that.

Senator SCHACHT—But is it a direction by the Treasurer to the FIRB that foreign takeovers of the four major remaining banks shall not take place? What direction has the government given to the FIRB as guidelines on the possible foreign takeover of the four banks?

Mr Jones—In relation to the takeovers of banks, essentially it comes within the foreign investment provisions but it also comes in with the legislation that covers bank shareholdings and takeovers, which is not administered by the Foreign Investment Review Board.

Senator SCHACHT—It is not administered by the FIRB?

Mr Jones—Banking legislation is not.

Senator SCHACHT—So it is in legislation?

Mr Jones—It is also caught by the foreign investment takeovers provisions because it is still a foreign takeover. There are two steps.

Senator SCHACHT—I am a simple politician. Just tell me: which minister says yeah or nay?

Mr Jones—The Treasurer.

Senator SCHACHT—Under the FIRB or under the banking legislation?

Mr Jones—Under both. You still have to satisfy both.

Senator SCHACHT—He gets two streams of advice and he makes a decision?

Mr Jones—That is right.

Senator SCHACHT—And that decision has not changed, going back for a period of time—that there will be no foreign takeovers of the four major banks.

Mr Jones—Following the government's announcements of its decisions in relation to the Wallis inquiry, it indicated that the blanket prohibition on foreign acquisitions had been

removed but they would still have to go through the same provisions of the legislation. They still have to satisfy the national interest provision.

Senator SCHACHT—National interest had to be satisfied but there was no blanket prohibition. So, if someone could prove it, the government could give it a tick. So people are told, 'You would make a good case; you could win.'

Mr Jones—In theory, yes. That is precisely the point.

Mrs DE-ANNE KELLY—So are you saying, Mr Jones, that the removal of the blanket prohibition is as a result of the Wallis inquiry, and so on?

Mr Jones—It was one of the first things announced by the government.

CHAIR—And it is not affected by the Fifth Protocol, which was what we asked you here finally to establish?

Mr Jones—The protocol reflects the decision the government made as a response to Wallis.

CHAIR—So that is established beyond doubt. Many thanks for your participation this afternoon.

[2.39 p.m.]

CARLSON, Mr John Albert, Director General, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade.

HAMMER, Dr Brendon Charles, Director, Nuclear Trade and Security Section, Nuclear Policy Branch, International Security Division, Department of Foreign Affairs and Trade

JACKSON, Ms Roslyn Patricia, Executive Officer, Nuclear Trade and Security Section, Nuclear Policy Branch, International Security Division, Department of Foreign Affairs and Trade

SCHICK, Mrs Elizabeth Ann, Assistant Secretary, Nuclear Policy Branch, International Security Division, Department of Foreign Affairs and Trade

CHAIR—We will not require you to give evidence under oath this afternoon but I must advise you that these hearings are legal proceedings of the parliament and they warrant the same respect as proceedings of the House of Representatives or the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some brief introductory remarks before we proceed to questions?

Mrs Schick—Yes, Mr Chairman, I would like to make a brief statement.

CHAIR—Go ahead.

Mrs Schick—The committee has before it an implementing arrangement between the European Atomic Energy Community, EURATOM, and Australia. The purpose of the implementing arrangement is to facilitate the shipment of plutonium derived from Australian uranium from Europe to Japan following the reprocessing of Japanese spent fuel assemblies in Europe.

To provide some background, Japan is the world's third largest producer of nuclear power behind the United States and France. For reasons of energy security and to limit its greenhouse gas emissions, Japan is strongly committed to nuclear power for electricity generation and its power requirements are expected to increase over the next 15 years. Japan is currently Australia's second largest uranium market just behind the United States and in 1997 took 22 per cent of Australia's total uranium exports.

For the purposes of maximising its power generating capacity, Japan's domestic nuclear energy program includes the transfer of spent nuclear fuel assemblies to the European Union for reprocessing and the return to Japan of the extracted plutonium for reuse in nuclear power reactors for electricity generation.

The intent of this treaty action, which is a further implementing arrangement to the 1981 Australia-EURATOM agreement concerning transfers of nuclear material from Australia to

the European Atomic Energy Community, is to streamline the operation of the Australia—EURATOM safeguards agreement. It will do so by making an adjustment to the conditions under which Australia exercises its consent for the retransfer from the European Union to Japan of plutonium obligated to Australia, that is, plutonium which is derived from Australian uranium and is therefore subject to an Australian safeguards agreement.

Under the 1981 agreement Australian obligated plutonium may only be transferred from the European Union to third countries in accordance with conditions agreed upon by the parties in writing. Until 1993 the shipment of Australian obligated plutonium from Europe to Japan, following the reprocessing of Japanese spent fuel in Europe, was subject to Australia's consent exercised on an exclusively case by case basis.

In September 1993 in a treaty level exchange of notes Australia agreed to exercise this consent in advance on a generic basis subject to certain conditions including that the transportation and physical protection (security) of the plutonium be subject to the strict standards required by the United States. To ensure this condition was met the 1993 exchange of notes specified that Australian obligated plutonium could only be retransferred under generic consent if the material also carried US safeguards obligations. A US safeguards obligation is typically acquired by nuclear material undergoing enrichment in the United States.

The 1993 exchange of notes did not, however, cover the small proportion of Australian obligated plutonium, about 10 per cent of all Australian obligated plutonium in the European Union, which carries an Australian obligation but which does not carry a parallel US safeguards obligation. The purpose and effect of this implementing arrangement is to extend Australia's advance generic consent for transfers of Australian obligated plutonium from the European Union to Japan to cover the small proportion of plutonium which carries an Australian safeguards obligation only—that is, which does not also carry a US obligation.

Members of the committee will have noted that the conditions under which such transfers may be made are clearly spelt out in the notes which we exchanged with the European Commission on 28 May this year. Significantly such plutonium shall only be shipped together with and under the same physical protection arrangements as plutonium which is subject to the EURATOM-US agreement and thereby carries a US safeguards obligation. Australia will continue to consider on a case by case basis any requests by EURATOM for transfers of Australian obligated plutonium which do not conform to the conditions agreed upon in this implementing arrangement.

Finally, the adjustment to Australia's prior consent rights under the Australia-EURATOM agreement, which this implementing arrangement will permit, was considered desirable by both EURATOM and Japan and is consistent with the practice of their other major uranium suppliers, Canada and the United States. The agreement is also fully consistent with Australia's uranium export and safeguards policy, which is to provide assurance to Australia that exported nuclear material cannot benefit nuclear weapon or other military programs. The material subject to this agreement will continue to be accounted for by the Australian Safeguards and Non-Proliferation Office.

Mr HARDGRAVE—What sorts of sanctions would exist if the obligations under this treaty were not fulfilled? What sanctions do we have up our sleeve? Sanctions, penalties, protests, methods of protesting—in other words, how can you enforce it?

Mr Carlson—I am not sure whether you mean by 'this treaty' the exchange of notes or whether you are talking about the safeguards agreement in general.

Mr HARDGRAVE—I agree with the concept of the treaty and it is right that we should maintain a mine site to the grave approach on uranium that we deal with. I guess we all want to make sure that none of our uranium ends up in nuclear weapons or ends up blowing back to us as we drink glasses of milk at some stage, if the French let off a few more bombs in our neighbourhood. All of those things are matters that concern me. What I am wondering is: how do we actually enforce this concern? We are going to exchange notes; are we going to hold our breath till our faces turn blue?

Mr Carlson—In terms of this exchange of notes, we could suspend the operation of the transfer arrangements so that further transfers would not be approved. In terms of the head agreements, we have the right to suspend all further transfers of nuclear material to the country concerned and to obtain the return of nuclear material already in that country. If there were such a breach—

Mrs CROSIO—What happens if that country says, 'You're not getting it'?

Mr Carlson—I was coming to that. In terms of a breach of the non-proliferation treaty, which would also be involved if it were a non-weapons state, this would be a matter that would be taken up by the United Nations Security Council. You are talking about a very serious situation.

Mr HARDGRAVE—It is not likely to happen. We are only exporting to non-proliferation treaty states, aren't we?

Mr Carlson—It is extremely unlikely to happen. One of the features of Australian policy in this regard is very careful selection of our treaty partners. We have concluded bilateral arrangements only with countries whose credentials are impeccable in this area.

Mr BAIRD—How many are there?

Mr Carlson—There are 24 countries, 14 agreements. You are testing my memory to go through them all, but I will do so if you wish.

Mr BAIRD—No.

Mr Carlson—Let me refer you to my annual report, which lists them all. The principal customers for Australian uranium, the countries that principally use it, are the United States, Japan, the Republic of Korea, France, UK, Sweden, Germany, Spain, Belgium—

Mr BAIRD—OECD countries, are they?

Senator COONEY—The United States would not fire any weapons unless they had to.

Mr Carlson—I make the point that our agreements specify quite clearly that uranium supplied is not to go to any military use. Our mining companies sell to power utilities who are using uranium for electricity generation. The plutonium that is produced as a result of electricity generation is way out of the isotopic composition that is suitable for weapons. The possibility that any of this material might—

Senator COONEY—Do you know that, Mr Carlson, or have you been told that by scientists?

Mr Carlson—I know that myself. I have a certain degree of knowledge in this area.

Senator COONEY—You have done some experiments in that area?

Mr Carlson—I know people who have.

Mr HARDGRAVE—Essentially, what we have before us is one of those things that we should be signing and ratifying because we are responsible international citizens and we have an obligation to follow the progress of our uranium from the mine site to the grave.

Mr Carlson—Yes, that is correct.

Mrs CROSIO—There is no downgrading of any safeguard obligations as far as Australia is concerned?

Mr Carlson—Certainly not.

Mr BAIRD—I am sure there is an appropriate scientific explanation, but how do you know that it is Australian uranium that is being used in terms of reprocessing? How would you know if they say, 'No, that's not ours that's going off to Pakistan; that's actually uranium that comes from another country'—South Africa or wherever? How would we know?

Mr Carlson—That becomes a legal and nuclear accountancy issue. Once uranium is mixed with uranium from other sources, there are what are called the rules of equivalence and proportionality which are used to identify the material that is covered by an Australian agreement. If you are talking about whether we can track an atom and say that an atom started its existence in Australian soil, the answer is no, of course we cannot. There is no way to do that, and in that respect uranium is like a number of other commodities that lose their identity when they are mixed in a process. As I said before, we select our customer countries very carefully and supply only to civil programs where the possibility that you described is implausible.

Mr BAIRD—So it is all on trust?

Mr Carlson—Plus inspection arrangements. Our safeguards system is built on the International Atomic Energy Agency safeguards arrangements, which involve inspection of facilities to ensure that all material is accounted for and so on.

Mr LAURIE FERGUSON—Do all other providers have similar stipulations for use?

Mr Carlson—Our supply requirements are very similar to those of Canada and the United States. Ours are the strictest. Some countries supply only under what could be loosely called a peaceful use assurance and some uranium producers have no restrictions.

Mr LAURIE FERGUSON—Who would they be?

Mr Carlson—Some of the African producers. For instance, Gabon and Niger have no particular requirements. I think most suppliers these days do request peaceful use assurances. It is worth recalling that the nuclear weapons programs of the five acknowledged weapons states are no longer producing material for weapons purposes. Concern in the past about whether there was a possibility of material moving from a civil cycle to a military cycle is now an issue of the past.

Senator COONEY—It is not so much the weapons but how you get rid of the waste. You do not want to go into that now, but I think that is the big concern.

Mr LAURIE FERGUSON—With regard to India and Pakistan developing their programs, I am not sure of their capacity. Were they able to internally generate requirements or were they basically reached from other countries?

Mr Carlson—In both cases they produced their own uranium. They both have small uranium mines which were able to meet the requirements of those programs.

Mrs CROSIO—In the report you have stated that states and territories were provided with information on the proposed arrangements. What additional information was requested regarding the proposed arrangements and which states or territories requested it?

Mrs Schick—To the best of my knowledge, there was no substantive additional information requested from the states and territories at all.

CHAIR—That concludes our questions. Thank you very kindly for attending this afternoon. We will consider your evidence and report to the parliament.

2.56 p.m.]

JENNINGS, Mr Mark Brandon, Principal Legal Officer, International Branch, Criminal Law Division, Attorney-General's Department

MEANEY, Mr Christopher William, Assistant Secretary, International Branch, Criminal Law Division, Attorney-General's Department

LUTON, Mr Robert William, Executive Officer, Passports Australia, Department of Foreign Affairs and Trade

MEEHAN, Ms Jennifer Lynn, Desk Officer, Europe Branch, Department of Foreign Affairs and Trade

CHAIR—Welcome. Although we do not require you today to give evidence under oath I must advise you that these hearings are legal proceedings of the parliament and they warrant the same respect as do any proceedings of the House of Representatives or the Senate. Hence, the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make a brief opening statement?

Mr Meaney—This extradition treaty with Poland is one of a number of treaties that have been negotiated over the last 10 years or so since the introduction of the Extradition Act 1988. Certainly, there have been a number of treaties presented to this committee previously. We have taken the view that we have not gone into great explanation each time that we presented a treaty. I think the committee had come to the view that they were something of a template agreement. I am happy to proceed on that basis but I can provide a bit more elaboration should there be new members of the committee who would like further information.

Senator COONEY—It might not be a bad idea to present a brief general background to extradition treaties. We do have some new members. If we start looking bored you can stop.

Mr Meaney—I might have to stop already, Mr Chairman! Historically, Australia's extradition relationships prior to our federation were handled by the UK and we still have a large range of what we might call inherited arrangements or treaties that we inherited from those previous arrangements.

In 1988 there was a major revision of the way we went about extradition. A principal concern at that time was the problem associated with requiring extradition to be on the basis of a prima facie case. A prima facie case not only requires evidence to be adduced but the evidence must be adduced in a form admissible in our courts of law. Without going too much into detail, this provided to many civil code jurisdictions, mainly in Europe and so forth, an insurmountable bridge to ever achieving extradition from common law jurisdictions.

In the course of the late 1980s this issue was focused on in the context of the United Nations. There is a model treaty that Australia contributed to which is in very similar terms to the model treaty that Australia uses for the purposes of negotiating its treaties. The policy behind that model treaty, moving to what we call 'no evidence extradition', was reflected in

the 1988 act. Since then we have, wherever possible, been seeking to negotiate modern extradition relationships that provide for extradition on a 'no evidence' basis, and also modernising other aspects of the extradition law which, up until that point, were quite archaic and provided technical reasons why extradition was not possible but did not do much to advance the general course of justice.

Mr HARDGRAVE—Are you suggesting that this has taken 10 years to negotiate, or is this just one of the ones down the list that you have got to?

Mr Meaney—No. This is one of the ones down the list. The Extradition Act was in 1988, but of course there are a large number of countries with which we would like to negotiate treaties; it depends on their availability, our availability and the resources devoted by government to this sort of activity. Poland, as you will recall, was up until recently behind what was then termed the Iron Curtain. Poland has since gained membership of the Council of Europe. Prior to entering into extradition treaty negotiations there is a threshold test that the system of justice and the state of the criminal justice system of the other country must be of a standard that is suitable for Australia to do business with—if I can put it that bluntly.

The threshold test for membership of the Council of Europe requires the adherence to certain fundamental human rights, civil liberties and state of the criminal justice system. We have adopted as a policy that countries that have been admitted to membership of the Council of Europe, that have been through that test, are suitable partners for us to negotiate treaties with. This is all done in conjunction with our colleagues from the Department of Foreign Affairs and Trade prior to entering into that process.

A couple of years ago we entered into negotiations with a number of former Iron Curtain countries following their admission to the Council of Europe. The latest treaty that we have is with Poland.

Mr HARDGRAVE—So what have we got? There is 10 years since the beginning of the intention and, obviously, for all of what you have just said, the execution of the intention. Are we now going to see a raft of people we want being pursued? Has this got a retrospective bent to it, or are we simply going to say, 'If you commit a crime and go to Poland now, we'll scoop you up'?

Mr Meaney—To go back to a point that I made earlier, we do have inherited extradition arrangements with a number of countries. There is an inherited extradition relationship with Poland that exists at the moment. That is on the basis of a prima facie case. Without going too much into that matter, there is a fairly high profile person by the name of Anthony Oates for whom we are presently seeking extradition from Poland. The absence of a modern treaty does not prohibit us from seeking extradition, but it will place future cases on a more modern basis.

Mr HARDGRAVE—Does this particular treaty give you the opportunity to use that to go back to somebody who has been, say, seeking refuge in Poland for a number of years?

Mr Meaney—The treaty will operate from the date that it comes into force. As of that date we can seek extradition of anybody who might be there. It is not retrospective in the sense that the treaty goes backwards, but it is retrospective in the sense that, from the particular date, we can seek a person who we might not otherwise have sought because of the defects in the technical nature of the request.

Mr HARDGRAVE—They obviously committed the crime, whether it was five years ago or whatever—

Mr Meaney—Well, alleged to have committed a crime.

Mr HARDGRAVE—Yes, they were alleged to have committed a crime and therefore we now wish to seek them—whether it be from today or whatever. Thank you.

Mr BAIRD—How long does the process last and what is the general cost of it? Do you have teams go over to Poland to sit around and negotiate this for weeks on end? What is involved in setting up an extradition treaty?

Mr Meaney—Basically, the way the system worked was that sometimes teams of officials would go to countries to negotiate or officials would come to Australia to negotiate, depending on what else might be going on in the bilateral relationship at that time. There was what was then called the extradition task force, which was a joint task force within the Department of Foreign Affairs and Trade at that time. In the early 1990s, about 1992, I think, we went through Poland. Hungary, Czechoslovakia and Slovakia were also covered at the same time on a tour of negotiating trips.

Mr BAIRD—I suppose that means it has taken since 1992 to get us up and away.

Mr Meaney—That is right.

Mr BAIRD—Why?

Mr Meaney—Perhaps my colleague could elaborate on detail, but it is a negotiation. You go there, you agree a text, there are then problems with the text and you need to further negotiate to refine it.

Mr BAIRD—Six years.

Mr Meaney—Yes.

Mr Jennings—I can elaborate a little on that. We need to bear in mind that negotiations are a two-sided process and that we are dealing with the other side and its internal processes with the development and approval of text.

Mr BAIRD—So it is their fault, is it?

Mr Jennings—I would not be suggesting that. What I am advising is that we have to work with the other side through this process; in some instances treaties run more quickly in

the negotiations and in other instances they do not, particularly where you find countries that are, let us say, new to the negotiation of extradition treaties in the modern context, such as the case was with Poland. Up until the time that the Iron Curtain was taken down, there were not many extradition treaties concluded with those countries, certainly by Western countries such as Australia. They have taken a while to get up to speed on things that we had been doing, for example, with the western Europeans for some years. We have enjoyed a good working relationship with the Polish authorities on this, but each case is different in a sense in the dynamics of the negotiations.

Mr Meaney—There are also problems associated with having the translation exactly correlate in a legal document. You can have quite an amount of discussion about that. One of the problems is that you might have the words that will translate the word as you see it but it is a translation of the legal concept. Particularly coming from a civil code jurisdiction such as Poland and a common law jurisdiction of our own, translating the same concept can be a very time consuming process.

Mr HARDGRAVE—You said something before, didn't you, about their developing their systems of justice and everything in Poland anyway?

Mr Meaney—My understanding is that Poland has had a pretty well-established system of justice.

Senator BOURNE—I am interested in what happens if a new government comes in, say, in Poland that brings in the death penalty or lopping off hands or something that we would consider to be torture under the CAT. What do we do then?

Mr Meaney—They are pretty much in the same boat as if a new government came in here and it was changed here. Any significant change, because it is a bilateral relationship, would have to be reviewed. We have had cases on a couple of occasions—I will not go into the countries—where a country has reintroduced the death penalty after we have negotiated a mutual assistance treaty rather than an extradition treaty, and we have had to go back to those countries and clarify what the effect of that was. When both countries did not have the death penalty it was not an issue, so you did not need clauses in the treaty to deal with it. You then need to go back and clarify by an exchange of diplomatic notes what your intention is in relation to certain circumstances.

On the broader question, if we start off on a basis of trust and at the end of the day you find out that you cannot trust them, the ultimate sanction on any country is to abrogate the treaty.

Mr LAURIE FERGUSON—This is more a suggestion than a question. With regard to this national interest analysis, it really looks to me like a pro forma that we might have had on a variety of treaties on extradition that have come before this committee. When I flick through it, the treaty looks largely like those. The explanation you have given of six years could be very valid, that you have had difficulties with the Polish authorities, but I am wondering whether for our own benefit we could actually have a clause in these extradition treaties of any variations from what you call a template. There might be something there that

I, for instance, and other members do not pick up with regard to World War II crimes against humanity, including the Warsaw ghetto, et cetera.

Mr Meaney—Wherever there is that sort of variation it is highlighted to the committee.

Mr LAURIE FERGUSON—So we are not going to find anything of any substance—

Mr Meaney—There is no variation of significance between this treaty and the Australian model treaty that we would draw to the committee's attention. As I say, if there have been variations in the past, we have certainly highlighted them for the purposes of the committee. Unfortunately, because they are done to a standard—if we do the negotiation process properly—they tend to bear a remarkable similarity to each other.

Mrs CROSIO—Do we have a treaty such as this with, for example, the United States?

Mr Meaney—An extradition treaty?

Mrs CROSIO—Yes.

Mr Meaney—Yes, we have one of long standing.

Mrs CROSIO—Following Senator Bourne's question, what happens when the individual state within the United States brings in the death penalty?

Mr Meaney—Sorry? When the individual state?

Mrs CROSIO—You were saying in the answer that you have to negotiate and the example was given by Senator Bourne of a government changing and it bringing in the death penalty. If we have an extradition treaty with the United States and an individual state within the United States brings in the death penalty within that state, what do we do then?

Mr Meaney—I guess that is not a great example to illustrate your point because many states in the United States do have the death penalty.

Mrs CROSIO—And many have brought it in over the last couple of years.

Mr Meaney—Exactly, and, as you are probably well aware, it has been brought back at the federal level by the Clinton administration for certain offences where it was previously nonexistent. But the treaty is with the nation state, the entity of the United States; it is not with the individual component parts. It is the same as the treaty with Australia. That is with the Australian government, not with New South Wales, Victoria or anybody else. So again you just look to see what the provisions in the treaty relating to that issue are.

It is accepted international practice, which is reflected both in our treaty and in our domestic law, that Australia will not surrender a person to another country that has the death penalty unless that country gives an undertaking that the death penalty will not be sought or carried out by that country; that is, we have a guarantee that the person will not be executed.

We have that in our treaty with the United States, as we do with other jurisdictions that have the death penalty.

Mrs CROSIO—So the obligation is on the United States not to send that individual back to a particular state where he or she could be executed?

Mr Meaney—No. The United States would be our largest extradition partner. Most persons fleeing from Australia, for good or evil, tend to go to English speaking countries, so they go first to the United States or second to the United Kingdom. We do much traffic with the United States. We get an undertaking from the federal administration that says that they will not permit the person to be executed, and to support that, prior to making the request, the federal authorities will seek a similar undertaking from the state authorities. For example, if it is the state of Pennsylvania that is seeking somebody for a murder, which might be punished by death, the federal administration seeks an undertaking from the state that they will not execute the person if they are returned, and that underpins the undertaking given to us by the US government.

Mrs CROSIO—But they can execute the one in the next cell?

Mr Meaney—Sorry?

Mrs CROSIO—I am just thinking aloud.

Mr Meaney—We, unfortunately, have no control over that. But where we have control, we certainly exercise it.

Senator COONEY—Article 15.1 of this extradition treaty says:

Expenses incurred in the territory of the Requested Party by reason of extradition shall be borne by that Party.

Do we provide legal aid for people for whom an application has been made for extradition?

Mr Meaney—This 'expenses' refers to the national obligation. For example, we did not pay the US authorities when Mr Dunn came back from the United States. They do not bill us when we send somebody back to them and we do not bill them. The question of whether or not a person is entitled to legal aid is not dealt with under the treaty; it is dealt with according to the scheme for legal aid.

Senator COONEY—No, I am not asking that. I am asking: if you had an application from Poland—and we are the requested party—to extradite a person to Poland, do we see to it that he or she gets legal aid?

Mr Meaney—No, not necessarily. It is a matter for them to take up with the legal aid authorities and they have threshold tests as to means and so forth. Often times, extraditees are granted legal aid, but it is not by any means automatically universal merely because they are an extraditee.

Senator COONEY—You wouldn't know how often that had happened, would you? I suppose this is getting off the point a bit, but I would be interested if you had the information.

Mr Meaney—It is something of a conflict of interest because I am more concerned to get the person flicked out of the country rather than seeing what happens to them.

Senator COONEY—You are more interested in getting the other country supplied with the person alleged.

Mr Meaney—I really do not think statistics would be kept in terms of persons who are the subject of extradition being granted legal aid. It is just not the sort of category that is kept. I can make some inquiries but I have got a feeling that it is not going to be easy to extract that.

Senator COONEY—That doesn't matter then. If it doesn't occur to you, that doesn't matter.

Mrs DE-ANNE KELLY—Mr Meaney, I notice in here that military offences are excluded. Does that mean that war criminals cannot be extradited from Australia to Poland and, obviously, vice versa? Does 'military offence' cover war crimes?

Mr Meaney—No. A military offence is an offence against a military code, so it is a peculiar offence by, say, a serving officer. Basically our view on 'military offence' is that it infringes dual criminality; it is not generally the same sort of offences. Some are but, specifically, military offences are not usually equivalent to those in the usual criminal code.

In terms of war criminals, it would not be the case that war criminals would be able to call into aid a political offence. A political offence, more usually, would be somebody who was a noted dissentient or critic perhaps of an autocratic regime where that regime would want that person back.

It does not extend to the taking of life. Even if that might be a political motivation of, say, notionally a terrorist bombing, we would not view that as being in the purview of a political offence. The other question on that would be that there could be two purposes. A purpose to bomb a house of religion, for example, can be a form of political violence but it can also be construed as just an act of violence against the community.

It would have to be the predominant purpose, in my view, before it would be considered to be politically motivated. That is, the government would be seeking to have the persons returned not for punishment for murdering or killing people but for the purposes of punishing them because they are a political opponent.

CHAIR—That concludes today's consideration. Thank you for your evidence. We will report in due course to parliament. The next treaty or agreement we have to consider is the agreement on medical treatment for temporary visitors with the government of New Zealand.

[3.18 p.m.]

BURNESS, Mr Mark, Executive Officer, Medicare Eligibility Section, Department of Health and Aged Care

RAYNER, Mr Craig, Adviser, Medicare Eligibility Section, Department of Health and Aged Care

CHAIR—Welcome. Although we are not requiring witnesses to give evidence under oath, I must advise you that these hearings are legal proceedings of the parliament and they warrant the same respect as proceedings of the House of Representatives or the Senate. The giving of false or misleading evidence is therefore a very serious matter and may be regarded as a contempt of parliament. Would you like to make some introductory remarks before we proceed to questions?

Mr Burness—I think I can make them fairly brief. The original agreement with New Zealand under this arrangement was signed in 1986. In 1992 some changes were made to the New Zealand health system which affected the reciprocity of the agreement. They fluctuated from 1992 until about 1995 and during this time we have been trying to restore the original balance and intention of the treaty, which came to fruition with the initialling of the agreement on 4 May this year. Thank you.

Mr BAIRD—How many other countries do we have this relationship with?

Mr Burness—Seven.

Mr BAIRD—On the whole question of the imbalance, there are a lot fewer Australians going to New Zealand than there are New Zealanders coming to Australia. I notice that there has not been a costing out of what this is likely to incur. I note that the number of New Zealand visitors to Australia has grown substantially again during this year. You quote 1995 figures. I think last year the order of 650,000 New Zealanders came to Australia and about 350,000 Australians went to New Zealand. The imbalance continues to grow.

Does that suggest that it really is not in Australia's interest to continue this just on the basis of the financial implications? I would have thought that the financial implications are quite substantial for this with just the volume of visitors that we have from New Zealand. More New Zealand men left New Zealand to go to the Bledisloe Cup in Melbourne than left during World War II.

I think the implications are significant. If we are concerned about the blow-out in our own health budget, what does this mean in the longer term? Is there a point where we say that we will cover our own costs with health insurance if we go to other countries where the agreement does not exist?

Mr Burness—I make two points. The general point is that we are dealing with the trans-Tasman treaty, the CER arrangements, and we are looking at a broader context of the issue, so we have to deal with New Zealand in that context and the benefits that flow between not only this portfolio but all the other portfolios of the government. But more directly, to

answer your question, the raw statistics you are referring to are traffic movements and not people.

Mr BAIRD—What do you mean by traffic?

Mr Burness—The movement of an individual in and out of our borders is one movement. That could be the same person added up multiple times.

Mr BAIRD—Yes.

Mr Burness—You are dealing with an individual and it is the same individual.

Mr BAIRD—But it does not matter—

Mr Burness—Or it could be different individuals. We have put it in the NIA for you to try to highlight this issue. We think that probably a better example of what is actually going on is to compare the actual enrollees in the two health systems in 1995. Those figures became far closer because they were the ones who actually used the system. Although there is disparity in numbers in terms of the two, the users of the system were very close. I think the figures in here were 20,000 and 27,000. Despite the fact that there may have been a few hundred thousand difference, there was about a 7,000 difference in number of people using the system.

Although we put them in there for you so that it clearly showed up this issue, I think we have to be a bit careful about using those figures as an example of the numbers of persons involved. They are the number of movements of people. It could be the same person 20 or 30 times.

Mr BAIRD—Yes, but no matter whether they are the same person—and a lot of people may come in five, six or 10 times a year—the exposure for the health system with that one individual remains similar, doesn't it?

Mr Burness—I think the test of that is the second set of numbers, which is the 20,000 and 27,000 figures. They are very close.

Mr LAURIE FERGUSON—Statistics you try to put forward to us as being more valid are very misleading. They have to be viewed in the context of the duration of stay, quite frankly.

Mr Burness—Certainly.

Mr LAURIE FERGUSON—It is good of you to come to us with some kind of modelling of this statistic, but don't you think that would be a fairly important point to this whole thing? My understanding is that the duration of stay is going to be overwhelmingly in New Zealand's favour.

Mr Burness—I could not comment on that.

Mr LAURIE FERGUSON—The Bledisloe Cup is not a good example.

Mr BAIRD—They often stay on.

Mr LAURIE FERGUSON—They might, but there is a very overwhelming trend, as I understand it. On balance, they have a longer duration of stay than Australians going to New Zealand. These figures are not that great either.

Mr HARDGRAVE—The bottom line is: are we as a nation going to save money as a result of this, and is it the case that the longer this agreement is not put in place, the more money we are going to be paying out, on the basis of your figures? Is that your contention?

Mr Burness—That is true.

Mr BAIRD—Mr Chairman, I defer to your experience as tourism minister, but with regard to the trend over the last few years, the number of New Zealanders coming to Australia has been in double digit figures for the past four or five years. In the last couple of years, the growth rate has been over 20 per cent, yet the growth rate of Australians to New Zealand has not been of that order at all. The trend is that the disparity is going to continue to increase.

Senator BOURNE—Isn't it the case that under the new agreement only hospital treatment is covered, not out of hospital?

Mr Burness—That is true. It is to match the New Zealand arrangements in New Zealand for all Australians.

CHAIR—Now that the person in charge of New Zealand's tourist authority is an Australian, indeed a former deputy to Bruce Baird in the Tourism Council of Australia, I am sure we will see more Australians visiting New Zealand. We might be back again for another hearing.

Mrs CROSIO—I would like to qualify what Mr Hardgrave said because it is in the *Hansard*. How is this agreement going to save the Australian taxpayers dollars?

Mr Burness—On the health cost?

Mrs CROSIO—Yes.

Mr Burness—Because they will have no access to out of hospital medical treatment at 85 per cent. When you go to the doctor, to a GP, you get an 85 per cent rebate. If you go to New Zealand, you pay the full cost of that treatment; you get no rebate. What we have done is to match that arrangement, which means they will have no access to out of hospital treatment through Medicare at 85 per cent.

Senator COONEY—Did you say New Zealanders will not have any access to our hospital treatment?

Mr Burness—No, to out of hospital medical treatment.

Mr BAIRD—This particular amendment represents a saving of funds, but the overall one, which was established beforehand, is where the costs come in.

Mrs DE-ANNE KELLY—Do we have any arrangements with Papua New Guinea? I know this is not associated with this treaty, but hundreds of Papua New Guineans come down for treatment in Queensland and it is a big problem.

Mr Burness—No, we do not have an agreement with New Guinea in a relationship of this sort.

CHAIR—Many thanks for your evidence this afternoon.

[3.28 p.m.]

SMITH, Mr Roger Neil, Senior Executive Manager, Planning and Standards, Australian Communications Authority

CHAIR—The next and second-last item today is the International Telecommunications Union Final Acts of the World Radiocommunication Conference. We are not going to require you to give evidence under oath this afternoon, but I must advise you that these hearings are legal proceedings of the parliament and they warrant the same respect as proceedings of the House of Representatives or the Senate; hence the giving of false or misleading information is a very serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Smith—Very briefly. World radio conferences occur approximately every two years. They are the means by which the administrative regulations, which are basically the rules under which international communications occur, are updated periodically, primarily to enable the introduction of new technologies and new communications systems. The World Radio Conference in 1995 was one of those conferences and updated the regulations in a number of significant areas, primarily satellite communications.

Senator BOURNE—You mentioned that it is opening up additional spectrum for high frequency, and mostly satellite, I guess. Will CDMA come under the frequency that is already open, say, for analog, or will it come under a new one?

Mr Smith—CDMA will operate in the spectrum that was available for the analog AMPS systems. As analog phases out, CDMA is able to come in and operate in the same radio spectrum and did not require any adjustment of the international radio regulations for that purpose.

Senator BOURNE—What would be the new systems that you would be using for the new extra high frequency?

Mr Smith—High frequency is another name for short-wave broadcasting. Short-wave broadcasting has occurred in Australia and in other parts of the world for many years as a basic means of communication for rural and remote areas. What this conference did in 1995 was basically open up more spectrum for the availability of short-wave broadcasting.

CHAIR—How much more spectrum is there beyond what has been opened up already?

Mr Smith—In terms of HF?

CHAIR—Yes.

Mr Smith—It was only some fairly small additions. It would have been only a very small percentage—I could not tell you exactly how much. Essentially it was parts of the spectrum that were already being used for short-wave broadcasting. This really legitimised its use for short wave and put some order into the use of that spectrum.

CHAIR—Because it is a hell of a mess. You have five bands and it is very hard to get through.

Mr Smith—Yes, short-wave broadcasting is pretty messy.

CHAIR—Any questions? Nothing about rural telephone services? Many thanks, Mr Smith. We will report in due course.

[3.31 p.m.]

KAY, Dr David Graham, Assistant Secretary, Wildlife, Environment Australia

CHAIR—The last of the agreements that we are to consider today is the amendments to the schedule to the International Convention for the Regulation of Whaling. I must point out that although we are not requiring you to give evidence under oath, these hearings are legal proceedings of the parliament. They warrant the same respect as proceedings of either house of the parliament and therefore the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you want to make some introductory remarks before we go to questions?

Dr Kay—Briefly, yes, Mr Chairman. The International Whaling Commission generally meets annually. It held its 50th meeting in Muscat in the Sultanate of Oman in May of this year. One of the tasks of the commission is to consider the need for amendment to the schedule to the International Convention on the Regulation of Whaling. One of the amendments that was adopted at the 50th meeting was effectively to continue the global moratorium on commercial whaling, and that requires small amendments to the dates which are in the schedule to the convention. This is effectively an annual event. This is the third time on which I have appeared before this committee to present this series of amendments. Thank you, Mr Chairman.

Senator BOURNE—I take it Japan is still carrying out scientific tests on whales which they then sell on a huge market in Japan. How many whales do you know that they pick up for scientific testing?

Dr Kay—The permits issued by the government of Japan are for a catch of 100 minke whales from the North Pacific and a catch of 440 from the Southern Ocean. The intention, we understand from the Japanese, is to take as many of that permit catch as they can. You may be aware that the factory ship on which the operation depends recently caught fire about 600 miles off Gladstone and required assistance to go to Noumea for emergency repairs. It is now on its way back to Japan. At this stage we do not have details of how long the refit of that vessel will take and when it is likely to head back south. Effectively they have lost two months of this season's operations.

Senator BOURNE—Tragic! Thank you.

CHAIR—How many whales are there in the world? Roughly speaking, what is the population of different species and so forth?

Dr Kay—I cannot give you even a rough estimate off the top of my head. There are reasonable figures for populations of certain species, but I do not think there is a generally agreed estimate, even on a species by species basis.

CHAIR—If the movement against whaling is so apparently well founded in scientific fact, surely the most obvious issue is how many whales there are. Therefore, the scale of whaling can be compared against it, can it not?

Dr Kay—I hate to get drawn into the complexities of policy, but Australia's policy on whaling is in no way based on numbers of whales. Australia's policy states quite plainly that its opposition to whaling is based on the fact that there is no humane method of killing whales and that, therefore, whales should not be killed. The non-lethal uses of whales, such as whale watching industries, are now significantly more valuable than the taking of whales. Certainly for a number of species, populations have been exploited to a level where they are in danger of extinction.

CHAIR—Even though we do not know how many there are?

Dr Kay—For certain species there are reasonable figures. The blue whale population is believed to be somewhere around 2,000 or 3,000, which is about one or two per cent of its population 50 years ago.

Senator COONEY—Are they increasing around the southern coast of Australia now?

Dr Kay—Populations around Australia have shown quite dramatic recoveries in the last decade or so. Australia only ceased to whale commercially in 1978. The main species around our coasts are the southern right whale, which is seen off Victoria, southern Western Australia and South Australia. The humpbacks migrate up both the west coast and the east coast. Humpbacks on the east coast are recovering at a rate, depending on which paper you read, of between eight and 12 per cent per year. The southern right whale populations seem to be recovering at a rather lower rate. The figures quoted are about six to eight per cent per year.

Senator COONEY—I think it was Malcolm Fraser that got whale saving into position.

Mr BAIRD—And Fraser Island too.

CHAIR—That is enough. We do not want to turn this hearing into a great panegyric about Malcolm Fraser. We have other questions.

Mrs DE-ANNE KELLY—You mentioned that other cetaceans are protected. What animals are they?

Dr Kay—The whaling convention protects all the great whales. That is usually taken to include about eight species. There is a whole range of smaller cetaceans, such as porpoise and dolphin, et cetera. There are 40 to 50 species, perhaps. There is a debate as to whether the International Whaling Commission has competence over those species. The taking of them has not been regulated by the commission. There are other conventions, particularly the Convention on the Conservation of Migratory Species of Wild Animals, which lists a number of dolphin species in various categories in need of protection.

Mrs DE-ANNE KELLY—Does that cover dugongs as well?

Dr Kay—No. A dugong is a different order of mammal.

Mr LAURIE FERGUSON—This is the body which essentially has an unlisted number of Caribbean countries, is it not?

Dr Kay—Yes.

Mr LAURIE FERGUSON—What is the qualification for a country to enter this process?

Dr Kay—It needs to pay its membership.

Mr LAURIE FERGUSON—Is that all?

Dr Kay—Yes.

Mr LAURIE FERGUSON—So if, for instance, St Lucia, St Kitts or any others into whaling pay a fee, they can become a member and vote?

Dr Kay—That is correct.

Mr LAURIE FERGUSON—That is pretty preposterous, is it not?

Dr Kay—It is arguable. It is a convention which, when it was first established, was open to all parties. I am not sure whether I should say this, but Japan argues that as Australia has no interest whatsoever in ever resuming commercial whaling it should resign from the commission.

CHAIR—People in glass houses. I see your point.

Mr LAURIE FERGUSON—You refer to Japan. Have Norway and Iceland current practices outside the requirements? Where do they fit in?

Dr Kay—Norway has a current commercial whaling operation in its coastal waters. It takes minke whale from the north Atlantic. They have a reservation against the moratorium brought in in 1985. My memory is slipping; I cannot remember the precise date. When the moratorium was introduced, Norway, along with Russia, Peru and Brazil, entered reservations. Norway has maintained its reservation and is, therefore, not bound by the moratorium. Iceland withdrew from the whaling commission in the early 1990s. It does not have any commercial whaling operation at this time. There is an annual debate in the Icelandic parliament on the issue. There is certainly a large body of opinion in that country that would like to resume a commercial operation.

CHAIR—Many thanks, Dr Kay. That concludes today's hearing. I kindly thank all the staff; happy Christmas and a good break to you. Happy Christmas, fellow members.

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

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

Committee adjourned at 3.42 p.m.