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JOINT COMMITTEE ON TREATIES

**Reference: Termination of the Social Security Agreement with the
United Kingdom**

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JOINT COMMITTEE ON TREATIES

Monday, 11 October 1999

Members: Mr Andrew Thomson (*Chair*), Senators Bourne, Coonan, Cooney, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Coonan, Cooney, Ludwig, Mason and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mr Hardgrave and Mr Andrew Thomson

Terms of reference for the inquiry:

Termination of the Social Security Agreement with the United Kingdom

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OZOLINS, Ms Amanda, Policy Officer, International Branch, Department of Family and Community Services	1

Committee met at 9.50 a.m.

Participants

EVANS, Mr Graeme Wheller, Policy Resource Coordinator (International), Australian Council of Social Service

FINLAY, Ms Jackie, Liaison Officer, National Welfare Rights Network

HOPE, Mr Graeme, Executive Director, Corporate Facilities and Services, Department of Family and Community Services

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OZOLINS, Ms Amanda, Policy Officer, International Branch, Department of Family and Community Services

SHEEN, Ms Veronica, National Policy Officer, Council on the Ageing (Australia)

ACTING CHAIR (Mr Bartlett)—In the absence of our chairman, I welcome you all here this morning and declare open this meeting of the Joint Standing Committee on Treaties. We look forward to your contribution this morning. On 11 August this year a number of proposed treaty actions were tabled in both houses of parliament. Today as part of our ongoing review of Australia's international treaty obligations the committee will be conducting a roundtable discussion to look further at one of those proposed treaty actions, that is, the proposed termination by Australia of its Social Security Agreement with the United Kingdom.

Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and 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 being in contempt of parliament.

I propose to begin today's hearing by inviting each of the non-government organisations present to make a brief opening statement expanding on the points made in your written submissions. After a period of questions from committee members, I will invite the Department of Family and Community Services to comment on the evidence they have heard

and on matters arising from the written submissions. At the conclusion of these comments there will be an opportunity for all parties to comment further on the issues raised by the proposed treaty action. I now invite Mr Graeme Evans from the Australian Council of Social Service to make some introductory remarks.

Mr EVANS—Thank you very much. ACOSS approaches this whole matter from two points of view: firstly, the income support and social justice aspects relating to individual people who are involved in the topic under discussion and, secondly, from the general treaty process point of view. We have supplied a deal of material on the income support and social justice dimension of this matter and we ask the committee to take that material very seriously. This seems to me, and I am sure it seems to all of us, to be a situation where it is very easy for us to be brave about the adverse consequences for others. They are not impacting on us personally; therefore we find the adverse impacts tolerable. If they were bearing on us, we might not find them so tolerable. I think that the principle, of income support systems not being maintained at the cost of individuals, is a very important one that this committee must uphold.

The second group of concerns we have is in relation to treaty processes, and I very much hope that the matters I raise in this connection will be matters that the committee chooses to take very seriously in its inquiries. I hope they are matters that the department will be able to provide some chapter and verse on. Once again, this falls into two areas: firstly, the issues relating to the agreement in question and, secondly, issues relating to agreements of this general sort.

One of the things that struck me forcibly when I started to examine the papers on this matter was that in 1990 when this treaty was entered into, the need for indexation had been established well and truly. How come indexation was not provided for in a treaty of this character when the need for indexation was widely recognised in governmental instruments generally? We were moving into the era of indexing, as it were, penalties provided in statutes. Probably we had largely implemented it at that stage. The general need for indexation of financial amounts set for varying purposes was well and truly established at that point. So there is a very serious issue. Why was that issue not accommodated in this agreement? After all, 1990 is not really very long ago.

The second question that came rather forcibly to attention is that in 1992 the agreement was opened up and there were amendments made to it. Why was indexation not included in that range of amendments? A third thing that struck rather forcibly was that we are not the only country that has suffered the way we have in relation to this matter. An obvious ally for us, it would seem to me, is Canada, which suffers, it seems from the papers, in a comparable way. What efforts were made to work in conjunction with other aggrieved nations, with our natural allies and particularly Canada? I wondered whether the negotiations had taken the form of people talking to each other behind the scene, and whether progress could have been made by pursuing the matter in a somewhat more formal way. Was there a formal note verbally sent at any stage expressly asking, in a way that is capable of being made a public document, that certain amendments be made, or was it simply behind the scene negotiations between people who were more or less associates of each other, although from different nations?

I wondered also whether or not there was something in terms of the weight of public opinion that might be brought to bear on the matter over and above the measures already taken. Have the opportunities for the full weight of public opinion been explored? In relation to instruments of this sort generally, questions that occurred were: are there other agreements of this general sort causing trouble and, if so, what sort of trouble? In other words, is this an indicator of a wider array of problems, and is there some form of model code or template that is used in such instances? If not, why not? If there is, can that template be made available?

So, summing up, it seems to ACOSS that there is a very real risk in this instance of saying we have a major problem and that the particular problems that will be generated by terminating this instrument are supportable and they are bearable. But the people making that decision will not be the people bearing the weight of the adverse consequences. So the income support aspects are fundamental. There are also some issues relating to treaty processes generally and in this instance which I also think need to be addressed. Thank you.

CHAIR—The next speaker is Ms Veronica Sheen, the National Policy Officer of the Council on the Ageing.

Ms SHEEN—The Council on the Ageing's greatest concern about this is that there are already people in Australia who have come to Australia in good faith in expectation that they may be able to receive some income support to top up their existing UK entitlements. The Council on the Ageing takes a very strong view that older people must be able to plan for their retirement and plan for their older age. While there may be some argument that this group are not people who have contributed substantially to Australia's income support system through taxation payments throughout their working lives, nevertheless they have come here in good faith. It seems a great miscarriage of justice that there is a significant number of people who will be caught out by this treaty termination. So, fundamentally, they would be the group that we would be most concerned about at this point in time.

It seems most clearly to us that special benefit will not be an adequate payment for those people. Special benefit is not set at the same level as the age pension and it does not attract the same sorts of fringe benefits. It also requires virtual destitution for an individual to become eligible for it, and to us that is a most undesirable situation for an older person to be in. We do not see the special benefit safety net as being a desirable or feasible income support payment, especially over the long term for this group of people who have been caught out by this termination.

There are also the people who may already have plans in train to come to Australia. In our submission, at point 2, we have talked about people who may have planned to migrate in the period just prior to or just after the termination. I want to clarify that point. What we need to say there concerns the time of the announcement of the termination, which was in July when Senator Newman made a public announcement of it. As far as I am aware, that is the first indication that anybody had that this policy decision had been made by this government.

I do not know, but I would suspect, that there may be people in the UK who may have made arrangements to come to Australia in the period prior to or just after that policy

announcement was made in July. We would be most concerned that people may be caught out by this sudden shift in policies. We would like to see people who already had at least migration papers in train excluded from the arrangement. We would also like to see a look, on a case by case basis, at the people who may have made other arrangements, such as sale of the house or otherwise arranged their assets, in the expectation that they would come to Australia in view of some of the benefits that would have accrued from the treaty.

Thirdly, as the submission points out, there are questions about the ongoing nature of Australia's family reunion program. We would be very concerned to see that people coming to Australia are well informed about the situation and about the termination of the treaty. There may be ongoing issues about consideration of the level of vulnerability that they may have if they come here.

I think there was a suggestion in one of these submissions, perhaps from the welfare rights centre, that perhaps a two-year phase-in period may be a more appropriate period. It is not something that is mentioned in our submission, but we believe that people must be well informed about this policy change and the termination of the treaty and that, as far as possible, people must be protected from any adverse effect from the termination. In addition, we would still hope that there would be ongoing negotiations with the UK to have a turnaround in position on the agreement. Thank you.

CHAIR—The next witness is Ms Jackie Finlay from the National Welfare Rights Network.

Ms FINLAY—The National Welfare Rights Network is made up of members that are specialist community legal centres around Australia, so our perspective is that we provide legal advice to people on income support. Our perspective for this hearing is that of the individual who is most likely to be affected by the termination of the agreement. As Veronica has pointed out, our proposal was that, rather than 12 months from the date of notice to the date of effect of the termination, the period be extended to two years.

The Welfare Rights Network has been heavily involved with people affected by the two-year newly arrived waiting period for benefits. From our perspective the period of time that was given to these migrants to notify them of the changes when they arrived was not sufficient, and particularly for the first year. We had newly arrived migrants arriving with no understanding and no way of knowing about the two-year waiting period. With a lot of these migrants, the letters they received from the Department of Immigration and Multicultural Affairs made no mention of it. In fact, the department had not actually come on board with giving out this information by the time there were migrants coming to Australia, so they had no knowledge of this.

We are concerned that the one-year time frame would have a similar effect on UK migrants to Australia. The reasoning behind the two years is to allow more time to notify people of the change and also, of course, to give perhaps a more realistic time frame in which to negotiate a new agreement with the UK.

The National Welfare Rights Network supports the first point in the Council of the Ageing submission, that those UK migrants already living in Australia be excluded from the

effect of the termination. That is, those people living here who may not yet be on an age pension but intend to be in three to four years do not have to comply with the 10-year residency requirement. The majority of people who use this agreement are age pensioners. They are people who have the least choice in renegotiating their finances and their living situation.

These people have already made the big move out to Australia, may be living off savings and may be still working—as the government is encouraging older people to continue working past pension age—but we suddenly turn around and say, ‘Sorry, you’ve made all those changes but we’re not allowing you this benefit that you came out here expecting you would get whenever you turned age pension age.’ So we would certainly support a proposal that these people be excluded and that some measure be put in so that people who are in Australia already would not be expected to comply with the 10-year residency requirement.

We are also concerned with the lack of information that has been given to people, and that matter may be assisted by having a two-year break between the termination of the agreement. As a result of information going out in *Age Pension News* to Centrelink customers and that news filtering through networks, the Welfare Rights Network has already had people ringing up completely confused as to where they are going to go and asking what they can do. These are people who have not yet reached age pension age but intend to return to the UK—‘Do we move now? Do we have a year to move? How can we organise our lives?’ To expect people in the later years of their lives to have a complete upheaval without them being allowed to make decisions about where they can go is very unsettling. To that extent, two years would provide a longer period for, hopefully, a new agreement to be negotiated for these people to make some arrangements.

In terms of the two social security benefits for these people if the agreement is terminated, as I said earlier, the network has had a lot to do with migrants who are subject to a two-year newly arrived waiting period. From our experience with that waiting period it is very difficult to get an exemption from that. The two tests are financial hardship, and that must be extremely severe financial hardship, and also substantial change in circumstances beyond their control. We found it very difficult for migrants from other countries to prove that. We believe that migrants from an English speaking country would have a more difficult time proving that they have had a substantial change in circumstances beyond their control. If they are not able to prove that, then they are not eligible for benefits for the first two years.

The national interest analysis points out that after the first two years these people will be eligible for some benefits. We are unclear as to what benefits this is referring to. Newstart is a payment that is payable within two years. Once you have served your two years waiting period, you can be eligible for a Newstart allowance. However, if you are disabled and unable to work you are not eligible for a Newstart allowance. If you are of age pension age, you are not eligible for Newstart allowance. So people with disabilities and those of age pension age are only eligible for pensions that have a 10-year waiting period, effectively. So there is a long gap between the first two and then the next eight years. They have a long time to wait before they get any income support.

In summing up, our concern is that there is information available to these people so they can make decisions and plans for the future. I think it has been listed that 850 people in the first year will be affected and that number does not seem great. Our network obviously looks at advising individuals and those 850 individuals will be facing financial hardship and vulnerability basically, now they are in Australia without any income support arrangements.

CHAIR—The last of the NGO witnesses is Mrs Edith Morgan from the Australian Pensioners and Superannuants Federation.

Mrs MORGAN—This issue is one that the association has discussed for a period of time because of the discrimination within it, and the fact that Canadian and British migrants here have not had indexing from the United Kingdom government, and the indexing is being picked up here by the Australian government. We have often discussed this in correspondence with the department because it is an anomaly, though I can think of reasons why it is like that. Turkey is one of the countries mentioned, and they may not even have a pension that would apply in any way to the migrants that have gone there.

However, because we are dealing with older people—and that is the focus of this—it is a very difficult situation in that we must be sure that the information is there, and that people know what the information is and it is very clear and transparent. There should be no clouding of the issue and the points that have been brought up before are very real in terms of those who are already here.

I understand the pensioners who are already here, and who have been supported by the Australian government, will not be affected. You can correct me if I am wrong. It would be very difficult to see how a case could be put for people coming to Australia from the United Kingdom at some time, for either family reasons or some other reason, being subjected to a new set of criteria. I personally believe that people who are already here should be treated as Australian citizens eventually and should not be subject to any new measure that comes in now. I agree that it should be thought through, looking at all the issues that will come forward when the whole thing has to be determined and a date is put for this treaty to be abolished. I have to say very clearly that, since we are dealing with older people, we must be very careful how we proceed. Thank you.

CHAIR—I would like to ask a representative of the department, Mr Hope or Mr McWilliam, to speak.

Mr HOPE—I will ask Mr McWilliam to make some general comments and, if need be, Mr Murdoch might also add some points of detail.

Mr McWILLIAM—We provided a written response last week to some of the issues that were raised, but it might be helpful if I were to go through and comment separately on the points raised during the discussion this morning. Perhaps I could start with the points raised by Graeme Evans. Mr Evans spoke about two sets of issues. He raised the impact on others and a number of particular issues. There were a number of issues concerning the impact on others that were raised during the points made by other speakers, and I might deal with those there and his specific questions regarding the treaty processes.

The first of these issues was: why was it not accommodated in 1992 when the change was made to the agreement? Essentially there were two reasons for that. The first is that the changes that occurred in 1992 had actually been under negotiation for some period of time before that. The second was that we still had not really given up hope that we might be able to come to some accommodation. Ultimately, over the ensuing years quite a number of further approaches were made to the United Kingdom government, including another compromise option which would have mitigated the cost on the United Kingdom government. In other words, it would have just dealt with those people who came from this point in time, and the Australian government would have continued to pick up the cost for those people who were already here. The United Kingdom government did not accept that compromise offer. So we were continuing to have discussions to see whether some alternative could be arranged. As I say, also it had been under negotiation for some time before that.

Mr Evans also spoke about Australia not being the only country to be affected, and what we might have done with other countries, in particular the Canadian government. In fact, a joint approach was made in December 1986 by Australia and Canada, and that approach was again refused by the United Kingdom government. Those other countries, in particular Canada, have made representations to the United Kingdom government. I believe that in about 1992 or 1993 the New Zealand government also made an approach to the United Kingdom government which again was not taken up at that time.

In terms of the weight of public opinion, there was also during the 1990s in the United Kingdom quite a bit of debate about this issue, including a parliamentary committee examining the issue. Despite this, the United Kingdom government has not accepted the representations which have been made.

Another issue raised was, 'Is this an indicator of a wider problem with other agreements?' The answer is no. The agreement that we have with the United Kingdom is very much an older style agreement. It is a host country agreement. Most of our other agreements are, in fact, shared responsibility agreements, where we share the responsibility, depending on the working life of the individual, with the countries with which we have agreements. So it is not an indicator of a wider problem.

I now move to some of the issues that were raised by the other representatives, which deal mainly with the impact on people who are going to be adversely affected. There have been a number of points made about the need for people to be well informed about Australia's intention to terminate the agreement. In fact, we have already started, through the Department of Immigration and Multicultural Affairs, to make people who are considering coming to Australia aware that the agreement is going to be terminated. From about August of this year the Department of Immigration and Multicultural Affairs has informed its posts in London and Manchester, and other posts around the world, about this change. It has put questions and answers about the change on its Internet site, and from this month it is intending to include this in its kit that goes out to prospective migrants.

A point was raised about whether the announcement by the minister in July of this year was the first indication of a possible change in policy. In fact, when Minister Newman had discussions with the UK government in 1996, she did at that time indicate that if a

satisfactory arrangement could not be made Australia would be faced with the prospect of terminating the agreement. But, as I say, we have since August been trying to make sure that information on this is widely available to people who are considering migrating to Australia.

Of course, if people who have already arrived have already received a payment under the agreement before it is formally terminated—which will be 12 months after a notice of termination is given—they will be protected; their payments will not be affected. So we are only talking about those people who would have applied for a payment after the agreement had been terminated. These would be people who would have accrued entitlements under the UK scheme, so they would have pension entitlements from the UK, and what we would be talking about is some adjustment to that to bring it up to a higher level.

We are also talking about perhaps a very small number of people who might not have been here for the full two years. Most of those people would be expected to have an entitlement from the UK. They would also be expected to have assurance of support. So in order to qualify for special benefit, if it had applied in those two years—it does not because of the migrant two-year waiting period—those people would have had to have been pretty destitute, and I cannot imagine any circumstance in which that would have occurred for those people. So I think we are probably talking about those people who have been here, say about seven or eight years, and who might apply for a payment. Those people would only be looking at an adjustment. So they are not going to be destitute people; they are going to be people who might be looking for a small adjustment in the payment.

The only other point which I think I have not covered relates to whether we could give two years notice of termination. The agreement will terminate one year after notice of termination is given, so the only way I think we could do that would be to give a notice of termination after 12 months. But, without a change in the agreement, if we give notice of termination, the agreement would be terminated 12 months afterwards. I just ask Mr Murdoch whether he would like to add anything to what I have had to say.

Mr EVANS—Mr Chairman—

CHAIR—Hang on a second, Mr Evans. Let us go through all the evidence. Then the committee members will get their chance to ask questions of the witnesses. At the end of that, if you want to make some final comment and we have time then that is the time for that. But there is to be no interruption.

Mr EVANS—But my first question was not addressed.

CHAIR—You will have your chance at the very end.

Mr MURDOCH—I just want to add something in relation to Mr Evans's opening remarks. He was concerned about the process and certainly about the efforts that have been made to address the problems inherent in this agreement. We have, in fact, prepared a list for the committee—really, an abridged list—that shows that since 1986 there have been 22 separate high-level attempts to have this matter addressed by the British government, from the Prime Minister down. If the committee is interested in that list we could let you have it.

CHAIR—Thank you.

Mr BARTLETT—A number of the comments from the non-government organisations were based on the difficulty with the transition arrangements, rather than the termination of the treaty as such. Ms Finlay, if those transitional problems were taken care of—for example, the two-year wait instead of the one-year wait—would your organisation still support the termination of the agreement?

Ms FINLAY—No, because there is still the uncertainty and the possibility of financial hardship for people, no matter what the notice period is and what information is available. There are also people from the United Kingdom who have come to Australia for a lot of their working life and then want to go back to the United Kingdom for their pension years. In order to get the pension in the United Kingdom, they need to have contributed, but their years of living in Australia can be counted. So these people will get nothing when they get there. The termination of the agreement will still affect these people. People who lived in Australia who go back to the United Kingdom will get nothing.

Mr BARTLETT—So the transitional arrangements are not the real problem for you. How then would you suggest the government responds to the problem with the UK government not fulfilling its obligation with indexation, despite 22 attempts to get them to do that?

Ms FINLAY—Unfortunately I do not have any knowledge of what those attempts comprise—what negotiations went on, who they involved and what sorts of processes they undertook. I am unclear on that, sorry.

Mr BARTLETT—Do you have any suggestions as to how the problem ought to be resolved?

Ms FINLAY—No, sorry.

Mr BARTLETT—Mr Evans, if the transitional arrangements were satisfied, say made more flexible or generous, would you in any way support the termination of the treaty?

Mr EVANS—I do not believe so. So far as I can see, it is not a transition problem. My special interest is the treaty process aspect, rather than the income support aspect, and I would need to get further advice on that. I am sure ACOSS would be happy to supply the committee with further information on that. On the documentation I have absorbed, it is not just a matter of the transitional arrangement—it is far more thoroughgoing than that.

Mr BARTLETT—Mr McWilliam, you gave an example of the British resident who is here for, say, five or seven years and does not quite qualify for the 10-year qualifying period for the pension. What would be an estimate of the extra cost to government of, in that situation, reducing the 10-year qualifying period to five years? Is there any estimate of the cost to the budget of that?

Mr McWILLIAM—I would not like to hazard a guess on that. I think there would also be some significant policy issues in relation to that because we would be doing something

quite separate for the UK group of pensioners compared with every other group of pensioners from non-agreement countries who have to wait the 10-year period.

Mr MURDOCH—I would like to add something to the concern that Welfare Rights has. The assumption is being made here, and it is of concern to some of the groups, that people will be in hardship because of the termination of this agreement. To stress a point that Mr McWilliam made earlier, the agreement only helps people who have made contributions to the UK social security system. They are the only people who can be helped by the agreement. If they have not made those contributions, the agreement does not help them. Those contributions also earn people the right to a pension from the United Kingdom so, in any event, these people will be granted their pensions from the United Kingdom. When we talk about extreme hardship, we are not going to encounter that amongst this group of people because they are insured for social security benefits from the United Kingdom. I think that is relevant.

Mr ADAMS—Are you saying that nobody will be in any hardship at all?

Mr MURDOCH—Nobody who would be covered by the agreement would be without support from the United Kingdom because, in order to be covered by the agreement, you have to have made contributions to the UK system.

Mr ADAMS—Right.

Senator MASON—But the extent of that support would vary.

Mr MURDOCH—It does vary, depending on the period of contributions.

Senator LUDWIG—Just on that, Ms Finlay spoke about those people who were working in Australia who then may wish to migrate back to the UK. Coming back to you, Mr Murdoch, how does the agreement impact upon that agreement, or doesn't it?

Mr MURDOCH—Well, it does, because, under the agreement as it stands, people who go back to the United Kingdom can use their Australian residence towards claiming extra benefits from the United Kingdom system. But, again, the United Kingdom has an income support system, which is the safety net which props up their system.

Senator LUDWIG—Yes, I recall now. I think that was one of the matters we spoke about last time. In your efforts to advise people of that, you spoke about putting it on the web site. Have you targeted that group of UK workers? How have you attempted to advise them? It is really a long-term issue. They might be in their early 40s and they might be considering spending a significant amount of time in Australia working and then returning home. What other arrangements have you put in place to advise them that the agreement may be terminated or at least that an indexed pension in UK may not be there in the future?

Mr MURDOCH—The information will be supplied by the Department of Immigration and Multicultural Affairs and, as part of the immigration kit, it will cover that segment of the population. Anybody planning to migrate to Australia will receive that kit.

Senator LUDWIG—But if the United Kingdom residents are currently here working?

Mr MURDOCH—And they go back without—

Senator LUDWIG—They might be 40 years of age, and they might be with their young family. They might be considering not retiring here, that they are going to retire in England, and it might be another 20 years before they do. What efforts have you made to advise that group? They might have been here for a couple of years.

Mr MURDOCH—I suppose, as part of the general publicity on the termination of the agreement, that group will become aware that any rights they may have acquired under the UK system as a result of residence in Australia will no longer be available after the agreement is terminated.

Senator LUDWIG—Let me turn to the special benefits. The general impression I gained last time we were here was that if there were people in a disadvantaged position they would at least be looked after. Is that now wrong? As I understand it, what is being said now is that the special benefit is difficult to access and contains a number of tests and that you have to be in 'financial hardship' to access it. Is that right? If Mr McWilliam is better placed to answer that, I am happy to hear from him.

Mr McWILLIAM—Yes, they have to be in financial hardship to access special benefit. It is there as a protection against financial hardship after the two years.

Senator LUDWIG—But they have to then pass a significant test to demonstrate that they are in financial hardship. Is that right?

Mr McWILLIAM—Yes, they have to pass a test of being in financial need for that.

Mr HOPE—As Mr Murdoch made the point, the agreement would have only been helping that group from the UK who already have an entitlement out of the UK system. The issue from our point of view is that they have a range of support already available to them. When we talk about special benefit arrangements, we are saying that, if their circumstances changed when they were living in Australia, and their income from the UK pension arrangements ended up not being sufficient, there was a safety net arrangement in Australia for those people. Our expectation would be, given the contributions they have already made to the UK system and the pension they would be entitled to from that, that they already have a source of support. If they were migrating for family reunion type arrangements later in life, there is also a range of support arrangements which come as a matter of course from our migration arrangements with the UK or anyone else.

Senator COONEY—Mr McWilliam was talking about the number of people who would be affected in different ways and, I think, giving an impressionistic assessment of it. Has there been any attempt by, say, you and the department of immigration to calculate the number of people that would be affected in the different categories or can we only go on impressions? This is the sort of category that Senator Ludwig was talking about, for example; how far can we take that?

Mr McWILLIAM—We have made some estimates, and I might get Ms Murray to bring you up to date on our latest attempts at that.

Senator COONEY—How many categories have you got?

Ms MURRAY—I have got two categories. The categories include those people already settled here at the time of termination, so that would be people who came here within 10 years of age pension age. Then I have the newly arrived group. That would be people who come to Australia after age pension age and after the agreement is terminated. I have been using immigration data but unfortunately the 1998-99 data is not available yet, so I am using 1997-98. So I have just made some assumptions.

Senator COONEY—Thank you and I will get those. But we have categories, such as those Senator Ludwig asked about, about those who might be here and who are intending to go back to England. I do not suppose we can get on to that because you would not know people's intentions.

Ms MURRAY—That is right. You would have to do a survey of people coming here, asking them whether they plan to return and when. So that is a very difficult group to ascertain.

Senator COONEY—Yes. What about those who have already done it?

Ms MURRAY—Who have already returned?

Senator COONEY—Don't worry—just give us those two and we will perhaps ask you for some other categories.

Ms MURRAY—Okay. These figures that I am giving you are only very rough estimates. We have still been looking at a lot of data, and Centrelink is yet to provide us with some more statistics in the next week or so. But I am assuming that the agreement will be terminated in October 2000, and for the financial period October 2000 to June 2001 I have estimated that there will be about 213 already in Australia that will be affected and about 221 will be newly arrived. That means they will be of age pension age when they arrive in Australia after the agreement is terminated. That gives us a total of 434 people in the first year, but that is a three-quarter year; it is not a full year.

In the year July 2001 to July 2002 I have estimated there will be about 282 people already here that will be turning age pension age, and about 294 people appear to be arriving in Australia after age pension age each year thereafter. That would give us a total of about 576. The following year, 2002-03, I estimate there will be about 250 people already here who will turn age pension age but who will not have the 10 years to qualify for age pension age in their own right. Again I have assumed that 294 people will come. That gives us a total of 544 people, and for the following year I have estimated that about 233 people will already be here. I assumed that there will be 294 people coming, and that gives us 527.

So the bottom line is that we think between 500 and 600 people each year will be affected but, again, these figures are estimates. It is only a short-term effect. The data we

have got from Centrelink about the people that have been granted agreement pensions over the last five years shows that most of these people only come on to the agreement for one, two or three years. The majority already have some qualifying Australian residence and just need that little bit of time to allow them to build up the 10 years. So people do not stay on the agreement for long-term periods.

Senator COONEY—Do you know the savings out of this?

Ms MURRAY—We estimated originally, when we thought the numbers affected would be about 850 people each year, that the savings over a four-year period would be about \$17 million. I think that is very high and, in view of the figures I have just given you, I think that amount would be much decreased. But I am sorry that I cannot tell you any real estimate until I get further information.

Senator COONEY—Are you able to estimate the number of people who have come in the expectation that the present system will continue but that expectation is not going to be realised? Mr McWilliam and Mr Murdoch were telling us that every effort is being made to notify people coming. Do we know the number of people who have come with the expectation that the present system will continue but who are going to be disappointed?

Ms MURRAY—I do not think so.

Mr HOPE—We certainly would not know whether that was a particular intent in terms of their arriving. The only thing we can observe from the figures which Peta gave you is that, of the people within 10 years of age pension age, there are about 200 or so who present themselves each year with potentially accessing the agreement.

Senator COONEY—I refer to the notification of the change in the law to people who are migrating from the United Kingdom. Do you know if that is put in the form of application, or are we just relying on general publicity in England?

Mr HOPE—I do not think it is in the formal application process but it is certainly in the package of information provided to people seeking to apply to migrate to Australia.

Mr HARDGRAVE—A couple of pretty incredible things have been said in evidence this morning. For a start, I cannot believe we would hold up this committee's deliberations on this matter simply because some people are going to come here, work and go back to live in England in their retirement years. I am also wondering—whilst we have all these figures based on all things being equal—about them suggesting that people are going to be coming here, year after year after year, basically to put themselves through some sort of lashing machine over their income support payments not being what they expected.

There has been a lot of incredible stuff here and I will not delay the committee's time by deliberating on the fact that the Immigration Act and the changes to the Social Security Act provide very clearly that, if there are substantially changed circumstances for someone who migrates here under the two-year provision of no social security, they are in fact given income support. So I think there is a lot of melding together of issues here.

But by way of question: if we no longer have, on these figures, 850 people affected in the first year but rather 500 to 600—or in the first year 213 here and 221 committed—do we have any idea as to the attitudes of these committed proposed migrants? Given the fact that there has been a change in their perceived expectations as they currently exist, are they likely to say, ‘Well, blow it, I’m staying. I’m not going to migrate to Australia,’ or will they still come anyway? Have you done any work on that? I would not expect that you have.

Mr McWILLIAM—We have had since the announcement one person who has written to us. He was thinking of going back to the UK and he just wanted to know what was the best time to go back. That is the only indication that we have had about someone trying to explore their intentions. We have not done any formal survey, and I am not really quite sure. I am not quite sure how we would do that survey but—

Mr HARDGRAVE—I am not certain either. After listening to all of these various claims and counterclaims this morning, it strikes me that that may be one exciting avenue that somebody can get a fat consultancy for and do some work on.

I think that anybody who has not come here yet still has the option of not coming here—that is the point that I was wanting to see if you had done any work on. So it comes down simply to those who are here and who, within this 10-year qualifying period, are in some way disenfranchised—and I think you have put us to some rest on that issue. Are these people also citizens of Australia? How many of the people—those who are here but who are not able to get the full benefit that they perceive they should be getting—are Australian citizens?

Mr HOPE—The social security laws are based upon residency.

Mr HARDGRAVE—British citizens, because of the way they have been able to vote in elections and so forth, have not been the very best in taking up Australian citizenship, I would submit. What other decisions have been taken—as far as looking at pro rata rates or topping them up or anything like that—to make sure their expectations are not being dashed?

Mr McWILLIAM—We would love to have an agreement with the United Kingdom which was based on the shared responsibility arrangements that we have with every other country.

Mr HARDGRAVE—All I am getting at is that there is something inherently unfair, and awkward at best, about a 10-year period which suddenly gives them 12 months notice of change. I would be particularly concerned if Australian citizens were being denied access to benefits. I am not worried about residents; I am worried about citizens here—people who have become Australians in particular. What numbers, measures and possibilities have you looked at? What costs are involved with those possibilities? Can you offer any evidence on that?

Mr McWILLIAM—I do not think there is anything that we can give you today, Senator.

Mr HARDGRAVE—Do not defame me—I am not a senator.

Mr McWILLIAM—I am sorry, Mr Hardgrave. We do not have information on people who are citizens. All of our information is based on residency, so I could not hazard a guess on that.

Mr HARDGRAVE—I think this morning's process has probably been more about doing the work that I wish the department had done in the first place. We still have an out-of-date and not quite competent NIA with all these NGOs not being consulted. I am finding it frustrating that we have to load our secretariat and our committee up doing the work of the department. Anyway, I will leave it there.

Mr BAIRD—In terms of the way that provisions would be, is it right that someone arriving from the UK who has pension entitlements is not entitled to receive an Australian pension until they have been living here for 10 years?

Mr HOPE—Yes.

Mr BAIRD—Can they ask for supplementation of their pension, which is not indexed because of the UK not reaching that agreement, after two years, or immediately?

Mr McWILLIAM—Because of the agreement, they can use their contributions in the UK to help them qualify for an Australian pension, but the pension that they receive from the UK is taken into account in determining the level of the Australian pension.

Mr BAIRD—Is that immediate from the time they arrive?

Mr McWILLIAM—That is immediate from day one.

Mr BAIRD—So the two years one is only for qualifying for other social security?

Mr McWILLIAM—That is correct.

Mr BAIRD—The outline is that the UK have reached agreements with indexation provisions with several countries—for example, the United States of America, Turkey, the Philippines and member states of the European Union. So they have these full indexation agreements with those countries but not with Australia?

Mr McWILLIAM—Yes, that is right.

Mr HOPE—Or Canada or New Zealand.

Mr BAIRD—It is very interesting when we think of whether we should become a republic or not, and we realise that they have cut us off in various forms. Not from the official point of view but from the point of view of those representing the various organisations, this is really a question of fairness and equity. I ask myself: what is the fair thing to do?

My father came from the UK as a migrant, as many people's relatives did. Can we honestly say this is unfair? If they have been provided for in terms of the UK pension

scheme then they come to Australia—they have not contributed through their taxation to the Australian economy or ensured that their own welfare is looked after in the future—for various reasons with an expectation that their pension will be supplemented. I know there is always a question of fairness in this. Is this basically unfair? To my mind, having thought about it, I have to say my only question would be: if there was an expectation of supplementation—if they were told it was going to be supplemented and it was not. I would ask Ms Finlay, Ms Sheen, Mrs Morgan and Mr Evans their views. Do you think this is unfair at the bottom line? If it is unfair, what is the nub of why you consider it unfair?

Ms FINLAY—As you said, the unfairness is the expectation, and it is not limited to the figures that the department have or the numbers they can say will arrive within the year.

Mr BAIRD—But I am sure that, once the agreement is terminated, they will all be very adequately briefed about their lack of entitlement. If there is a case of those who have already arrived in the last 10 years and have been told that their pension has been supplemented, that is a case of unfairness. Maybe I can even go back to Mr McWilliam's point. Were the people who migrated from the UK during that period told that their pensions would be supplemented?

Mr HOPE—Can I go back one step and clarify one point? What we are saying is that someone who comes from the United Kingdom with a UK pension entitlement has made contributions for a substantial part of their working life, but they arrive in Australia within 10 years of our age pension age—let us assume 65—at the age of 58. When they reach the age pension age of 65, they are a couple of years short. All the agreement does is allow them to use the period of contribution in the UK to get in quicker than the 10 years. In the absence of that agreement, they would have had to wait 10 years of residency, which would be a couple of years beyond age pension age. It is not that we are saying, 'When you arrive, we are going to supplement your pension.' We are saying, 'When you reach age pension age, we will take your UK contribution history into account to accelerate your access to our age pension and we will take into account in calculating that pension the fact that you already have a block of income unindexed from the other country.'

Mr BAIRD—But the key thing is: were the people who have already arrived given the expectation that this would happen?

Mr McWILLIAM—I think we would have to assume that they were aware that there was an agreement between the UK and Australia.

Mr BAIRD—I do not think that, at the bottom line, what you are proposing is unfair at all. It probably should have happened a long time ago. I think it is also particularly interesting that the UK has deliberately discriminated against Australia when it has given it to all these other countries, and that should be noted. But what concerns me about this is the fact that we have people who arrived on the expectation that this would take place and then we have changed the ground rules. The basic parameters of what we are doing seem fair and reasonable, but I am concerned that we have changed the guidelines and that people may be planning their retirement on the basis of what they previously understood. That would be my concern.

Mr ADAMS—I had a concern that the community groups had not been talked to or given an opportunity of stating their case.

Senator TCHEN—I have a short question and perhaps two comments. My question is to the department. Are Australian residents who qualify for the age pension and then move overseas to spend their remaining years there entitled to take their Australian pensions with them?

Mr McWILLIAM—Yes.

Senator TCHEN—This is following on from Senator Ludwig's question. So someone aged, say, 40 who comes from the UK and stays and works in Australia long enough to qualify for an Australian pension and then, for unknown reasons, wishes to go back to England to settle can take their Australian pension with them?

Mr McWILLIAM—Yes. And it is indexed.

Senator TCHEN—I have two comments. I would like to endorse Mr Baird's comment about the inherent perceived unfairness to a part of the population. On the general scheme, yes, it is fair that all migrants to Australia should be treated the same way, but at the same time some of these people are coming from a country which has perhaps a generous pension scheme but does not have shared responsibility treaties with Australia. If these people then lose their benefits, from their point of view there is an element of unfairness in there. I am not sure how we can resolve it by giving them benefits, because then it will be unfair to the rest of the migrants. This is a philosophical question you might need to discuss with the immigration department again.

My final comment is related to the ACOSS submission. In your written submission at least you said you are concerned about the impact this termination of the treaty would have on older people when they come to Australia to settle. I am sorry to say this, Mr Evans, but I have more concern for the problem of older people who are already in Australia than the ones coming here to settle. We can do without worrying about the extra burden the settlers want to bring to Australia.

Mr EVANS—If I can respond to that by saying that both groups need to be considered and, from the ACOSS point of view, the notion of people well established in Australia being able to bring their parents to Australia who may be quite elderly is a fundamental issue of good policy and family maintenance.

Senator TCHEN—If they are well established, they should be able to maintain their aged parents?

Mr EVANS—Yes. By 'well established' I meant people feeling themselves to be well and truly integrated into Australian society. I was not implying that they would be high income earning people. People who are not high income earning can still be well established in Australia in terms of their sentiment.

Senator MASON—I will probably give you another go in a second, Mr Evans, on that issue of principle. In your evidence you summarise the issues very well: that this treaty is about two issues—security for older people, and you are quite right, and also the treaty process about lack of consultation and perhaps perceived lack of notice. Mr Hardgrave last session addressed the treaty process issues about lack of consultation and so forth. Mr Adams has too, and I will not go on about that. Senator Tchen touched on the principle. Perhaps the core question is: why should the Australian taxpayers accept the burden of supplementing United Kingdom pensions when there is no shared responsibility by the United Kingdom?

Mr EVANS—We do not set aside the need for there to be a replacement and better agreement negotiated. We note from the evidence that that has been a difficult task in the past and it is likely to be a difficult task in the future. On the income support side, my point to you is that we have to be careful to avoid saying, ‘This is a damn stupid matter that has arisen as a matter of intergovernmental relations. It has to be rectified,’ and then not ask ourselves the question, ‘Who in fact are the people paying the price for that rectification?’ What I am saying is that the innocent parties, as it were, in this matter must not be the ones to pay that price.

It is certainly not ACOSS’s objective to say, ‘This is a good and sensible treaty and it ought to be kept at any cost.’ What we are saying is that, until a better alternative can be negotiated and inserted in its place, then the present treaty, warts and all, needs to be maintained. We do not deny the fact that there are some substantial warts with it.

Senator MASON—Even if in effect the Australian taxpayer is paying that burden?

Mr EVANS—This ties in with Mr Baird’s question before. There have been people come to Australia, and I think they have had certain assumptions. They would probably know as a matter of just general knowledge of governmental process that processes of indexation for many decades have been automatically applied. They are applied through statutes, they are applied through secondary legislation and they are applied through agreements. There is an assumption that people make that indexation in this modern world is just something that is routinely done, and by and large that is true. But if a person was a little bit more cautious and inquired before coming whether or not there would be indexation, it would have been overwhelmingly the case that they would have been told in a reassuring way, ‘Don’t you worry about that. There is an intergovernmental agreement between the UK and Australia that looks after things such as this.’

Senator MASON—I accept your point, and I accept Mr Baird’s point. I suppose the issue is whether in the future, if that expectation is now guillotined, is there a matter of principle whereby you still contend that the Australian taxpayer should pick up the burden, assuming the issue of notice is rectified?

Mr EVANS—There is only one way that that question of notice could be rectified. That is by it being built into the initial application where the person signs, as part of the application to come here, that they have had certain notice, they have digested its contents, they have perhaps sought independent advice on its meaning and that they accept it. To say that it is available on the web site and so on—

Senator MASON—If that were done and they signed it, what would your position then be?

Mr EVANS—That would be a totally new set of circumstances, and I would like to discuss that with my colleagues. But I expect the principle of notice will be regarded as one that is fundamental.

CHAIR—That being more or less the extent of the committee's questions, I would like to ask the NGOs whom we have asked to come to give this supplementary evidence to make a brief closing statement. In doing so—apart from Mr Evans—would you like to address this last issue that has been coming up? That would be useful for us.

Mr HOPE—I would like to make one comment on this issue of a better agreement and it might be better if I make it now and then we can move on.

CHAIR—By all means.

Mr HOPE—For about the last 13 years, at a whole range of levels of government from prime ministers down to an official level, there have been various attempts to work our way through this issue and get the matter of indexation recognised. The matter of indexation has been recognised but there is just a total lack of will, and for whatever reason the UK government is not prepared to take it on board. We have engaged interest in the UK and a UK House of Commons select committee went through this issue in 1996. Their report, in broad terms, is that they have recommended that there should be a free vote in the Commons about it and that is where the matter stands. It is not for want of trying. We have looked for better alternatives. But, as with all agreements and partnerships, it takes two like-minded sets of individuals to get any progress. In this particular circumstance there have not been two like-minded sets of parties to get that point over.

CHAIR—We will hear final closing remarks. Would you like to go ahead, Mr Evans?

Mr EVANS—Thank you. I have emphasised already the importance of Australia collectively not being brave at the cost of others, and I think that is a critical element in the present situation. I must say I would not be personally satisfied that there has been an attempt made to explore the opportunity for full utilisation of the potential weight of public opinion in this matter. I think that the UK government has been remarkably insensitive in responding to the concerns of the Australian government. It may be that there is potential for the weight of public opinion to be brought to bear further on that, and I believe that ought to be explored.

There has been evidence given that there has been some degree of utilisation of public opinion within the UK. I think there has not been much attempt made to marshal public opinion within Australia, and I must say I think we all find it astonishing that Canada, Australia and New Zealand are being discriminated against, by contrast with the USA and the European nations. What is sauce for the goose is not apparently sauce for the gander in this instance. The fact that the triumvirate of Australia, Canada and New Zealand is singled out for unusually bad treatment is something that may well be germane to other events at this point.

My first question on the treaty process side was not about the 1992 amendments but rather about the negotiating process leading to the 1990 agreement itself. Mr Murdoch referred to providing a detailed account of what had been done. Can I ask whether that is simply going to be provided to the committee or is it going to be tabled so that it is available to others?

CHAIR—It is accepted as committee evidence. If we move that it be made public, in that sense it is yes.

Mr EVANS—I accept the department's bona fides that they have really taken this matter seriously and tried hard. It may be that they could have tried a little bit more widely in not customary Public Service ways as well. But I accept their bona fides in saying they have tried hard. I think the nature of their trying and the absence of a response to them is something that needs to be well and truly on the public record and thoroughly known.

It is also a matter of interest whether, in the period leading up to 1990, there was a standard template for host country agreements and whether indexation was provided for in this template. I think the answer to that may be that by that time we had moved to shared responsibility agreements. But I think that the history of this matter—how it came about that indexation was not provided for in this agreement—is something that the committee does need to look at very carefully and very thoroughly.

I thank the committee for this opportunity. I think that the matter has got more complex as the corner of the carpet has been lifted. If the committee were to see an advantage in a further roundtable such as this, having gained a peek at some of some of the things that are under the carpet, I think that might well be a useful thing. Certainly ACOSS would be glad to take part in that further exploration. Thank you for having us here today.

CHAIR—It has been our pleasure.

Ms SHEEN—As far as the merits or demerits of terminating the agreement go, the organisation has not formed an opinion about that. We have taken it as a fact that the government is determined to go ahead with the termination and we have tried to offer policy advice to the best of our ability to make that process as tolerable as possible for the people who will be affected.

Notwithstanding what the departmental people have said about the limited impact of the termination of the agreement on individuals currently in Australia or planning to come to Australia in the very near future, we would still be very concerned about gaps in income support policy for people who are presently residents of Australia.

I do not think that we can be altogether sure that there will be a very limited impact. We know that they will be receiving UK entitlement. But, as to the extent to which that will be sufficient to the cost of living in Australia, I am not convinced by the evidence that has been put up by the department that people will not be affected.

I would also be very concerned about something that has been brought up regarding information provided to people planning to come to Australia in the future. I would think

that information by itself is not enough. I think the level of vulnerability needs to be taken into account. People can make decisions about coming and they may be well informed about the termination of the agreement. However, I think that is not enough. It does need to be a question about the level of financial vulnerability that they would bring here. Family support, as we know, may not be forthcoming when they actually arrive or arrangements can break down. So I think those considerations need to be taken into account in decisions about who comes to Australia. However, having said that, it is very unfortunate—in view of the fact that Australia has had a very long history of migration from the United Kingdom and that a large part of our population is from that part of the world—that this situation has come to pass.

Ms FINLAY—We also understand the department's perspective and why it is looking to terminate the agreement. As I said, where we come from is concern for those people who are going to be affected by it. They are not players in the game but they are the ones that the impact is going to fall on.

To summarise the types, there are four types of people. There are the ones here who have payment, and that is going to continue. Even with the termination they will continue to get payment, so that is fabulous and they are covered. But, as Mr Baird identified, there are those here not yet on payments who came with the expectation that their pension would be topped up so that they could survive in the Australian economy. I think perhaps the term 'top-up' is a little frivolous as it is used by the department. It suggests that it is an extra bonus or something for those that have come from the UK. I think it is wrong to imply that. It is a top-up so that they have an amount of income with which they can try to survive in the Australian economy. To suggest it is a bonus is incorrect. So there is particular concern for that group—those who have come here with the expectation that they will receive a certain amount of income and that they will be covered, if their UK pension goes down, by the Australian government.

The third group is those who are here but who intend to return to the United Kingdom—the group Senator Ludwig brought up. I am not aware of how the department is to notify these people. They have presumably filtered throughout the Australian community. These people have not been targeted for any information. They are not going to realise until they go over there that their period in Australia is not going to count towards our UK agreement. From our perspective, no measures have been put in place to look at how this group will be looked after if the agreement is terminated.

The fourth group is those who will come to Australia in the future after the agreement is terminated. I support Mr Evans's suggestion that it is not sufficient to have information on a web site and it is not sufficient to have it in an additional booklet. It needs to be on the application form that you fill in and that you talk to an immigration officer about. So they will go through it and you will say, 'What does that mean?' and there will be a plain English explanation of what that means, rather than a written document which can be quite confusing to people, especially older people. So with that group implications in the future could be overcome by extensive written information in the agreement.

But it would take some time. The knowledge about the UK agreement has been around for so long that, even if people have not read about it, the knowledge still filters down

through people and they get an understanding of it—even if they do not know the details, they might know it is going to be okay. It is going to take time for the new information to filter down to people that you really have to look at how you are going to get a benefit if you move to Australia. Thank you.

CHAIR—Thank you.

Mrs MORGAN—After listening to the evidence today, I would have to say we need to be very careful, at the end of this day, to look at not putting in more discrimination. I accept—and our organisation accepts—that there has been discrimination in the treaty itself between the United Kingdom and Australia. But we also have to be very careful that that discrimination, if we do go ahead and terminate the agreement, does not act adversely on other people who may be coming or who may be here. I understand that those already here receiving a pension from within Australia will be fine, but there is a whole murky area where it is going to have very adverse affects on people coming to Australia and those living in Australia.

Senator TCHEN—I would like to put a question to the department on notice. Mr McWilliam, could your department make some estimates of the cost if, upon termination of this treaty, the social security legislation is suitably amended to grant UK migrants who are already in Australia the deemed qualification period for the time they contributed to the UK system? What would be the likely cost to Australia?

Mr McWILLIAM—We would have to take it on notice.

Senator TCHEN—Thank you.

CHAIR—That concludes the public hearing this morning. Thank you very much for coming. It was an interesting exercise.

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

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

Committee adjourned at 11.22 a.m.