COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON TREATIES

Reference: Treaties tabled on 12 October

FRIDAY, 22 OCTOBER 1999

CANBERRA

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JOINT COMMITTEE ON TREATIES

Friday, 22 October 1999

Members: Mr Andrew Thomson *(Chair)*, Senator Cooney *(Deputy Chair)*, Senators Coonan, Ludwig, Mason, Schacht, Stott Despoja 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 Ludwig and Mason and Mr Bartlett, Mr Hardgrave, Mr Andrew Thomson and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 12 October 1999

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ADAMSON, Ms Joanna Marie, Director, Papua New Guinea Section, Department of Foreign Affairs and Trade 39

ANDERSON, Mrs Helen Elizabeth, Director, International Strategy, National Office for the Information Economy, Department of Communications, Information Technology and the Arts 53

BRYANT, Mr Robin, General Manager, Energy Minerals Branch, Department of Industry, Science and Resources 47

DESMOND, Mr Richard, Manager, Radiocommunications and Satellite Section, Department of Communications, Information Technology and the Arts 67

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THOMPSON, Mr Ian, Assistant Secretary, Field Crops Branch, Agricultural Industries Division, Department of Agriculture, Fisheries and Forestry 88

THWAITES, Mr Richard, General Manager, International Branch, National Office for the Information Economy, Department of Communications, Information Technology and the Arts 53

TYSON, Mr Robert James, Assistant Secretary, Nuclear Policy Branch, Department of Foreign Affairs and Trade 47

WATERHOUSE, Mr Doug, Registrar, Plant Breeders Rights Office, Department of Agriculture, Fisheries and Forestry 88

Committee met at 9.01 a.m.

ADAMSON, Ms Joanna Marie, Director, Papua New Guinea Section, Department of Foreign Affairs and Trade

DILLON, Mr Michael Campion, Acting Deputy Director General, Pacific, Africa and International Division, AusAID

JAUNCEY, Mr Robert, Acting Assistant Director General, Papua New Guinea Branch, AusAID

MORRISON, Mr Grant Gerard, Country Program Manager, Governance and Coordination Section, Papua New Guinea Branch, AusAID

SHAW, Ms Gaynor, Acting Director, Governance and Coordination Section, Papua New Guinea Branch, AusAID

STORTZ, Mr Pat, Manager, South Pacific Office, Austrade

CHAIR—Welcome. We are going to take evidence on the second group of the 10 proposed treaty actions that were tabled on 12 October. It is a large group of treaty actions. We are going to look at material ranging from the Development Cooperation Agreement with Papua New Guinea and nuclear cooperation with Japan to things like the protection of new varieties of plants. On Monday we heard evidence on the first group of seven of the proposed treaties.

I think we can beat the timetable as set out by the secretariat. With some pithy submissions and a lack of frivolous interventions, we will do well. These are proceedings of the parliament, so they require the same respect as if they were taking place in the House of Representatives or the Senate. The giving of false or misleading evidence is potentially a contempt of parliament, but I am sure there is no chance of that. I invite you now to make an opening statement on the first of these treaty actions.

Mr Jauncey—I would like to thank the committee for the opportunity to appear here today to discuss the new treaty on development cooperation between Australia and PNG. As you will know, the treaty was signed by Prime Ministers Howard and Morauta in Port Moresby on 7 October. Australia and PNG have had a treaty that has provided a framework for the aid program to PNG since 1989. PNG is the only country for which the aid program is governed by a treaty. This reflects the importance of the bilateral relationship between Australia and PNG and also the strong historical links between the two countries. It also reflects the fact that, with an aid program of $300 million per year currently, PNG makes up one-fifth of Australia’s total aid.

The new treaty is a culmination of a thorough review of treaty arrangements conducted with PNG officials, which commenced in March last year. Comments from the major Australian non-government organisations, business organisations and friendship organisations with an interest in PNG—as well as from within government agencies—were also sought at

the beginning of the process to revise this treaty. I am pleased to note that we have representatives from the Australia-PNG Business Council here today as observers as well.

The new treaty marks a turning point in Australian aid to PNG. Over the course of the 1990s, untied cash payments to PNG have been progressively replaced. From July 2000, when this treaty is intended to take effect, budget support will be completely replaced by specific projects and activities jointly agreed between the two governments. The new treaty is intended to set out a framework for that aid program that will ensure our aid focuses even more closely on trying to promote success and effective development in PNG.

Aid will be set at a maximum level of $300 million per annum until 2003, continuing the gradual decline in aid that has been occurring since independence. In real terms, aid has halved to PNG over the past 25 years. We would anticipate that over the next few years aid will be maintained in nominal terms rather than be increased for inflation. The aid volume will also be set out in a separate arrangement rather than being an annex to the treaty, which will give the Australian government a greater flexibility than in the past to vary that number and to reduce aid flows if performance is not up to scratch.

A growing proportion of the program will also be devoted to a new incentive fund. This is intended to reward and encourage agencies in PNG that have performed well, that have a proven track record or that are promoting reform. For the first time, this will allow aid to be channelled directly to provincial or district government agencies that are working well. It will also allow us to directly channel aid for almost the first time in PNG to community groups, to not-for-profit organisations and to Australian non-government organisations.

The treaty also specifies that performance benchmarks be strengthened and focus more closely on ensuring outcomes are met. So we are trying to set ourselves some targets for reducing, for instance, infant mortality or increasing school enrolment rates over the medium to long term, as well as focusing on ensuring we use benchmarks to make sure aid does not displace PNG government funding and domestic resources going to key sectors, such as health, education or road maintenance. From our perspective, we consider the aid program to PNG to have been effective. Due to aid interventions over the past four years, for instance, primary school enrolment numbers have increased by one-fifth from about 550,000 to 670,000, but we are keen to make sure initiatives in this treaty make the program even more effective.

I should note that, in parallel to this treaty which sets out a framework for the program, we have also been in the process of developing a new country strategy for PNG, focussing on the shorter to medium-term program directions, including increased support for social sector activities, particularly in rural areas, and initiatives to try to encourage better governance in PNG. That country strategy also has been taken out for fairly wide consultation and we are expecting to put that to the minister fairly soon. We welcome the opportunity to discuss the treaty in some detail and, should the committee decide, we would look forward to further public hearings where these issues could be discussed with other interested parties. Thank you.

Mr BARTLETT—You have made some comments already, but could you outline to us the effectiveness of our past aid programs? I notice here in the NIA it stated that one of the aims is:

. . . to increase the effectiveness, accountability and contestability of the aid program and to place a greater emphasis on good governance.

That would almost imply that there were some significant concerns about the effectiveness, accountability and so on of our earlier programs.

Mr Jauncey—From independence through until the late 1980s aid was provided largely as budget support. I think there were some achievements over that period, from independence through until 1995. For instance, infant mortality in PNG had reduced by one-third and infant mortality in PNG now, while unacceptably high, is still half what it might be in Irian Jaya. Australian support has provided for that.

Mr BARTLETT—How can we relate those figures to the effectiveness of Australia's aid? Is there any way that we can measure the extent to which our aid contributed to those improvements?

Mr Jauncey—Our aid provided roughly over that period one-quarter of total Papua New Guinea expenditure and most of Papua New Guinea's development budget. In that context we can say that budget support was able to support some improvements in PNG. Clearly, however, I think there was a feeling in the late 1980s that the degree of accountability and transparency of budget support needed to be improved, and that we did need to move to project aid to try and make our contribution more measurable. That was starting to happen over the past five years. For instance, as I noted, the aid program has contributed to a dramatic increase in enrolment rates in PNG. We have immunised 600,000 children against polio and over 1,000 kilometres of roads have been built.

Mr BARTLETT—So it is a much more effective use of our money. What was the response of the PNG government to the switch from cash contributions to their budget to project focused aid?

Mr Jauncey—There was initially some resistance on the PNG side to that. I think that resistance has largely dissipated. There is a broad acceptance in PNG now of a project approach and, more importantly, among the communities in PNG as well as the government, people are now being able to see more clearly what the program is delivering and comparing that perhaps with what they had got previously. There is a degree of community support as well in PNG for the transition.

Senator BARTLETT—I have one last question. Is there any anticipated breakdown of the proportion of project money that might go to non-government organisations, as distinct from government agencies?

Mr Jauncey—We have set aside $15 million in the program next year for the incentive fund. We would anticipate that that would grow annually. We are looking at a figure of perhaps up to $50 million in some years time, although that will depend on progress. The

NGOs would not be looking at gaining access to all of that money, but I think it is fair to say it would be a significant and growing proportion of the program.

Senator MASON—Just to pick up where Senator Bartlett left off, you mentioned that we had moved from untied cash payments to specific projects, and of course that makes accountability much easier to assess. You mention in article 3 that the programs will give priority to education, health, infrastructure, rural development, law and justice, provinces and governance. You gave some examples of projects in education, health week, and you in fact had benchmarks. Do you have benchmark achievements for all of those outlined in an administrative arrangement?

Mr Jauncey—We are developing benchmarks or strengthening benchmarks, particularly for health, education and infrastructure sectors, which between them would make up probably close to three-quarters of the program.

Senator MASON—And the government will monitor the success of achieving those benchmarks?

Mr Jauncey—We will try our best to, yes.

Senator MASON—And what happens if those benchmarks are not reached?

Mr Jauncey—I think there are a few options and it depends to some degree on perhaps the reasons why they might not be reached if they are not. If there is a feeling from our side that they are not being met because PNG is not putting their own resources into that sector, then I think benchmarks will be linked to funding and we would be able to redirect aid to other sectors where perhaps we are performing better. Or, in a worst case scenario, actually be able to have the flexibility, if needed, to reduce total aid to PNG.

Senator MASON—But we are able to monitor outcomes?

Mr Jauncey—I am not going to pretend it is going to be easy, but we are trying to establish a framework to help us monitor outcomes, yes.

Senator MASON—It is certainly a change from untied cash payments at least.

Mr Jauncey—Yes.

Mr HARDGRAVE—This is a little bit about greater control and certainty from Australia's point of view, is it not?

Mr Jauncey—Yes.

Mr HARDGRAVE—In the review process that I imagine has taken place as background to this, what concerns have we been able to satisfy to bring about this change? I do not want to drop you into a big vat of controversy, but have we looked at things like the allegations about Australian money ending up helping things like the Bougainville crisis and one side versus the other? Have we looked at those sorts of things and decided that, if we start to

look at specific projects, then no-one can allege that we are displacing a cost from one line on the budget by paying for another?

Mr Jauncey—Clearly, concerns about broader governance issues and the use of the funds when they were provided in an untied form was at the back of everybody's mind to this. What will be important for us is to try and make sure that, as we move to program aid and project aid, it is not fungible, and that putting Australian dollars into health projects does not allow money to be then redirected from the domestic health budget. That is going to be an important part of the benchmarks process. As for Bougainville, we do have a large program for Bougainville as part of the program and I think it is helping to consolidate the peace process there.

Mr HARDGRAVE—Are we well satisfied that our values, if you like, on what constitutes good governance, on infant mortality programs, on getting more kids at school, which you have mentioned, and I will throw in environmental standards of the Tedi and so forth, are enforceable? Are the PNG government conceding that we have a point or are they telling us, 'Nice try. We'll do our own thing'?

Mr Jauncey—I think they are enforceable for our program. The extent to which we can enforce them beyond the program is perhaps a bit limited. It is worth noting that the new Prime Minister in PNG, Sir Mekere Morauta, is very much committed to improving governance in PNG. He is looking at electoral reform. He is very committed to coming to an agreement with the banks. In that sort of framework, I think there is some hope that governance standards in PNG will improve over the next few years.

Mr HARDGRAVE—I have one other very specific question. What projects are we undertaking in connection with say, Rabaul, where that volcano several years ago concerned a lot of Australians? Have we got any plans to help with anything there?

Mr Jauncey—We have put in a significant amount of support for the Gazelle Restoration Authority in Rabaul. That has included rebuilding roads, schools, first aid posts, as well as support for the vulcanological monitoring centre there to try to get a bit more forewarning. If you would like further details, I am happy to provide them.

Mr HARDGRAVE—Probably more for my own personal interest but thanks very much.

Senator LUDWIG—In your NIA, where you mention article 6 of the treaty, you do not mention paragraph 4, which states:

> The parties agree that the Government of Papua New Guinea shall be eligible to access a facility to enable the carry-over. . .

What is the purpose of that? It is more just to flesh out your NIA, I suspect. For me that might be one that appears generally. What is the purpose of that and what would it be used for?

Mr Jauncey—There is no carryover facility available at the minute for aid funds between financial years. There is occasionally discussion between us and the Department of

Finance about whether some sort of carryover facility could be introduced. Currently, it is only available for the emergency component of the aid vote. I suppose we put that in there in the eventuality that something might happen on that score but at the minute there are no provisions for carryover.

Senator LUDWIG—As I understand it, what you are telling me is that it is a wish list that you have included, should the government ever allow you to have a carryover facility, because you see some benefit for it.

Mr Jauncey—I do not know if 'wish' list is the word but, yes, it is very much something there in the eventuality of that.

Mr Dillon—This was a provision in the previous treaty, so in the negotiation with PNG it just became one of those points that was perhaps best left in place, although from our perspective it was superfluous.

Senator LUDWIG—Will it remain superfluous?

Mr Dillon—We expect so. But it is there.

CHAIR—I would like to ask a question of Ms Adamson about the direction of the new government there. What have they done since the election to show that they are heading in the right direction? I know Mekere is a terrific fellow and all that, but what are they actually doing?

Ms Adamson—They have done quite a lot since Mekere became Prime Minister in July. In his acceptance speech, Sir Mekere pledged his commitment to five priorities. They were to restore integrity of state institutions, to improve financial stabilisation, including re-engagement with the IFIs, to strengthen budgetary processes, to address obstacles to investment and private sector development and also to pursue a negotiated settlement to the Bougainville question.

He moved pretty quickly, within days—certainly, very soon after becoming Prime Minister—to reaffirm the One China policy. You will recall that Prime Minister Skate had gone off to Taiwan. So that was pretty important. He also moved within days to re-engage with both the World Bank and the IFIs. That engagement is continuing. He made some very important appointments to key financial institutions such as the Reserve Bank and to such things as the police force. He introduced the supplementary budget, which was welcomed by business and also by us. I think the aim of the budget was to reduce the budget deficit from over three per cent to under two per cent. He is also moving on the Bougainville issue, so there are several things that are very positive.

Senator LUDWIG—Article 7, the Incentive Fund, the NIA provides a clear overview of its operation. But it goes on to say that there will be a separate administrative arrangement that would not have treaty status. We accept that but can you send it back past us, when it is developed, so that we can have a look at it. The issues that I am interested in are what it will contain and how it will operate, obviously for the benefit of Papua New Guinea and Australia. In addition, if you are putting bulk money into an incentive fund, over five years,

you could imagine how it could grow into a sizeable fund, which you deal with administratively, which is really outside the treaty making process. That is the other matter that I was interested in—to see how that would operate.

Mr Jauncey—We would be happy to send that back to you once it is finalised.

Senator LUDWIG—Thank you. Your assurance is that you would not be heading down that path?

Mr Jauncey—The Incentive Fund is very much the opportunity for us to look at opportunities to go around central PNG government systems and go straight to organisations that are working on the ground. That is the main rationale for us.

Senator LUDWIG—That is very encouraging. That is as I understood it—that it was a worthwhile goal to be able to deliver on-the-ground support.

CHAIR—You can supply that information in due course.

Mr BARTLETT—Could someone give us a quick snapshot of the employment situation in Papua New Guinea, particularly of the interface between education and employment. How effectively do we monitor the effectiveness of the education programs in getting young people into employment opportunities? It seems to me from what I read that that is one of the problems in the country.

Mr Jauncey—One of the difficulties PNG faces is that the formal sector of the economy takes up only about 15 per cent of the work force. Most of the other 85 per cent of the population survive largely from subsistence agriculture. So there are two issues. The first is trying to make sure that educational opportunities are more widely available. Literacy rates are only around 65 to 70 per cent. Secondly, and just as importantly, is trying to get a policy framework in place that encourages the expansion of the formal economy so that there are jobs available for people coming out of school. Some of the recent developments such as the devaluation of the kina, while it is causing hardship now, should help in the longer-term to encourage labour intensive, export oriented industry in PNG. So, from our perspective, there are two issues needing to be addressed—one is education and the other is expanding the opportunities because, at the minute, they are just not there.

Mr BARTLETT—So there are social tensions created up there where education leads to expectations of opportunities that do not materialise?

Mr Jauncey—Very much so.

CHAIR—From Austrade's perspective, can you give us a view of what you think the treaty and, I suppose, the new government might bring to trading opportunities in PNG?

Mr Stortz—From our perspective, PNG is a billion dollar market. It is widely misunderstood in Australia just how significant that market is in comparison to a lot of other markets that we actively promote or understand. We did some analysis last year, and we produced a little brochure on it, which showed that the total export earnings based on 1996-

97 statistics from PNG was equivalent to what Australia earned in that year from exports to France, Brazil and Norway combined. So it is pretty important to us.

The problem we have is the perception that people might have trouble getting paid for exports, that there is no real market there, that it is all aid funded and so on. I guess our challenge is to try and alter that perspective, and we think we are making some significant progress in that regard. Our traditional program up there focuses on the mining industry and the education sector and we have a range of displays each year in those areas, but we are now looking at promoting non-traditional exports—for example, IT, communication and security. The response from the business community so far has been very encouraging.

CHAIR—That deals with our consideration of the treaty. Many thanks, and in due course the committee will report to parliament about its consideration of this.

Proceedings suspended from 9.32 a.m. to 9.50 a.m.

BRYANT, Mr Robin, General Manager, Energy Minerals Branch, Department of Industry, Science and Resources

DIETZ, Ms Susan, Director, Nuclear Trade and Security Section, Nuclear Policy Branch, International Security Division, Department of Foreign Affairs and Trade

LEASK, Mr Andrew Roger, Assistant Secretary, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade

TYSON, Mr Robert James, Assistant Secretary, Nuclear Policy Branch, Department of Foreign Affairs and Trade

CHAIR—Welcome. We will begin consideration of the second of the proposed treaty actions, the Japanese Nuclear Fuel Agreement: Transfer of Uranium to New Zealand. These are proceedings of the parliament as if they were taking place in the House or the Senate and so they need to be approached in that light. Hence, any false evidence could be regarded as a contempt of parliament. I invite you to make an opening statement, and then we will go to questions.

Mr Tyson—Certainly, Mr Chairman. Firstly, I must apologise for delaying your procedures this morning. The committee has before it an exchange of notes constituting an amendment to the implementing arrangement pursuant to the Australia-Japan Nuclear Cooperation Agreement. It also has before it an agreement between the government of Australia and the government of New Zealand concerning the transfer of uranium, done at Canberra on 14 September this year.

The Australian government policy is that uranium exports should be covered by bilateral safeguards agreements. These agreements establish conditions which ensure that the export of uranium is consistent with Australia's commitment to the non-proliferation of nuclear weapons and Australia's related treaty obligations. The bilateral safeguards agreements that Australia enters into provide for the application of International Atomic Energy Agency, IAEA, safeguards and prior Australian consent for re-export, high enrichment or reprocessing of Australian obligated nuclear material. This is to ensure that Australian uranium is properly monitored through the nuclear fuel cycle and is prevented from being used for any military or explosive purpose. These provisions are consistent with Australia's obligations under the non-proliferation treaty, the NPT.

The implementing arrangement annexed to the 1982 Australia-Japan agreement sets out details of how the agreement will operate, including the facilities at which Japan may process, use or reprocess Australian nuclear material. These facilities are listed in a document, commonly known as the capsule, attached to the implementing arrangement. The implementing arrangement allows for the amendment of the capsule to add or remove facilities by agreement of the two governments.

In 1997 Japan proposed the addition of two US facilities, the Columbia plant of Westinghouse Electric Corporation and the Richland plant of Siemens Power Corporation, for the purpose of light water reactor fuel fabrication. Both plants are licensed by the US Nuclear Regulatory Commission, which undertakes regular audits and inspections. Moreover,

both plants are available for IAEA safeguards and inspections under the US voluntary offer agreement with the IAEA.

The addition of these facilities is consistent with Australia's nuclear safeguards policy. The Australian Safeguards and Non-proliferation Office, or ASNO, will account for any nuclear material which may be fabricated in the two facilities subject to this exchange of notes and then transferred to Japan, to provide assurance that Australia's uranium exports remain exclusively in peaceful use.

The proposed agreement with New Zealand will add to our current network of 14 bilateral agreements. The intent of this treaty action is to facilitate the export of small amounts of uranium ore concentrate, or yellowcake, from Australia to New Zealand for non-nuclear purposes. The agreement will ensure that arrangements covering the export of Australian uranium exported to New Zealand comply fully with Australia's nuclear safeguards policy.

By way of background, a New Zealand company, Gaffer Coloured Glass Co. Ltd, has expressed a wish to purchase from Australian uranium producers small quantities of yellowcake for use as a glass colouring agent. In 1996, New Zealand requested that Australia agree to a one-off export of 25 kilograms of uranium to New Zealand for Gaffer Coloured Glass. We agreed to this request at the time after taking into consideration New Zealand's impeccable non-proliferation credentials, the intended non-nuclear use of the uranium, the insignificance of the quantity in proliferation terms and the expectation that this would be a one-off request.

However, in 1997 we were advised by the New Zealand government that Gaffer Coloured Glass wished to purchase uranium on a continuing basis and envisaged importing up to 100 kilograms a year of yellowcake, with the potential for imports to increase to 200 kilograms per year. Although the intended non-nuclear use of this uranium differentiates it from Australia's usual uranium exports, which is obviously in multiple tonne shipments destined for use in nuclear power reactors, it is still desirable for the export of uranium to New Zealand to be covered by a bilateral safeguards agreement to ensure that all uranium exports are consistent with Australia's safeguards policy.

To reflect the fact that the maximum exportable quantity of uranium set by the proposed agreement is insignificant in proliferation terms—it would take approximately five tonnes of natural uranium, not to mention the necessary enrichment and weapons fabrication technology, to manufacture a nuclear explosive device—the agreement with New Zealand has been simplified. Those obligations relating only to large-scale exports of uranium for nuclear power generation have been removed, and reporting arrangements have been streamlined to reflect the absence of a safeguards authority in New Zealand.

In conclusion, the conditions imposed by the agreement on the transfer of uranium from Australia to New Zealand are consistent with both governments' commitment to nuclear non-proliferation, including their obligations under the NPT. ASNO will account for the nuclear material subject to this agreement, in accordance with the Safeguards Act 1987, to provide assurance that Australia's uranium exports remain exclusively in peaceful use.

CHAIR—Thank you kindly.

Mr BARTLETT—I notice that in an in the *Canberra Times* there were some allegations that Australian uranium had been involved in the leak from the uranium processing plant in Japan recently. Would you like to comment on that?

Mr Tyson—The Japanese authorities have assured us that that is not the case. The level of enrichment of the uranium involved in that accident was far beyond that which we have provided for nuclear power generation in Japan. The figures roughly are that that uranium was enriched to 18 per cent. Our Australian obligated nuclear material that goes into the nuclear power program is generally between three and five. So the answer is no.

Mr BARTLETT—Has there ever been any evidence of Australian uranium being involved in any loss of uranium, unaccountable losses from shipments, or in any other accidents?

Mr Tyson—No, I believe not. Since exports resumed in the 1970s, there has been no loss of Australian yellowcake to the environment during shipment.

Senator MASON—The agreement with Japan is based on the standard safeguards agreement and of course, as Mr Bartlett alluded to, there has been much adverse comment recently on nuclear energy resulting from the fallout in Japan. I suppose the obvious question is, what are we doing to monitor the use by Japan of this uranium?

Mr Tyson—I think the first point I would make is that, whilst there has been obvious and understandable commentary on the accident, Japan does have a good safety record. It subscribes to the key conventions, international conventions and agreements in relation to nuclear safety and safeguards. Its record in relation to nuclear power reactors is very good. So far as we are concerned in Australia, the organisation which is responsible for monitoring the use of Australian obligated nuclear material is ASNO, and I ask Andrew to comment.

Mr Leask—We monitor the Australian uranium. It is our business to ensure that that remains entirely in peaceful use, and we are completely satisfied that that is the case. In regard to safety, that is a national responsibility. As Bob has said, Japan has a good record in operating power plants. It has a more mixed record with some of its smaller plants and arrangements, and I am quite sure that from the investigation Japan is conducting there will be changes to its regulatory processes to ensure that the events we have witnessed recently do not occur again or as far as is possible are excluded.

Senator MASON—You mentioned that there is no International Atomic Energy Agency safeguards inspection in New Zealand, and this is simply because there is no—

Mr Tyson—There are no facilities to inspect.

Senator MASON—Thank you.

Mr HARDGRAVE—How much uranium are we talking about that under the 1982 agreement we are actually sending to Japan?

Mr Bryant—Last year, 1,588 tonnes were destined for Japan. They go to converters first and then on to Japan. This year, it is probably closer to 2,600-2,800 tonnes. It depends upon the contract arrangements that are being made by the companies. We have got two companies, WMC and ERA, who are exporting from Australia. They make commercial contracts, and the tonnages rise and fall according to demand and supply.

Mr HARDGRAVE—Is that a substantial part of our overseas uranium sales?

Mr Bryant—Japan is a substantial source, but we export to many other countries: the US, France, Germany, Finland. Japan, I think, is about one-third of the market.

Mr HARDGRAVE—So it is a substantial part?

Mr Bryant—It is substantial, yes.

Mr HARDGRAVE—Would it be our largest trading partner in terms of uranium?

Mr Leask—In 1998, the US was slightly ahead and Japan was just behind. The US was 1,600 tonnes and Japan was just under 1,600 tonnes out of total exports last year of 6,000—that is the order of magnitude. The other countries mentioned by Robin make up the balance.

Mr HARDGRAVE—And if we were not supplying uranium to Japan, if we did not have these sorts of agreements, there are plenty of other places for them to get it from?

Mr Bryant—There are a large number of competitors in the market. Canada is a very substantial competitor. You could go to Kazakhstan. Niger is also a potential exporter. Uranium is available in many places around the world. Australia has been underperforming in its export sense, given the reserves that we have, but the companies have been working hard over the last few years to build up the markets.

Mr HARDGRAVE—So, if we were to hold things up before ratification to say to the Japanese, 'Look, you have had this accident. You have had a good safety record in the past, but we are concerned that some of our uranium may be involved in an accident in the future,' what sort of circumstance would that put us in?

Mr Bryant—One can only speculate what the commercial response would be from the Japanese, but there are plenty of sources of supply and, of course, not only the natural sources from the mining but the overhang of the nuclear weapons disposals program has provided and will provide for the future a very substantial source of supply. That, in commercial terms, overhangs the market and creates a very low price at the present time.

Mr HARDGRAVE—How do we actually know that our material was not involved? I think you said something about it being 18 per cent instead of three to five per cent. How does this whole thing work? Do we literally have responsibility cradle to grave for this material? Can we pick up the phone and say, 'You have got some of our yellowcake in possession. How is it going, where is it, what are you doing with it, how much is there?' Do we know that much?

Mr Tyson—Under our bilateral safeguards agreements there are various obligations of which you are well aware, one of which is that it shall not be enriched to this higher level without the agreement of the original supplier, which is us. But the safeguards requirements are very strict both from the IAEA and our own safeguards requirements, which are monitored by ASNO. So, in essence, the answer is yes.

Mr HARDGRAVE—It is quite an amazing commodity to think that you know what happens to it. For a grain producer to know which particular loaf of bread the grain went into would be an absurdity, but literally in the case of uranium that is what you do know.

Mr Tyson—It is the most highly regulated industry in the world, I suppose.

Mr HARDGRAVE—In relation to the agreement with New Zealand, are there any other similar agreements already in existence under the 1982 arrangements?

Mr Tyson—No, there are not. There is an exchange of letters under which we export monazite, which is a component of beach sand which has a very low level of uranium in it which is in some ways comparable to this very small amount of uranium. In fact, it was a model for the first exchange of letters with the New Zealanders in what we thought was a one-off shipment. The other 14 agreements we have are of a different scale, if you like. We just thought it was appropriate in the circumstances of ongoing shipments, albeit of very small amounts and albeit for non-nuclear use, to have a safeguards agreement.

Mr HARDGRAVE—I was just a bit intrigued about what a glass company was using uranium for. My first mind was that we were going to get yellow coloured glass from New Zealand that would send the geiger counter into deep orbit, but I suspect there is something more to it. I gathered from what you said that with the quantities involved New Zealand is not about to become the land of the long mushroom cloud. What are they doing with it?

Mr Tyson—They are in fact using it to colour their glass. I gather this is a very old technique which dates back, I think, to the 18th century. There is no other commercial alternative to yellowcake to provide the particular hue, tinting, that they want in this glass.

Mr HARDGRAVE—So do you find out about how they do that? Is that part of the information you get?

Mr Tyson—Certainly under the agreement ASNO is entitled, or I suppose obliged, to go and have a look at what happens at the other end with our uranium. It remains Australian obligated uranium nuclear material and will be subject to safeguards under the agreement. I suppose that Andrew or someone else from ASNO will eventually see it going into glass. It is indeed to colour the glass, and it is the only product that Gaffer Glass is aware of that will provide the particular hue that they want in the product—a commercial decision.

Senator LUDWIG—How is it traceable? Is there a dispensation given to the commodity? You are saying you are responsible for the yellowcake and where it goes, and it is regulated, and that you are responsible for where it might end up. It begs the question: how are you going to be responsible for pieces of glass all over the world that Gaffer export?

Mr Leask—Under safeguards agreements, there is an end clause when the International Atomic Energy Agency can declare the material, the uranium component, no longer recoverable. There are certain conditions under which they can do that and judgments that they would make. In the case of the material going to New Zealand, once it is embodied in the glass as a chemical component then it is judged to be no longer recoverable and we do not track it anymore.

CHAIR—Many thanks. That is very clear. In due course we will report on this treaty and it will be tabled in parliament.

[10.10 a.m.]

MATSON, Mr Barry Charles, Executive Manager, Radio Frequency Planning, Australian Communications Authority

McGILL, Mr Philip, Manager, International Liaison, Australian Communications Authority

ANDERSON, Mrs Helen Elizabeth, Director, International Strategy, National Office for the Information Economy, Department of Communications, Information Technology and the Arts

THWAITES, Mr Richard, General Manager, International Branch, National Office for the Information Economy, Department of Communications, Information Technology and the Arts

CHAIR—I welcome witnesses for the next two proposed treaty actions, which are the final acts of the World Radiocommunications Conference, WRC-97, and some amendments to the constitution of the International Telecommunications Union, ITU. Do you have anything to say about the capacity in which you appear today?

Mr McGill—I was a delegate at the WRC-97 and the plenipotentiary conference in 1998.

Mr Matson—I am the executive in charge of the group that includes Mr McGill's team.

CHAIR—These are formal proceedings of the parliament as if they were taking place in the House of Representatives or in the Senate. Hence, you must treat them in the same fashion, and any false evidence will be regarded as a contempt of parliament. I invite you to make an opening statement, and then we will proceed to questions.

Mr Matson—Very well. I should start by saying that I was not present at the particular meeting we are discussing today, having been in my present job for only about 18 months. I am now in charge of the group that is managing our appearance at the next such meeting, which is in May next year. Essentially, we are talking about the International Telecommunications Union, and the treaty is the radio regulations that govern the use of the radio spectrum around the world. The main method that the ITU uses is to have a conference, at the moment running about every 2½ years, where all member countries of the ITU—there are 188 member countries—get together and propose changes to these regulations and discuss them. Of course, there is an enormous lead-up preparation period for working out common world positions. Indeed, Australia is part of the Asian area, and through the Asia-Pacific Telecommunity we try to produce common proposals with the countries in our region so that they will have more success at the international meeting than Australia would on its own.

The last meeting took place in 1997. There were 142 countries represented at that meeting—the World Radiocommunications Conference 1997. There were 141 representatives and observers from international and regional organisations among 1,800 delegates.

Interestingly, this particular conference was chaired by an Australian, Mr Roger Smith, who was my predecessor in the ACA and is now in a permanent position with the ITU.

The conference faced a number of particular issues that had been raised as contentious in the world community—in particular, the use of satellites generally. It is becoming very crowded up in space, and the spectrum they use is starting to overlap. There are a number of equity issues about whether countries are getting a fair deal in the number of satellites they are allowed to have and in the positions they are allowed to serve on the earth. There was a lot of talk about what is fair and what spectrum should be used for satellites for various kinds of services.

Another issue was short-wave radio broadcasting, which is probably the oldest issue in the ITU and goes right back to the early days of radio but which still has not properly been sorted out. The changing political situation in the world has resulted in a shift in the countries that want to use this kind of broadcasting. It is unusual in that it uses spectrum in another country without necessarily having the permission of that other country. You can imagine it is a fairly political thing, and there was a fair bit of discussion on that.

It is a very intense meeting indeed. In fact, on the last night, Mr Smith found it necessary to keep the people working until 5.00 a.m. after the conference was supposed to have finished the day before. But he ironed out a lot of common positions and, in our opinion, it was a very successful meeting.

The way is now clear for the introduction of many new kinds of satellite systems. In particular, there is a shift from satellites that remain apparently stationary over the earth, which is the traditional form of telecommunications and broadcasting satellite, to a new generation of systems, which have a whole constellation orbiting around the earth at a much lower altitude. This conference very bravely declared that these could use the same spectrum as the fixed satellites. You can imagine that, if they are flying in between them and the earth stations on the same frequency, the potential for interference is enormous. This has created a great deal of controversy and discussion, which will be going on at the next meeting too. It is not all resolved.

The Asia-Pacific telecommunity approach to common proposals was very successful. It was a big lesson for Australia that, if we want to succeed, we have to go in with common positions to our neighbouring countries. I think that is all I need to say by way of introduction. I have a lot more material on individual agenda items if you need it.

CHAIR—Thank you. We will start with Mr Bartlett.

Mr BARTLETT—I suppose the basic question I have is: are you convinced that Australia is getting a fair deal?

Mr Matson—Yes. I think we were one of the more advanced countries in this satellite world with AUSSAT back in the mid-1980s. We were in the first round of countries putting up satellites, and we secured the important positions we wanted above Australia and the number of channels received on that. I do not think we were excessive. The big issue in the ITU is probably what we call ‘paper satellites’. These are essentially ways of reserving

positions in case you want them in the future. You register a satellite that does not really exist with the ITU and, because that has been notified formally, no-one else is able to use that slot or those frequencies. We are very opposed to that approach because it is extremely inefficient in the use of the spectrum. While we have not made that kind of reservation for Australia, we have secured what we really need fairly well.

Mr BARTLETT—And with potential for growth in our telecommunications activities?

Mr Matson—I think so. We have to make compromises. We cannot have everything we want at the expense of other countries, but I think Australia is viewed in our region as being a very reasonable player.

Senator MASON—Just as a matter of information and background, are radio spectrum and the positions in stationary orbit of satellites finite resources?

Mr Matson—Yes.

Senator MASON—How are they allocated?

Mr Matson—The ITU regulations say that countries agree that certain kinds of services—like satellite services, broadcasting, mobile radio and radars—should use certain frequency bands. Then countries produce a national plan. We have the Australian Radiofrequency Spectrum Plan, which takes those ITU allocations as a framework and then makes an Australian plan where we allocate particular services in Australia within that overall framework. If we did not adhere to the international treaty, we would find that equipment would not work when it went to another country and we would not be able to trade or import. For instance, you can imagine that, if we had different broadcasting frequencies from everywhere else, it would be a big disadvantage to Australia.

Senator MASON—When the ITU in negotiations determine who gets what, do they do it on the basis of the size of Australia's land mass, or is it our population?

Mr Matson—They tend to allocate services, not particular countries, to bits of the spectrum. They say, 'This is for broadcasting. This is for radar,' and the countries themselves decide. I think Mr McGill wants to interject.

Mr McGill—Thank you. I would just like to add that there is a number of ways to allocate a spectrum. The first is what is called a priori plan—that is, all of the countries around the world will determine by an algorithm to carve up the spectrum. This is called a plan allocation. Australia has a number of fair deals in the world community on plan allocations for broadcasting satellites and for fixed satellites. There is the so-called BSS plan in appendices 30 and 30A, which you would have seen reference to in the proposals. At the last WRC we not only retained our 1977 allocations but also got additional allocations for our offshore territories, including the Antarctic Territory. This was a bit of a coup. We did not expect the world to do this. However, we have more to do at the next WRC to make sure we maintain our equitable share of the allocation. So that is the plan allocation.

The rest of the allocations are based essentially on a 'first come, first served' basis. So the countries—and you can imagine which countries these may be—who are quite advanced put in a lot of filings. They get the great share of the spectrum, this finite resource. It was with that in mind that Australia put forward resolution 18, which was to mitigate the so-called paper satellites. That was discussed at WRC-97 as a means of trying to mitigate people trying to file for spectrum which they do not actually need. But the second process—first come, first served—is on the basis that you do not cause interference to anyone who was there before you in the queue. So it is very much a queuing scheme—you file your piece of paper with the ITU, and that will get processed in time order of receipt.

There was recently another form of spectrum allocation—pertaining to the mobile satellite fraternity mainly. Because there is a great oversubscription of demand for services. In this case, we have an MOU in regions 1 and 3—Europe, Africa and the Asia-Pacific region to which Australia is party, where all of the mobile satellite service proponents in the geostationary orbit can, each year, go to a meeting and present their claims for the amount of spectrum they need. So the allocation is adaptive and changed on a yearly basis. The cake is carved up each year, and the condition for getting a slice of the cake is very strict due diligence. You need to show contracts, you need to show numbers of subscribers. So it is very transparent, very fair and very commercial.

The other way of assigning allocations is when it has been decided that you do not need to coordinate. For some services—and Barry mentioned the NGSO; these low earth orbiting satellites—it has been decided that, if they conform to certain technical standards, they can have the spectrum they want. Anyone following them simply needs their agreement. Those are the methods of spectrum allocation.

Mr HARDGRAVE—Who is actually in this treaty? Who is in the ITU, and who is out?

Mr Matson—All of the member countries of the United Nations, essentially.

Mr HARDGRAVE—All member countries?

Mr Matson—They are all eligible; I am not sure whether they all actually participate by virtue of subscribing to the ITU. I would have to take that on notice.

Mr HARDGRAVE—I would certainly like to know. Is the United States a signatory to this?

Mr Matson—Yes.

Mr HARDGRAVE—When they sign into a treaty does it have an impact on their constitutional obligations as far as their domestic laws are concerned?

Mr Matson—Yes, in the same way as it does for us.

Mr HARDGRAVE—Actually, it is not in the same way, but we will not debate that. There is plenty of discussion in the *Hansard* already about that. What I am particularly

interested in is that I do not really think that the ITU actually works, in the sense that there are differing systems all around the world.

Mr Matson—The ITU works in three regions around the world. Europe and Africa is region 1. North America and South America is region 2. And the rest of the world, including us, is region 3. You are right: this is a historical thing, and the regions are slightly different in their use of frequencies. That gives us trouble when a US warship from region 2 comes to Australia and starts using all the things on a warship and starts opening garage doors in Hobart—like what happened recently.

Mr HARDGRAVE—And your mobile phone does not work in America and the Caribbean, while it works in England, Ireland, Australia, China and most other countries in the world.

Mr Matson—We take the attitude that we try to maximise commonality. Unfortunately, I think some countries take the attitude that it is better for their industry to be different.

Mr HARDGRAVE—What is the ITU doing about that? You have some responsibility now—your predecessor is a permanent delegate, or whatever—what are you doing to try to iron this out?

Mr Matson—The issue of the next generation mobile phone is one of the dominant ones for the next conference. This is the one that is going to replace the GSM digital. It is hopefully going to be a world phone, which means that countries are getting together and deciding how much radio spectrum it needs and whether we can make that common around the world. The problem is that there is no new spectrum that can be taken for this. It has to be recovered from other applications, and these applications have different values in different countries. So it is a very controversial issue.

I think probably the best we can hope for is that all of the phones will work on some tiny piece of common frequency that is the same in all the world—even if it has not got a great amount of capacity but is enough for the phone to look at and register what it has to do in that country. So we can achieve commonality through software and management techniques but maybe not through spectrum.

Mr HARDGRAVE—Do you think you will carry the argument to the Americans that their system is not as good as, say, ours?

Mr Matson—We may be overtaken by events. The world phone concept of the Americans is that it would be satellite based and work anywhere in the world and, therefore, the national allocations do not matter so much. But we think they do. Americans have a xenophobic way of looking at things. The GSM phones work pretty well everywhere in the world, except America, so they think there is a huge need for a world phone.

Mr HARDGRAVE—Everyone is wrong; they are right—exactly. I must admit I have just had that problem in the last couple of months. You commented about carving up the spectrum on a first come, first serve basis. How long has it actually taken to get this international agreement on the broad use of spectrum?

Mr Matson—I think it started with the *Titanic*, actually, and the need for common radio frequencies at sea for rescues. The ITU is the oldest UN body, in fact. So we have been at it for a long time, and it will never end. The big trend is sharing spectrum. Up until a few years ago, we thought that if the same spectrum was used in the same geographic location by two different things they would interfere with each other. Increasingly, we are learning that with directional antennas and careful planning you can share spectrum between things that do not look down each other's throats, like satellites and ground microwave links. But it is difficult. There is a tendency at the ITU to just say, 'Yes, share, and then work out studies on how you are going to do it.' And those studies get bogged down in physics that just will not bend.

Essentially, there is another layer of law. We have the national law, the national plan. We have the ITU regs above that. Above that I think we have God's law, the law of physics, which will not change. So the ITU is sort of like the laws of physics laying down a layer of regulation, and then we lay another layer down on top of that.

Mr HARDGRAVE—I feel I have just been part of a special moment, Chairman. I am wondering then whether this is perhaps—'Heavens! Here I am: I started the week mauling them, and at the end of the week I am offering them an excuse for why the ABA have taken seven years to get local area planning for the use of part of the spectrum and they are 3½ years behind.' Is that because of this detail of where you place transmitters and where you do not?

Mr Matson—The ABA have a very difficult task. I would not like to criticise them—

Mr HARDGRAVE—You can leave that to me; I have done enough of that.

Mr Matson—but they do not have an international problem, as far as I am aware. We try to make their lives as easy as we can. We try to use any spectrum they are not using, to make maximum use of it. Apart from that, we stay out of their business.

Mr HARDGRAVE—Can we, as a result of this treaty, reliably stop our neighbours—as countries that are far closer to other countries can—from boosting signals, taking up our spectrum allocation, crossing boundaries and so forth? With fortuitous coverage are we able to do that?

Mr Matson—Yes. In fact, just two weeks ago Australia hosted a meeting of the Asia-Pacific telecommunity on this subject in preparing for the next world conference. I have to say there was a very high degree of cooperation. The delegations that dominated the meeting were Australia—because it was home territory; but that is fairly normal in our region—Japan and Korea. Although we have some fairly diverging interests in a number of areas, the degree of cooperation and common proposals was very good. So, optimistically, the answer is yes.

There is one issue in this area on the agenda for the next conference that you might be interested in, and that is interference with emergency channels for shipping and aviation. Little fishing boats and logging camps throughout South-East Asia are buying radios meant for amateur radio people and, with small modifications, they can be made to work not only

on the amateur bands but on any of the short-wave frequencies, including those that are being kept clear for emergency communications. These people are not really very well regulated by their governments; they just listen for a quiet spot and then transmit on it to their mates. They do not know that somewhere in a control tower someone is listening for emergency traffic on that channel. These people get very annoyed when they hear all this fishing boat traffic, and they complain to us. So we put it on the agenda for the world conference at the last meeting, and it was basically referred to the next meeting. We have been pushing very hard for common positions on that at this coming meeting.

Mr HARDGRAVE—It sounds like you will have a few more 5.00 a.m. finishes.

Mr McGill—Mr Chairman, can I just add a few—

CHAIR—Really, we should invite Mr Thwaites to make some remarks about the ITU. Senator Ludwig, do you want to continue about the WRC?

Senator LUDWIG—I have one or two things.

CHAIR—You go ahead, and we will go to Mr Thwaites after that.

Senator LUDWIG—I would like to try to tie it together. I must admit I find some difficulty in doing this, as it is not an area I am closely familiar with. You talk about a declaration, and then there is an attached letter back to us headed, 'Final acts of the World Radiocommunications Conference, Geneva, WRC-97, status of declaration No. 54.' What is the nature and content of the declaration, which is attached at 63?

Mr Matson—I will get Mr McGill to answer that, because he was there.

Mr McGill—In the final acts of the World Radiocommunications Conference—this is an official copy—administrations usually reserve their sovereign right, so a standard clause which we put as a declaration after every IT meeting is, 'Notwithstanding anything contained herein, we reserve our sovereign right with respect to other countries.' That is a standard declaration we put in.

In WRC-97 there was another issue raised concerning claims by a number of equatorial countries—Colombia, Ecuador and Costa Rica—that effectively the space above their territories belongs to them. So, the geostationary orbit would therefore be carved up by those people lucky enough to be underneath it. We put in a joint declaration with the United States, UK, Japan and a whole range of countries, saying that we did not think that was right. So that was the declaration submitted on the final days—in fact, at the closing ceremony—of WRC-97.

Senator LUDWIG—In short, those particular countries were taking a very English view of property rights, which would stretch from the centre to the top.

Mr McGill—Yes.

Mr Matson—The geostationary orbit is a particular altitude ring around the earth at the equatorial plane, so it is like a single line at a particular altitude. So it is above countries on the equator. I guess the question is: is it airspace above those countries, or is it space belonging to everybody?

Senator LUDWIG—Yes, I understand the legal problems that arise, but you then reserve by declaration.

Mr McGill—That is right.

Senator LUDWIG—Further, you suggested in your NIA that there are no foreseeable costs to the Australian government, but you then indicated that there will be likely costs associated with industry. What are those costs likely to be? Are they foreseeable? Have you consulted with industry? Are they aware of the costs? Are these costs recoverable in the sense that they outlay costs on the basis that they are going to recoup profits?

Mr McGill—The process of development of the proposals leading up to WRC-97, during WRC-97 and even after WRC-97 was that industry and all stakeholders have been participating. They have been active participants through our International Radiocommunications Advisory Committee. We had no reservations from any industry stakeholders at all on the brief which went forward, and no reservations at the conclusion of the meeting. We can assume, therefore, that industry were happy with any flow-ons. They were part of the decision making process and they knew what was happening. No-one has advised us that they have any problems with it.

Senator LUDWIG—Do you have an idea of the costs that may be incurred in moving from different areas of the radio spectrum? I understand industry is going to bear those costs.

Mr Matson—In Australia, when we require part of industry to move from a particular spectrum to make way for a new service, it is done in a fairly formal way according to our act. These days the popular approach is to use a price based allocation or an auctioning mechanism to sell the new spectrum. Sometimes that is done before it is cleared, and that is allowed in the act. A lot of notice is given and the firms who are required to move get to make business plans to enable them to do that. If they do not wish to move, there is ample opportunity to discuss that with us and to come to some compromise. It is even allowable for the winner to compensate the loser under those circumstances and get them to move more quickly. There is a very strong position that the ACA, as industry regulator, does not compensate anyone affected by a spectrum move.

Senator LUDWIG—Can you give me a concrete example? Would that be relevant for digital television?

Mr Matson—No, digital television is being crammed into the existing television spectrum, thank goodness. An example would be a new satellite service. There is one called ICO, a British constellation of orbiting satellites, that needs spectrum currently used by microwave links, many of the links supporting broadcasting. The broadcasters and the telecommunications carriers involved really do not want to move to make way for a new satellite service that will be a competitor.

We have not yet resolved that one. We have had a lot of meetings between the affected parties, and there is a view that the new player should not be making so much out of the spectrum that he can afford to compensate the existing player. The satellite operator says that he must operate all the way around the world. He cannot afford to get into negotiations like this in every country, and he does not want to create a precedent by paying compensation in Australia. It is a very vexed issue that has been made a bit easier for us by the fact that this particular satellite company—like a lot of others—has just gone into chapter 11 and no-one is taking it very seriously anymore.

Mr WILKIE—Air Services Australia talked about a few problems with the NIA which were to do with long-term access for the aeronautical industry. What were those concerns based around?

Mr Matson—Several conferences ago there was a bit of spectrum, orbital position and so forth allocated for use by aviation for controlling aircraft. This was given to them as dedicated spectrum only for aviation. They were very happy about that. But it was unused because for many years there was no particular entrepreneur wanting to put up a satellite for that purpose and aviation had other things. They were really just making a reservation.

It was eyed-off by other commercial applications of satellites who wanted to use that bit of spectrum for general satellite telecommunications. At the last conference they won their case, and it was allowed to be shared. The aviation community raised its objections. So a footnote was created to the regulations that said that anybody who used this bit of aviation spectrum had to make their services capable of working the aviation way, that is, with very quick priorities and instant communications for aircraft. The aviation community was not very satisfied with that and, frankly, has been lobbying ever since to go back to the old exclusive allocation.

The Australian Communications Authority, as industry regulator, wants competition and it wants to encourage new services. It believes that the footnote protection is adequate. A footnote has full status in the regulations. Our view has been that there has been no demonstrated problem with that footnote working and that the aviation interests are still well looked after. The aviation community is used to having its own exclusive frequencies and wants it on satellites as well. It has not given up this case. In the lobbying that has been going on for positions for the next conference, there have been some very strong representations from the Australian aviation community—and through their international bodies like ICAO and IATA, and even the Airline Pilots Association—demanding that we support going back to the exclusive use requirement.

We are letting that issue take its course in the debates. The ACA takes the view that it does not go out and win spectrum for anybody. Basically it acts as a facilitator to help it win its own case in the international community. We like them to be a player on our national study groups and preparation processes, and then we want them to be part of the delegation, come with us to Geneva, fight it out with their counterparts on other delegations and help us reach a common position. The ACA does not see that it has the responsibility of making this particular case, but we will do everything we can to see that there is full consultation on the issue and that the proposal that goes into the Australian brief will represent the combined interests of Australian industry overall.

Senator LUDWIG—As I understand it, the frequency they use is something in the order of 118 to 129 megahertz. Do they go down to quarter channel?

Mr Matson—That might be the bandwidth they use on the satellite.

Mr McGill—It is not that much.

Senator LUDWIG—Somewhere in that order.

Mr Matson—Yes.

Mr McGill—It is less. It is a relatively small amount. The spectrum is very scarce there and very valuable.

Senator LUDWIG—And that is why they are protecting it.

Mr Matson—We all fly in planes and we would all like to give aviation what it wants, but there is a cost to just agreeing to this, a cost in new services and competition to Australia that we would have to weigh against their claim.

Mr WILKIE—I am not sure whether my second question falls into the ambit of the treaty, but it is more curiosity. With the mobile phone spectrum and the power outputs of the antennas of different countries, I notice here that signals drop out regularly. I was over in a foreign country recently standing in a rice paddy in the middle of nowhere and I had a full strength signal. Are there different outputs in different countries?

Mr Matson—The way you make those phone systems work is called cellular, and you have these little cells. Ideally, you start with very big cells when you first put in the service and fairly high powered transmission. As you get more clients, and you need more capacity, you subdivide and subdivide until the cells are very small. That is how they are supposed to be designed. It gets much more difficult when you get out of the populated areas. I suspect you might have been lucky enough on that occasion to be fairly near one of the cells and getting a good service.

Mr WILKIE—It worked anywhere in their country, actually.

Mr Matson—We leave that up to the carriers, although the ACA takes a monitoring view and does get very interested in coverage from time to time. All I can say is that it is up to the carriers to design it and their first attempt will be to design it to provide the capacity where it will make the money, and that is the normal commercial pressure.

Mr WILKIE—But there is no limit on the signal power and they can boost it?

Mr Matson—In fact, the phones step down the power. There is a feedback between the transmitter and the phone and they actually say, ‘I am getting plenty of signal. You can give me a bit less, less and less.’ Then they say, ‘That’s enough’. So they actually use the minimum power that they need, so that the same frequencies can be used a couple of cells away. It is interference limited like that. So power is not usually the issue. It is usually the

amount of capacity, that is, the number of phones that can be using the cell at any one time. That is the limiting factor.

Mr HARDGRAVE—This first come, first served business is killing the scheme, and frequency allocation is processed in the order of receipt. Does that work, or do you have a use it or lose it mechanism?

Mr Matson—That has been the basis for our national planning for many years. Within Australia we allocate particular services to the spectrum on a first come, first served basis, unless we are going to something like an auction. It is problematic because it means someone might get spectrum by virtue of the fact that they were first, and not because they have the best application for it, and they can tie up spectrum in inefficient applications. That is a known disadvantage of what we call administrative allocation process. We overcome it by the fact that they pay fairly hefty licence fees. If you are not using it effectively, you are wasting money. There are mechanisms for recovering spectrum through ministerial direction if we really needed to.

We have been looking at that kind of allocation method very hard lately. An alternative method used in the UK a lot is to do an economic benefit analysis. You have to have some pretty smart economists on board who can say, 'We have got three competing uses for this bit of spectrum. We look at the contribution to GDP of the three applications and we will give it to the one that makes the biggest contribution.' It is against the grain for the ACA to make decisions like that, because we try to be a hands-off regulator and not pick winners. It is different to our philosophy, but it is the alternative to first come, first served. At least there is an element of fairness in that.

Our absolute preferred way is that, when there is competition, we feel there are grounds for a price based allocation, the theory being that whoever is prepared to pay the most must have the best application. That only breaks down when you get applications that are not commercial, such as defence, police and things like that. We have a problem with price based allocation fitting into those sorts of social users of the spectrum. So it is a very interesting mix of policy, economics and technology.

Mr HARDGRAVE—So you do lose it if you do not use it?

Mr Matson—If you are prepared to keep paying your licence fee, there is no automatic method for you to lose it. But, if we knew that spectrum was being underutilised, we would try to do something about it.

Mr HARDGRAVE—By ministerial direction?

Mr Matson—Yes.

CHAIR—Mr Thwaites, can you make some remarks about the amendments to the constitution of the ITU?

Mr Thwaites—Under the various acts administered by our portfolio, the operational matters related to the ITU are the responsibility of the ACA, whereas the institutional

responsibilities remain with the central department of which the National Office for the Information Economy is a part. Hence, we have the responsibility for matters such as constitutional change and the parliamentary process that delivers those.

In the last discussion, you have had some examples and indications of what it is that the ITU does. There are approximately 189 governments who are members. I might take this opportunity to answer one of the earlier questions about who is not a member. All UN members are entitled—some are inactive members in that they have not paid their subscriptions for a certain period of time and have lost their entitlement to be active, but they still remain on the books as a member.

I will proceed to the amendments here. These changes particularly are aimed at improving the efficiency of ITU processes and in particular to enhance the role of non-government entities in the organisation. In addition to the 189 countries that are treaty level members, there are 500 other non-government entities which are members in the second category under these amendments known as sector members. These amendments embody steps towards extension of cost recovery, applying stronger budget discipline and promoting more efficient working methods.

Australia has actively encouraged these reform processes as a means to gain greater value for money from Australia's contributions to the organisation, both in subscription and in kind in the form of participation in the many activities associated with the ITU. All Australian positions that have been taken and that are represented in these outcomes have been developed through extensive consultation with interested Australian industry sectors.

The major amendments here include several changes to the financial arrangements that are set out in the constitution and the convention. In particular, the constitution will recognise revenues other than member contributions as possible sources of income, therefore validating the use of cost recovery and other income generating activities on the part of the ITU. Another change is that member states will announce their level of contribution to the ITU at the plenipotentiary, rather than six months later. The purpose of this is that member states will be able to make their contribution pledges in fixed currency terms—and it is normally the Swiss franc—rather than in terms of a unit of variable value where the value is not finally established at the time when this pledge is made. This change provides more financial certainty, particularly to larger contributors such as Australia, and imposes stronger financial discipline on budget discussions held in the plenipotentiary meeting itself.

The Secretary-General will act as a depository for special arrangements between member states and sector members. This is a new avenue of activity for the ITU and again reflects the increased importance of non-government participants in the processes of the ITU. It allows that voluntary agreements at the level of memoranda of understanding can be implemented under the ITU's umbrella, but without the formal implications of treaty level agreements. The option is significant for the telecommunications sector where technology and industry structure are undergoing continuous change at a pace faster than treaty ratifications are able to maintain.

Standard terminologies apply to ITU members who are not states. Non-state entities participating in the ITU will now be referred to as sector members. The right of sector

members at meetings and in decision making are now established in the constitution. Applications for membership can be made directly to the ITU, rather than through the member state where the relevant state has agreed to this process. The role of a set of advisory groups to progress intercessional decision making is formalised by inclusion in the constitution and convention. Those are the principal changes in these amendments.

Mr HARDGRAVE—What will happen? Who will win and who will lose? In Australia who—that is, government or non-government users—will be affected by these changes?

Mr Thwaites—We believe the major effect is that the industry participants for whom this activity essentially takes place, will have greater enhanced rights in the processes of the ITU that lead towards formal decision making. This being a treaty based organisation, there is still a level at which the sovereign states do have the final say, but there are many intermediate processes. It has certainly been our consistent policy over many years that the non-government members—who, after all, provide a great proportion of the expertise, not to say stakeholder interest in the outcomes—do have enhanced rights to participate and greater recognition of their contributions. That is the major underlying drift in these changes.

Mr HARDGRAVE—Was the preparatory group that you put together before the 1998 conference given a chance to have a look at the treaty, or the amendments of the constitution and convention of the ITU that we have before us?

Mr Thwaites—Absolutely. In fact, they had the opportunity to attend the conference itself, and some of them did.

Mr HARDGRAVE—You have consulted across the industry and you are satisfied about that?

Mr Thwaites—Yes. Our delegation to this conference included several Australian industry participants.

Mr HARDGRAVE—Basically there have been no comments, other than support from a Queensland respondent to your call for comments on this?

Mr Thwaites—No. We are not aware of any. We have been through the process to elicit any possible consequent comment, but there has been none.

Mr HARDGRAVE—When I go to the AGM in a couple of weeks time in Brisbane and tell them about this, they will all be happy that we are doing this?

Mr Thwaites—We trust so.

Mr WILKIE—I am just curious. There were some amendments made to the constitution in 1998. In what way do those amendments place new obligations on Australia, if any?

Mr Thwaites—I do not think they place any new obligations on Australia. They enhance our abilities as government representatives at the treaty level and in a broader delegation sense—including industry members—to press for the reform agenda that we have been

working on. That is, items such as cost recovery, better discipline on the secretariat and so forth—are key. I might say to you that our industry members are well entrenched and motivated towards this in that Australia's financial contribution to the ITU is essentially hypothecated from the licence fees that they pay. So they realise they do have a stake in it, and they drive us very keenly to ensure there is value for money in Australia's participation.

Senator MASON—You have listed that one of the reasons for the constitutional changes is to recognise the importance of non-government entities. What are some of the major Australian non-government entities that would be involved?

Mr Thwaites—There are two forms of involvement. One is by actual non-government sector membership. There are currently three Australian entities that are sector members: Telstra, Optus and AsiaSpace. However, there are many other Australian commercial entities that participate in ITU activities as members of the Australian delegation. That would include many of the broadcasters and also people in the Telecom supply industry and other carriers that have a less intensive interest than, say, Telstra or Optus, but are nonetheless kept informed and are certainly involved in the preparatory processes.

Mr Matson—So there is a difference there. If you come as a delegate, you are bound by the brief and you have to take the position that we have all agreed on. If you go as a sector member, you can represent yourself as your company and do not necessarily have to follow the Australian brief. You could choose to go either way.

Senator MASON—In a sense, the involvement of all these non-government entities reflects the dynamism in the area.

Mr Thwaites—That is what we encourage. To be frank, we would be happy to see more Australian companies choose to become sector members. There can be a number of reasons why they do not—perhaps because we are so accommodating with our delegation. We do not exclude them as some countries do. Another factor that must be taken into account is that a lot of the companies operating in Australia with major interests in this field are affiliates of international companies that will have a seat at the table through some other delegation.

CHAIR—That concludes our consideration of those treaty actions. Thank you very much for your very thorough briefing this morning.

[10.57 a.m.]

DESMOND, Mr Richard, Manager, Radiocommunications and Satellite Section, Department of Communications, Information Technology and the Arts

NEIL, Mr John, General Manager, Enterprise and Radiocommunications Branch, Department of Communications, Information Technology and the Arts

CHAIR—Welcome. These are proceedings of the parliament as if they were happening in the House of Representatives or the Senate, so they require the same degree of respect. Hence, any false evidence could be regarded as a contempt of parliament. I invite you now to make an opening statement, and then we will have questions.

Mr Neil—We are dealing here with the restructuring of Inmarsat. In 1976, the Inmarsat convention established a global mobile satellite communication system for maritime purposes, including those related to distress and safety of life. The convention has been amended several times in order to expand coverage in response to changing technology and needs. At the time of its establishment, Inmarsat was one of only two global treaty based organisations providing satellite communications—INTELSAT being the other.

With the increasing number of private companies providing or planning to provide services that compete with Inmarsat, there has been pressure on Inmarsat to remain competitive in the market and to continue to provide its public service obligations. The three imperatives driving the need for structural change were flexibility in investment in new systems and programs, speed of decision making and ensuring equitable competition.

The 1998 amendments to the convention under consideration principally provide for the Inmarsat satellite system to be operated by a new corporate entity in order to preserve its commercial viability, purpose and provision of services. A new international organisation has been established to oversee the company to ensure that it continues to provide the services required under the convention and according to set principles. This will be done through a public service agreement between the international organisation and the company.

The restructuring of Inmarsat was of concern to the International Maritime Organisation, IMO, given its requirements for a global maritime distress and safety system. The IMO was consulted throughout the restructuring process, and assurances were given by Inmarsat that the maritime services would be maintained. The effect of the amendments is to remove government parties from the commercial activities of satellite based communications but to retain the purpose of the treaty by ensuring a commercial operator will provide the required services.

One of the major issues of the restructuring process was the need for rapid implementation of the amendments. It normally takes several years for amendments to enter into force, due to the requirement of formal acceptance of the amendments by a two-thirds majority of the membership representing two-thirds of the investment shares at the time of the adoption of the amendment. As this delay would have defeated the commercial purposes of the restructuring, the parties decided there was a need to resort to the concept of rapid implementation.

At the 13th extraordinary session of the assembly in September 1998, the Inmarsat assembly decided that amendments would be implemented as from 1 April 1999 or such date as the Inmarsat council decided, depending on and subject to entry into force of the amendments in accordance with the procedure set forth in the convention and the operating agreement. It had been emphasised that it was important that the assembly's decision should be taken by consensus, given the substantial nature of the amendments—which affected the rights and interests of all members of the organisation—and the need for certainty in implementing the complicated legal arrangements needed to give effect to the restructuring.

As the assembly took place during the period of the caretaker government, the approval of the government and the opposition was gained to enable Australia to vote in favour of the rapid implementation of the amendments. The assembly's decision was taken without a vote and by means of consensus. The transition was subject to various legal and regulatory conditions which were finalised before the implementation date—which was, in the event, put back to 15 April 1999. The amendments do not substantially change Australia's obligations under the existing convention, nor will they breach the obligation Australia has under the Safety of Life at Sea, or SOLAS, Convention. The treaty action will not result in any increased costs to the Australian government. Mr Desmond and I will be pleased to take questions on any of the issues that are of concern to the committee.

Senator MASON—You mentioned that there is competition for these services. You said that other providers and organisations can provide these services in competition with government.

Mr Desmond—In competition with Inmarsat, a number of constellations are presently up that, if configured appropriately, would be able to provide those services. For example, Mr Matson mentioned Iridium earlier on, which will be providing mobile telephony. There are a number of other constellations which will provide mobile telephony—ICO and Globalstar. There are other constellations which will provide broadband services—I think Teledesic is one that is on the drawing board—but there are also existing geostationary satellites like PanAmSat and AsiaSat. They are competitors for various Inmarsat services—not necessarily for the SOLAS services but for the other broadband and telecommunications services.

Senator MASON—So you think that, in privatising the satellite system in this case, the services rendered will still be appropriate for the task?

Mr Desmond—Yes. Mechanisms in the agreement require the SOLAS services to continue to be provided. In effect, they have been cross-subsidised by the commercial services. For example, where Inmarsat provides telephony in regional Australia—it is a service offered by Telstra—groups like Optus can also provide mobile telephony.

So in the major markets, I guess, where the money is, there is plenty of competition that seems to be increasing, and that is one of the reasons for needing the changed structure. Potentially, you could get that competition in the SOLAS area but it is not evident at the moment so the structure is designed to improve the commercial viability of the organisation whilst retaining the public service obligations, the SOLAS requirements.

Senator MASON—That is funny; that is the conundrum across many areas of public policy, isn't it?

Mr Desmond—It is indeed.

Mr HARDGRAVE—Why was Inmarsat established?

Mr Desmond—As part of the SOLAS convention. To give a very brief thumbnail sketch, starting with the *Titanic* there was no international monitoring. But following that there was a decision to allocate radio frequencies and for those to be monitored. As technology developed, people worked out that you could put up a constellation of satellites and monitor the entire surface of the earth. It was a Safety of Life initiative primarily, and it has got the automatic distress beacon, automatic positioning, continual monitoring by various earth stations rather than, say, looking for the HF frequencies which, as Mr Matson alluded to, they do monitor. But the nature of HF means—I am not a technical expert—that you do change the frequencies according to the solar cycle and the time of the day. So it is a lot more intensive, whereas Inmarsat uses a dedicated frequency at—I cannot remember what it is—1.4 or 1.5 gigahertz, and that is continually monitored.

Mr HARDGRAVE—So this is a focused organisation. I am just amazed that I have heard the *Titanic* mentioned twice in evidence today. You have the ITU that is sort of bringing 189 different nations together and you have got the WRC-97 that is sort of slotting a whole lot of things about spectrum management and all this sort of stuff together, and then we have got 86 parties in the Inmarsat organisation—

Mr Neil—The difference is that Inmarsat is actually a provider of satellite communications—ITU and WRC are international regulatory bodies.

Mr HARDGRAVE—Thank you.

Mr Neil—I think what we are really saying is that, as the world has progressed since 1976, people have realised that countries and governments do not fundamentally need to be involved in the delivery of satellite communications. What we are interested in is the preservation of the Safety of Life at Sea system, and so we are narrowing down the treaty to cover those issues and putting the rest of it into a more commercial framework. Hopefully, that will be to the continuation of this as a platform and the further development of Inmarsat in a competitive framework.

Mr HARDGRAVE—So I take it that the 86 parties involved in this convention are nations with a seaboard or shipping industry. Would that be fair comment?

Mr Desmond—Yes. The majority of them would be. I do not have a list, but it would not preclude them because Inmarsat has changed into a more commercial organisation anyway, and there might be incentives for a carrier to wish to participate commercially.

Mr HARDGRAVE—To make the dollars.

Mr Desmond—For other than SOLAS reasons. But certainly most of them are maritime.

Mr HARDGRAVE—I imagine therefore that the United States are signatories to this convention, given that we have got a maintenance of a 22 per cent share in this planned public offering—everyone else is only allowed 15. Is that the might of the US or is that a current state that they do not want to disenfranchise by changing?

Mr Desmond—That is correct. COMSAT currently have 22 per cent. As part of their structuring we are not going to force them to sell down. So that is the only reason.

Mr HARDGRAVE—So there is no retrospectivity disadvantage?

Mr Desmond—No. We changed the status quo, essentially. They can certainly sell down if they choose and would then be caught, but they are not required to dilute their shareholding.

Senator LUDWIG—I was interested in how you intend to maintain the public service obligations.

Mr Desmond—In simple terms, the organisation has been restructured into two: one is a commercial company and one is a new intergovernmental organisation. That intergovernmental organisation has the same membership as the old one, so Australia will continue to be a party to it. There are mechanisms that the new organisation has. For example, it has a special share in the new company. The public service obligation will be in the memorandum and articles of the new company. They can be amended only by a vote by a certain number, similar to a special resolution in Australia. The IGO has the power to veto those proposed changes and bring that to an extraordinary meeting of the company and of the assembly of parties—the current membership.

The new company is required to report to the IGO on a regular basis and to consult on any matters that might affect delivery of the SOLAS type of services. In the event that those consultations cause concern to the IGO and those concerns cannot be resolved, then the IGO can call a meeting of the assembly of parties. It may attend the meeting of shareholders of the new company.

Further, in relation to the SOLAS services, there is a mechanism that allows an arbitrator to be appointed. Should that not resolve the issue, the public service agreement is legally enforceable and the IGO can take the matter to court as a final sanction.

Senator LUDWIG—What is in that basket of public service obligations? Is that articulated anywhere?

Mr Desmond—Yes, it is. That is essentially the maintenance of the GMDSS in SOLAS services. I do not have the exact details here.

Senator LUDWIG—You could perhaps send that to us.

Mr Desmond—It is basically a no-change position. What exists prior has just been carried over.

Senator LUDWIG—That is a finite basket.

Mr Desmond—Yes, I believe so.

Senator LUDWIG—What happens over time with the changing technologies if there is the requirement to expand that basket? Is there a provision for expansion?

Mr Desmond—It is not necessarily about capacity; it is about the types of services.

Senator LUDWIG—That is what I am talking about. What happens if, for argument's sake, technology changes, demands change, you have a finite basket of obligations circa 1999 that in the year 2010 are missing and you want to add some?

Mr Desmond—I would need to check that.

Senator LUDWIG—But what happens then? In other words, if you can imagine the *Titanic*—and we have all mentioned it sinking, which is a terrible example I must say—and we then say we had obligations to maintain a radio frequency at that time, into the future it would be pointless.

Mr Neil—Without trying to get into the technical side of things—

Senator LUDWIG—It is not a technical question.

Mr Neil—No, I know what you are getting at. It is a policy question. I think the answer is that we have a treaty that reflects the needs and views of the governmental parties at the moment. Basically, they are contracting with this new company to provide those services. If the parties get together at some point and decide that that contract does not reflect what their current needs are, then the parties are going to have to decide whether, by means of the Inmarsat treaty, they can expand by contracting either with this company or a private sector provider, to add to services—or another private sector provider—or whether another treaty arrangement is required between the parties. They will just have to go through a fundamental policy process on what the needs are.

Senator LUDWIG—You are still missing the question. I can think that too, that that would be a logical corollary of what we are talking about. But what I would do—and perhaps I am taking it too simply, so I am happy to be corrected—is that, if you were going to then go down the track of providing a company, providing a memorandum and articles of association or what we now call replaceable rules under the Corporations Law, you would then include within that not only provision for the public service obligations and a mechanism to veto to ensure that they are actually being met but also a possibility of how you deal with things that come up that you might want to include in that basket, as a logical issue.

Mr Neil—I will check what the provisions are.

Senator LUDWIG—That is the question I am asking.

Mr Neil—That is a fair question. I will follow it up.

Senator LUDWIG—And if not, why not?

Mr Desmond—We do not have that information. We would need to check and get back to you.

Senator LUDWIG—Thank you.

Mr WILKIE—My questions have really been answered. If you have that maritime safety function, how do you ensure that that that is actually being performed properly if it is being done by a commercial company? Often their focus is more on profit, whereas I imagine there would not be a lot of profit in providing these services. Who ensures that they do provide that proper service on an ongoing basis?

Mr Desmond—The International Maritime Organisation has observer status on the Inmarsat agreement and will continue to do so. It is closely involved in monitoring those services. We are looking to the IMO to ensure that the services are being delivered at the right level and consistent with the public services agreement.

Mr WILKIE—So there is a policeman, so to speak?

Mr Desmond—And of course there are various parties. If our maritime industry were to complain to us that in their view it was not being maintained to the right standard, we would certainly be taking that up with the new intergovernmental organisation and asking it to consult with the new company to make sure that it is meeting its obligations.

Mr WILKIE—I suppose it gets back to the *Titanic* scenario: you do not want to find out there is a problem when the boat has gone down.

Mr Desmond—That is absolutely correct. We consulted with maritime interests and with AMSA. The IMO had a significant role in ensuring that the SOLAS requirements were going to be met. Among the conditions of us proceeding were that the IMO were happy and that we had received advice from our maritime areas that they were happy with it as well.

CHAIR—Many thanks. That concludes the communication related treaty actions this morning. We will proceed to consider the Cultural Cooperation Agreement with Germany.

[11.18 a.m.]

FREEMAN, Mr Chris, Director, Media Strategies and Internet Unit, Images of Australia Branch, Department of Foreign Affairs and Trade

PARKS, Ms Melanie Jayne, Project Officer, Images of Australia Branch, Department of Foreign Affairs and Trade

CHAIR—Welcome. These are proceedings of the parliament as if they were taking place in the House of Representatives or the Senate, so they require the same respect and, hence, false evidence is a contempt of parliament. I invite you to make some opening remarks after which we will ask you questions.

Mr Freeman—Before we begin, I extend to you the apologies of Mr Chris De Cure, our branch head, who was initially scheduled to appear. Unfortunately, he is heavily involved in the East Timor communications strategy and was called away to an urgent meeting—and your timing altered as well, I understand.

I can make my remarks relatively brief, and then we can come back to quite detailed ones, if you wish. As background, the decision to negotiate a formal agreement on cultural cooperation with Germany has its origins in a Prime Ministerial visit in 1995. The agreement was subsequently initialled during the visit of former federal Chancellor Dr Helmut Kohl to Australia in 1997 and was signed by Foreign Minister Downer at the Australia-Germany Trade and Investment Conference on 7 November 1997 in Dresden.

Essentially, the agreement reflects the government's priority of promoting a strong and forward looking bilateral relationship through expanding cooperation in the economic and cultural fields, and that is an element of the Partnership 2000 Action Plan, which is a joint initiative signed and developed by the Australian and German governments. Our view in the department is that cultural interaction between the two parties would not only enhance mutual understanding but also would be reflected in all aspects of the bilateral, political, social as well as, hopefully, the economic relations between the two countries.

For us it is a symbolic signing, and we also hope it will have good practical effect in implementing those kinds of designs. We do see it as marking a new level of commitment to bilateral cultural exchanges by both governments. At the same time, it acknowledges that budgetary constraints will impose some limitations on the activities we can perhaps undertake together. But those same budgetary constraints, ironically, make closer cooperation even more desirable.

As for the anticipated outcomes of the agreement, in brief we would hope that they would facilitate both creative and technical interchanges; strengthen cooperation and mutual assistance, particularly in the provision of education and training, by facilitating and strengthening institutional and educational links; provide a greater understanding of each other's respective heritage, language, education, culture, et cetera, through various exchanges; and, in a narrower cultural sense, assist Australian musicians, contemporary dance performers, film industry people in other exchanges of that type.

The agreement, in terms of its obligations, provides for both parties to encourage exchanges; develop cooperative activities between individual institutions in the various fields I have already mentioned; encourage a study of each other's languages; encourage exchange programs of film, television, radio and other media; promote cooperation in the field of sport; promote youth exchanges; and make available experts seconded to provide for official assignments; facilitate the import of materials required for the purposes of the agreement—including pictures, exhibition items, books, films, digital media and a whole range of public diplomacy activities.

The exchange programs will allow German nationals to enter Australia for the purposes of work or study for short periods of time on temporary student type visas. Germany is currently the 13th most significant recipient of student visas, with 1,240 students visiting during 1998-1999, which is a seven per cent increase on the previous year. The number of such exchanges, we would expect, could increase slightly as a result of the agreement. We would not anticipate a major surge. We also would not anticipate that the number of German citizens applying for Australian residency in Australia would be affected by the agreement one way or the other. We would not see it as having any significant impact on that.

There are no direct costs in terms of the portfolio, but there may well be the possibility of meetings and other administrative contact to discuss and review the agreement, and that could create some indirect cost, just in terms of facilitating people's involvement and so on. The Department of Foreign Affairs and Trade would meet any necessary costs, including travel expenses and costs incurred for conferences held in Australia, and we would anticipate doing that from our existing budget.

We have consulted quite widely with the Victorian, South Australian, New South Wales, Tasmanian, Western Australian, Northern Territory and Australian Capital Territory governments, and there is strong support for the objectives of the agreement amongst all those state and territory governments. We have also consulted with various cultural bodies, including the Australian Museum, the Art Gallery of New South Wales, the State Library of New South Wales, a number of Arts Victoria affiliated art and performance groups; and all of them anticipate positive outcomes, particularly in relation to the opportunity for many of those performing groups to break into the German market.

A number of tertiary institutions—including the Australian National University, the University of Queensland, the University of Western Australia and the University of Melbourne—are all strongly in support of the agreement, with most of them commenting on its impact on their respective language schools. The Teachers Association for German in Western Australia and the Western Australian School of Languages and Communication Studies have also welcomed the agreement.

CHAIR—Terrific.

Mr HARDGRAVE—A couple of the states—according to your national interest analysis—have communicated their strong support for the agreement's objectives. But one of the ones that is missing is the Queensland government. Did you not hear from them?

Ms Parks—We have heard since from the Queensland government, and they support it, like the others. At the time of writing they had not yet contacted us.

Mr HARDGRAVE—I just wanted to make sure they were in on this. Do you have any idea, from a trade point of view, what German tourists might spend here? I saw some figures some years ago that said that Japanese tourists would come here, stay for a week and spend $5,000 or so. Do we have any ballpark figures? My understanding is that German tourists are pretty good spenders.

Mr Freeman—Yes. I am sorry we do not have any specific detail on that. Certainly, they would be regarded as being almost without question on the higher end of the spending scale in per capita spending—and on a day by day spend.

Mr HARDGRAVE—And they are pretty good travellers—

Mr Freeman—They are.

Mr HARDGRAVE—So we would see more Germans perhaps being enamoured of Australia in an even greater way than they currently are by this agreement?

Mr Freeman—Yes, and that would be one of the key objectives. Australian-German relations are, as you know, particularly strong—and particularly so on an economic basis. There are a lot of banks and bankers and major corporations who have made their regional headquarters in Sydney. We would see, as we always do within the department, the use of cultural activities and things of this kind as a form of leveraging for trade and economic activity, as well as for encouraging tourism.

Mr HARDGRAVE—We have already got some very strong cultural activities here. The Goethe Institute has a lot of activities.

Mr Freeman—It does.

Mr HARDGRAVE—Will this enhance all of that as well?

Mr Freeman—It will. One of the indications we had from the German side, and one of the issues we looked at fairly closely in recent years, was the question of whether we should sign formal cultural agreements in the same way as we have done in the past, or whether we should go for a memorandum of understanding. Our advice has been that we would look to getting much better and closer cooperation at the institutional level with organisations like the Goethe Institute and so on by having a cultural agreement.

Mr HARDGRAVE—I guess the question begs to be asked: why do you really need an agreement, if things are going so well anyway?

Mr Freeman—The short answer is that they can always be better. We have got reasonably good links, both in a symbolic sense and in a pragmatic sense. This really will, I think, underline both the value we place on the existing links and the fact that we do believe

that more can be done. I certainly do not think we have reached the full ambit of the kinds of activities that we can actually pursue with the Germans.

Mr BARTLETT—I note the consultation with the states and their enthusiastic support. I find that a little hard to marry up with, say, the New South Wales government's emphasis on Asian languages rather than European languages. Did they make any specific comment about that? Did they see that greater emphasis on promoting German language studies might detract from their emphasis on Asian studies?

Mr Freeman—I am not aware of that. This is partly an assumption; I will consult with Melanie in a moment as well. But I think the way we would see it would be that, while the study of Asian languages is clearly a very major part of any of our public communication strategies—as well as in business, tourism and so on—the ability to build on these existing relationships is also important. New South Wales, which you mentioned, is probably the key city, perhaps even marginally more so than Melbourne, in terms of German headquartering of their business and regional organisations in Sydney. It is an assumption that the New South Wales government presumably valued that kind of presence and would see this is as a way of perhaps extending that relationship with them.

Mr BARTLETT—Do you see any possible competition there, given that there is a limit to the amount of language study that students will undertake, either at secondary or tertiary level? It becomes a bit of a choice. Do you see any sort of conflict there?

Mr Freeman—No. I think we would basically be trying to harness the interest that already exists. Frankly, under this agreement, I would not be looking at big numbers. I think we are looking at traditional linkages being built on, rather than a brand new strategy to overwhelm the obvious push into Asia. It is a little like French and so on. It will probably be by people with a longer standing interest in Germany—an existing interest that they want to further refine, I expect.

Mr BARTLETT—Can you elaborate on how you would see us expanding the promotion of German cultural institutions within Australia?

Mr Freeman—Under the Department of Foreign Affairs and Trade's existing arrangements, we currently have a small, fairly modest cultural arrangement with Germany. We send Australian tours and groups and so on over there. Under this agreement, I think we will see an expansion of that into Germany and a further, concurrent expansion from Germany into Australia as well. Under the agreement, I think we would be saying to the Germans that we want to extend within Germany a greater understanding of Australia's aspirations and culture and its economic potential by sending, under the agreement, various specialist groups and others that we would identify as being useful for the Germans to know about.

We would anticipate the Germans would take a similar view, using possibly the Goethe Institute but also the agreement as the umbrella to make similar proposals to us—that is, like us, they would presumably identify areas of their economy or their culture that they think would be particularly useful to promote in Australia. They would possibly invoke the agreement and come to us and seek facilitation by us for that kind of visit.

Mr BARTLETT—Clearly, there are significant potential benefits for both countries—social, cultural and economic. I am interested that you are convinced that this can be undertaken without any further cost to the budget and can be met within the department's current budget.

Mr Freeman—Yes. Our reasoning for that is that we are, in the department, increasingly looking at a number of avenues for funding. While we do not claim to have the kind of pulling power or sponsorship of certain media figures, we have looked at trying to encourage private enterprise to seed-fund. We often provide seed funding for particular projects and we have had reasonable success in getting bilateral chambers, business houses and others to actually contribute as well. I think we will be looking to do more of that. Quite frankly, if we do not do more of that, our base budgets are likely to remain fairly static for some time to come. That is one aspect.

The other aspect is that we basically will need, in the words of the bureaucrats, to try to do more with less. As I mentioned, we have a certain amount of money already allocated for activities in Germany. That will continue. We do not anticipate that that will be reduced, but we do not anticipate that it will be increased, either. We have done some very good things. At the moment, of course, we have fairly heavy involvement in the Hanover expo, as well, next year. It could well be that under this agreement we may well be able to initiate this and use it as a catalyst for some exchanges to coincide with Hanover. There are options there. There is funding under Hanover, as well, which we will hopefully draw on for some of these activities—or at least link them into the expo exercise.

Senator MASON—Mr Bartlett is right. This is a noble objective to enhance bilateral relationship in scientific, education and cultural matters. Is this a particularly special agreement, or are there similar agreements with other countries?

Mr Freeman—There are. From my recollection, we probably have 20 cultural agreements with other countries, broadly similar to this in terms of their aims and objectives but different in one important way. This particular one—and it is the trend we have tried to pursue—is more general. It leaves open more options and does not seek to spell out in detail very specific programs—which other treaties occasionally did. Frankly, we found sometimes that the more detailed they were, the more difficult they were to adhere to, and the more difficult they were to also make flexible.

Senator MASON—I see.

Mr Freeman—The other difference is that, in the last three years or four years, as I mentioned earlier, we have tended—probably more often than we have in the past—to undertake memorandums of understanding rather than formal treaties.

Senator MASON—This agreement reflects a fairly intimate relationship, doesn't it?

Mr Freeman—It does; and part of the reason that it is a treaty and not an MOU, as I mentioned earlier, is the fact that the German government actually places considerably more weight and gravitas on a treaty than on an MOU.

Senator MASON—Thank you.

Senator LUDWIG—What does the Images of Australia Branch do?

Mr Freeman—Thank you for that.

Senator LUDWIG—I was just curious.

Mr Freeman—How far back do you want to go? Let me try to be brief. I carry a lot of public affairs baggage in the sense that I have been around for a long time. Federal governments over the years, and certainly since World War II, have all had a mechanism for promoting Australia's interests abroad. It has gone under all sorts of names. It has had all sorts of homes and various agencies and so on. Its names have ranged from the Australian Overseas Information Service, the Australian News and Information Bureau, Promotion Australia and a whole host of others.

Senator LUDWIG—All of them are familiar names that I would recognise.

Mr Freeman—Yes. So Images of Australia is really the latest bureaucratic incarnation of all that. We were set up in April within the department to harness various existing bodies and units in the department and give it a more centralised focus. The name actually comes from a smaller unit that was established in mid-1997, the Images Australia Section in our Asia division in the department. We have now just purloined that name and brought together a host of activities, including our Olympics linkages or the federal government's involvement in the various Olympic programs. We have brought into it our visiting media programs under which we sponsor various people who come and report on Australia. Our cultural relations area has also been umbrellaed under this activity. Its basic objective really is to promote a positive and, if not a positive, at least an accurate image of Australia internationally, mainly through the media but also through cultural bodies and so on.

Senator LUDWIG—Do you interact with the public in that endeavour? Is there a service that you provide or is it more a government—

Mr Freeman—Within Australia or overseas?

Senator LUDWIG—All over, I guess.

Mr Freeman—Our charter basically is to promote Australia internationally, so a huge amount of our activity, if not all of it, is interacting with the public internationally, whether it is through the media or through formal activities and so on. Within Australia we obviously relate to the cultural organisations and bodies in terms of our cultural agreements. In terms of presenting an accurate picture of Australia in a whole range of areas that might be of interest internationally, then obviously we do interact. We have to go to the primary sources of the information in Australia to get it cleared, approved and accurate for sending overseas, but not with the general public. In fact, most of the material we produce is available on request to the public, but not as a matter of course, because it is written for international audiences.

Senator LUDWIG—Thanks very much.

CHAIR—Many thanks.

Mr Freeman—Thank you very much.

[11.38 a.m.]

LARSEN, Mr James Martin, Director, Administrative and Domestic Law, Department of Foreign Affairs and Trade

O'LEARY, Mr David John, Assistant Secretary, Consular Branch, Department of Foreign Affairs and Trade

MORTON, Ms Lydia, Assistant Secretary, East Asia Branch, Department of Foreign Affairs and Trade

CHAIR—We do not require evidence to be given on oath, but these are proceedings of the parliament and require the same respect. Any false evidence could be regarded as a contempt of parliament. Mr O'Leary, could you begin with some introductory remarks and then we will go to questions.

Mr O'Leary—Thank you very much, Mr Chairman. I welcome this chance to explain to you the background and purpose of the Agreement on Consular Relations between Australia and the People's Republic of China, as well as the Agreement Concerning the Continuation by Australia of Consular Functions in the Macau Special Administrative Region. Both agreements were signed, as you are probably aware, during the recent visit of President Jiang Zemin to Australia. The consular agreement with China was negotiated over the past three years at the original suggestion of the Chinese. Australia normally relies on the Vienna Convention on Consular Relations as the main international legal basis for its consular functions. In this case, however, because of some quite difficult cases which have arisen with China, we thought it would be useful to negotiate a special set of understandings with China.

The agreement will benefit the work of our consular staff in the embassy in Beijing and at our consulates general in Hong Kong, Guangzhou and Shanghai. While the figures are approximate, we estimate that at least several thousand Australian citizens reside in China as a whole, apart from Hong Kong. In Hong Kong, we estimate the residential population is about 45,000. Over 60,000 Australian citizens visit China in any one year. In the case of Hong Kong, over 100,000 Australian citizens visit each year.

For the most part, our consular activities in China have proceeded relatively smoothly. The problems which have arisen, and I do not want to exaggerate their frequency, have included matters such as belated notification of the arrest or detention of Australian citizens; Chinese official reluctance in some cases to accept that a client is an Australian citizen especially where that client is of Chinese ethnic background and was born in China, and this relates to the longstanding Chinese policy of not recognising dual nationality; lack of clarity of rights of access by consular officials to our citizens who may be arrested or detained; and, lack of uniformity in administrative procedures in handling cases involving foreigners, depending on the province where the consular case arises. Such problems have occurred more often in areas of China where provincial authorities are unfamiliar with international norms.

We are also aware that two of our main consular sharing partners with whom we are in regular contact—the United States and Canada—had sought to overcome similar problems

through bilateral agreements. The US agreement with China is quite old now—about 20 years old—while the Canadian agreement is much more recent. We naturally used those agreements as benchmarks and for comparison purposes in negotiating the agreement. We can claim that in several respects we were able to progress beyond them in our own agreement.

Although the agreement contains a variety of detailed provisions as we have outlined in the National Interest Analysis, the key issues which emerged in the negotiations were dual nationality and access questions. The relationship of the agreement to the Vienna convention was also in question at one point. Dual nationality remains very sensitive in the Chinese context. In some cases, Australian citizens who have claims to Chinese nationality choose to travel to China on Chinese travel documents. This is understandable in some ways as travel around China as a Chinese citizen is easier and subject to fewer bureaucratic obstacles. It can also offer certain advantages such as taking advantage of investment provisions that are available to Chinese nationals. But, if they run into problems, get into disputes or are arrested, the Chinese can refuse to accept that they are also Australian citizens and consequently will refuse to allow them consular access.

Under the agreement, the Chinese have continued to reject dual nationality, but they have agreed to a useful clause which we were able to negotiate allowing regular consultations on consular matters, including on difficult cases. This provides us with the opening to raise and discuss cases where we claim a client is an Australian citizen but the Chinese authorities regard that person as Chinese. In the case of Australian citizens who are travelling on an Australian passport, the situation is clear-cut. The agreement usefully confirms that such persons will be granted consular access and protection by Australian consular posts. The provision will be helpful in relation to dual Australian nationals carrying Australian travel documents in terms of consular assistance in future.

In relation to access to detained Australian citizens, we made a number of significant advances. The agreement contains guarantees for notification of the arrest and detention of Australian citizens and establishes time frames for access to them. If Chinese officials detain an Australian national, they must now notify Australian consular officials of the arrest within three days and a consular visit to the detainee must be permitted within two days thereafter. This is obviously a great deal speedier than has occurred in a number of instances in the past.

Monthly consular visits are also guaranteed. Reasons must be provided for the detention of an Australian national and the details of any charges. Consular representation at trials is guaranteed. Adequate interpretation services will be provided for Australian nationals who become subject to trial or legal proceedings in China. These undertaking are, of course, reciprocal, and Australian authorities are consequently required to provide similar levels of access in respect of Chinese consular cases in Australia. We do not, however, anticipate any great problem, as the Australian Federal Police and the state police usually provide necessary access quite speedily as long as the person agrees and subject, of course, to Australian privacy laws.

The agreement also makes clear that it is intended to expand and clarify the provisions of the main international instrument on consular relations—namely, the Vienna convention—

and does not detract from them in any way. On that point, despite questioning the need for that linkage to the VCCR, the Chinese eventually conceded the point to us. Our posts in China will play an important role in promoting greater awareness and appreciation among Chinese officials of the existence of the agreement once it enters into force. The need to do this will be greater in more outlying areas, where officials, as I said before, are often unfamiliar with international instruments of this kind.

I will turn to the agreement on Macau. This is a rather simpler matter than the consular agreement with China. We had always envisaged that, after the reversion of Macau from Portugal to China at the end of this year, consular arrangements for Macau would require some sort of legal instrument to allow consular activities to continue to occur. We had in mind a simple exchange of notes of less than treaty status, but it transpired that the Chinese insisted on an agreement with treaty status because they wanted to treat Macau on the same basis as Hong Kong, with whom we have already established an agreement. As you know, we established that agreement a couple of years ago just prior to the reversion of Hong Kong from British rule to Chinese sovereignty.

Accordingly, this draft exchange of notes was rewritten in the form of a treaty, and this is the document we have submitted to you. Basically, this document allows our consular officers in Hong Kong, including the consul general, to continue to perform consular functions in Macau as required. Australian consular interests in Macau are relatively small. A substantial number of tourists, almost all of them from Hong Kong, go there each year, often for brief visits. We do not have exact figures, but the Australian community in Macau is estimated at about only 150, and they are mostly dual national Chinese-Australians. I will leave it at that point. Are there any questions?

Mr BARTLETT—Perhaps you might give us some figures as an indication of how often Australians are detained in China.

Mr O'Leary—My impression is that it is a relatively low number. Perhaps Lydia Morton might speak on this a little bit. At the moment, we have about a half a dozen cases that we are working through intensively. As you will realise, some of them have been difficult in a number of respects. The dual nationality issue has been part of the problem that we have had. It is not a large number of cases, but they can be difficult when they occur.

Mr BARTLETT—Are they all related to a dual nationality problem?

Mr O'Leary—Not all of them.

Ms Morton—The majority of them are of Chinese ethnic origin. There is one that I know of who is not, and that is a recent case that has come up. But, yes, the four that I can think of are of Chinese ethnic origin.

Mr BARTLETT—How do the time frames in this agreement—their guarantee of monthly consular visits, the notification of arrest within three days and the visit within two days thereafter—compare with agreements with other countries?

Mr O'Leary—We had the agreements with the US and the Canadians fairly closely in mind. The US agreement basically has a provision for notification within four days, and then there is no provision that relates to how long after that there would be a visit. In the Canadian agreement, the notification period merely says that they would be given early notice and then two days from that for a visit. I think the important thing for us is that, in both of those steps, we have quite precise time limits involved. The notification period is slightly better than the others, and it is the same as the Canadians have in terms of a visit thereafter.

Mr BARTLETT—Are you confident that these measures will work?

Mr O'Leary—We certainly hope they will work. I suppose one has to allow that, out in some of the provinces where perhaps they will be at least initially less familiar with the terms of the agreement, there could be longer delays in some instances. But the important thing from our point of view is that it is a benchmark. If we hear about cases where people have been detained, we can use our influence through the foreign ministry to put pressure on the provinces to abide by the agreements. We have already had one instance in recent times after the agreement was negotiated but not signed. It was the case of researcher, Gabriel Lafitte, who was caught up in the Tibetan region. The influence of the foreign ministry was clearly pretty important in getting him out quickly.

Mr BARTLETT—What has been the history of compliance with other agreements that we have had with China over the years? Has that been a good record?

Ms Morton—I am trying to think of other agreement of this level. I do not think we have many. We have air services agreements. We have MOUs—

Mr BARTLETT—They have all worked well?

Ms Morton—They are useful, as Mr O'Leary has said, for reminding outer reaches of the Chinese administration of the levels of service or of the requirements that the central government has agreed to reach, but I do not think it is possible to generalise.

Mr BARTLETT—Thank you.

Senator MASON—You mentioned that the two issues were dual nationality and access for consular officials. I have a question perhaps slightly from left field: do we have mutual assistance agreements or extradition arrangements with the People's Republic of China?

Mr Larsen—The absolute answer to your question is: I do not know. I certainly did look generally at the sorts of legal arrangements we had with China, and I am not aware of us having an extradition relationship, nor am I aware of us having a mutual assistance relationship with China. It is possible that I am not fully informed.

Ms Morton—We have just entered into an arrangement with China on increased legal cooperation, but it is not a treaty level agreement.

Senator MASON—I was going to get there next because part of the problem is obviously, in a sense, respecting each other's legal backgrounds. But that is fine. Mr Mason, do you have any background on that?

Mr Mason—Yes. As with James Larsen, I do not know with absolute certainty, but I am certainly not aware that we have had extradition arrangements or mutual assistance agreements signed with China. I would be pretty confident that we have not.

Senator MASON—Thank you.

Mr HARDGRAVE—I guess a lot could happen in five days—from someone being arrested before, at the absolute outside of this agreement, a consular official could get there. Do we have an understanding about Chinese domestic laws, policing practices and detention practices to be satisfied that an Australian citizen is going to be in a reasonable state of health at the end of those five days?

Mr O'Leary—I should start by saying that the five days are outside limits. It is not to say that we could not hear before that time, if they get the information quickly enough. Certainly, those who are engaged at our posts in China are fully enough aware of the details of Chinese laws in this area, particularly those who are consular officials. Our hope would be that that would be soon enough. I am not unaware that the Chinese are capable of fairly strong interrogation procedures. That has happened in a number of instances.

It comes back to the point again that, in the absence of any basic agreement, relying on a broad international convention, which is not in some respects as strong, is not as good a situation. Probably nothing is a perfect situation. If you are implying—and I do not think you are—that we perhaps should have had provisions in there that would ban interrogations and things of that ilk, they would not wear it. Certainly, if we became aware that that sort of thing had occurred amongst security authorities in the provinces who are rather heavy handed, obviously we would be protesting pretty vigorously as soon as we found out about that.

Mr HARDGRAVE—As I said, a lot can happen in five days. I must say that the People's Republic of China are advancing their linkages with the outside world and nothing but good can come from that exposure of Chinese nationals. You have mentioned in your evidence this morning the two days in which the consular officials would have to travel to an outlying province, and having those outlying provinces in mind where it may not necessarily be far to travel.

I am concerned. I do not spend a lot of time worrying about people who are convicted criminals in one sense, but I do have an ongoing concern about human rights matters with regard to the People's Republic of China. They are advancing things. I just wanted to hear what your comments may have been. You said you could not have put a factor about interrogation in there. Let us go back. Do you think perhaps the Mandarin-English versions of this agreement should be carried by Australian citizens with them when they travel? Should Australian citizens be advised about these matters before they leave for China?

Mr O'Leary—Certainly, it is useful that Australian citizens, particularly dual nationals, are aware of the terms of the agreement. At the time that the agreement was announced, Mr Downer made it fairly clear that for people carrying Australian passports we could guarantee they would get consular assistance. For those in the other category who were carrying Chinese passports, it is not that we would not pursue their cases, but the guarantees are not as strong. So there has been public announcement to that effect. There obviously has been reference to these time limits that we have talked about. I would assume that the Australian-Chinese community are pretty well aware of the terms of the agreement. But obviously, for anyone who needs it or wants it, we are happy to give those details to them.

Mr HARDGRAVE—What about an Australian citizen who carries an Australian passport and their birthplace is Taiwan? Are they in a secure position or would you advise them to be very cautious in their travels to the People's Republic of China?

Mr O'Leary—If they are travelling on an Australian passport, I do not think they would have a concern.

Mr HARDGRAVE—On the question of the consular matter, how do we determine where our consulates are? What is the discovery process to say that we have to have one? You are not opening up a new consul in Macau; you are simply using the Hong Kong consulate general to good effect. How do we actually determine where consulates go?

Mr O'Leary—It is broadly the same process that applies when we are opening diplomatic missions or consular missions. It is very much directed to an assessment of our overall interests in the country. In consular cases, it is very much where our business and tourist interests are and where we see the greatest flows of people are most likely to be. In all of those cases, they are major cities, and a lot of Australians do business and tourism through them.

Mr HARDGRAVE—I noted in your NIA you state:

. . . notified to the State and Territory Governments through the Standing Committee on Treaties' Schedule of Treaty Action.

When signed, a copy of the Agreement was sent to all State and Territory Governments, including Police Commissioners, along with a letter seeking comments and feedback. To date no comments have been received.

I thought you would have had an opportunity to actually talk to the welter of Australian-Chinese groups that exist in this country. I wondered why you did not do that just to get some viewpoint on it and, in fact, help get the word out about this.

Mr O'Leary—Maybe Lydia Morton would have some comments on this as well. Our feeling was that we had a fair breadth of experience of what the problems have been with China over the years. We are talking about detailed provisions of consular agreements in this instance. We felt that it was sufficient to negotiate an agreement which covered the major concerns that have arisen over the years and then to publicise that as much as possible. Since we have done that, in terms of the broader consultations processes we have had with the states and with the state police, we have only had very limited reactions. A few of the police departments came back with pro forma responses.

Mr HARDGRAVE—So you were looking at it more from the policing and legal viewpoint, rather than the people who, for some reason or another—some misadventure or perhaps some determined adventure—ended up in police custody?

Mr O'Leary—Yes. Obviously, in a consular area, we have not had too much contact with community groups in the Chinese community. Lydia, has this arisen much in your discussions with them?

Ms Morton—No, it has not, really. They are aware of the process.

Mr HARDGRAVE—How do you know that?

Ms Morton—I could check with you about whom we actually did write to. We are in contact with them.

Mr HARDGRAVE—Contact with whom? Chinese groups in Australia, is that what you are saying?

Ms Morton—Yes, groups who do business in China, for example, through the Australia-China Business Council and other community groups.

Mr HARDGRAVE—It is probably more appropriate for the chairman to talk about this, but we take very seriously the fact that these sorts of consultations are not taking place with every treaty that comes before us. It is vital that people feel a sense of ownership about these agreements. We really would, as a committee, like evidence that these organisations are being consulted. What you have said all makes sense, but it does not help us knowing that this has not been aired past people who are affected, who may have a view on it or who may even have a really good understanding about what does happen in some of those outlying provinces as far as law and order issues are concerned—perhaps a better understanding, with the greatest of respect, than those within the department.

Ms Morton—I have one thing that I would like to add to what Mr O'Leary has said about the standard of administration of justice in China. We have on foot with China a dialogue on human rights every year. As part of that dialogue, we do have an extensive human rights technical assistance program which focuses exactly on that aspect, the administration of justice. We have exchanges. We invite people from courts, prison administrations and the public security bureau to come and see what we do in Australia and learn how we administer these things. They go away with ideas, we hope. Some of the feedback is that they are implementing some of the things that they have learnt through this program.

Mr HARDGRAVE—Thank you for that.

Senator MASON—Mr Hardgrave is alluding not just to the fact of the law here, but also that it is very much practised.

Ms Morton—Yes, that is what we are aiming at as well.

Senator MASON—Their practice has to change, not just be reflected in the legislation.

Ms Morton—Yes, the people who actually administer these things.

Mr O'Leary—I certainly appreciate the fact that the point is about the practice and the consultation process. I would just add that, since the agreement has been signed and publicised, we have not had any contacts or letters from the Australian public about it. So I assume it has not created too many ructions.

Mr WILKIE—When Macau is taken over by the Chinese, what would happen with the existing treaties we have with Macau?

Ms Morton—I do not believe that we have any.

Mr Larsen—I am not aware of our having any treaties with Macau.

Mr WILKIE—There are some with Air Services Australia. I am not sure exactly what the nature of that treaty was, but I was wondering if we had looked into that and if we have a contingency plan to deal with it?

Ms Morton—Yes, we have. Perhaps I could take your question on notice and get back to you.

CHAIR—That concludes the consideration of this agreement. We will consider this in due course and report back to parliament.

Proceedings suspended from 12.05 p.m. to 1.29 p.m.

THOMPSON, Mr Ian, Assistant Secretary, Field Crops Branch, Agricultural Industries Division, Department of Agriculture, Fisheries and Forestry

WATERHOUSE, Mr Doug, Registrar, Plant Breeders Rights Office, Department of Agriculture, Fisheries and Forestry

GLASSON, Mr Keith, Managing Director, Pioneer Hibred Australia Pty Ltd and Vice President, Seed Industry Association of Australia

TAUBMAN, Mr Antony, Director, World Trade Organisation—Intellectual Property, Department of Foreign Affairs and Trade

CHAIR—We do not require witnesses to give evidence on oath, but these are legal proceedings of parliament, as if they were taking place in the House of Representatives or the Senate, so they require the same degree of respect. Hence, any false evidence could be regarded as a contempt. I invite you to make an opening statement and then we will proceed to questions.

Mr Thompson—The International Convention for the Protection of New Varieties of Plants, which is commonly abbreviated to UPOV, was first concluded in 1961. Its fundamental aim is to grant rights in respect of new plant varieties and to protect the intellectual property of plant breeders. UPOV provides the basis for an international system that facilitates commercialisation of new plant varieties.

Without plant breeders rights there is nothing to prevent others from multiplying a breeder's seed, or other propagating material, and selling the variety on a commercial scale, thus giving no recognition to the work of the breeder in any way. Plant breeders rights encourage the development of new plant varieties by providing an opportunity for the breeder to recoup their investment of time and money.

Innovation in plant breeding also serves the public interest. For example, new varieties are created that are better suited to—in this case—Australian conditions or to meet market needs. This leads to an efficient and competitive agricultural sector, providing high yields, using less pesticides and developing new and different products.

While the breeder is rewarded, producers and consumers are also winners. Like all intellectual property schemes, plant breeders rights are granted for a limited period of time at the end of which varieties become public property. The breeder's right is balanced by public interest considerations. The breeder's right is subject to controls in the public interest against possible abuse, and it is specifically required that varieties are made publicly available.

The authorisation of the plant breeder is not required for the use of a variety for private, non-commercial or research purposes, including its use—and this is quite important—in the breeding of further new varieties. The system works. Our experience is that there is an ever-growing choice of plant varieties available for all sorts of purposes.

As I said, UPOV was first brought into existence in 1961. Minor revisions occurred in 1972 and 1978 with clarifying revisions taking place in 1991. The 1991 revision, which is

the subject of this hearing, incorporates changes reflecting experience and scientific and technical progress, and contains more detailed provisions defining the act concerning propagating material in relation to which a breeder's authorisation is required. Australia joined the 1978 convention in 1989, following the establishment of the then Plant Variety Rights Act 1987. In anticipation of Australia acceding to the revised 1991 convention, the Plant Variety Rights Act 1987 was repealed and replaced by the current Plant Breeders Rights Act 1994.

Consideration of membership of the revised 1991 convention is not equivalent to joining a totally new convention. The basic convention itself has been well and truly road tested since its inception in 1961. Australia has had a decade of experience with the revised 1978 convention and continues as a member. The implications of membership are well understood and the benefits are generally recognised. Moreover, the revised 1991 convention is an evolution of the 1978 revised convention and is not a radical departure from it.

The prospect of becoming a member of the revised 1991 convention has developed progressively. Australia participated actively in the diplomatic conference that led to the 1991 revision. The position that Australia adopted in those negotiations reflected the views and concerns of Australian industry and other stakeholders. In many cases, Australia was successful in having its views incorporated in the final text.

It was of course widely recognised after the conclusion of the revised 1991 convention that Australia could join when it was in a position to fulfil its obligations. The issue was examined at length in the context of the introduction of the Plant Breeders Rights Act 1994. Extensive public debate has taken place at various points, affording the opportunity for all interested parties to make representations regarding accession to the revised 1991 convention. This proposition to formally join a revised convention with which we have had considerable experience is uncommon but not novel. The implications of Australian membership of the revised 1991 convention have been tested empirically over a significant period.

Our experience of operating the Plant Breeders Rights Act over five years since its inception has been overwhelmingly positive. I do not propose to run through all the additional obligations entailed in accession to the revised 1991 convention because they are set out in our national interest statement which has been provided to the committee, although I would like to note that the obligations have already been adhered to through the implementation of the Plant Breeders Rights Act over the last five years.

I am unaware of any reason why Australia should not accede to the revised 1991 convention. There are now 44 members of UPOV. Some 27 per cent of the members are now at the level of the 1991 convention. Australia has been positive to formally upgrading, if I could use that term, its membership of UPOV to the revised 1991 convention for some time because of the reciprocal nature of the benefits of accession. This is demonstrated by the establishment of the Plant Breeders Rights Act 1994 in anticipation of accession. The considerable debate, including in the parliament, that took place at that time made explicit references to the revised 1991 convention as being the standard to which Australia aspired.

It would now cause confusion among other UPOV members as to Australia's commitment to plant breeders rights if Australia were not to formally accede to the revised

1991 convention now that the Plant Breeders Rights Act is in place and there is wide acceptance of the need to accede. Failure to accede could also be seen as an unwillingness by Australia to entrench its legislation to what is international best practice. The effect of this would be to raise uncertainty regarding Australia's intentions in respect of the breeders rights act in the future and could act as a deterrent to further investment in new plant varieties, particularly from overseas. It would cast a shadow over the possible duration of current investments as well.

In international plant breeding and industry circles, the key issue that people raise is the level of membership. The level of protection available for the variety is stated in terms of whether a country is a member of the 1978 or 1991 convention. As I think I have mentioned earlier, the membership of the revised 1978 convention does not give the prospective investor assurance of the same level of protection as that afforded by the 1991 convention. Failure to accede would lead to negative perceptions and hinder Australia's efforts to attract more investment and technology transfer in relation to plant varieties.

Australia is a leader in IP protection in our region. We have encouraged neighbouring countries to place a greater priority on the protection of intellectual property in general and to look positively at joining UPOV. A number of our trading partners are not yet UPOV members. If they were to join, they would have to do so at the higher level of the revised 1991 convention. If Australia is not prepared to adopt the highest level of membership itself, despite having given every intention of doing so, our arguments that others should join the 1991 convention bear little weight.

A question that occurs to everyone and occurs to us as well, and I think it would be useful if I actually answered the obvious now, is this: why have we not moved to accede earlier given that the convention was 1991 and it is now 1999? Australia prepared itself for acceding by establishing the convention consistent legislation in 1994, as I said. The 1994 Plant Breeders Rights Act is 1991 convention consistent. One of the important conditions of acceding to UPOV is that there is legislation already in place to meet the obligations of membership. The legislation has to come first. Australia enacted its legislation and then waited for the revised 1991 convention to enter into force before initiating action to become a member.

Entering into force meant that there were sufficient countries joining the convention to render it useable. The revised 1991 convention entered into force in April 1998, only last year. This triggered the formal processes that have led us to this point. Looking back, it was unclear for a number of years when the major parties that we trade with and the major parties in world trade would participate in the revised 1991 convention. Australia was sensitive to the concern that the revised 1991 convention should not be brought into force until potential members who had the option of joining at the 1978 level had completed their 1978 membership process.

In summary, acceding to the revised 1991 convention has strong support. In particular, since the revised 1991 convention entered into force in April 1998, the question of accession has been addressed through a standing committee on agriculture and resource management task force, in the Plant Breeders Rights Advisory Committee as well as in other fora. Consistent support for accession has been evident in all these contexts. In addition, the

department wrote to over 50 organisations advising that accession to the revised 1991 convention is under formal consideration. All respondents either supported or raised no objections. In July 1999 the Commonwealth Minister for Agriculture, Fisheries and Forestry formally wrote to the Prime Minister and other Commonwealth ministers securing their agreement to commence formal accession processes. State and territory ministers were also approached and all respondents supported accession. This completes my opening statement but, before I go to questions, perhaps Keith Glasson from the Seed Industry Association may wish to make some remarks.

Mr Glasson—Thank you, Chairman. I would initially say that I agree absolutely with Mr Thompson's opening remarks and add that we do need to ensure that Australian farmers and consumers maintain access to the world's cutting edge in technology to plant breeding and germ-plasm enhancement. Australia's accession to UPOV-91 will signal to the world's private and public breeders that we are serious about plant protection in Australia, ensuring that continued and increasing investment in open pollinated crops and plants generally continues. Thank you.

Senator MASON—Mr Thompson, you said that the principal advantage of the convention is that it protects intellectual property so that it promotes investment in plant breeding and it protects property rights. You said we are already subject to the obligations under the 1991 conventions under the Plant Breeders Rights Act 1994. You are not aware of any reason why we should not accede to the treaty—in fact, not to do so would send off negative signals. Are there any other benefits internationally other than the ones you mentioned with respect to intellectual property that you can refer us to?

Mr Thompson—Intellectual property protection is the main one attracting investment. The view that Australia is a good international citizen and does view intellectual property as an important thing to be protected is one of the key ones. The other issue, as Keith alluded to, is the confidence it gives in people investing in varieties in Australia that they will be protected. Australia is only part of the whole world seed in these areas. We do have different needs in our varieties for our agricultural purposes and, to attract that investment for Australia, means those varieties then can be bred and adapted to Australian conditions, feeding through to the whole Australian economy and the value of food here.

The other advantage that is tied up with that is making it easier to protect varieties that are originating in Australia such as bred cultivars of Australian native plants that can then be more easily protected in the international marketplace where Australia is leading the way. But there are other people in other parts of the world who are also doing it and, if we can protect our varieties here, we can ease the way to having them protected in other countries. Doug Waterhouse may be able to provide some further detail on that, as he is directly involved.

Mr Waterhouse—When we come down a level of detail, there is certainly the opportunity to get access to varieties bred overseas that would not be released in Australia unless we offer the best form of protection available. Certainly there is plenty of opportunity for Australia to provide the out of season production back into Europe. People are looking for southern hemisphere countries in which to develop their varieties for re-export. The 1991

convention provides the level of protection they require, because it has controls on the import and export of the protected variety.

There are a lot of other reasons as well that spring to mind. With our membership goes the opportunity for Australian breeders to claim priority in overseas countries. That is important, certainly with the development of the Australian natives, where we are competing with some Middle Eastern countries and others for the use of our materials. We need to maintain our proper place in the queue, ahead of them, for the use of that material.

Equally, when these overseas varieties come into Australia, they come in with a package of technology—not only the use of the variety but the actual composition of the variety as well. As Mr Thompson said in the opening statement, protected varieties are freely available for the use of breeding new varieties. So we are actually importing that technology packaged in the variety and then our breeders can immediately start to work on them to our own benefit. We will not get the varieties into Australia, unless we give the highest level of protection. Once they are in we can start to use them and adapt them to our own conditions.

Mr HARDGRAVE—I do not have any questions. It is the most complete and well presented submission I have ever seen in my 3½ years—and I mean that genuinely. It has been extremely well done. Congratulations.

Mr Thompson—I have been here before but for a different treaty.

Mr WILKIE—It was a great presentation. I do not have any problems; I just have one query. With the move towards genetic engineering—I imagine that is happening a lot on plants as well—does this treaty cover those developments?

Mr Thompson—In brief summary, this treaty treats genetically modified organisms or conventionally bred organisms in exactly the same way. The are tested against their criteria as a unique stable variety. That does not say they can be released in Australia. You can have a registered variety that can be genetically modified but all that says is that you have a property right in this variety. The Office of the Gene Technology Regulator and the processes they will be developing will still have to be gone through before anyone can do anything with that variety.

CHAIR—What industries does the protection of this international property assist the most? You have timber, food, pharmaceutical uses, in some sense, of certain plants: what else?

Mr Thompson—I will quickly skim through them. From my point of view, coming from field crops, the most important ones that this is absolutely fundamental to are Australia's wheat, barley, cotton and cane exports. All of those industries require new varieties about every three, four or five years either to keep ahead of disease resistance and disease problems that emerge or as diseases evolve or new diseases appear or because of increasing customer demand for new characteristics in those varieties—breads that cook in different ovens or beers that have high heads all require slightly different varieties. Being able to protect that variety means that people invest in that, produce the barley that makes the better beer for the Japanese market. That is where some major dollars are. Yes, there are some

pharmaceutical plants that could well be protected but you can also protect things in that sort of line through patents.

The other major area is the horticultural and floricultural areas where new varieties are being developed continuously to satisfy customer taste. People want different coloured plants for flowers all the time. They want flowers that will grow in their garden that will survive frost, floods and droughts.

CHAIR—Thornless roses, for example.

Mr Thompson—Thornless roses. And they want new vegetable and fruit varieties—crosses between broccoli and bok choy, hairless peaches and those sorts of things. The customer demand constantly changes and the breeding community are busily following that through.

Mr HARDGRAVE—I suppose it does mean that that is why we have got this exception at article 35.2 so that if we come up with a good idea we can hold on to it for a while—basically that is it.

Mr Waterhouse—In exchange for that monopoly we have to declare the technology. It is not perhaps quite the same as a patent where the technology is declared on paper; you actually have to be able to do it. The variety has to exist and the public has to have access to it as one of the conditions. One of the conditions of plant breeders rights that is different is that the public interest needs to be satisfied by marketing the material.

CHAIR—That is terrific. That concludes today's hearing. Many thanks to the secretariat and members.

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

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

Committee adjourned at 1.50 p.m.