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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 30 October 2000

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

Senators and members in attendance: Senators Cooney, Mason and Tchen and Mr Baird, Mr Bartlett, Mr Hardgrave, Mrs De-Anne Kelly, Mr Andrew Thomson and Mr Wilkie.

Terms of reference for the inquiry:

Review of treaties tabled on 10 October 2000.

WITNESSES

Committee met at 11.38 a.m.

Proposed Agreement between Australia and Egypt regarding Cooperation in the Protection of Children

ATWOOD, Mr John, Principal Lawyer, Attorney-General's Department

BOURKE, Mr Stephen Patrick, Assistant Secretary, Family Law Branch, Attorney-General's Department

OSBORNE, Mr Matthew John, Senior Legal Officer, Family Law Branch, Attorney-General's Department

MONFRIES, Mr John Elliott, Director, Consular Policy Section, Department of Foreign Affairs and Trade

PEPPINCK, Mr Winfred Marcel, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

CHAIR—I formally open this morning's meeting of the committee to continue with our review. We are going to deal with the remaining treaties that were tabled on 10 October this year. The first three we reviewed last week. If officials from the Department of Foreign Affairs and Trade and the Attorney-General's Department are present to give evidence on the Proposed Agreement between Australia and Egypt regarding Cooperation in the Protection of Children, I welcome them to the table. If someone wishes to make an opening statement, they may, and then we will ask some questions.

Mr Bourke—The agreement that is before the committee is designed to protect the welfare of children in situations where the child or children have been wrongfully removed or retained in either Australia or Egypt. I would like to make five points in opening.

Firstly, Australian parents whose children have been wrongfully removed or retained in Egypt or who have difficulty in maintaining contact with their children in Egypt will benefit from this agreement because it establishes a focus and framework for dealing with these sorts of problems. The problems at the moment are typically dealt with through consular channels. However, there is no formal mechanism in place to deal with these sorts of circumstances.

Secondly, the agreement establishes a joint consultative commission that will assist parents to locate children who have been either wrongfully removed or wrongfully retained, to encourage dialogue between parents and to facilitate the return of children in appropriate cases. The commission is an administrative body made up of representatives from government authorities in both countries. In Australia, the authorities are the Attorney-General's Department and the Department of Foreign Affairs and Trade. In Egypt, the government authorities are the ministries of Foreign Affairs, Justice and the Interior. The commission will be made up of officials with direct knowledge of the administrative and judicial structures in their respective countries.

Consideration of the cases brought to the commission will benefit from the knowledge and experience of the commission members and also their access to government networks. The Family Law Branch of the Attorney-General's Department is responsible for the administration and implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction and Australia plays an active role in international fora where the child abduction convention and the protection of child welfare issues generally are featured. Experience with the convention has shown that direct communication and cooperation between authorities in different states is invaluable.

Thirdly, the agreement is required because Egypt is one of several countries with children's laws based on religious laws which make it unlikely that that country will join one of the more than 60 countries that are now parties to the 1980 Hague convention.

Fourthly, by way of coverage and access, it extends to children who are of Egyptian nationality, Australian nationality or dual nationality. I also note that cases before the commencement of the agreement can be considered under the agreement.

Finally, the results of our consultations have shown that the agreement has the full support of members of the Australian Egyptian community and other legal and government agencies. Before concluding, Mr Chairman, could I draw the committee's attention to one small typographical error in the National Interest Analysis on page 1 at paragraph 4. It concerns the date for the Hague Convention on Civil Aspects of International Child Abduction. That date is stated as '1985' and it should read '1980'. That concludes the opening statement. We are happy to take questions.

Mrs ELSON—How is this proposed agreement viewed by the Australian Egyptian community?

Mr Bourke—In our consultations, the Australian Egyptian community were very supportive of the agreement, primarily because it puts in place a formal structure to assist in communication and resolution of issues where children may have been removed between Australia and Egypt. By and large, the Australian Egyptian community, from our consultations, saw it as a positive move.

Mrs ELSON—Can I ask how you did those consultations? Were they Australia wide or were they just done in one state?

Mr Bourke—No. At the back of the National Interest Analysis we have a list of all the organisations that we consulted. You will see the representatives of the Egyptian community included the embassy, the President of the Australian Egyptian Association of Victoria, and other states are also mentioned in that list.

Mrs ELSON—Thank you.

Senator COONEY—Mr Bourke, can you just work me through this—did you say the five points included one which said that this helped Australian parents with children who were wrongfully or illegally removed to Egypt?

Mr Bourke—That is right, Senator.

Senator COONEY—It would not matter, would it, whether they were wrongfully or illegally removed, in a certain sense? Say a child was legally and rightfully removed, you would still have contact with the child through this system, wouldn't you?

Mr Bourke—If the removal was in accordance with the law, then yes, you would maintain that contact. Typically, you would find those sorts of removals would be where the parties have agreed to the relocation and there are contact arrangements in place to ensure that contact is maintained between the left behind parent and the children. The more difficult cases are those where the children may be removed and processes are not put in place for continuing and ongoing contact. That is what we call a wrongful removal and, in those circumstances, we feel that this structure will assist in enabling resolution of those sorts of cases. You will note in the agreement that our typical means of communication—to assist the parents in ensuring that they come to a resolution of the location of the child—are through diplomatic channels. It may turn out that in some circumstances the child may or may not remain in the country to which the child was taken. There may then be satisfactory contact arrangements in place. It will depend on the circumstances of the case.

Senator COONEY—On page 9—the implementation—where you say, 'No legislation is required to implement the agreement,' there is no new legislation but, if you are going to have the concept of wrongful or illegal removal, you would have to have some legislation underpinning it. Somebody would have to decide that, wouldn't they? Wouldn't a judge, either here or in Egypt, have to decide that issue? I am not quite sure how you initiate a particular problem.

Mr Bourke—The primary mechanism for resolution is through consultation.

Senator COONEY—But you have got to have a situation where somebody says, 'This child was illegally removed.' I am puzzled about this being a mechanism for looking after those children who are illegally or unlawfully removed. I said, 'Why should it be confined to that?' You explained that. But you have got to have somebody to declare that the child was unlawfully or illegally removed. If a mother took a child out of the country to Egypt and settled down there, there would be no illegality in that necessarily, would there? Say you removed the child from here and took the child to Egypt—it is not necessarily the case that that would be illegal.

Mr Bourke—It would depend on what the arrangements were between the parents.

Senator COONEY—That is right. Say somebody took a child to Egypt and subsequently one of the parents said that they were going to object to this, they would have to go and get a court order or some such thing, wouldn't they?

Mr Bourke—The first mechanism is through the Joint Consultative Commission. You make application through the Joint Consultative Commission to establish whether the child ought or ought not be returned.

Senator COONEY—The consultative committee will decide whether it is illegal or not?

Mr Bourke—No. The consultative committee would try and facilitate a resolution of the issues between the parents. If I could take it a little bit further: if the Joint Consultative Commission was unable to come to a resolution, then you may need to make application through the court structures.

Senator COONEY—I can understand that. What I cannot quite understand is why, when we are looking at the five points, you start off by saying that this is to do with children who are illegally and wrongfully removed. Why do you have to put that in if the first port of call is the consultative committee anyhow? Why does that issue arise?

Mr Bourke—Because we have found, certainly in our experience with the operation of the Hague convention, that, in those circumstances, the best resolutions come about where there is consultation and we can have the parents talking to each other, so you can come to a resolution.

Senator COONEY—This is a bit like a consultative mediation, isn't it?

Mr Bourke—Yes, consultative mediation.

Senator COONEY—That is the mechanism. The mechanism here is mediative; it is a mechanism of mediation where the two countries get together in a particular locality and try to thrash it out. What I am trying to get from you is: why do you introduce the words 'wrongful and illegal removal' in any event?

Mr Bourke—We use those because they are the concepts which are used under the 1980 Hague convention. This structure will operate as a bilateral convention between Australia and Egypt in circumstances where the Hague convention would normally operate. But, because it is our judgment that Egypt is unlikely to accede to the Hague convention, we have opted for a bilateral arrangement.

Senator COONEY—There is no need for me to tell you this, but isn't it better to have mediation where the issues of who is wrong and who is right are not to the fore. If mediation does not work, you go off and try other measures.

Mr Bourke—That is how this structure will work. This agreement, firstly, tries for resolution through the commission. Failing that, you can access the judicial structures of either country.

Senator COONEY—In any event, is the local community happy with it?

Mr Bourke—That is certainly the result of our consultation.

Senator COONEY—We will see how it works, I suppose.

Mrs DE-ANNE KELLY—How many cases have there been of children removed unlawfully from Australia and taken to Egypt?

Mr Bourke—That depends in part on the cases that are reported to us, but in the year 2000 there were three cases, in 1999 there were two cases and in 1998 there were two cases.

Mrs DE-ANNE KELLY—Is this going to deal retrospectively with those existing cases?

Mr Bourke—It does permit cases which have occurred prior to the operation of this agreement to be brought under the umbrella of this agreement.

Mrs DE-ANNE KELLY—What avenues are available to parents at present to pursue the return of their children?

Mr Bourke—At present the parent left behind would have to make application through the legal structures in the other country, in this case Egypt. They are able to make application to the Attorney-General's Department for some financial assistance. Subject to the outcome of a means and merit test, they may receive some financial assistance to find their way through the judicial structures of Egypt to try and secure a return.

Senator TCHEN—I do not have any questions regarding the details of this treaty; I am satisfied with what you have presented in the NIA. I do have a comment about the consultation process. Given that this committee has in the past expressed concern about inadequacy of consultation, my comment might sound a bit strange to you, but it does not represent a reversal. I think it is an important issue. Why do you need to consult the Embassy of the Arab Republic of Egypt as a representative of the Australian community of Egyptian ethnicity? My concern is that, by doing that—given that Australia has migrants from many different backgrounds—this particular approach will give de facto recognition to the ability of the Egyptian government to continue to represent Australians in Australia.

Mr Bourke—I think I see the point you are making. The purpose of consulting with the embassy was more one of courtesy, given that this is a rather unusual agreement. It is certainly the first that Australia is entering into in this area—a bilateral arrangement between two countries for protecting the welfare of children—because in the past we have typically relied on the Hague convention and encouraged other countries to accede to that convention so that it assists in the resolution of these issues. On this occasion, given that it is an unusual step that we are taking—because, as I have said earlier, our judgment is that Egypt is unlikely to accede to the Hague convention—we are very cautious in proceeding through the consultation process, and it was a matter of courtesy that we adopted that approach.

Senator TCHEN—But surely one would expect the Egyptian government to have informed their own embassy about what treaties are afoot?

Mr Bourke—I think that would be right. Yes.

Senator TCHEN—So it does not require the Australian government to inform them?

Mr Bourke—No, it was simply a matter of courtesy that we informed them that we were consulting with others in the Australian-Egyptian community.

Senator TCHEN—I appreciate that courtesy is important, but I think the dignity of a sovereign government is important too. Perhaps you can keep that in mind.

Mr Bourke—I take your point.

Mr ADAMS—Do the figures for children going from Australia to Egypt include Egyptian children coming back from Egypt to Australia?

Mr Bourke—No, they do not.

Mr ADAMS—Are there any cases where children have come back?

Mr Bourke—I do not have that information before me. I will have to take that one on notice.

Mr ADAMS—Thank you. What is the religious law on which Egypt bases its support and recognition of children? Can you give me a quick outline of that?

Mr Bourke—The Sharia law is the primary basis. We have actually done some research into it ourselves. The primary point to make for this committee is that, where the parents are divorced, the mother has custody of a male child until he is 10 years old and of a daughter until she is 12 years old. There are some exceptions that allow that to go to a higher age. The Sharia law is very complex and, as I said, we have done some research. It may be of interest to the committee if I simply provide the results of our research to you.

CHAIR—Okay.

Senator LUDWIG—Will the intended joint consultative commission be interdepartmental? And, if it is to be a part of DFAT, will the officers be drawn from there only or will they be drawn from anywhere else?

Mr Bourke—The officers will be drawn from Attorney-General's and from the Department of Foreign Affairs and Trade.

Senator LUDWIG—Will they consider the terms of the treaty as part of their operational charter?

Mr Bourke—They will consider the terms of the treaty as well as the individual cases, where that is appropriate.

Senator LUDWIG—Part of the treaty goes to article 6a, which is to discover the whereabouts of a child who is subject to the agreement. What mechanisms will that commission have to implement that?

Mr Bourke—Speaking on behalf of Australia, we would use the established infrastructure for the operation of the Hague convention. That operates through a series of state and territory central authorities. The Commonwealth central authority is housed within the Attorney-General's Department, and each state and territory has what is known as a state central authority. Where there is an abduction into Australia, the application comes through the central authority in the Attorney-General's Department, and then we provide it to the state or territory to which the child has been taken. The state central authority then undertakes the location exercise.

Senator LUDWIG—So once a child has been 'found', so to speak, and the joint consultative commission convene to try to resolve the differences or mediate on the issue, will they, at the conclusion, make a decision, deliberate on it or simply say that, if the parties cannot reach an agreement, they will not comment any further? Assuming that they do deliberate on the issue and come to a conclusive view about the child in the terms of the convention that might be applicable, how is the decision then enforceable?

Mr Bourke—The deliberations of the commission are put on record, and that is in article 9 where it says:

> The conclusions of the commission are put on record.

In terms of its enforceability, if there is a failure by either parent to abide with the deliberations of the commission, we could, as I mentioned earlier, access the judicial structures of either country to obtain orders for return of the children.

Senator LUDWIG—But they are already available, aren't they?

Mr Bourke—Yes, you can actually obtain orders for return of the children. The advantage of this bilateral agreement is that it puts in place a formal structure so that we would anticipate a better resolution of cases.

Senator LUDWIG—Who would then pay for that? For argument's sake, if the commission made a finding and a court ruling was sought, who would fund that? At the moment, you would have to fund it yourself if you were a parent who did not have the child or was seeking to have the return of the child.

Mr Bourke—Under the current arrangements, if it was a return from Australia, the orders would be sought by an Australian court. That is funded by the Attorney-General's Department under the existing arrangements with the Hague convention, in the same way that occurs when a new country joins the Hague convention—if there are orders that need to be sought and Australia has not made a reservation to article 26 of the Hague convention in relation to legal costs, we fund those costs to seek the return orders.

Senator LUDWIG—The perceived benefit would be—please correct me if I am wrong—that a person would then be able to access the commission. If they have a positive finding, they can seek funding and have that finding enforced in an international court or in the court in Egypt, I guess. Is that the nub of the benefit that might accrue?

Mr Bourke—Yes, the essential benefit is the consultative process to assist the resolution.

Senator COONEY—Apropos of what has gone on round the table and following on from the question by Senator Ludwig, it seems to me that you should drop that concept of unlawful or illegal because what you are really doing is trying to facilitate exchanges on a voluntary basis—on a consent basis between people in two different countries. To introduce the idea of illegality at that stage seems to be counterproductive. As I said, let us wait and see what happens. It just seems an interesting way of going about it.

CHAIR—We had better not go into any more discussion because we do not have the time. We can deal with further queries, before we consider it privately, by letter—we have done that in the past. Thank you very kindly for appearing this morning.

[12.03 p.m.]

Fifth and Sixth Protocols to the Constitution of the Universal Postal Union

PEPPINCK, Mr Winfred Marcel, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

ATWOOD, Mr John, Principal Lawyer, Attorney-General's Department

CARRICK, Mr Michael, Contractor, Enterprise and Radiocommunications, Department of Communications, Information Technology and the Arts

HANNA, Mrs Jane Mary, Manager, Enterprise and Postal Policy Section, Department of Communications, Information Technology and the Arts

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

GROSSER, Mr Christopher John, Group Manager, International, Australia Post

CHAIR—We will now consider the fifth and sixth protocols to the Constitution of the Universal Postal Union. Would one of you please make a few opening remarks and then we will have some questions.

Mr Neil—I have a brief opening statement. The Universal Postal Union is a specialised agency of the United Nations, comprising 189 member countries. Article 1 of the constitution of the UPU establishes a single postal territory for the reciprocal exchange of postal items with freedom of transit guaranteed throughout.

The aim of the UPU is to secure the organisation an improvement of universal postal services and to promote in this sphere the development of international collaboration. Since its inception in 1874 the UPU has provided the focus for the establishment and further development of the rules and regulations governing the transmission of postal items between member countries.

The treaty status documents of the UPU include the constitution as the basic act of the UPU, the general regulations, and the Universal Postal Convention. The constitution contains the fundamental rules of the UPU, providing for its legal foundation, and is binding on all member countries. The general regulations contain provisions which ensure the application of the constitution and the day-to-day working of the UPU, and is also binding on all members. The Universal Postal Convention, and the letter post and parcel regulations, comprise the rules applicable throughout the international postal service and provisions concerning letter post and parcel post services and are binding on all members of the UPU.

The principal outcome of the 1999 Beijing congress was continued restructuring and reform of the principal organs of the UPU, introduction of the principle of 'universal service', the recasting of the UPU convention and the introduction of postal financial services acts, formalisation of relations with the World Trade Organisation, and further revision of the UPU convention's terminal dues provisions.

The principal outcome of the 1994 Seoul congress was the decision to restructure the organisation with the aim of streamlining decision making processes and reducing functional overlap and duplication that had developed within the previous structure. This continued a reform agenda set in Washington in 1989.

Australia has been a member of the UPU since 1907 and has contributed actively through, for example, representation on various UPU bodies. At the 1999 Beijing congress, Australia was elected as a member of the Council of Administration, through the auspices of the department, and the Postal Operations Council, through the auspices of Australia Post. Australia is also a member of a high level group on reform of the UPU which is charged with addressing this issue prior to the next congress to be held in 2004.

Continued participation in the UPU provides Australia with the opportunity to voice its opinion concerning the conduct of the UPU's affairs and the operation of the universal postal service over which the UPU presides. It also strengthens Australia Post's capacity to fulfil its mandate. The UPU is an important forum for Australian participation given the increasing trend by member states to provide postal services on a competitive basis internationally, and the increasing significance of market liberalisation of postal services and the deliberations of the UPU.

As an active contributor to the activities of the UPU, Australia has sought continuing reform and efficiency in its operation. Australia continues to advocate reform of the UPU to enhance its relevance in a rapidly changing global postal market. I should draw the committee's attention to a small typo on page 10 of the National Interest Analysis for Beijing. The reference, on the second last line of page 10 of the Beijing document, to '2 kilograms' ought to be '20 kilograms'. I thank the committee.

Mrs ELSON—You say the protocol has been in place since 1907. What would be the effect on Australia Post if they withdrew from the UPU? Also, what is the cost to Australia Post of being involved in the UPU?

Mr Neil—I can deal with the second question easily enough. The annual cost is around $800,000 per annum, which is met from Australia Post's budget. As for the effect of withdrawal, some of that would be debatable. The advantage of being involved is that it does provide an opportunity for discussion and the establishment of what in large part are business arrangements on a multilateral basis between the Australian postal administration and other overseas administrations. One of the issues of reform in the UPU is whether some of those things that are treated as matters of treaty status and brought up as regulations ought not actually to be moved out of the treaty and be treated more on a business to business type basis. That is one of the objects of reform of the treaty that we are pursuing over the coming period. Mr Grosser might want to comment on some of the specifics of the value of the UPU.

Mr Grosser—Yes, thank you. In particular, the relationships are quite extensive. The treaty does provide us with a method of working with 189 postal administrations. When you look at the time and effort that would be involved in effecting bilateral relationships outside of this particular singular treaty, it would be terribly time-consuming to set up postal relationships and postal mechanisms and procedures. The UPU does provide us with a very effective medium for

working with a vast range of countries—not only the industrialised countries but many of the smaller countries which have only very small mail flows.

Mrs ELSON—Is that $800,000 a cost for services provided by another country or is that administrative costs in Australia?

Mr Grosser—The $800,000 that we pay is a contribution to the UPU's administrative costs of the international bureau in Switzerland.

Mrs ELSON—Do they give you an account of where all that money has been spent or is it just a general thing that each year you hand over $800,000?

Mr Neil—One of the major items of discussion at UPU meetings—we have just returned from a session of the council of administration and the postal operations councillors—is the budget. As with all UN agencies, there are requirements to reform budget processes and for them to provide transparent accounts, and so on. And yes, one of the activities that we get involved in—a sort of administrative part of our involvement—is to see that we are getting a reasonable return for the money that has been contributed annually. Vis-a-vis Australia's size, we are a relatively large contributor to the UPU and that reflects a largely historical assessment of our perception of the value.

Mrs ELSON—Would it be all right to ask for a copy of those costs or a copy of a breakdown of them?

Mr Neil—We can provide you with a copy of the budget documents. It is a rather large document, as they are for all international organisations. If you would like that and some clearer indication of what the UPU actually does through those processes, I am happy to provide the documentation. There is no difficulty with that.

Senator LUDWIG—Do you have a one-liner as to what this does?

Mr Neil—I think the basic underlying requirement for a treaty—if there is one; you could have a philosophical argument about whether, 100-odd years on, there is really a need for a treaty to govern postal arrangements—fundamentally, as a government to government arrangement, is the guarantee of unhindered transit of mail throughout the world. That is, at base, its fundamental tenet. We argue, for example, that there are a number of things which are given treaty status under this that ought to be removed and dealt with as basically a business relationship between what are increasingly becoming commercial organisations. This has got a history of having been a treaty between 180-odd countries, all of whom had government operated postal services, and now many of them in the developed world are moving to more commercial arrangements—as we have—and, in some cases, to privatisation. Those sorts of issues are also being addressed and assessed in these processes. It does provide a forum for people to discuss reform to a degree.

Senator LUDWIG—And this is fundamentally an administrative and regulatory update?

Mr Neil—Fundamentally, yes.

Senator LUDWIG—Does it do anything else? Broadly—I will not hold you to it.

Mr Neil—I think the fundamental changes that were brought about in Beijing formally brought the concept of universal service, and trying to set a standard for universal service, within the treaty. Australia took a reservation on that issue to ensure that we did not take obligations which were outside of our domestic universal service obligation.

The other area that was of concern and interest to us at a governmental level was the arrangements on terminal dues, which are the prices paid by postal administrations for the exchange of international mail and to deal with imbalances between countries. We had a concern that the proposed arrangement for differential payments between developing and developed countries introduced an element which we thought was inconsistent with our broader trade obligations under the World Trade Organisation and the GATT treaties. We sought to argue that case in Beijing. We made a declaration that we would interpret this treaty consistent with those broader obligations, as did the United States and the EU countries in the end, largely as a result of the Australian intervention. That issue is still being played out in discussions within the UPU, in terms of introduction of a new transitional terminal dues arrangement. We are consulting with Australia Post and with the Department of Foreign Affairs and Trade on how we will deal with that issue going forward. No decisions have been taken about how we will handle it, but we are addressing it.

Senator LUDWIG—In relation to the Money Orders Agreement, the Giro Agreement and the Cash on Delivery Agreement, which regulated postal payment services, have the optional regulatory agreements now been resolved?

Mr Neil—Some postal administrations provide banking type financial services, which Australia Post does not. We are not a member of the financial services agreement. Any obligations from the treaty relate only to those countries which are part of the financial services agreement, which deals with banking services provided by some postal authorities. We are interested in the issue of payments for particular postal services, such as registered mail and those sorts of things, but that is as far as we are involved.

Mr ADAMS—With postal services around the world being privatised, I would have thought that it was getting more significant to make sure we protected the integrity of postal services and delivery services from around the world. Is that being given consideration? I have noticed even in Australia that there are sometimes relaxed attitudes towards mail in private situations, with people not understanding that mail has a legal obligation to it. In global terms, could that become an issue or not?

Mr Neil—The considerations of the maintenance of universal postal services are an issue for debate within the organisation. As you would expect, views vary from place to place, as they do within Australia domestically, on how those are best protected. Certainly one of the really large issues for the Universal Postal Union is how an organisation which, in and of itself, was originally based on government provided services, can properly represent the whole interest of the postal sector, or whether it can, given that increasingly there are private operators in the business, even amongst some of the members. For example, the Netherlands have privatised their postal service and the German government is about to undertake privatisation of DeutschePost.

How that interaction plays out between the commercial and the universal service type elements is an area for debate. We and a number of the European developed nations argue that there is a compatibility between these processes and they can be worked out, not inconsistent with the domestic policies on these issues that have seen Australia Post move from a fully government operated organisation within a department to a commercial entity. Those sorts of processes are being mirrored pretty well around the world. Even a lot of the developing nations are outsourcing their postal services, either to other national postal services, such as the Canadians, the UK, or the New Zealand postal services, or bringing in private operators.

CHAIR—Thank you very kindly for your evidence this morning.

[12.19 p.m.]

Protocol concerning International Registration of Marks

BENNETT, Ms Barbara Jean, Deputy Registrar of Trade Marks, Trade Marks Office, IP Australia

FARQUHAR, Ms Susan, Director, External Relations Section, Corporate Strategy, IP Australia

WILSON, Mr Ross, Registrar of Trade Marks, Trade Marks Office, IP Australia

TAUBMAN, Mr Antony Scott, Director, World Trade Organisation Intellectual Property Obligations and Enforcement Unit, Department of Foreign Affairs and Trade

CHAIR—Welcome. You might want to make some brief remarks. We have had a good read of the subject matter, but if you want to elaborate in a brief way on the NIA then please do so. We will then have questions.

Mr Wilson—I would like to raise a couple of matters for your attention. Members of the committee will be aware that the government joined with the Business Council of Australia in establishing the National Innovation Summit, which met in February this year. This action resulted from recognition that innovation will be the driving force behind prosperity and economic growth over the next century. The value to Australian trademark owners of Australia acceding to the protocol is noted in the final report of the Innovation Summit Implementation Group where accession is supported as a means of ensuring our firms are not disadvantaged as they market products and services internationally. The group recommends the government agree to join the protocol and implement this decision quickly. And given the broad representation of business, academic, professional and government bodies in the summit and the implementation group, I suggest that this recommendation lends some weight to the case in favour of accession.

I would also like to note the range of consultation that has been undertaken in the process of considering accession. In addition to the usual notification of relevant government departments and agencies at the federal and state levels, IP Australia has contacted a wide range of interest parties around Australia through seminars, written communications, specialised meetings and public notices. The discussions at the meetings and seminars, and the response to the written communications, have been comprehensive and positive. Given the somewhat specialised nature of the subject, I believe the contact made through this consultation represents a good cross-section of the relevant community.

Consultation with our particular interest groups such as the Law Council of Australia, the Institute of Patent and Trade Mark Attorneys, the International Trade Marks Association, and AMPICTA, which is a group of IP owners from the manufacturing sector, is continuing, with a focus now on how the Trade Marks Office might implement the protocol if the government decides in favour of accession. IP Australia has also been consulting with other offices where the protocol is already in operation, and with the International Bureau of World Intellectual Property Organization which administers the protocol to ensure we are able to make implementation decisions based on the best possible information.

If time permits, perhaps the representative from the Department of Foreign Affairs and Trade could also add something in terms of the regional and trade aspects.

CHAIR—Not if it is just something like, 'We have to sign up to this, otherwise Australia's reputation will be trashed.' We have had that ad nauseam. If there is something specific about this, sure, but if it is a matter of this reputation business, no thanks. That belongs here, the reputation, not over there. Go ahead.

Mr Taubman—It is probably more to do with safeguarding the reputation of Australian small businesses and enterprises overseas. Essentially, for exporters it is a major challenge getting trademark protection in their export markets. This is a crucially important part of getting a sustainable place in export markets. The cost of securing trademarks overseas, which has to be done jurisdiction by jurisdiction, can be exorbitant. There are fees, legal costs, documentation and red tape. This is a significant burden on small businesses especially, and a real barrier to entry in some cases to international markets. It is impossible to establish trademark protection retrospectively if in another country a trademark is misappropriated, and so there are very heavy up-front costs.

Overall, there is a real disincentive on small and medium enterprises to take the necessary steps to secure their trademarks in international markets. This has been brought to a head by the rise of Internet commerce and effectively a global market on the Internet. In the end, the Madrid protocol provides us with the only reasonable mechanism for securing these rights. I will leave it at that, thank you.

CHAIR—That is quite clear, thank you. You ought to be promoted.

Mr ADAMS—I am impressed with the public seminars and the consultation to get it out to small business that they can get registration on a new regime. I did not see any of the advertising. That always makes me a bit concerned, as politicians usually work pretty hard at seeing what is happening in their communities. Did you have a Net site?

Mr Wilson—Yes, IP Australia has a web site. In fact, we just received a comment from someone in Switzerland who was reading it and was very impressed with the clarity of the information that was on that site.

Mr ADAMS—Good, but I would be more impressed if it was some small business in Australia wanting to get a mark so they can get protection in the world and get a brand name out there. How many hits did you have on the web site? That is an indicator, a benchmark.

Mr Wilson—I do not have an answer to that.

Mr ADAMS—Could you let us know through the secretariat?

Mr Wilson—Yes.

Mr ADAMS—Were the public seminars held in all states?

Mr Wilson—Not in Tasmania.

Ms Farquhar—They were in all the mainland capital cities but, on this occasion, not in Tasmania.

Mr ADAMS—That takes a lot of points off you.

Mr Wilson—The patent attorney profession is not represented formally in Tasmania. Melbourne attorneys visit Hobart and other cities in Tasmania to try and catch those who need assistance in that area.

Mr ADAMS—It is a matter of getting the information out there that small new ideas can get some registration in world terms without costing a fortune to go through the legal formalities of all the different regimes, which is restrictive, as we know—that is why there is this new regime. In relation to the Madrid protocol, once we sign up to this one do we become part of the other one? What is the significance of all that?

Ms Farquhar—I take it you are referring to the Madrid agreement?

Mr ADAMS—Yes.

Ms Farquhar—No, membership of the protocol does not automatically confer membership of the agreement. One would have to take separate action to accede to the agreement.

Mr ADAMS—Does that lock us into past regimes?

Ms Farquhar—No, the protocol is quite separate. There were reasons why the terms of the Madrid agreement would not have been particularly favourable to Australian trademark owners. The regime that we follow here is not compatible.

Mr ADAMS—Thank you.

CHAIR—This supranational way of registering the marks is good. Do you have to set up another little outfit to do it or will the existing WIPO do it?

Mr Wilson—In the Trade Marks Office we will have our examiners capable of handling this. We are training a specialised group of examiners but there is not an additional group. We work through the International Bureau at the World Intellectual Property Organization, which is well established.

CHAIR—So there is no new outfit in Geneva or the Hague or somewhere?

Mr Wilson—No.

CHAIR—That is terrific.

Mr ADAMS—In how many countries can someone here file to have their trademark registered and how many countries does that go out to?

Ms Farquhar—There are 49 members of the protocol at present. Once Australia accedes, it would be open to an Australian applicant to nominate protection in any one of those members.

Mr ADAMS—That can be done through one filing?

Ms Farquhar—Yes.

Mr Wilson—In one language, paying a single set of fees.

Mr ADAMS—Thank you.

CHAIR—Thank you kindly.

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

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.29 p.m.