COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 18 March 1997

CANBERRA

Tuesday, 25 March 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Mr McClelland
Senator Neal	Mr Tony Smith
Senator O'Chee	Mr Truss
	Mr Tuckey

For inquiry into and report on:

Treaties tabled on 18 March 1997.

WITNESSES

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Present

Mr Taylor (Chairman)

Senator Abetz	Mr Adams
	Mr Bartlett
	Mr Laurie Ferguson
	Mr Hardgrave
	Mr Tony Smith
	Mr Tuckey

The committee met at 8.33 a.m.

Mr Taylor took the chair.

BIGGS, Mr Ian, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 2600

GOLEDZINOWSKI, Mr Andrew, Co-President, Foreign Affairs and Trade Association, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 2600

HART, Mrs Teresa, Protocol Officer, Protocol Branch, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 2600

SELLECK, Mrs Maria, President, Foreign Service Family Association, Association Room, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 2600

STOREY, Ms Sarah, Legal Officer, Administrative and Domestic Law Group, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 2600

WILSON, Mr Howard, Protocol Officer, Protocol Branch, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 2600

HERMES, Mr Neil, Acting Director, International Relations, Department of Primary Industries and Energy, Edmund Barton Building, Barton, Australian Capital Territory

PIGOUNIS, Mr Anthony Nicholas Alexander, Policy Officer, International Relations Section, Fisheries and Aquaculture Branch, Department of Primary Industries and Energy, GPO Box 858, Canberra, Australian Capital Territory 2001

RAYNS, Dr Nicholas David, Senior Fisheries Manager, Tuna and Billfish, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory 2603

HUGHES, Mr Neil Frazer, Assistant Director, Marine Strategy Section, Portfolio Marine Group, Environment Australia, 25 Moore Street, Turner, Australian Capital Territory

CHAIRMAN—Welcome. We will start with the Chile agreement. Do you want to make a short opening statement on it?

Mr Biggs—The manager of this particular program within the legal office of the department is Ms Sarah Storey, and I thought I would ask her to make a brief opening statement.

Ms Storey—Good morning. In giving an introduction, I will take you through the bilateral employment agreement that was signed with Chile in Canberra by Mr Andrew Thomson on 12 March. It was tabled in parliament on 18 March. I am going to briefly cover three points: Australia's global bilateral employment arrangement programs, since this committee has never looked at one of these before; why this particular arrangement is of treaty status; and, finally, how many people are involved.

Firstly, I will explain Australia's global bilateral employment arrangement programs and what these arrangements do. It is a priority of DFAT to conclude as many bilateral employment arrangements as possible. Bilateral employment arrangements allow the dependants of Australian diplomatic and consular personnel to engage in paid work when posted to the other country with which an arrangement is concluded. On the basis of reciprocity, the arrangement would also oblige Australian authorities to allow the dependants of diplomatic and consular personnel of that country posted in Australia to engage in paid work for the duration of the official posting. This authorisation is handled by DFAT's Protocol Branch.

As regards the standard form of the arrangements, bilateral employment arrangements are usually in the form of memoranda of understanding, or MOUs, which are arrangements of less than treaty status. To date, Australia has 12 arrangements concerning the employment of dependants of diplomatic and consular personnel, and negotiations are under way with another 16 countries. In particular, we are trying to focus on those countries where Australia has high numbers of diplomatic and consular personnel posted.

The policy impetus for these arrangements are as follows. From a policy perspective, bilateral employment arrangements are consistent with the government's family friendly policies. Bilateral employment arrangements recognise that it is a significant disincentive for diplomatic and consular personnel with families to apply for postings in countries where spouses or dependants are not allowed to engage in paid work. Two incomes are common for Australian families. Without the capacity of the accompanying spouse to work, there is an immediate loss of family income which is not compensated for through family allowances. Also, the career path and aspirations of the accompanying spouse are affected, and it takes time to find a job for the spouse upon return to Australia. The spouse also often forfeits superannuation benefits.

DFAT finds it difficult to fill postings in particular countries for these reasons, and some spouses and children decide not to accompany officers on postings. This means that there is an unbalanced profile of Australian representation overseas, as there are fewer families represented. There are consequences for separated families, sometimes leading to

family breakdown.

To turn to the priority placed on negotiations by the Department of Foreign Affairs and Trade, within DFAT, the Protocol Branch has the main responsibility for the negotiations of bilateral employment arrangements. These negotiations are followed keenly within the department. Organisations with a particular interest include the Foreign Service Families Association, the Foreign Affairs and Trade Association, DFAT's Family Liaison Officer, the former Women's Officer and the Overseas Conditions section. Since 1994, successive DFAT secretaries have held regular focus groups with women officers, and these meetings have consistently called for the conclusion of more bilateral employment arrangements.

A seminar examining reasons why eligible women officers were not applying for head of mission or post positions found that a major reason was the relative lack of employment opportunities for their spouses. Mrs Maria Selleck, the President of the Foreign Service Families Association, has joined us today. There is also a brief written submission by the Foreign Affairs and Trade Association.

As for why this particular arrangement is of treaty status, bilateral employment arrangements, as I have mentioned, are usually of less than treaty status. However, the Chilean Minister of Foreign Affairs and Chilean diplomatic representatives in Australia have both affirmed in 1996 that there was no latitude to conclude arrangements of less than treaty status, even though they were advised that, to date, all of our arrangements have been less than this and that concluding a treaty would significantly delay its operation.

Finally, how many people are involved? At present there are seven Chilean diplomatic and consular personnel posted in Australia, and there are six Australian diplomatic and consular personnel posted in Chile.

CHAIRMAN—Thank you. Mrs Selleck, would you like to come up to the table?

Mrs Selleck—I have a statement here which I would like to read and which the Foreign Service Families Association would like to present to the committee.

CHAIRMAN—Go ahead.

Mrs Selleck—Dual income families are now an accepted part of Australian society, and in Canberra the majority of the families are dual income. In the Department of Foreign Affairs and Trade the percentage of two-income families is very high, with many spouses having established careers. Because of the continued financial commitments now being placed on families and the need for them to remain on a dual income, there is an increasing reluctance of spouses to accompany officers on postings overseas.

In addition to the financial strain imposed by the lack of employment opportunities overseas for spouses, the psychological effect on the spouse and on the family as a whole can be profound. While for many years spouses were happy to follow the officer, society norms and expectations have changed and spouses now question the need to make such a sacrifice for the government's overseas service.

The loss of career aspirations and opportunities occasioned by the necessity to put a career on hold for several years for a posting makes it even more difficult for a spouse and family to decide whether or not to accompany the officer on overseas postings. The ability to secure employment overseas also provides better opportunities for spouses on return to Australia.

The Foreign Service Families Association, therefore, welcomes the opportunity that the conclusion of this agreement between Australia and Chile on gainful employment of dependants of diplomatic and consular personnel will provide. FSFA will continue to encourage and support the conclusion of similar agreements with other countries.

CHAIRMAN—Thank you very much. Is there anything else in the way of opening comments?

Mr Biggs—Mr Chairman, I have some briefing here on the visa classes that are used for the visas in question. Is that of interest now?

CHAIRMAN—We might have a question on the immigration side of it anyhow—the status, et cetera—so perhaps we could ask a question. If we do not, you could cover that in response to questions.

Mr HARDGRAVE—The only question I have, from an Australian perspective, is to look at the work that can be performed within consuls or embassies, both here, based in Australia, from other countries and ours overseas. What work is available for locals here? Likewise, what locals work in our embassies or consuls in other countries? I guess the natural extension of that is: do we see Australian spouses of diplomatic officers working beyond the consulate when they perhaps could work within?

Mr Biggs—The arrangements in question, of which this is one example, are mainly about allowing opportunities within the wider community. There are already a significant number of Australian spouses who work within our missions abroad on almost any sort of work. Many of them have security clearances through employment in the Australian Public Service and are able to work within the diplomatic framework; others perform routine immigration or related work. The pattern is very similar for the dependants of foreign diplomats working in Canberra. The missions around Canberra have a very high proportion—I do not know the percentage—of their locally engaged staff who are spouses and children of their own diplomats.

Mr Wilson is responsible for administering the visa issue for diplomats in Canberra and he might have more statistical or anecdotal thoughts on numbers there. This program is mainly about providing opportunities for people to work in the wider community, because until now there has been, in many countries, including those where we would have the largest number of diplomats, an objection to the families of diplomats being given work permits.

Mr HARDGRAVE—I can understand that, because the same sort of xenophobic thing may occur here in Australia without too much difficulty as well. I guess what I am saying is would there be a natural advantage in having an Australian citizen, a spouse of one of the diplomatic personnel, working in our consuls than, say, employing a local person in the particular country? Why have we got jobs going in different directions?

Mr Biggs—To answer that extremely briefly, it depends on the nature of the jobs in question. There are many where it is indeed appropriate to have an Australian citizen, if there is some sensitivity, for example, if it is our commercial interests that are being promoted. But it is also true—and I am speaking from personal experience here—that one of the most valuable things about locally engaged staff in diplomatic missions is that they have local inside information; they are the source of local knowledge. They can tell you where to find the right part of the local government system, they know their way around town and they speak the language as native speakers. So it is not universally the case that it is better to have an Australian. It is also true that, in many countries where we have diplomatic missions, the local pay scales are not such as to attract Australians within the locally engaged framework. It is not always the kind of work that people look for. Mr Goledzinowski may have something he wanted to add.

Mr Goledzinowski—Mr Hardgrave, from the staff association point of view many DFAT staff would agree with what you have said. But apart from all the problems that Mr Biggs has outlined, including the pay scales—we are actually notoriously bad payers overseas—there is also a very strict no-preference policy within the department. The department goes out of its way not to prefer spouses as employees in its missions. In fact, the selection procedure is rigorously objective, to such an extent that spouses very often miss out on selection for jobs they would like to have in posts. That is an issue for staff, but it is one that the department maintains as part of its general policy of employing the best people for a particular job.

Other foreign services, such as the US foreign service, choose not to go that way. A number of European foreign services actually pay spouses or family members at home country rates, precisely to take advantage of the fact that there are Dutch, Spanish, or whatever, citizens available in the country to employ. But that is not the policy of this department.

Mr TUCKEY—That is slightly separate from the issue that is before us at the moment.

CHAIRMAN—But it is good background.

Ms Storey—May I also add that there are some spouses who may have completely different skill sets that are appropriate to the locally engaged staff framework. I would like to elaborate on that. Some of them might have significantly more professional skills and would like to work, for example, as a professional in that country. Others may have particular trade skills and would like to work in that sector in the communities.

Mr TUCKEY—Mr Chairman, I have a quick question as I have to leave very shortly. What is the incidence of nations agreeing to the diplomatic green card? I see that the number of agreements is relatively low and Mr Biggs just said that some of the larger posts have not yet achieved this arrangement. Have we only got these agreements with the Chiles of the world, or are the Americans, the British and others giving us this sort of agreement as well? It seems quite desirable. Where are we at?

Ms Storey—There are 12 that we have concluded. They are varying in size. They are memorandums of understanding, not public documents, therefore—

Mr TUCKEY—Fair enough.

Ms Storey—Yes; their names are in confidence. However, we do have these arrangements with some of the larger countries. As I said, we are trying to focus on those where we have large numbers posted, and they would include some in the Asian region.

Mr TUCKEY—What about America? Which side of the fence are they on?

Ms Storey—We have an arrangement with them.

Mr Biggs—I should say, Mr Tuckey, that the program is quite recent. It has been going for two years, hasn't it?

Ms Storey—No, it has been going since about the late 1980s. This particular one has taken since 1988 to negotiate. One of the reasons is because the Chileans have insisted that it is of treaty status. Sometimes, because the arrangements provide for reciprocity in relation to taxation and social security laws, we have experienced quite a number of sticking points on those matters with a number of countries, for example, those European countries that have social insurance systems and have a significantly high proportion of a spouse's income going to a social insurance scheme where they would not get any return from that scheme. That is the reason they take a long time. Others have been done more recently within a few years.

Senator ABETZ—Following on from that, what domestic procedures or arrangements have to be put in place for this agreement? We have been told that no new legislation is required, but we were also told that parties notify each other that all

domestic procedures necessary to give effect to the agreement have been completed. What were the domestic arrangements that had to be effected for this one?

Ms Storey—Australia already has an informal arrangement with many countries. Upon application individually by any spouse, through a formal note, our protocol branch will consider—usually favourably, but not always as a matter of course—the approval for a spouse to work in Australia.

Senator ABETZ—I am sorry, I was asking about the fact that for this treaty we have been told that no new legislation is required, but we were also told that all domestic procedures necessary to give effect to the treaty have been completed. So what were those procedures?

Mr Biggs—Senator, that particular phrase 'all domestic procedures have been completed' includes the hearings of this committee. It refers to the process for approving a treaty, including reference to Executive Council, and so forth.

Senator ABETZ—Yes, but Ms Storey told us about the need for, say, arrangements with regard to payment into social security types of funds in countries. Is there such a situation in Chile or were there any social security, taxation or other matters that we had to take into account to give exemption to the Chileans who would benefit under this treaty?

Mr Biggs—Not in this case, Senator.

Senator ABETZ—No changes at all?

Mr Biggs—A change in the policy on the issue of the visas of particular classes that allow diplomats' families to work. That is the only—

Senator ABETZ—Yes. But on tax or social security no new legislation, no new regulations?

Mr Biggs—None was necessary.

Mr LAURIE FERGUSON—I have four points. You mentioned the number of employees affected in Chile and in Australia. What are the numbers of spouses and children affected?

Ms Storey—In this case, all of the seven who are posted here are males and have accompanying wives and children. I have the numbers here: seven have wives, there are also two children of the ambassador—

Mr LAURIE FERGUSON—Are they over 18?

Ms Storey—No.

Mr LAURIE FERGUSON—What about Australians in Chile?

Ms Storey—We are not aware of how many of those have spouses. There are six posted there.

Mr LAURIE FERGUSON—Are clerks et cetera in the embassy covered by this?

Ms Storey—The locally engaged staff or administrative attaches?

Mr LAURIE FERGUSON—No, people who are below diplomatic level in the posting. Are they covered?

Ms Storey—Yes.

Mr LAURIE FERGUSON—The reality of two-income families has been mentioned in evidence. On the question of the number of spouses accompanying people overseas and the supposed trend of people being disinclined to go overseas, is that anecdotal or has some survey been done?

Mrs Selleck—I would not say there has been a survey as such, but it is quite a common thing amongst the spouses; many of the members feel that they would prefer not to go overseas or are reluctant to go overseas under the circumstances.

Mr LAURIE FERGUSON—There is no study, though?

Mrs Selleck—No.

Ms Storey—The seminar that I referred to, with the Secretary's focus group, was in particular relating to eligible women not applying for head of mission. That is a very specific category. That was a formal seminar.

Mr LAURIE FERGUSON—Yes, I understand that. Finally, if these agreements were to be extended, which would involved many people, and extended to Third World countries, and significant numbers of people thereby obtain the right to work in Australia and gain skills that would be recognised with regard to migration et cetera, what has been the degree of discussion with Immigration about the possibility of the problem emerging where people who essentially have no right to be here or work here under our normal standards of entry could obtain those skills and migrate?

Mr Biggs—It would certainly be true that people have a potential to acquire more skills through work in Australia. I do not think most Australians would find that objectionable, but the class of—

Mr LAURIE FERGUSON—I question it because these people normally would not have the right to work here. They did not enter on those kinds of permits.

Mr Biggs—And their right to remain in the country is terminated when the principal diplomatic or consular officer leaves. There is no—

Mr LAURIE FERGUSON—Which could be some years.

Ms Storey—Two to three, usually. That is the standard posting.

Mr LAURIE FERGUSON—There are many more than that.

Mr Biggs—The standard visa for these people is issued for four years in the first instance and can be extended through normal processes. But there is no question of people converting their diplomatic visa, or the visa that they get is independent of a diplomat in order to remain in the country when the diplomat or consular official leaves. It is quite a different category visa—

Mr LAURIE FERGUSON—I understand that, but in the process they could acquire skills that they would not have been allowed to previously obtain which would be recognised by NOOSR and other migration related sources in regard to re-entry. I am questioning, down the track, whether we have a whole lot of people who—

Ms Storey—With respect, Mr Ferguson, in order to apply for jobs amongst the wider community they must be competitive in the wider Australian job market, so they must have these skills to start off with. They are also career officers within the department and they are likely to be very professional.

Mr LAURIE FERGUSON—With all the spouses and children.

Ms Storey—Yes, there are significant numbers of—

Mr LAURIE FERGUSON—Significant numbers, but they are not all in that category, are they?

Ms Storey—No, certainly not, Mr Ferguson.

Mr LAURIE FERGUSON—If it does proliferate, there is a question there, I think, down the track.

Mr TONY SMITH—With regard to article 3, in respect of 'all matters arising out of the gainful occupation', does that phrase include travelling to and from the place of work in a vehicle such that any civil liability that was incurred includes the travelling to or from work?

Ms Storey—I would suggest, Mr Smith, that this would be included if the journey was directly to work. It would be the same as a normal work related situation for any member of the community. If they were travelling directly to work and that travel was work related specifically, then possibly this could be included as a work related activity. As you can see, this agreement actually creates an understanding to waive immunity so that if a person, for example, committed an act of negligent driving there would be the understanding that immunity should be waived in that instance.

Mr TONY SMITH—The understanding but not necessarily the requirement.

Ms Storey—No, Mr Smith, there is no general requirement at international law of waiver of immunity. Under the Vienna Convention on Diplomatic Relations, article 32 relates to the waiver. A waiver can never be done in advance for a huge group of people; it must be done expressly and in each instance. For example, in your example of someone going to work, the receiving state would request of the sending state that immunity be waived in this instance, and then that would be considered on an individual basis and a decision would be made.

Mr TONY SMITH—Similarly, in relation to the drink driver in article 4A, if he goes off on a frolic of his own—in other words, if he stops off at the pub on the way home—he is covered by diplomatic immunity, it would seem. Is that what you are saying?

Mr Biggs—The current law says that diplomatic immunity is potentially there. This is a statement saying that it will not be claimed in those cases.

Mr TONY SMITH—It will not be if it is directly on the way home from work.

Mr Biggs—If it is in connection with employment.

Mr TONY SMITH—But if it is in another direction, it might be if it is slightly off the beaten track.

Ms Storey—This agreement is actually requesting that immunity be waived in relation to work related activity. There is also a tendency in relation to immunity from criminal proceedings. Australia does quite often request that immunity be waived by sending states. However, this is not always done because, under the Vienna convention, states have the right to refuse immunity being waived.

Mr TONY SMITH—It could not be waived if he was going directly home from work.

Ms Storey—It could be, because this agreement is specifically trying to erode immunity in relation to work activities.

Mr TONY SMITH—But if he goes home a different way than his normal way from work, then this agreement does not cover it, in reality.

Mr Biggs—No, this is cutting back on the potential for immunity to be claimed, but it does not cover all the circumstances.

Mr TONY SMITH—But only in specific circumstances.

Mr Biggs—Only in work related circumstances.

Mr TONY SMITH—And the work related issue is what this question is all about. It is something that is directly to and from the place of work. Is that what you are saying?

Ms Storey—Yes. However, Mr Smith, I would reiterate that Australia does have a policy of particularly requesting waiver of immunity in relation to criminal acts that have nothing to do with the diplomatic duties, and that would include the spouse.

Senator ABETZ—But the immunity applies now already. This only deals with the right to get a job, and therefore it only deals with the travel to and from work because, if it is during their spare time or free time, the current immunity that exists now would still be applicable.

Mr TONY SMITH—Yes, but this is extending a privilege. What I am saying is that because it is extending a privilege—that is, giving people the right to work—then it ought to be very, very strictly monitored, hence my question about work related activity.

Lastly, and I suppose it is almost answered, 'except in special instances when the sending state considers that such a waiver would be contrary to its interests,' can you think of any examples of special instances?

Senator ABETZ—The brother of the President.

Ms Storey—I would say it would be more likely if, for example, a diplomatic officer had criminal charges laid in a state where there was a possibility of political persecution. That would not be in the interests of us as the sending state to waive the immunity in that instance. We would want to protect our diplomat in that state.

CHAIRMAN—If you did not realise it, Mr Smith is a lawyer. I apologise for that. I should not say that.

Senator ABETZ—Can I take you to article 5, which says that, 'In accordance with a diplomatic convention or under any other applicable international instrument, dependants shall be subject to the taxation and social security regimes of the receiving state.' Does that mean, let us say, a 16-year-old who has been here for two years, or someone 18 years

of age, could then access unemployment benefits and job training schemes, et cetera?

Mr Wilson—No.

Senator ABETZ—You are telling me no. Why not?

Mr Wilson—The person is not eligible for them under—

Mr Biggs—It is the visa conditions for class 995 visas for diplomats and their families.

Senator ABETZ—They are not covered under the visa, as opposed to this treaty?

Mr Biggs—Yes. This is about extending the possibility of getting work, but it does not affect the fact that—

CHAIRMAN—The visa conditions obtain, don't they?

Senator ABETZ—Right.

Ms Storey—And these same visas would be issued, regardless of whether there is an arrangement. These arrangements are more for Australian diplomats' benefits because, as I said to you earlier, we are in the practice of actually trying to approve as many of these, just in order to create more favourable conditions for other countries to reciprocate and allow our spouses to work.

Senator ABETZ—I understand that. Thank you.

CHAIRMAN—Thank you very much. Mr Hermes, would you like to make a short opening statement?

Mr Hermes—Yes, thank you. First of all I should apologise that Mary Harwood, who was the leader of the negotiations on this treaty and who has spoken on this matter before this committee, is not able to be with us. She is off defending our fisheries interests at COFI and IOTC at present in the Northern Hemisphere.

The negotiation for this particular agreement commenced prior to our receipt of the report from your inquiry. In fact most of the significant work was done—in terms of negotiating positions, preparing the Japanese, agreeing on agendas, et cetera—well before this committee started its inquiry. So I put that in context.

On 18 March we deposited the range of documents concerning this treaty under the head agreement of 1979. The documents that were tabled in parliament were the subsidiary agreement, the record of discussion and the NIA. Separate from that the

Minister for Foreign Affairs has provided this committee with further details via the summary record, which we hope has been of further interest in fleshing out the agreement.

In addition, in the letter that the Minister for Foreign Affairs provided to the chair of this committee, he did note that there was a number of matters that had come about, which has meant that in fact this document will be tabled for 15 sitting days in the House of Representatives but only 13 days in the Senate. That was explained to you in the letter of 18 March. What we propose is that Minister Parer would be seeking Minister Downer's assistance in providing this document to go to ExCo in time for a signature to occur on 4 June. This would enable this treaty to apply for Japanese fishing within the Australian zone from 4 June until 30 October.

I would like to make two further explanatory comments. I have already commented on the fact that the negotiations commenced prior to our receipt of the report from your committee on the treaty, and you would be only too aware that last year we had the awkwardness of the urgency provisions having to be used. This year the annual cycle has been drawn back to the extent that urgency provisions will not need to be used. However, because of the timing of the negotiations, there are some unusual elements to it, in particular the fact that the document has been tabled unsigned—which is unusual—and the tightness of the timetable to ensure that we do get the agreement through.

The changes that have happened since last May in terms of the treatment of treaties, the annual timetable and the length of time needed has been of considerable interest to the Japanese and they have been following these details with great interest. This year we have been able to get a range of changes, including the tabling of an unsigned document. We hope that the difficulties we had with timing last year and this will finally be able to work through the system.

CHAIRMAN—Thank you. We wait with interest for the government response to report No. 3 in lots of areas. In this one, of course, you have taken the 200 tonnes approach and the 17 nautical miles from Tasmania. Was that just halfway between what was and what we recommended? What is the rationale for 17?

Mr Hermes—Yes, perhaps I should have also commented in my introductory remarks that, despite the fact that negotiations started prior to the receipt of this committee's comments, certain elements of the comments were able to be worked into the arrangements. I should also mention that the issue concerning port access and a restructured arrangement and the annual proposals et cetera were all raised officially with the Japanese in the negotiations. Many of the elements that are part of your report have already been put into the agenda for the negotiations and we will have prior negotiations this year to try and advance some of those matters.

On the Tasmanian issue, it is a point of tension, as you would all be very well aware. There are pressures on both sides to find the best spot. It is a compromise to find

what is an acceptable level of increased access for domestic fisheries at the same time as providing sufficient interest that the port of Hobart will get sufficient Japanese coming in to fish just outside. It is a point of compromise.

Mr ADAMS—I am interested in what you just said. We certainly raised issues about the introduction of a certification system, the by-catch mitigation schemes and the retention of marlin. We suggested that they be dumped and not brought ashore. Are you telling us that those issues have gone into the system, or were they put on the table in negotiations? Were they raised?

Mr Hermes—Specifically the issues that were raised and put on the table over and above the elements that were already in the agreement principally were concerning the whole annual cycle port access fee structure arrangements. They were clearly put on the table as the issue of whether we could have a two-year agreement. The issues of how we would structure the port access issues et cetera were all put on the table—specifically on certification and marlin. What was the third point?

Mr ADAMS—The mitigation of by-catch.

Mr Hermes—By-catch issues were not specifically raised in any new context.

Senator ABETZ—When you say not in a new context, were they actually raised, the by-catch issue for example?

Mr Hermes—By-catch and marlin are a permanent part of the negotiations and you will see that the conditions on those are part of our annual negotiations.

Dr Rayns—Just to add a couple of points, Mr Chairman. In regard to by-catch, yes, we did raise that and mitigation has been a key issue. In fact, as you are probably aware, the Japanese are now required to use tori poles to reduce seabird by-catch.

Also, with regard to marlin, we are keeping the Japanese aware of the progress of your inquiry and also that there may be a need to change the current arrangements in the future. We also routinely check the marlin by-catch by all Japanese vessels to make sure no targeting is going on. There is an arrangement in place with the Japanese to encourage non-targeting. As far as we can be aware at this stage, last year at least they did not target marlin specifically, but of course there are some species they do target as part of their fishing operations, such as broadbilled swordfish. But the key species, black marlin for example, as far as we can ascertain have not been targeted in the last season.

CHAIRMAN—After we tabled report 3, I sent a copy to the Japanese ambassador. Was there any indication in the negotiations that they were well aware—that they had some reservations? As background for us, did they give any indication as to whether we had raised a few danger signs that they did not like?

Mr Hermes—The Japanese have followed this process with extreme interest and, within days of the report, were commenting in detail on elements of the report. I think it would be fair to say that the Japanese saw the report as being a mixed bag. There were elements of it which they were very pleased with and there were elements they saw as being significantly difficult.

Mr ADAMS—Article 6 of the agreement make some changes to the order of placing communications between vessels and Australian authorities in reporting the catch data. Does this reflect changes in the way people can deal with the Australian authorities? Does it reflect anything to do with those Tasmanian fishermen who were experiencing having their gear run over?

Dr Rayns—I think there are a couple of things. Regarding catch data reporting and so forth, we are trying—and have been since 1994—to get the Japanese to change their reporting arrangements from a radio-based system to a vessel monitoring based system based on satellite communication. The Japanese have been using a system known as Inmarsat A for the past couple of years in the zone, and we have experienced considerable problems with that system in terms of reliable catch reporting.

In this agreement, we have put the Japanese on notice that unless we can jointly get greater reliability into that system—up to a level we have specified—that we would be seeking to have the Inmarsat A system removed from the list of approved systems for vessel reporting and replaced by a system known as Inmarsat C, which Australia already uses in some of its fisheries and which we know to be extremely reliable.

Mr ADAMS—Can we use the satellite in that regard?

Dr Rayns—Yes. There are two things we get from the Inmarsat system: vessel position and forwarding of data to AFMA in terms of catch reporting and other information.

Mr ADAMS—And we use that in Australian fisheries now, do we not?

Dr Rayns—Yes, we do.

Mr ADAMS—All our trawlers have to do that and report in to AFMA on where they are and what catch they are taking. So this agreement would only bring those people fishing in our waters into line with what we actually ask from our own fishermen.

Dr Rayns—To some degree, yes. Currently, the operational VMS we have in the Australian fishing zone is primarily for position reporting, but we are moving to catch reporting as well. The use of VMS in Australian fisheries is spreading quite rapidly, especially at the Commonwealth level. It is a very cost-effective system. We are trying to encourage the Japanese to come into line with our own requirements. That is correct.

Mr BARTLETT—I must admit I am rather disappointed that we only extended the fishing zone around Tasmania by five nautical miles. Was there any indication in the Japanese response to the committee's report to indicate that they would have withdrawn totally from fishing there if we had pushed the limit out further? Would there have been any adverse effect on the Hobart ports, for instance?

Mr Hermes—The fishing off Tasmania is a significant part of the overall package. The Japanese accessing that fishing is an important part of providing the need for the vessels to use the Hobart ports. The judgment about where the line is between the interests of the developing Tasmanian domestic fishery and providing the support for the Japanese fishing vessels in Hobart and how much the Japanese value that component of the total deal is a question of judgment.

Mr BARTLETT—Are we going to continue to pursue that in further negotiations, or are we just rolling over on that and leaving that?

Mr Hermes—We are actively watching the development of the domestic fishery and, as that fishery develops, that issue would be revisited. At the present time, we believe that the current arrangements allow the full development of the domestic fishery out of Hobart, and at the same time provides us with the opportunity to provide the Japanese with access to that part of the zone. It is a particularly key part of the access provision, and changing the balance there is a critical part of it. It really is a question of judging the extent to which the Tasmanian domestic fishery can take up the extra.

Mr BARTLETT—In your opinion, if the line had been drawn at, say, 25 nautical miles, would that have affected the Japanese desire to use the access facilities there?

Mr Hermes—It would have made a significant difference. What we have is extensive documentation of their current use of the area. If you look at the current patterns of use of that area, it would have cut into the Japanese use patterns significantly.

CHAIRMAN—So what you are saying is that that was one of the down sides of the mixed bag—using the terminology you used before.

Mr Hermes—The fact that that line has been extended out, yes, and issues such as the reduction of the vessels from 20 to 15 on the Western Australian side. All of those issues are part of that pattern.

Mr HARDGRAVE—I accept that the wheels of government work awfully slowly, but I have this horrible feeling we wasted a whole heap of time inquiring into this agreement last year. This morning, we have heard evidence before us that suggests that the Japanese government, within a few days of our report, could offer comments in response, yet our own government has not been able to put a response to the parliament. I actually think that that is a convenient excuse.

Obviously, Minister Parer does not sit down to write a detailed response—that would come from within his department. The same people who are negotiating a treaty arrangement are ignorant of what we have contributed to the debate last year. What I am wondering is, why the lack of urgency? Why hasn't our submission to this debate been taken seriously enough to incorporate it into the agreement that is before us this morning?

Mr Hermes—To be absolutely frank, we have taken extreme interest in the details of the committee's comments.

Mr HARDGRAVE—You have essentially ignored it, though, in practice.

Mr Hermes—We have not ignored it. The agreements on the agenda items and the matters that would be dealt with in terms of negotiating this agreement had actually been set down in negotiations with the Japanese at the time that this committee was seeking comments in the second half of last year. If you will allow me to make a comment about the negotiating environment we found ourselves in, we had the interesting circumstance of having an established agenda for the negotiations with the Japanese in terms of how we would deal with the agreement. In the midst of that, we also had public comments being made in detail about the detail of the agreement.

I am not saying that that is not a reasonable thing; all I am saying is that it did considerably complicate the matter of dealing with the Japanese under those circumstances. What it has done is, in a very coherent and well-documented way, put the Japanese on notice that there are all those various areas of interest. They are perhaps in a position now to better understand the sorts of issues we may well have been putting across in a range of areas, concerns of the Australian position, in a way which they can see as coming from the parliament.

It has actually provided a very useful basis. A lot of those elements can be worked into those negotiations in future years. It is a valuable document. The Japanese understand that. Last year's and this year's, because of the changes that we had and because of the nature of the annual negotiations, have been rather complicated, and perhaps things do work slowly, but I can assure you that the detail of those sorts of comments that have been made have been well heard.

Mr HARDGRAVE—Essentially, our report is like a loaded gun sitting in a top drawer. Surely we should have the thing out on the desk. It should be part of the negotiations, not sitting hidden inside a drawer with an implied threat attached to it.

Mr Hermes—It was certainly well out on the table in terms of the negotiations this year, in terms of the issues that were clearly important. For example, the issue that Mr Rayns has already addressed—the issue of VMS, for example—is a matter that has been of some concern for us for some time. The Japanese have already made large investments in technology to use a certain system. We are not entirely happy with that. We cannot just

change that in one year and say, 'That equipment is no longer useful. It has to change.' They are working with AFMA to try and make that equipment work. We will change it over. These things are apart of the annual balance, if you like.

Mr HARDGRAVE—What adjustments have the Japanese made to their position based on the fact that our report, although sitting in the top drawer, is nevertheless there?

Mr Hermes—I do not know if I can necessarily comment on how the Japanese would be commenting on various elements. Clearly, one of the very significant elements that has changed this year is the clear recognition that some sort of new structure to the agreement is necessary to make it work more efficiently, to make it work perhaps in a way which is going to provide more perceivable benefits in terms of our environmental concerns, our port concerns and our domestic fishery development concerns.

Mr HARDGRAVE—Is this the team that will prepare the response for consideration by the minister before it is perhaps tabled in the parliament? Are you responsible for that?

Mr Hermes—All the people at this table are part of the group.

Mr HARDGRAVE—How are you progressing with that particular report preparation?

Mr Hermes—It is close to finalisation.

CHAIRMAN—To take up Gary's point, I would hope that, in the ongoing negotiations for the next time round, it is taken out of the top drawer and thrown right in the middle of the table. I do not think you can back off from some of these things. I understand the sensitivities with the Japanese, in particular: they are tough negotiators and they are sensitive at times, some might say overly sensitive in some of these things. But, in particular, the quota and port access seem to us to have been a very important issue. Are there any indications that the Japanese are prepared to divorce those two things?

Mr Hermes—In this year's agreement we have actually agreed to meet prior to a formal negotiation next year, to discuss those matters. The Japanese are happy to do that.

CHAIRMAN—The other thing really is for Ian, and it is a wider issue but it is raised as a result of Gary's comment and question. We have not had a reaction to report 3, but we have not had a government response to report 1 yet. I think the committee would like to know where we are at in terms of formal responses from the government and the sorts of time scales. Have we got any feel for when we might have a response? For example, in report No. 1 we raised issues about the NIA and all the rest of it. Are we going to see a response to that in three months time, in six months or 18 months? When are we going to see it?

Mr Biggs—It is difficult for us as officials to make that prediction. I would simply say that report 1, for example, has been with ministers and that is where it is. It is a matter of ministerial consideration at this point.

CHAIRMAN—We have reached the stage, perhaps, where it would be appropriate for me to write—this is going beyond the one here, but I might as well put it on the record now—to the Minister for Foreign Affairs and say, 'We have tabled, as of yesterday, seven reports, some quite extensive. We really do not sit around and do these things just because it is something to keep us busy. We do these things, hopefully, in the national interest. Therefore, I don't think it is unreasonable for us to expect the minister to indicate some sort of time scale as to when the parliament might have some reaction to what we have recommended.' Bearing in mind that this committee has such a short time scale, and that the fuse that we have is shorter than for any other parliamentary committee and entails more work, I would suggest, than for any other parliamentary committee, I do not think it is unreasonable for us to ask that basic question. Ian, I would like to give you advance warning that I will be writing to the minister as a result of this hearing to raise that basic question.

Mr HARDGRAVE—Mr Chairman, I think if you are going to do that, you should cite the example of this particular treaty. We spent the time last year to inquire and to put this report together, and I think we came up with some very sensible, straightforward agreements, but, essentially, the department have not factored those into their ongoing agreements this time round.

CHAIRMAN—We understand the sensitivities and difficulties in this one, and that some of our recommendations could not be acted on in the short term. I have spoken informally to Senator Parer about it. I think, without saying too much, that he would have liked to have moved a lot faster and far wider. But the negotiations had reached the stage, as you have indicated, that it was a bit difficult to do that. We would hope that, as a result of report No. 3, next time round, when you come back to us in another six or eight months or whatever, we will see substantive progress in terms of report 3.

Mr TONY SMITH—I have a couple of questions. I refer to the negotiations that have taken the line out to 17 nautical miles. On what basis were those negotiations conducted? For example, were there briefing or position papers put with a view to those negotiations proceeding? Were those briefing papers based on what we recommended here, or were they based on some other briefing papers? I am really interested in knowing that first of all. And who conducted the negotiations in relation to that? Could I just get that first.

Dr Rayns—In terms of negotiations with regard to the 17 nautical miles, we did take into account as part of the negotiation the position the treaties inquiry has put in its report. Also, we had already previously put the Japanese on notice in 1996 that we would be seeking some form of extension to the line anyway. We were already aware that there was considerable concern about the line remaining where it was because of needs to

encourage the Tasmanian industry to expand and so forth. So it was a combination of things, I think: our awareness already of the situation plus the report itself.

Mr TONY SMITH—In the negotiating process did you start with, say, 50 nautical miles?

Dr Rayns—We made the Japanese aware at the start of the negotiations of the exact wording in the inquiry report—that there was a strong push to move the line out to 50 nautical miles, and that is where we did start from.

Mr TONY SMITH—So you adopted the position consistent with our line of 50?

Dr Rayns—As an initial starting negotiation, yes.

Mr TONY SMITH—And we got pegged back by—what was it—45?

Dr Rayns—By 33.

Mr TONY SMITH—With regard to the by-catch, was that raised again? Was a position taken in relation to that with the Japanese, consistent with the very strong recommendations we made?

Dr Rayns—Are you referring to seabird by-catch or marlin by-catch?

Mr TONY SMITH—Seabird by-catch.

Dr Rayns—I cannot recall the exact recommendation in relation to seabird by-catch.

Mr TONY SMITH—I do not have it with me either, but there is a number of pretty strong comments about the need to eliminate by-catch rather than live with it. Dick has also got some views on this. Was that position put—that we are here to see the elimination of by-catch? Therefore, consistent with that, was a specialist observer training program introduced with added emphasis on seabird research? Has that been looked at?

Dr Rayns—Some of those matters are still under consideration by government and will be responded to when the government responds to the inquiry. However, with regard to seabird by-catch, a couple of initiatives were undertaken. One was actually outside the treaty's process with the Commission for the Conservation of Southern Bluefin Tuna adopting a position statement on ecologically related species issues as they are known, which includes seabirds and other marine fauna and flora and so forth.

The other issue is that we made the Japanese aware that we were seeking to reduce seabird by-catch further. That process, however, is really one that is being conducted

primarily through the commission, which has a meeting scheduled for later this year on ecologically related species to try to advance some of those matters.

Mr TONY SMITH—Did we produce an easy-to-use guide on the identification of seabirds?

Dr Rayns—There is already a guide in circulation in Japanese by Mr Nigel Brothers called *Catch Fish Not Birds*, which does include a lot of information on how to release seabirds that are caught and identifying seabirds. Again the commission itself actually discusses, not through the treaties process but through the commission process, increasing or recirculating that book and improving that book for use by the Japanese. Just on another point, at the beginning of every season in Tasmania we routinely brief the Japanese fleet. That issue will be raised again there to make sure that they are aware of those seabird issues.

Mr TONY SMITH—Is there a copy of the book on every boat?

Dr Rayns—Basically the Japanese have previously circulated it to every skipper on every boat; yes. We are working with the Japanese to maintain that circulation level.

Mr TONY SMITH—And upgrade the work?

Dr Rayns—Yes. There is upgrading work going on. In fact there is another publication now available which may supersede the current one, or at least complement it.

Mr TONY SMITH—Has the government formally invited representatives from Japan and New Zealand to participate in the development of the threat abatement plan?

Dr Rayns—Yes, we have. We have officially done that.

Mr TONY SMITH—So that is an ongoing process?

Dr Rayns—Yes, the threat abatement plan is currently under development.

Mr TONY SMITH—I turn—with your indulgence, Mr Chairman—to a report in the *Courier-Mail* of 31 January 1997 in relation to fuel subsidies for Japanese fishing vessels. I find it difficult to read the report exactly but it suggests, I think, that a total of $91 million or $21 million was repaid to fishing vessel operators under the fuel rebate scheme in the past financial year. First of all, are you able to confirm a figure of that magnitude? Am I misreading it, or has it been misreported? Secondly, was that rebate taken into account in setting a lower figure of $3.4 million this time? Thirdly, what steps do you intend to take in relation to an overall consideration of how much the Japanese fleet is benefiting by the diesel fuel rebate levy?

Mr Hermes—I am not entirely conversant with the details of this matter, and I would prefer to take that on notice. However, it is my understanding that the current arrangement is that the Japanese who are refuelling within Australia do not pay any excise anyway. They are not required to pay the excise on those fuels, and so that is not part of the calculation. But the detail of that I would need to provide to you separately.

Mr TONY SMITH—There is a reference in this article. Perhaps I should table the article, Mr Chairman, even though it is difficult to read. We might be able to get a better copy. There is reference to off-road purposes, where operators are getting rebates as well; and so that is also a matter of concern, if it tailors in with the fishing fleet in some way.

Mr Hermes—My understanding is that there are a number of ways in which it can be done: they either do not pay excise at all or, if they do pay excise, there is an automatic rebate of the excise, and it is not payable by the Japanese fleets that are refuelling. There were a number of conflicting reports that appeared at about that same time, but I would be happy to take that on notice and provide you with the detailed information.

CHAIRMAN—I think that is the best way to do it.

Mr ADAMS—I have one question. The sashimi market in Japan is a pretty important market. In the discussion on tariffs, we had prior confirmation that the tariff applied to all kinds of tuna, and I believe that it has come down from 4.4 to 4.1. There are some implications there. Is this part of the negotiations on this treaty? While we are negotiating this treaty, if we are trying to establish a Tasmanian tuna industry with fresh tuna being flown into Japan, we do not want them setting different tariff arrangements to counter anything that happens in relation to this treaty. Is this a part of the negotiations? Is this on the table when you are negotiating the treaty?

Mr Hermes—All of those matters are on the table. I would make the comment, though, that there is a range of issues that will affect the price received in Japan, and it will not all be influenced by the people that we are actually in negotiation with. We are negotiating essentially with fishermen to catch fish, but there is a whole range of things—through trading houses and other arrangements within Japan—which will affect those people as much as they affect us. We are conscious of the complex interplay that actually results in the prices that are paid and the tariffs are paid at different points, but we are very keen to do everything we can to develop the Tasmanian fishery.

CHAIRMAN—Ian, to go back to the comments I made about writing to the minister, because Chile is a relatively minor issue and because this particular bilateral issue is just a step up on what we have already reported on, we do not, as a committee—and I hope you agree with this—really see the need to table a formal report. Once I have cleared it through the committee, I will write to the minister to say that we can see no impediment to the ratification of both of these, in a little more detail in letter form. At the

same time, at the end of the letter, I will raise the issue of governmental progress with reporting back in terms of responses to the reports that we have tabled. I think that is the quickest way, rather than go through the laborious process of a formal report. Does everybody agree with that?

Mr HARDGRAVE—No; I am of half a mind to suggest that we should refuse this particular treaty, and that will make the government proceed faster down the track.

CHAIRMAN—We can talk through the wording of that letter, but I think we can do that in an appropriate way in the letter. The main point is to have a letter to the minister rather than a formal report. I thank the witnesses for appearing before the committee today.

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

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

Committee adjourned at 9.40 a.m.