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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 4 June 2001

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, Mr Hardgrave, Mr Haase, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Mr Bartlett, Mr Byrne, Mr Haase, Mrs De-Anne Kelly, Mr Andrew Thomson and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 23 May 2001.

WITNESSES

ATWOOD, Mr John, Principal Legal Officer, Office of International Law, Attorney-General's Department	1
.....	9
BAKER, Mr Geoffrey Barrington, Assistant Director, Wildlife Scientific Advice, Wildlife Australia, Natural Heritage Division, Environment Australia	1
BARSON, Mr Roger Andrew, Assistant Secretary, International, Department of Family and Community Services	9
CARRICK, Ms Marion Florence, Director, Agreements, International Branch, Department of Family and Community Services	9
EVANS, Dr Nathan, Acting Manager, Sustainable Fisheries Section, Fisheries and Aquaculture Branch, Department of Agriculture, Fisheries and Forestry—Australia	1
FRENCH, Dr Gregory, Director, Sea Law, Environmental Law and Antarctic Policy Section, Legal Branch, Department of Foreign Affairs and Trade	1
McNEE, Mr Andrew, Senior Manager, Tuna and Billfish Fisheries, Australian Fisheries Management Authority	1
MONTGOMERY, Ms Narelle Gaye, Assistant Director, Wildlife Scientific Advice, Wildlife Australia, Natural Heritage Division, Environment Australia	1
MORRIS, Ms Megan Philomena, General Manager, Film and New Media, Department of Communications, Information Technology and the Arts	14
SALMOND, Dr Paul Douglas, Manager, Film Industry Section, Department of Communications, Information Technology and the Arts	14
STERN, Ms Robyn, Director, International Law Section, Legal Branch/ILD, Department of Foreign Affairs and Trade	1
.....	9
WATTS, Mr Anthony, Director, New Zealand Section, Department of Family and Community Services	9

[10.06 A.M.]

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MONTGOMERY, Ms Narelle Gaye, Assistant Director, Wildlife Scientific Advice, Wildlife Australia, Natural Heritage Division, Environment Australia

STERN, Ms Robyn, Director, International Law Section, Legal Branch/ILD, Department of Foreign Affairs and Trade

CHAIR—I welcome everyone to this hearing, and in particular I welcome a new member of the committee, Barry Haase, the member for Kalgoorlie, who is attending for the first time in the place of Mrs Kay Elson, who has resigned to undertake other parliamentary activities instead of sitting on this committee. We are going to take evidence this morning on three proposed treaty actions. They are, firstly, the Agreement on the Conservation of Albatrosses and Petrels; secondly, the Agreement on Social Security with New Zealand; and, thirdly, the Agreement with Germany on Film Co-Production. We will begin with the conservation of albatrosses and petrels.

We do not require the witnesses to give evidence under oath, but I do have to advise you formally that these are legal proceedings of parliament, and hence they warrant the same respect as if they were taking place in either chamber. The giving of false or misleading evidence is a very serious matter. Could one of your number make an opening statement, and then we will have some questions from members. Who will do that?

Ms Montgomery—I would like to make an opening statement. I am pleased to appear at this hearing of the committee in relation to the Agreement on the Conservation of Albatrosses and Petrels. As you know, this agreement seeks to achieve and maintain favourable conservation status for albatrosses and petrels, particularly in the Southern Hemisphere. The species concerned are listed in annex 1 of the agreement. The agreement was developed under the umbrella of the Convention on the Conservation of Migratory Species of Wild Animals, otherwise known as the CMS or the Bonn convention.

Development of the agreement was initiated, following the listing of all Southern Hemisphere albatross species, under the CMS in 1997. The listing was an initiative of Australia and, with

the support of all parties to the CMS, this was an important step toward promoting a cooperative framework for the conservation and management of Southern Hemisphere albatrosses. The listing obliged CMS parties to endeavour to conclude an international agreement promoting the conservation and management of these threatened species. From the beginning, this initiative attracted wide domestic support, and this support continues. As you will be aware, negotiations on the agreement concluded in Cape Town, South Africa, in February this year.

I would now like to highlight the issues which I believe might be of interest to the committee in relation to ratification of the agreement. The first of these issues is our obligations upon ratification. Australia already has strong conservation measures in place domestically, and ratification of the agreement would not require amendment to existing legislation, policies or programs. Basically, the agreement concentrates on habitat conservation; mitigation of threatening processes; coordination of research, training and information dissemination; and raising awareness of the conservation status of, and programs for, albatrosses and petrels. In practical terms, ratification of the agreement will not impose additional obligations upon Australia. Its main purpose is to ensure that all other potential parties to the agreement have the capacity to do what we in Australia are already doing.

As you may be aware, the incidental catch of seabirds during long-line fishing is a major cause of albatross and petrel mortality. Australia currently has a threat abatement plan for the incidental catch or by-catch of seabirds during oceanic long-line fishing operations, which has been in force since August 1998. The threat abatement plan aims to reduce seabird by-catch in all fishing areas, seasons or fisheries to below 0.05 seabirds per thousand hooks. This would represent a 90 per cent reduction in seabird by-catch within the Australian fishing zone.

A number of fisheries based mitigation measures were introduced in regulations in February this year. Australia has also drafted a recovery plan for albatrosses and giant petrels, which aims to ensure the recovery of these threatened species and to facilitate critical research into the population status, biology and threats faced by albatrosses and petrels in Australia. It works in conjunction with the threat abatement plan, allowing both documents to offer a holistic approach to albatross and petrel conservation domestically.

In short, there are no additional measures contained within the agreement which Australia is not already undertaking through either the threat abatement plan or the recovery plan. In fact, the fishing industry has been consistently supportive of the development of this international agreement as it provides a mechanism to create a level playing field in regard to the management of these threatened seabirds. The agreement seeks to cooperatively extend this kind of domestic action to the international arena and to bring the international conservation standards and actions for albatrosses and petrels into line with those currently in place in Australia.

The second issue which I wish to address is the act of ratification itself. It is, of course, reasonable to ask why we should ratify if we are already meeting our obligations. It is important to remember the highly migratory nature of these seabirds, which makes them so vulnerable to a range of threats. It does not matter if we in Australia are doing an excellent job protecting and conserving our populations of albatrosses and petrels if other countries do not adopt the same approach. Although Australia does have a number of breeding populations of albatrosses and petrels, these birds regularly travel outside our jurisdiction across the high seas and into other

jurisdictions to forage for food, and vice versa. Albatrosses and petrels do not respect international borders.

In Australia, we have gone about as far as we can to ensure protection within our jurisdiction. If we want to further contribute to albatross and petrel conservation in any significant way, we can assist other relevant countries to have access to the information and measures necessary to develop harmonised conservation actions across international waters. Ratification by the required five signatories, as soon as practicable, will ensure this happens.

It is worth noting that for every week that passes the world loses, on average, an additional 1,000 birds from long-line fishing. Moreover, most of these species are very slow to breed, which means that at present their rate of mortality exceeds their natural replacement rate. Without ratification, we do not have the formal mechanism to cooperate with other countries.

There are of course other international agreements that include some seabird conservation measures, but they are generally limited in their geographic range. Their focus on seabird conservation is also peripheral to their main objective, which on the whole relates to fishing practices. This, by contrast, is the first international agreement that clearly focuses on an integrated and holistic approach to albatross and petrel conservation.

The third matter which I wish to raise this morning is that of resourcing the agreement. We believe that the costs of managing this agreement will be limited to a very small secretariat and voluntary conservation fund. Our current expectations are guided by our experience in running the interim secretariat for the agreement. This we agreed to do by consensus at the conclusion of the Cape Town meeting. We will continue this function until the first meeting of the parties decides on the location of a permanent secretariat. We have run the interim secretariat with no more than two people at any one time during the intense period of negotiations. We would expect resourcing for the permanent secretariat to be similar and would explore all cost saving options, such as collocation, to keep costs to a minimum. Let me reassure you that all countries participating in these negotiations were of like mind on this subject.

By the way, decisions regarding appropriate scale of contributions for the secretariat budget will be made at the first meeting of the parties, and it is important that Australia be able to attend and influence those discussions to ensure a fair and equitable outcome. To effectively do this we will need to be a ratified party to the agreement.

Finally, I want to assure the committee that the government, through Environment Australia, has consulted closely with all stakeholders interested in albatross and petrel conservation. This consultation commenced when the agreement was conceived in 1997 and has continued to the present time. Amongst stakeholders I include relevant fishing industry representatives, non-government conservation organisations, and of course state and territory governments, as well as other Commonwealth agencies. I should make special mention in this regard of the government of Tasmania, which, as home to Australia's only endemic albatross, has had a special interest in the development of this agreement.

The government believes that there is no impediment to ratifying this important agreement as soon as practicable. All stakeholders agree that ratification should take place. Ratification by Australia will be the culmination of a process that Australia itself began, and we can expect, as

a party, to be a major player in albatross and petrel conservation for many years to come. I thank you for your attention.

Mr BYRNE—In total what is the population of albatrosses and petrels that come into our countryside?

Ms Montgomery—There are 24 species of albatrosses globally and 21 species in the Southern Hemisphere. All of those 21 species have been recorded in Australian waters. There are seven petrel species listed on the agreement and six of those petrel species have occurred in Australian waters.

Mr BYRNE—Do we have a rough estimate of the number of birds?

Ms Montgomery—I would have to ask my colleague, Mr Baker, if he has that information.

Mr Baker—Some of these populations are very small and some are quite large. For instance, there is one record in Australia of an albatross that breeds in the north Pacific, where the population size is probably half a million. Of the black-browed albatrosses which also occur in Australian waters, there are probably half a million breeding pairs. You can contrast that with other species such as the Chatham Island albatross, which have a population of 5,000 breeding pairs and only breed in one particular site. I have never added up the total number of albatrosses in the world but it would be some millions.

Mr BYRNE—What is the pattern of migration of the albatrosses? Where do they breed? How many would be breeding in Australia, migrate elsewhere and then migrate back?

Mr Baker—To answer that question properly we need to look at it on a species by species basis. For instance, one species that breeds in Australian waters around Tasmania, the shy albatross, breeds on three islands there. We know something about the migration of two of those populations. Of the population from The Mewstone, for instance, young birds disperse to as far west as South Africa, where they spend the first few years of their lives. They then return and probably spend the rest of their lives around the breeding island of Pedra Branca. Young birds that breed on Albatross Island in Bass Strait seem to only disperse as far as Western Australia. They spend most of their time around their breeding island once they have achieved maturity. But you can contrast this with other species such as wandering albatrosses, which occur off most of Australia's southern coastline, particularly during the winter months. Of the populations that breed in the Croset Islands, some individuals come in winter off New South Wales in the non-breeding season, but other populations of wandering albatrosses probably disperse to other parts of the world. So it is quite a complex situation.

Mr BYRNE—How many range states are there potentially that could be part of this agreement?

Ms Montgomery—There are actually 26 range states that we have identified. It is important to bear in mind that range states under this agreement can include countries that have breeding populations as well as populations that forage within their waters. It can also include distant water fishing nations because they have vessels that interact with albatrosses on the high seas. That is why there are about 26 countries that we have identified.

Mr BYRNE—Are you anticipating that all 26 will be party to this particular treaty?

Ms Montgomery—In a positive way that would certainly be the optimum. In the short term we have had positive indications from quite a range of countries that they will be looking to sign and ratify this agreement as soon as their processes allow, whereas other countries I think may take a bit longer.

Mr BYRNE—What are the other countries where we are having some difficulties at the moment?

Ms Montgomery—Some distant water fishing nations have chosen not to be involved at this stage.

Mr BYRNE—Which countries are you referring to?

Ms Montgomery—Japan has chosen not to be involved. China have said that they are not interested. Countries that have been invited include countries that are members of CCAMLR because they have the capacity to come down and fish. Countries like Germany have said that they are not interested in joining but they are interested in the process and seeing what comes out of it. Then you contrast that on the other hand with some distant water fishing nations that have expressed interest. At some negotiations we have had Indonesia and Korea come along, so it is quite spread.

Mr BYRNE—Does most of the mortality of these particular species of albatross and petrels come from ocean-line fishing? Is that right?

Ms Montgomery—Long-line fishing is the primary threat.

Mr BYRNE—What is the percentage of mortality compared with mortality through habitat, et cetera?

Mr Baker—These are long-lived species that we are talking about. I guess juvenile mortality is probably in the vicinity of 50 per cent—that is just natural mortality. Once birds get to two or three years of age, annual survival is probably about 95 per cent. The impact on fisheries takes a long time to be evident and quite often you do not quite know where a particular population is foraging. When you look at the long-term demographic data that is available for some of these populations, it is clear that over the last 20 years some populations have probably had a reduction in adult survival of only two or three per cent, but that is actually enough to drive populations to extinction within 50 or 60 years.

The actual mortality on particular populations changes as fishing effort changes. Typically we see populations of birds foraging in particular areas where they might come into contact with one particular fishery and there may be a severe impact, with thousands of birds from that population impacted over a short period. The fishing effort may then change. A fishery moves on. It fishes in a different part of the world and, therefore, that population may not be targeted by that fishery at that particular time. The short answer is that mortality through long-line fishing occurs throughout the southern oceans of the world and, in fact, all the oceans of the world.

Mr BYRNE—With respect to a cost analysis, if the measures proposed here have been implemented domestically with long-line fishing, what is the cost to the fishing industry of implementing those measures?

Mr McNee—In essence, there are no additional costs arising from this agreement because Australia has put in place a series of measures in domestic legislation and also in policy. Really there is a benefit to the Australian industry arising out of that in the sense that Australia is leading international efforts, both within the fishing industry and more broadly, to conserve albatrosses. Certainly, we would like to see other countries adopting similar approaches to conserving these species.

Mr BYRNE—It is a little bit like trade. For international countries that obviously have some objections, what would their rough costs be if they implemented these measures?

Mr McNee—There has been quite an extensive process within Australia between Environment Australia and the Australian Fisheries Management Authority to look at what measures can be implemented which are effective in conserving albatrosses. In fact, we broadly think that there are a number of accessible measures which are relatively cost effective to implement. The real issue, which is where this agreement is trying to head, is that there is obviously a bit of concern and a lack of information about what those measures might be and how they might be implemented in other fleets. Certainly we would see this agreement as providing a mechanism by which that information could be disseminated and some of the ways that you could approach conservation of albatrosses could be addressed.

Mr BYRNE—At this stage, if a state that did not want to ratify it basically said, ‘We do not want to ratify it because of the costs,’ we are not able to quantify what the costs might be? I presume that is one of the objections.

Ms Montgomery—From countries where they have actually said that they are not interested in the agreement, such as Japan, it is not the actual costs of implementing any seabird conservation measures, because Japan is actually doing that in some other areas, such as the CCSBT, and parties in CCAMLR also implement seabird conservation measures. I do not think that those costs are really what is putting off some distant water fishing nations. I think that perhaps it has not been recognised that there are other threats to albatrosses and petrels besides long-line fishing, and this agreement offers the opportunity to have a holistic international approach covering both marine based and terrestrial based threats. Some fishing nations already feel like they have addressed seabird by-catch issues through other fora, and so they are not interested in this one at this time.

Mr HAASE—You have mentioned that there are a number of countries that are not interested in ratifying. You have agreed that long-line fishing is the greatest cause of mortality, and Australia already has practices in place to minimise that. Of the worldwide mortality per annum due to long-lining, what proportion are we going to address by Australia ratifying this treaty? How many birds are being lost to Australian long-liners versus the number being lost to other long-liners collectively that are not going to ratify?

Mr Baker—That is a difficult question to answer because the knowledge of the level of by-catch within the tuna fisheries in Australia is imperfect. We know a lot about by-catch from the

Japanese fleet which, of course, no longer fishes within the Australian fishing zone. We are about to implement an observer program in the domestic industry that will give us some information. It is hard to say.

In essence, we assume that the by-catch of birds in the Australian fleet is probably about 0.2 birds per 1,000 hooks, which probably translates into a few thousand birds a year. We can contrast that with the by-catch that is achieved in pirate fishing, say, in CCAMLR waters, which last year was estimated to be 50,000 or 60,000 birds a year, and that is just one particular fishery. To answer that question, we need excellent data on the by-catch level that occurs in all fisheries throughout the world, the amount of fishing effort and where that fishing effort occurs.

One of the advantages of this agreement, we hope, is that by getting a number of players around the table talking about the conservation of albatrosses and discussing amongst other things where they are fishing, the sort of gear they are using and the levels of by-catch they are achieving, we will be able to get a good handle on the total number of birds that are killed throughout the year.

Mr HAASE—What is your best estimate of the proportion?

Mr Baker—I would say that Australia's level of by-catch now, with recent changes to fishing practice, is probably fairly low.

Mr HAASE—The problem we are going to solve with the immediate adoption of this treaty is not going to greatly affect world mortality. I accept your point of view that it will form a basis for a forum in which to have further discussions, but are you telling us that our signature on this treaty is not going to make a significant difference to world mortality of birds as a result of long-lining?

Ms Montgomery—No, I do not think so. From Australia's perspective, our option of going into this agreement would be to enable Australian albatross and petrel species to be protected in the waters of other countries. One of the key features of the agreement is to establish close working relationships with other international instruments, such as the fishery management instruments, and to be able to access their data on the sort of seabird by-catch levels that are occurring within their fisheries. We will then be able to collate it with the data that this agreement collects, say, on the migration patterns of albatrosses—where they are foraging and their population status—and to meld it to see exactly where the key problems are and who has been fishing where.

Mr HAASE—I am satisfied with that. On another matter, Narelle, you mentioned in your summation that the treaty would enable us to provide assistance to those countries that did not have the resources to implement the treaty. Can you elaborate on what the value of that assistance might be? Is there some guesstimate?

Ms Montgomery—Capacity building with other countries is a key element of the agreement. Capacity building is not just the provision of funds; it is also the exchange of information, expertise, techniques and knowledge with other countries. So it can take on a raft of forms such as training programs and how to use novel mitigation measures. It is difficult to put an actual dollar figure on it at the moment, because it can take such a wide range of forms.

CHAIR—Can I just pursue a couple of things? First of all, the national interest analysis prepared by the department does not have a list of states or maps of where these species range. We do not know where they nest. We have a list of species, for which we are very grateful; but, frankly, we cannot consider a treaty on the basis of no information beyond a description of its terms and your assumptions and so forth. There is just nothing there for us to judge; there is no evidence beyond your statements, which we take on face value. But we feel that it would be a poor precedent for us to just wave these treaties through without the sort of information that obviously Mr Baker and Mr McNee have got up here.

In fact, there must be filing cabinets full of these sorts of things back in the department. It is just a bit upsetting that the level of briefing of the committee, as to whether or not to proceed with these kinds of instruments, is perhaps one-tenth of that which you would give the minister. What I would like to do, and I have just discussed it with other members, is adjourn the evidence on this agreement until our next sitting date. This will allow you to bring back further information, even if it is a map on which you can show us the information with a pointer. We have a process and we cannot be taken for granted in this way. We appreciate the work that is put into the negotiation of these things, but approval of them is not just a matter of appearing and going back. So, with the agreement of the other members, I will adjourn your appearance until the next hearing on 25 June, the Monday after next. You can then come back and give us a briefing, showing us where the birds fly. When you say that Australian albatrosses migrate into other areas and fall under threat—and, hence, presumably, the enforcement mechanisms of the treaty would come into play—that is the sort of thing you have to show us before a treaty can be ticked off. Thank you for the evidence so far. We look forward to the second half of it on 25 June.

Ms Montgomery—Thank you.

[10.37 a.m.]

ATWOOD, Mr John, Principal Legal Officer, Office of International Law, Attorney-General's Department

BARSON, Mr Roger Andrew, Assistant Secretary, International, Department of Family and Community Services

CARRICK, Ms Marion Florence, Director, Agreements, International Branch, Department of Family and Community Services

STERN, Ms Robyn, Director, International Law Section, Legal Branch/ILD, Department of Foreign Affairs and Trade

WATTS, Mr Anthony, Director, New Zealand Section, Department of Family and Community Services

CHAIR—I welcome the witnesses and formally advise that these are legal proceedings of the parliament and, hence, they warrant the same respect as if they were taking place in either chamber. The giving of any false or misleading evidence is a serious matter. Would you make an opening statement, and then we will have some questions.

Mr Barson—Thank you. Australia and New Zealand have had an agreement on social security since the 1940s. The original agreement was based on the principle of host country, where the country in which a person resided took responsibility for all social security arrangements. A complication of this was that by the 1980s, with the trans-Tasman travel arrangement, Australia was bearing a disproportionate amount of the cost of the agreement, because New Zealanders tended to come to Australia rather than the other way round. This was compounded at that time by New Zealand not paying pensions to its former residents living in Australia. To address this disparity a system of reimbursement was developed, and that resulted in New Zealand reimbursing Australia for a proportion of the payments made to New Zealand citizens living in Australia. But even then, by the mid-1990s, both countries were expressing dissatisfaction about the administrative complexity of that arrangement.

As a result of a meeting between prime ministers, a joint task force between the countries was set up to review that arrangement. That reported in June 1999 and, based on its findings, the prime ministers of both countries recommended that a new social security agreement be negotiated. The revised agreement, which has been negotiated, follows the model of Australia's 10 other agreements on social security. A key element in the new agreement, and other similar agreements, is the sharing of responsibility between the partners for providing adequate social security coverage to former residents of their country. If people live and work in both countries it is a reasonable proposition that the countries cooperate in providing adequate welfare protection to them. The agreement with New Zealand will be Australia's 11th agreement. It complements others with Italy, Canada, Spain, Malta, Portugal, the Netherlands, Ireland, Austria, Cyprus and Denmark. New agreements with the USA and Germany will come to the committee later this year.

New Zealanders, unlike migrants from other countries, are not represented in Australia by specific identifiable community organisations. For consultation on this agreement, the department approached all of the major welfare organisations in Australia with details of the proposed changes, but no negative comments were received. In the process of announcing the changes, every New Zealand born customer of Centrelink was written to and told about the changes. In addition, we have consulted with state governments on the proposed changes and there have also been no concerns raised. The proposed agreement with New Zealand maintains the flexibility that enables Australians and New Zealanders to live and work indefinitely in each other's countries while balancing the responsibility for social security benefits for those people. Subject to the views of the committee, and a number of necessary actions that have to happen in both countries, we would hope to be implementing the agreement from July 2002.

CHAIR—Thank you.

Mrs DE-ANNE KELLY—I notice that, unlike other agreements, the one with New Zealand applies not only to permanent residents but also to persons who reside or resided in Australia using trans-Tasman travel. Why is that? I have to say I think it is an excellent agreement.

Mr Barson—Thank you.

Mrs DE-ANNE KELLY—My constituents who have mentioned it certainly are very supportive of the government and the department's moves in this area. Why were you able to get such a far-reaching agreement with New Zealand and not with other countries?

Mr Barson—The special relationship that exists between Australia and New Zealand that led to one of only two host country agreements with New Zealand is really the reason. We have had that special relationship for a long time. We have the trans-Tasman travel arrangements which mean that people are free to move backward and forward. The feeling in both countries was that to totally restrict all social security benefits to only permanent residents was not in line with that special arrangement. Yes, you are right: it is the only one of our reciprocal agreements where temporary residents for that country are eligible for some social security benefits.

Mr BYRNE—What is the qualifying period in terms of assessing whether or not a person who has been working in a particular country might qualify for a benefit?

Mr Barson—There is no qualifying period as such. What we enable by this agreement is for the period of working life residence in either country to be added together to form an eligibility for the pension in one of those countries. For example, Australia's aged pension arrangements have a 10-year residence requirement. It would enable somebody to add together their residence in New Zealand and their residence in Australia to meet that requirement. It is simply a totalisation factor.

CHAIR—I have a couple of questions. What other countries henceforth do you think we have a chance of negotiating a similar agreement with?

Mr Barson—We have negotiated the German agreement, which will come before this committee, as I said. The agreement with the USA is in its final form and that will also come before this committee later in the year. We have agreements in draft with four other countries. It

is difficult for me to say when and if they will come before the committee. We have agreements in draft with Croatia, Slovenia, Switzerland, Chile and in a less developed form with Norway and Finland. We have agreements with most of our main migration countries. The agreements that are still to come are attractive to Australia and those countries, but we still have to sort out issues of cost.

CHAIR—What about the People’s Republic of China? That is an interesting one in the sense that there is a fair lick of aid money that goes into China and yet we have a most welcome stream of immigration from China and thereby a burden, or a liability if you like, under our own social security law for them once they are here. So this is something we can look forward to hearing a bit of in the future, perhaps. Is there any such agreement under way with Vietnam?

Mr Barson—I am glad you asked that, Mr Chairman, because subject to this committee rising I am travelling to Hanoi this afternoon, so it is excellent timing. Just to deal with China first: we have a memorandum of understanding at the moment with our Chinese equivalent, which is mainly working on capacity building within China and the development of changes to the social security system. The system in China, of course, is heavily based on enterprise responsibilities: the government owned companies themselves have responsibility for the welfare of their workers for life. With economic changes, China is trying to move to something more similar to our three pillar arrangements, where there is a state responsibility, a company responsibility and a personal responsibility. The MOU is the start of that process. I believe it will be many years before China’s own system is sufficiently developed to assist future migrants from China, but certainly as a principle it exists. I will come back to that.

With Vietnam, we do not yet have a memorandum of understanding. We are about to negotiate that over the next few days and hopefully finalise that. Again, in a similar way, Vietnam is revamping its social security system to try and encourage personal and industry contributions to agreed funds, whereas at the moment it tends to be the same enterprise or private savings systems.

Our criteria for agreements with countries are essentially around reciprocal arrangements. Where there is a mutual benefit to be achieved we are very interested in entering into those agreements. There is certainly the potential for reciprocal arrangements with both those countries. I think though it will be some years before the systems are sufficiently developed to make it worthwhile on both sides for us to proceed, but we are certainly interested.

CHAIR—I appreciate that. I should make it clear I suppose that once a person migrates to Australia and becomes an Australian citizen, if we are willing to accept people as citizens, we take on all the rights and responsibilities of a government vis-a-vis them under our laws, so we cannot, in a sense, be going back upstream to too great an extent. The fact that these countries do get aid is because largely, generally speaking, they are quite poor, so we should not be too stingy, I suppose.

Mr Barson—Most countries other than Australia have contribution based systems, so we are very interested in enabling people who do move here to recover the contributions that they have made to those systems. Some countries do not allow those contributions to be paid outside the country without a social security agreement, so these agreements do become very important. Switzerland, for example, where we are negotiating but are not yet finished, does not allow its

pensions to be paid outside its borders to former residents except where a social security system exists. So the income we are able to release for Australian residents not only offsets any costs of pensions that may be payable but also produces a net benefit to those people.

Mr BYRNE—With respect to the dispute resolution mechanism, if someone—say a person from New Zealand—has some level of concern about the payment, how do they get a resolution? Is it through Australia or is it through New Zealand? How is that done?

Ms Carrick—If they have a question about their entitlement, it just clarifies it—

Mr BYRNE—Or a variation of their entitlement, for whatever reason, as a consequence of some policy that the New Zealand government may bring down.

Ms Carrick—If they are residing in Australia, if it was a question about the Australian component of their pension, they would use the Australian dispute resolution mechanisms; if it is the New Zealand part, they would access it through the New Zealand social security system facilitated by us in Australia.

Mr BYRNE—Are they fairly similar in how the Australian system of pension support, et cetera, and the New Zealand system operate?

Ms Carrick—Yes, very similar.

Mr BYRNE—So there are no anomalies at all that might create some level of difficulty?

Ms Carrick—Not to my knowledge.

Mr Watts—We have tried to iron out in the agreement any differences there were.

Mr BYRNE—So there are some symmetries. In terms of a catchment of how many people are involved in receiving pensions from other countries that are not parties to this agreement, do we have a rough costing?

Mr Barson—This is Australian residents who have come from other countries who do not have this sort of agreement?

Mr BYRNE—Yes.

Mr Watts—I am sorry, of all the statistics I have brought—

Mr Barson—I would be quite happy to get back to you. That is not a difficulty.

Mr BYRNE—Could we also have it by country as well?

Mr Barson—Certainly. I do have that, Senator. If this were an estimates committee, I would have it at my fingertips, but I do not at the moment.

Mr BYRNE—I appreciate that. Thank you.

Mr HAASE—Are there any parties that are disadvantaged by this treaty and in what way are they disadvantaged? On the other side, is there any particular group that will be significantly advantaged?

Mr Barson—Anybody who is in receipt of a benefit under the existing agreement will continue to receive those benefits, so they are protected. There are no changes for those people. People who become eligible under the future agreement similarly get access to the full benefits of that agreement. So, no, we do not believe that there are any people who are disadvantaged by the changes to the agreement. There are some changes such as arrangements around payment of disability support pensions where, by agreement between both countries, the reciprocal arrangements are defined in terms of severe disability. But that does not affect the person's entitlement within their own country to claim the full range of benefits. It is merely a mechanism of reciprocity rather than the person's entitlement to a benefit—so, no.

Mr HAASE—No on both counts.

Mr Barson—No on both counts.

Mr BYRNE—Sorry to cut across, but if that person became an Australian citizen there would then be some diminution of the benefit that is paid because of the differential. You just mentioned, for example, a person who was on the disability pension and you were saying that, where we might categorise a particular component, they had to have a certain level of disability before they would qualify for a particular benefit. Are you saying it is different in New Zealand compared to Australia?

Mr Barson—What I was saying, poorly, was that the arrangements of the agreement for cost sharing only apply to people with severe disabilities. The other arrangements for a person with a milder disability relate to the domestic laws of those countries. So a person who is permanently resident in Australia is fully entitled, as they have been.

Mr BYRNE—In New Zealand as well.

Mr Barson—In New Zealand. It is the arrangements in the agreement around cost sharing and the pension under the agreement is defined as 'a person with severe disability'. This is to bring in line the legislative provisions on both sides, and I should say that is the same as our other shared responsibility agreements.

CHAIR—We will accept that evidence—thank you kindly. I call witnesses to give evidence on the third of the agreements, which is the agreement with Germany on Film Co-Production.

[11.01 a.m.]

MORRIS, Ms Megan Philomena, General Manager, Film and New Media, Department of Communications, Information Technology and the Arts

SALMOND, Dr Paul Douglas, Manager, Film Industry Section, Department of Communications, Information Technology and the Arts

CHAIR—I welcome witnesses from the Department of Communications, Information Technology and the Arts. We also have present again Ms Stern from the Department of Foreign Affairs and Trade and Mr Atwood from the Attorney-General's Department. I have to warn you that these are legal proceedings of parliament as if they were taking place in either chamber, so the giving of any false or misleading evidence is a very serious matter. Would you like to make an opening statement and then we will have some questions?

Ms Morris—I do not have an opening statement prepared.

CHAIR—Then speak extempore. Tell us in layman's terms why on earth we need an agreement with Germany about films.

Ms Morris—We have agreements already with several countries, including the United Kingdom, Canada and Italy. We also have memoranda of understanding with some countries. We already have two films that have been produced under a memorandum of understanding with Germany. Surprisingly enough, we do a lot of film business with Germany. It is one of our major export markets for film product, and we already receive a large amount of German investment in film and television productions made in Australia. Basically, a film co-production agreement is just one avenue for a producer to explore in terms of financing a project, and it allows equal access to whatever rights or obligations apply to film product in both signatory countries.

CHAIR—If we develop another piece of property jointly with a company in another jurisdiction—for example, a graphic or whatever—why do we need a treaty for films? Is it because of the tax arrangements?

Ms Morris—It is access to whatever benefits are available in both countries. In our country, they would have access to direct subsidy through the Film Finance Corporation. It would not be automatic; the application would be assessed against other competing applications, but it would qualify as a qualifying Australian film so therefore could apply to the Film Finance Corporation. They could also have access to tax benefits, although I note that both divisions 10BA and 10B have not been used very much for film co-productions. The final thing that is of relevance is that it can qualify as an Australian production for the purpose of the Australian content standard. So on the German side, a co-production would have access to whatever tax benefits are available there and direct funding, and it would count as a German production for the purpose of German content regulations. With television productions, in particular, that can have a huge impact on the licence fee paid by the network that wants to screen it in either

country. If it is a qualifying film and it counts for quota, you are more likely to get a good price for it and recoup your costs.

CHAIR—Now it is beginning to make sense. Kim, were you interested in asking questions?

Mr WILKIE—Yes. When you said there was a considerable amount involved in the films, what do you call a considerable amount? What sort of dollars are we talking about?

Ms Morris—I am trying to remember when I used the term ‘considerable amount’ and what I was referring to. Do you want to know how much is being spent on co-production?

Mr WILKIE—Just vaguely what the impact is financially.

Ms Morris—For Australian film-makers?

Mr WILKIE—Yes.

Ms Morris—I will give you a bit of background first before I try to answer that. I would say that film co-productions exist as a framework under which someone can make a movie, but they are not always accessed. There may be one production made under a treaty every two or three years; there may be a few made. It has to be a story that works in both countries, and those sorts of stories do not come up all the time—and in Australia we do not have a huge industry. The Film Finance Corporation would probably subsidise two television miniseries a year. One was screened last night: *My Brother Jack*. And we produce about 20 feature films a year, so the chances of there being a story that is going to resonate with both German and Australian audiences to the extent where both countries want to put official money into it—it is not that common but the framework is there if a producer thinks that it is a good avenue to use.

We do have two movies that have already been produced under the memorandum of understanding. In terms of the money, it is a bit hard to know. It can vary from year to year, and it depends what is being produced under it. The average budget for an Australian feature film is around \$2 million or maybe \$3 million. A co-production can allow for a bigger budget film with more money going in and the payment of actors from another country, so a co-production film can be anything from \$5 million up, but they are not always. It could be a film made specifically for TV, and they tend to be a bit less expensive, or it could be a TV miniseries. That would cost from \$2 million to \$5 million, depending on the production values. A documentary can be about \$300,000. It depends on the genre, how many and when.

Mr BYRNE—What happens if there is a third country? Say you have the two, Germany and Australia, but there is a country—do we have an agreement with America?

Ms Morris—No.

Mr BYRNE—If America comes in—

Ms Morris—No, I do not think America is signatory to any co-production.

Mr BYRNE—On a theoretical basis, how does that arrangement work? What if they have a partnership with Germany? What happens with respect to restrictions that are placed on them?

Ms Morris—I do not know if my colleagues from DFAT can give a clearer answer to this. Do not feel obliged to answer it.

Mr BYRNE—Do you want to take that on notice?

Ms Morris—I could try to answer it, but I think I would prefer to take it on notice.

Mr BYRNE—Okay.

Ms Morris—I will take it on notice and give you an answer that we would all be satisfied is correct, but my suspicion is that it would have to do with the nature of the arrangement that the Americans had with the Germans. I think in many cases it would prohibit it being considered as a co-production agreement with Australia. The Australian Film Commission has an advisory committee that comprises all the local industry lobby groups like the actors union, the producers association—

Dr Salmond—The industry advisory panel.

Mr BYRNE—Do you want to take this on notice?

Ms Stern—I am happy to take it on notice. I certainly did not want to interrupt. We were just discussing between ourselves that there is a provision in the treaty that does deal with third countries, but we can defer to DCITA on that. I am happy to take it on notice and get a formal answer back to you.

Mr BYRNE—Are we moving towards some sort of agreement like this with America at all?

Ms Morris—No.

Mr BYRNE—For what reason?

Ms Morris—First of all, America does not actually need an agreement like this with anyone. I do not think anyone has a film co-production agreement with America. It basically enables participating countries to get bigger budgets, share talent and try and maximise revenues from what happens (a) in a way that America does not need and (b) when there would be no point doing it with America.

Mr BYRNE—What other countries are we then targeting on a similar basis to form an agreement?

Ms Morris—I would not say that we actually have a sign-up schedule or a target, and we probably already have treaties with those countries with whom we would be doing the most business. By that I mean other English speaking countries with reasonably sized film industries, like the UK and Canada, and either countries that have good investment infrastructures for

investing in Australian product and traditionally buying Australian product—and I understand that a lot of the European cable networks are based in Germany, which is one reason they buy a lot of our product—or countries with whom we have a longstanding relationship because of large migrant numbers here, like the one we have with Italy, for instance. There is also the provision to have one-off productions made, and one-off agreements.

Mr HAASE—The first question I had pertained to censorship and how this treaty might require German film-makers to work within, or otherwise, Australian censorship laws and vice versa. Is there a portion of the treaty that covers acceptable production?

Ms Morris—Within our own funding arrangements in Australia we do not explicitly apply censorship laws, rulings or whatever to anything, but any product invested in by the Film Finance Corporation must have what we describe as market attachment: there must be a distributor who is prepared to take on the production and sell it somewhere. That in a way acts as industry self-censorship of what is invested in.

Mr HAASE—I take it that this agreement would benefit other film producers—those not necessarily seeking Film Finance Corporation funds. You have mentioned much of funding these joint ventures, but the tax relief would be very attractive for some commercial group wanting to come and produce in Australia.

Ms Morris—Yes, it could be, though—as I said earlier—we found that the tax provisions have not recently been used as much as direct funding. It depends on what tax provisions there are in Germany and how they are being used. Some producers prefer to raise money through tax; others like direct subsidy. Either could be used; it would be up to the production at the time and the producer.

Mr HAASE—You have mentioned the exemption from wholesale sales tax—are we to take it that that applies for not applying GST to equipment being brought in as well?

Ms Morris—I would have to take that on notice, I am sorry. I assume it would, but I would prefer to check that.

Mr HAASE—What has been the response from unions? You have at point 20 some information, but generally speaking what has been the reaction from various union memberships?

Ms Morris—On the German co-production agreement in particular?

Mr HAASE—Yes.

Ms Morris—They were all consulted in the preparation of this treaty and have supported it.

Mr HAASE—They have supported it?

Ms Morris—Yes.

Mr HAASE—So it does not raise any issues of Australian actors being replaced or displaced?

Ms Morris—We do actually have a foreign actor entry scheme which the department administers for actors coming in for film and television productions, and there are well-established guidelines on how many foreign actors you can bring in for certain types of productions. They are understood and the unions have input to them whenever they are reviewed.

Mr HAASE—In that vein, I was concerned that I read that article 6 requires Australia, subject to its laws, to facilitate entry of citizens—in this case, German—for the purposes of making a film under this agreement. Could someone from the Attorney-General's Department tell me whether this treaty might clash with any laws we have restricting the entry of undesirable foreigners?

Mr Atwood—My understanding is that it would not clash because the provision here is expressed to be subject to our already existing domestic laws and regulations. That deals with the interaction and allows our existing immigration requirements and processes to be fully administered.

Mr HAASE—It does not clash?

Mr Atwood—That is my understanding.

Mr HAASE—It does not override?

Mr Atwood—That is right.

Mr HAASE—What are the other countries that we have similar agreements with at this stage?

Ms Morris—The United Kingdom, Canada and Italy, and we have memoranda of understanding with New Zealand and France. We previously had an MOU in place with Germany and are now moving to a treaty, and we have also signed with Ireland and Israel.

Dr Salmond—And we have had a one-off arrangement with Vietnam.

Mr HAASE—So it is an extensive list.

CHAIR—We should clarify at this point what is the legal status of memoranda of understanding and memoranda of agreement in terms of the obligations in international law. Are they binding on Australia? What are they?

Ms Stern—Memoranda of understanding are not legally binding at international law. They express a moral and political commitment on behalf of the two governments that have negotiated them but they are not legally binding. They differ clearly in that respect from treaties like this one.

CHAIR—I would have thought so. So they are done for the purpose of ministerial theatrics—speaking as a former minister; let us be blunt—or to demonstrate to the industry that some tremendous activity is under way and to inspire confidence and foster leadership?

Ms Stern—They can be done for a number of reasons—the one you cite may possibly be one in some cases. Sometimes it depends on the nature of the subject matter. There is some subject matter that is, if you like, administrative or policy in nature and perhaps lends itself to a memorandum of understanding.

CHAIR—We could go into that at great length, but we had better not do it today.

Mrs DE-ANNE KELLY—Thank you, Ms Morris, for that overview. What films have we made cooperatively with Germany?

Ms Morris—Under the memorandum of understanding?

Mrs DE-ANNE KELLY—Yes, ones that we would know of.

Ms Morris—I would not say they are ones that I know very well.

Dr Salmond—Neither have been released.

Ms Morris—Neither have yet been completed and released. There is one called the *Prisoner of St Petersburg*—that was made in 1990, so it must have been released. There is also a telemovie about backpackers called *Backlands*, which has not yet been released.

Mrs DE-ANNE KELLY—That does not sound like a lot, does it?

Ms Morris—No, but I do not find that a surprising number.

Mrs DE-ANNE KELLY—I am not being at all negative about the treaty but I notice that the objectives are to promote Australian culture and to enrich the cultural life of all Australians. Was the prisoner of St Petersburg an Australian? I do not quite see the significance to Australia; I am just a bit lost.

Ms Morris—I am sorry but I cannot actually answer that because I have not seen the movie and I do not know much about it. Every co-production is either a majority or a minority, which is the terminology used. We have put money into some productions that have had very little Australian content, or none at all, but in which some of the key creators involved were Australian. So there was some Australian money put in but the majority of it came from another country. It allowed, say, Australian directors, scriptwriters, or whomever to work on quite a big project with a high international profile. Some of the ones I am thinking of in that category are, for instance, *Black Robe*, which is a Canadian movie—and which I think the Canadians would describe as seminal—that had an Australian producer and an Australian director. There was also *Map of the Human Heart*, which was another Australian-Canadian production. There was an Australian actor in it but with a very small part, and not recognisably Australian. We had

minority funding in for those two cases, but they provided opportunities for the Australians involved and we also recouped something from them.

Mrs DE-ANNE KELLY—So if we invest in those films, then there is revenue back to Australia?

Ms Morris—If they make money, yes.

Mrs DE-ANNE KELLY—Do most of them make money?

Ms Morris—One of our very successful film co-productions was *Green Card*, which cash flowed an awful lot Film Finance Corporations.

Mrs DE-ANNE KELLY—I noticed that Dr Salmond mentioned Vietnam, was it?

Ms Morris—Yes.

Mrs DE-ANNE KELLY—Are we likely to co-produce much with Vietnam?

Ms Morris—We made one co-production with them in a one-off agreement for the sake of that production. I would not have thought that we would do a lot. Because of language differences they are not a buyer of Australian product, but there was obviously a story that was there for the telling and it worked for one production. That is the nature of a co-production agreement. It is not that you have an agreement in place and suddenly you run around looking for things that you can make. They work for some projects and they do not work for the majority of projects but, when they work, it is of benefit to the producer.

Mrs DE-ANNE KELLY—Thank you.

CHAIR—We will finish it there. Ms Stern, would you like to add something to an answer?

Ms Stern—I would like to go back to Mr Byrne's question earlier on in relation to third countries. I know that this question was taken on notice by DOCITA, but article 5 of the agreement to which I would draw your attention says that under this agreement it is possible to approve as co-productions film productions made between co-producers of Australia, Germany and a third country.

Ms Morris—There are provisions for third countries but I was loath to explain the detail.

Mr BYRNE—It was stipulated in article 5, which is what I was referring to. Can I then go into a hypothetical or do you want to take that one on notice?

Ms Morris—I will hear it.

Mr BYRNE—What then happens if, say, Australia has a problem with the third party that the co-producer has an arrangement with and wants to bring in—I guess you could say the venture does not, but is there some sort of mechanism then?

Ms Morris—Yes. Do you want to talk to this?

Dr Salmond—They would all have to be approved by the Australian Film Commission to meet the co-production criteria, and that would obviously be something they would consider.

Ms Morris—The Australian Film Commission has an industry advisory panel that it consults on all productions. If the third country or the third partner meant that it was leaving Australia exposed in some way—leaving the deal exposed financially, culturally or was compromising the creative integrity of the project or whatever—then the AFC would not approve.

Mr BYRNE—Are you aware of any recent arrangement where that has come in and where article 5 has been applied?

Ms Morris—No, but I could check that and include it. I will roll it into the question on third parties.

Mr BYRNE—Thank you.

CHAIR—Thank you for the evidence. We will consider it at our private meeting.

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

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

Committee adjourned at 11.23 a.m.