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JOINT STANDING COMMITTEE

on

FOREIGN AFFAIRS, DEFENCE AND TRADE

(Human Rights Subcommittee)

Reference: Hong Kong's transfer to Chinese sovereignty

CANBERRA

Wednesday, 13 November 1996

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

(Human Rights Subcommittee)

Members:

Mr Nugent (Chair)

Mr Hollis (Deputy Chair)

Senator Bolkus

Senator Bourne

Senator Chapman

Senator Harradine

Senator Schacht

Mr Barry Jones

Mr Lieberman

Mr Price

Mr Slipper

Ms Worth

Matter referred to inquire into and report on:

the future of democratic political structures in Hong Kong after the transfer of sovereignty;

the protection of human rights in the territory of Hong Kong as established by the United Nations Charter, the international human rights covenants, relevant United Nations General Assembly resolutions and the Hong Kong Bill of Rights;

the impact on the implementation of human rights protection of the Joint Declaration made by the United Kingdom and the People's Republic of China and the Basic Law enacted by the People's Congress of the People's Republic of China and subsequent negotiations between the United Kingdom and the People's Republic of China;

the condition of the remaining asylum seekers and the repatriation of those screened out under the Comprehensive Plan of Action for Indochinese Refugees;

the future status of those whose citizenship of China or a third country, or right of abode in Hong Kong might not be assured;

the implications for Australia of the transfer of power from the United Kingdom Government to the Government of the People's Republic of China.

WITNESSES

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BUFFINTON, Ms Fiona Kathryn, Manager East-Asia Regional Support Office, Austrade, PO Box 2386, Canberra City, Australian Capital Territory 2601	34
BUGDEN, Mr Laurence Kenneth, Assistant Secretary, Refugee and Humanitarian Branch, Department of Immigration and Multicultural Affairs, Chan Street, Belconnen, Australian Capital Territory	74
CHEY, Dr Jocelyn Valerie, 7 Rosetta Avenue, Killara, New South Wales 2071 ...	50
FISHER, Mrs Denise Margaret, Director, Hong Kong, Macau and Taiwan Affairs Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221	2
.....	49
.....	88
FORSYTHE, Mr Peter John, Executive General Manager East-Asia, Austrade, PO Box 2386, Canberra, Australian Capital Territory 2601	34
HUMPHRIES, Mr Leslie Peter, Executive Officer, Hong Kong, Macau and Taiwan Affairs Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221	2
LAMB, Mr Christopher, Legal Adviser, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221	2
LEIGH, Ms Kathy, Senior Government Counsel, International Civil and Privacy Branch, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory	65
PERGAMINELIS, Ms Maria, Executive Officer, Hong Kong, Macau and Taiwan Affairs Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221	2
.....	88
RIZVI, Mr Abul Khair, Assistant Secretary, Migration and Temporary Entry Branch, Department of Immigration and Multicultural Affairs, Benjamin Offices, Belconnen, Australian Capital Territory	74

SIMMONS, Ms Catherine Jane, Desk Officer, China and Mongolia Section, Department of Foreign Affairs and Trade, John McEwen Crescent, Barton, Australian Capital Territory 0221	2
SULLIVAN, Mr Mark, Deputy Secretary, Department of Immigration and Multicultural Affairs, Chan Street, Belconnen, Australian Capital Territory	74
TOMKINSON, Ms Corinne Denise, Executive Officer, Human Rights and Indigenous Issues Section, International Organisations Branch, Department of Foreign Affairs and Trade, John McEwen Crescent, Barton, Australian Capital Territory 0221	2
WHEEN, Mr David George, First Assistant Secretary, Multicultural Affairs and Citizenship Division, Department of Immigration and Multicultural Affairs, Chan Street, Belconnen, Australian Capital Territory	74

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE
(Human Rights Subcommittee)

Hong Kong's transfer to Chinese sovereignty

CANBERRA

Wednesday, 13 November 1996

Present

Mr Nugent (Chair)

Senator Bolkus

Mr Sinclair

Senator Bourne

The subcommittee met at 9.36 a.m.

Mr Nugent took the chair.

FISHER, Mrs Denise Margaret, Director, Hong Kong, Macau and Taiwan Affairs Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

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TOMKINSON, Ms Corinne Denise, Executive Officer, Human Rights and Indigenous Issues Section, International Organisations Branch, Department of Foreign Affairs and Trade, John McEwen Crescent, Barton, Australian Capital Territory 0221

CHAIR—I declare open this public hearing of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade and welcome the witnesses. The subcommittee is inquiring into Hong Kong's transfer of sovereignty from Britain to China on 1 July 1997. This is the first public hearing in this inquiry. Other hearings will be held in other parts of Australia in January, February and March. The committee will also visit Hong Kong in January next year for meetings and discussions with a variety of relevant individuals and organisations. The committee expects to table its report on this reference in June next year, if not sooner.

The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give any evidence in private you may do so and the subcommittee will give consideration to your request. I invite you to make a short opening statement before we proceed to questions.

Mr Lamb—Thank you, Mr Chairman. I will not do more than say that we are very grateful for the opportunity to be here. The department has made an extensive submission to the committee. It might be better if we allowed that statement to speak for itself and took as many questions as we could in the time that is available from the members of the committee.

We, of course, work very happily in and with parliamentary committees and look forward to working with the committee as it develops its thinking here. I am sure that there will be other issues that will come to your attention as you interview others and have other hearings. If you would like to return to us at any stage with more questions we would be only too happy to cooperate in filling out the knowledge that we can, and making available our other resources to bring information to your attention as you need it. Perhaps Mrs Fisher, from her vantage point in the Hong Kong, Macau and Taiwan section will be able to say more.

Perhaps I should say one brief thing about myself: the multilateral side of the Department of Foreign Affairs and Trade's work is one that is close to me and to my colleague Ms Tomkinson beside me. We have responsibility for the way Hong Kong fits into the larger multilateral scene, and the way some of the human rights issues are dealt with. With Hong Kong that is something that we think we might be able to offer some expertise to the committee on, as well, in cooperation with our colleagues from the bilateral desk.

Mrs Fisher—I thought I would firstly tell you, how we approached the preparation of the submission, and, secondly, update a few things that have happened since we gave you that submission. We then welcome questions on any aspects of it.

The main thing that we think should be borne in mind about Hong Kong is that it is not a static economy. For over 150 years, at least, it has had to adjust to a number of changes. Most recently, we have seen a lot of change just in the structure of its economy. Fifteen years ago, Hong Kong was basically a manufacturing centre. Now, we find that it is a service centre: over 80 per cent of its economy is contributed to by the services industry. It is an international services and monetary centre and certainly not just a gateway to China, as it has often been talked about. It has taken on this challenge and been able to cope with this change with resilience and ingenuity.

Equally, our relationship with Hong Kong is a dynamic one. It is not static. A very quick example is that while it is our eighth largest export market, what has happened recently is that the structure of that market has changed quite substantially. It is our fourth largest market for manufactured goods, as opposed to commodities, and it is our sixth largest services market. We are right there at the edge of where it is changing. We have a very large business presence compatible with those statistics which gives us quite a stake in looking very closely at elements of the transition and preparing for it to protect and promote those interests.

So, the terms of reference that came to us from you were very interesting because we see it very much in the context of change. Yes, this change on the 1 July next year does bring with it a number of uncertainties. There are going to be changes. How could we provide something useful to the committee that is not crystal ball gazing? The fact is that both China and the United Kingdom have made some unprecedented and historic

undertakings for China about what might happen to Hong Kong beyond 1 July. These are enshrined in some documents, one of which is the Joint Declaration between China and Britain which is lodged with the United Nations as a treaty and subsequently, put into the China's Basic Law. These are legal undertakings and very detailed undertakings. So those are our starting points.

Since we gave you that fairly extensive submission, which we hope gave you a snapshot of where things were, there have been a few recent developments. Things are moving very quickly as we enter the last eight months of the process of preparation for the transition. The selection committee has been formed now to appoint the chief executive consistent with the parameters of the Basic Law and the Joint Declaration. That announcement should be made by 11 December.

Equally, China is pushing ahead on a somewhat less acceptable idea, from the international community's viewpoint, of forming a provisional legislature to help it to prepare for the mid-year transfer of sovereignty. The same selection committee is looking at appointing various members of that provisional legislature which is to start to meet informally in January of next year. Qian Qichen is coming to Hong Kong on Friday to take that process a step further.

Separately, in Geneva last week, the United Nations Human Rights Committee considered a report from Britain on Hong Kong. There has been a regular requirement for Britain under the various conventions to report on Hong Kong. It last did so in 1995, but the committee had asked the United Kingdom to submit a supplementary report on Hong Kong, which it did in June. We are happy to provide a copy of that to the committee if that assists you. Last week, the Human Rights Committee debated that report and made some conclusions about it. The supplementary papers bring you up to date on the various elements of your terms of reference. That is all I would like to say to start out with.

CHAIR—Thank you very much. It is very difficult to know where to plug in the first question in many ways, but I think the first question that I would like to start off with is in terms of the legislative council which has been a matter of some controversy internationally for some time. After the agreement was signed between Britain and China, Governor Patten made some changes to the way that the council was elected. Of course, as I understand it, the future of that council is, as you have just mentioned, going to be changed under the Chinese government system. And yet, given that the original agreement said that the LegCo would continue, the changes that Governor Patten made appeared to be fairly minor. I wondered if you could perhaps tell us how you would characterise those changes, the degree of democratisation involved in those reforms that Governor Patten introduced, what are the objections of the Chinese perhaps, did his changes comply with the Basic Law? Perhaps give us a perspective on those issues concerning the changes that Governor Patten has made and why they seem to be a problem for the Chinese government and they have gone down a different route.

Mrs Fisher—On his appointment it was quite clear that Governor Patten wanted to take things a lot further in Hong Kong in terms of representative government than had hitherto taken place. He decided in early 1992 to move ahead on making some adjustments to the basis on which the 60 members of the Legislative Council were appointed/elected. Up until then there had been a mixed system of appointment and election on the basis of various functional and geographical constituencies. The British initiated a number of discussions with China about reforming the electoral system. In fact, they had something like 18 meetings and they basically could not achieve any agreement at all. China felt that the agreement it had entered into in 1984 - the Joint Declaration - applied to the status quo ante 1984, a continuation of the LegCo arrangements as of that date. What the British were proposing went, in their view, well beyond that.

It is interesting that the changes that the Patten reforms made to the LegCo itself were actually not all that different to what the Basic Law provides. So before 1992 you had 18 people directly elected from nine two-member constituencies, 18 appointed by the governor and 21 elected from functional constituencies—there were 15 of those. The 1992 reforms provided for 20 seats directly elected from single seat constituencies, which was a change, a much more representative arrangement, 10 appointed by an election committee, which is composed of the district boards, and 30 by the functional committees, which he reduced to nine. He rationalised them somewhat so that the greater weight was with the geographical constituencies and the election board.

At the same time Governor Patten introduced measures to provide for representative election of the district boards. We then had the first elections of the district boards where some pro-democracy people won the majority of the seats, and it was those district boards which then contributed to the election of the LegCo—at least of 10 seats, anyway. So, once you had the elections in 1995, what you found was that the composition of the resulting Legislative Council did include many more ‘pro-democracy’ candidates. It was a very interesting result because you had quite a large number of successful ‘pro-democracy’ candidates—29 out of 60—and the remaining candidates were basically either what is loosely termed as ‘pro-China’ groupings or business, which is largely defined as being fairly politically neutral. In an annex to China’s Basic Law, a decision by the National People’s Congress elaborates on how a legislature after mid-next year might be elected, might evolve. It is not very specific, but it does talk about 20 elected from geographical constituencies, without definition, 10 appointed by a committee and 30 by functional constituencies, which is not, one could argue, all that different to what Governor Patten had put forward. But Governor Patten had put forward these other amendments to the district board elections and so on, other reforms which, when combined, produced a different kind of result.

The other thing the governor did was to remove himself as the executive, and to have a president elected from amongst the LegCo. So what happened was the LegCo, instead of becoming part of the governor’s team, became almost a mini-opposition to the governor. China maintained that this was not ball, it was not what it had signed up to in

1984. The National People's Congress in fact passed a resolution saying that they would dismantle that legislature accordingly on 1 July and set in place some sort of provisional legislature.

CHAIR—What Patten did, is that really within the agreement, spirit and/or letter?

Mrs Fisher—There are two ways of looking at this: political and legal. Legally the question has been asked, and I understand that the Democrats have been considering whether or not to get legal advice on that question—that is, whether the provisional legislature is consistent with the Basic Law and the undertakings in the Joint Declaration. I know that the UK government has been looking at the same question, but we have not seen any resolution of that question legally. The real effect, of course, is the political effect.

CHAIR—In terms of that election, given that, as I understand it, there was about 35 or 36 per cent participation in the vote, what degree of legitimacy can you therefore attach to that outcome?

Mrs Fisher—In terms of global turnouts, that is in fact not a bad turnout if you look, for example, at US elections and other elections—

CHAIR—I think even the US got 49 per cent, didn't it?

Mrs Fisher—I do not know but even so, if you look globally other than at Australia which has, of course, compulsory voting, it is not—

CHAIR—We will not go into compulsory voting here.

Mrs Fisher—all that low. But certainly, by the standards of Hong Kong up till then—and admittedly Hong Kong had not had much experience with representative government until then—that was actually quite high, over 35 per cent.

CHAIR—You mentioned the democratic parties have done a lot better. How well organised are political parties in Hong Kong, how many are there, and what are their strengths?

Mrs Fisher—The notion of a political party is a somewhat new notion, historically speaking.

CHAIR—Okay. Did you want to pick up some questions?

Senator BOURNE—In that general area, yes. You may not want to answer this in public. As to the possible chief executive, I see Anson Chan has ruled herself out and there was an article on AAP this morning that Peter Woo has ruled himself well and truly

in. Does the department have any views on where that is probably going, and who in Australia's view would be particularly good or particularly bad?

Mrs Fisher—We do not have a position on this. This is something that is for Hong Kong to work out.

Senator BOURNE—Exactly. But do we have a view on who—I should not be asking in public, I suppose—is there anyone we should be watching out for as being a potential real problem as a chief executive?

Mrs Fisher—The process so far has elicited a list of contenders. We do know that out of that list there are maybe four who are serious contenders, one of whom is Peter Woo. We know that there are others around who have expressed a very strong interest in the position, and we know, for example, that Mr C.H. Tung has been a business person who has been very widely talked about in the media as being one of the strong contenders. But we certainly do not have a position on that. We will be interested to watch the process and see what results.

Senator BOURNE—Right. I have a couple of other questions on how you think the Basic Law will work. The Chinese constitution itself guarantees certain rights, but when I have been there certainly it has looked as if those rights that are guaranteed under the constitution just have not existed in many cases. The Basic Law goes further and quantifies the rights better and uses it as a basis—the ICCPR and the ICESCR—to some extent. Do you think that those rights will in fact be covered over the next 50 years—I suppose we can't really tell past there—but, at least over the next few years, do you think that the Basic Law will in fact allow the basic rights that you do get under those covenants?

Mrs Fisher—I should have added in my opening comments that, of course, China and Britain have signed on to the Joint Declaration, and China has made these undertakings its domestic law through the Basic Law. But we do not know how they will be implemented. The starting point of Australian policy is that these undertakings will be adhered to.

Senator BOURNE—Yes, and we have to assume that, although having seen what is enshrined under the Chinese constitution and what is allowed, there is a big difference, unfortunately.

Mrs Fisher—It is worth noting that what we base our policy on is the maximum continued autonomy for Hong Kong in all matters except for foreign affairs and defence for 50 years as provided for in the Basic Law and the Joint Declaration. This is specifically enumerated in those two documents, that the free way of life of Hong Kong will continue.

Senator BOURNE—And the capitalist system, yes.

Mrs Fisher—And the capitalist system. So we will be certainly, and we have been certainly, in our approaches to the various governments involved, urging that those commitments be adhered to.

Senator BOURNE—Yes. Just one more question, if I can, before Ian leaps in. I am particularly interested in whether you think the media will come under subtle or not so subtle pressure for self-censorship, or indeed censorship, as it stands. Equally, too, with the judiciary and with the unions, how heavy do you think the pressure will be to change those three institutions to make them far more like China and less like Britain?

Mrs Fisher—As we have said in our submission, there has been a lot of talk and discussion in the media about so-called self-censorship of the media. We were interested when Anson Chan, the Chief Secretary, came to Australia recently. One of her very strong messages, including in a presentation she gave to the Press Club, was that the onus is on the citizens of Hong Kong to maintain the autonomy which is guaranteed to them under these two basic documents, and she specifically exhorted journalists to be aware of that need. She also, incidentally, made a strong comment in favour of the role of foreign journalists.

As far as the judiciary is concerned, we had urged the parties involved to resolve a longstanding difficulty over the last few years over the Court of Final Appeal arrangements. When both sides, Britain and China, came to an agreement mid last year, we welcomed that resolution of what was a very difficult issue but a vital one for the continued notion for business, particularly, of an independent judiciary.

Senator BOURNE—If I remember from your submission, the final court of appeal is now still in Hong Kong. Is that right?

Mrs Fisher—It is in Hong Kong. Up till now it has been the Privy Council in London but, as part of this whole process of localising and adapting legal arrangements, this special Court of Final Appeal was agreed.

Senator BOURNE—It has been accepted, though, that it will stay.

Mrs Fisher—And it will be in Hong Kong. It will make decisions in all matters other than matters of state which are defined as foreign affairs and defence and specifically excluded under the Basic Law. But Christopher has a much more experienced legal mind than I. Do you have something to say on that?

Mr Lamb—Denise, that is very kind. I will just offer a very short comment on all this. There is a lot of concentration, of course, on the way one country-two systems means political systems. But it also means legal systems. So you have to have in your mind that

across the border in China there will be a completely different legal system for the next 50 years. Within Hong Kong there will be the common law legal system and tradition that has grown up in Hong Kong in its own Hong Kong way, not a pure British way, over the years of the colonial history. Just as we have had our own common law system evolve in our Australian way, so they have had theirs. That will continue. But that brings with it some things which are natural within the common law system: the independence of the judiciary; the independence of prosecutors; the ability to defend in an adversarial trial in the way that we are familiar with here—trial by jury.

Senator BOURNE—And you can still get a lawyer straight off, and you do not have to wait—

Mr Lamb—Not only can you still get a lawyer, but foreign lawyers who practise in Hong Kong now will be able to continue to practise according to the law, as they can in other jurisdictions. I should think it is probably easier for foreign lawyers to practise in Hong Kong than it is for them to practise in Australia. It is difficult to know where to throw stones on an issue like this one. But the one country-two legal systems point I think is immensely important, looking at the way other safeguards will be protected as Hong Kong evolves.

Senator BOURNE—I know that when I was last in Shanghai, which was 1992 or 1993, they were trialling a system whereby you could get a lawyer before you actually were in the courtroom, which was a real step forward. They were thinking of whether that should go further out than Shanghai. Obviously it will be allowable under Hong Kong. I do not suppose you have any feel for whether this could spread to within China?

Mr Lamb—It is one of the most interesting questions to look at. One of the larger points of inquiry about Hong Kong is what might go wrong in Hong Kong over 50 years. I am not suggesting that is a valid point of inquiry, but it is equally valid to ask how, when you have one country and two systems, the two systems help each other to grow.

Senator BOURNE—Exactly, yes.

Mr Lamb—There are significant areas where that can happen.

Senator BOURNE—Yes, and especially when it is coming from inside China as well.

Mr Lamb—Denise made the point that Hong Kong is a dynamic situation growing as we think about it. So too is China. The capacity of China and Hong Kong to share with each other as their two systems make one country is something which will be really quite riveting for the next 50 years.

Senator BOURNE—I hope so.

Mrs Fisher—It has been very interesting to talk to people I am sure the committee will be talking to in the monetary area, for example. On the commercial law side there has been a lot of contact both ways—cross-fertilisation, if you like. I do not think one should be too starry-eyed about it, but there certainly has been a lot of visits to Beijing from certain people in Hong Kong. The signs are that the Chinese are listening and want to understand more about how Hong Kong works. That may well have an effect on China.

Senator BOURNE—I hope you are right. And the unions? Do you have a view on—

ACTING CHAIR (Mr Sinclair)—Do you mind if we stay on the law for a few minutes, Vicki? My apologies for being late. I had to go to Sydney for a function. I want to say three things about the law. I think your observation, Chris, about it being easier for foreign lawyers to practise needs to be tempered by the view that you just about had to be admitted to one of the Inns of Court of the British bar until very recently. Australian graduates really could not just pick up their plate and practise as far as Hong Kong jurisdiction was concerned. I understand there has been some relaxation, but I still think there are restraints. I know Australian lawyers have a lot more difficulty in getting their local certification of practice than others, so I think you need to temper your statement there to that degree.

As far as the court is concerned, my understanding is that the new final court of appeal is going to have a capacity to invite outside judges. Could you explain how that is going to work?

Mrs Fisher—Yes. Part of the agreement was that one common law foreign judge per panel could sit with the Hong Kong judges, trying various cases—

ACTING CHAIR—Could, not would.

Mrs Fisher—Could.

ACTING CHAIR—In other words, on invitation of the court?

Mrs Fisher—On the decision of the court about the case, but I think the tradition so far has been that this occurs. There was a lot of questioning in the media at the time this decision was agreed on the Court of Final Appeal last year as to whether that means only one can sit at a time. We did a bit of research on that and we found that it was one per panel. So at any time there can be a number of panels sitting, trying various cases, which can have a foreign judge simultaneously sitting on each panel. So that was considered by some of the people we spoke to to be quite a breakthrough.

ACTING CHAIR—Is it one judge out of three, one out of five, one out of seven or what?

Mrs Fisher—I would have to check that, Mr Sinclair. I can get back to you on that.

ACTING CHAIR—When a judge sits on his own, presumably he will be a Hong Kong judge.

Mrs Fisher—It is specifically in terms of panels—more than one judge in those situations.

ACTING CHAIR—Right. How are judges going to be appointed in the future?

Mrs Fisher—There is a special commission that has been agreed upon between the two sides. As the submission says, appointments to the judiciary should be made by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. This is provided for in the Basic Law and the Joint Declaration. I have not heard any criticism of that.

ACTING CHAIR—So they will submit a panel of names?

Mrs Fisher—As in fact they do now, but the body will be called something else. It will not be called an independent commission after 1 July. It is pretty much exactly what happens now by another name.

ACTING CHAIR—Are they going to retain a system whereby their Court of Appeal, which is their top court—I thought it was on only that one that you had a panel of judges but, from what you have said, it appears it is not going to be. You will then have something like our Supreme Court, District Court, county local court, Magistrate's Court?

Mrs Fisher—It is clear that it is the Court of Final Appeal which will have the foreign judge.

ACTING CHAIR—That is right; that is what I thought. But then you do have beneath that another district court type level?

Mrs Fisher—Yes.

ACTING CHAIR—And that will be entirely made up of—

Mrs Fisher—Of Hong Kong judges.

ACTING CHAIR—Appointed in the same way?

Mrs Fisher—Yes.

ACTING CHAIR—What about a magistrate's court or county courts?

Mrs Fisher—I am not clear on that. I would have to check that.

ACTING CHAIR—Would you mind coming back to us with that?

Mrs Fisher—Of course.

ACTING CHAIR—One of the areas this committee has to look at is the indicators of whether or not the transition works. To my mind, the impartiality and the nature of the maintenance of that legal system are a very important part of it.

Mrs Fisher—Yes, we will check that for you.

ACTING CHAIR—If you could do that, that would be helpful. Back to Vicki.

Senator BOURNE—I was thinking while you were speaking that one other question on the judiciary would be whether Chinese judges from mainland China are considered to be foreign judges under that—

Mrs Fisher—I think it is under common law jurisdictions. I think that would mean no, but we can double-check that for you.

ACTING CHAIR—We had a discussion a few weeks ago with a group that calls themselves the legal committee of the Beijing government. They are quite interested in the whole process. A couple of members seemed to me to be quite interested in the processes of common law. I was quite keen to get one of the groups invited out here to try to subject a few of those members to a bit of the process of common law. We automatically think that Chinese law will dominate in 50 years time, but perhaps we could encourage a few of these people who are pretty good lawyers themselves. Clyde Holding and I had a fascinating discussion. We finished up almost cross-examining them on a series of these aspects of law, and they were more receptive. But the trouble is they have a different pattern of examining people.

Mrs Fisher—Tradition, yes.

ACTING CHAIR—They regard a person's guilt or innocence as being determined by a sort of combative procedure between the two, instead of the presumption of innocence. I think we need to look at aspects of that. That is another area that I thought we should pursue.

Mrs Fisher—Yes.

Mr Lamb—It is for those reasons that the answer to Senator Bourne's question is

not whether or not they are foreign judges but that, I would imagine, they would not have the competence in common law to be available for appointment.

Senator BOURNE—That is true. It also seemed to me when we were talking to lawyers and the judiciary in China—admittedly, this is four years ago—that they were quite keen to get experience in different systems and to see what would work best. It was still an evolving legal system in China, and they accepted that. It seems to me that Hong Kong would be a good place to at least have some sort of exchanges to see how it works.

Mr Lamb—There is quite a lot to think about in this term. I think it likely that as Hong Kong continues to develop lawyers in neighbouring China will wish to obtain competence to enable themselves to practise in Hong Kong on behalf of clients. I do not think that on 2 July 1997 very many lawyers from neighbouring China will be eligible to practise in Hong Kong, but I would be very surprised if there were not within a couple of years quite a number who had gained themselves the qualification for good professional reasons. So it is a question that will be answered by the effluxion of time, I think.

Mrs Fisher—If I could just add on the question of appointment of judges that Maria has shown me a piece of paper, which we will give you, that we have just received from the Hong Kong government, which is prepared specifically to brief people on the transition of the judiciary. It does say quite specifically, under ‘Appointment of Judges and Magistrates’:

Advice on the appointment of all judicial officers is given by the Judicial Service Commission, which is an independent statutory body.

The independent commission that I referred to earlier is replacing that Judicial Service Commission. Just to clarify further: article 92 of the Basic Law does say:

Judges and other members of the judiciary . . . shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

So that is the answer to that question. I am aware of Australian lawyers who have, under various programs, gone into China to advise the Chinese on how things are done in common law jurisdictions. An Australian lawyer lecturing at the University of Hong Kong was telling me how successful this had been in changing views. We would not want to overstate the effect because it is a very slow process, but it is certainly exposing Chinese legal officers to other traditions.

ACTING CHAIR—When do they retire? Are they appointed for life or are they appointed until they are 72 or are they appointed for a period of years? I am just looking at the Basic Law. I cannot see anything. Article 93 gives them continuity of tenure, but I do not know what their tenure is.

Mrs Fisher—This has been a subject of some debate amongst the lawyers in Hong

Kong—the conditions under which the judges should be appointed. I think it is still being worked out. You do not see it in the newspapers but, amongst the legal community, they have been debating this and wondering whether this will put the independence of the judiciary at risk.

Ms Pergaminelis—Article 89 refers to the conditions under which a judge may be removed from the court, but—

ACTING CHAIR—Yes, that is misbehaviour of the norm, but they are not the circumstances that you are obviously looking at.

Ms Pergaminelis—I am not aware of anything that actually stipulates a retirement age for the judges.

ACTING CHAIR—Perhaps you might just check that and let us know. It is probably here, I just cannot see it on the face of it. Just on the extent to which those contiguous zones of China have changed in their controls of operations—Guandong, for example—I think all those adjacent provinces virtually operate under normal Chinese law, although they have been given certain dispensations. Is that right?

Mrs Fisher—I would have to check. I just do not know enough about the way the Chinese law operates. Do you have anything to say on that, Catherine?

Ms Simmons—No, I am not sure of the details either.

ACTING CHAIR—My understanding is that a lot of Hong Kong industry has virtually moved offshore and into China and Guandong and other provinces. My general recollection is that, at the time they transferred, some special conditions applied. I am not sure of the nature of those special conditions. Presumably, as far as commercial law was concerned, there were some undertakings given. We were given some figures the other day that said that 86 per cent of the Hong Kong economy is now based on services and that essentially is because all the other industries moved off and were operating quite satisfactorily in some type of commercial sense. I do not know whether there is some dispensation in commercial law. I think it might be worthwhile for us to check to find out just what those arrangements are and whether they, in any way, mean that there is going to be three levels of commercial law or whether there is going to be one that applies in those areas where there is some type of an economic advantage being given.

Mrs Fisher—A greater China, if you like.

ACTING CHAIR—Yes, as distinct from the rest of China.

Mrs Fisher—Yes.

Senator BOURNE—Can you tell me what you think about trade unions and how they operate?

Mrs Fisher—The unions are very interesting. There are a number of trade unions in Hong Kong, and you will meet probably one of the larger groups when you go. Under the two human rights covenants that the UK signed, Britain made reservations to apply to Hong Kong under both. Under the economic and social covenant, they specifically reserved the right of trade unions to confederate. So there are some controls on the unions that now exist under British administration.

Within Hong Kong there are a number of unions, each of which takes different views on things. So, for example, one group of trade unions decided to participate on the Chinese selection committee for the chief executive and another decided, ‘No, we are not going to be represented on that.’ So there is some sort of tradition of taking political stances.

As to what would happen beyond 1997, I am not sure that there is a specific reference in the Basic Law to 1997. We can check that, but I believe not. I do not think there is any specific reference to trade unions.

Senator BOURNE—So you assume that they would keep going the way they are and see what happens.

Mrs Fisher—Yes. As Chris pointed out, that it is not a foreign affairs and defence matter. The assumption is that everything else falls under the terms of the Basic Law.

Senator BOURNE—Yes, good thinking.

Mr Lamb—My understanding on that is that the lines are fairly clearly drawn. If the thing is an internal affair it will be managed internally. The management of the trade union environment would be an internal affair.

Mrs Fisher—Since it is fairly controlled now even under the British—

Senator BOURNE—That is true, and you still have the restrictions on how many people can gather for marches and that sort of thing.

Mrs Fisher—Yes.

Senator BOURNE—Hong Kong has separate membership of APEC and a couple of things.

Mrs Fisher—Yes.

Senator BOURNE—I assume that will continue. What is the significance that you see to that?

Mrs Fisher—One of the reasons Australia, as a founding member of APEC, worked so hard in the early years of its formation to have the grouping as a grouping of regional economies rather than of countries was to accommodate the participation of both Hong Kong and Taiwan. One of the reasons we so firmly wanted them in was that they are amongst the top economies of the region. I think an unwritten assumption was that it could be quite helpful to China to have those two entities participating separately.

The Australian government's policy stance has been to support Hong Kong's participation in its own right in those economic international organisations where possible. You will notice in one of the annexes that there is a list of international conventions where Hong Kong has been participating either as a member of the UK delegation or in its own right. Usually the economic ones are the ones where it participates in its own right. Those have been put forward to the Joint Liaison Group and both sides have agreed—I think it is in annex 7—to the continued participation of Hong Kong on its own.

ACTING CHAIR—I would like to go back to the trade unions where it leads to political parties, which is part of the area, before I come back to a few other questions. How structured are political parties now? My impression is that they are still a bit of a moveable feast.

Mrs Fisher—Yes. There are party structures, but as I said earlier they are very new. The whole concept of a political party is a fairly new one to Hong Kong. So, to that extent, they are in their nascent stages—all of them, from the Democrats to the so-called pro-China groups. Certainly, the business groups are very loosely structured.

ACTING CHAIR—But Martin Lee has virtually been campaigning for a form of democracy now for six, seven or eight years. He has built up around himself an organisation. The pro-China group has also built a bit of an organisation quite apart from the newspaper with which the administration is aligned. Have they tried to structure themselves akin to British political parties or American political parties or are there entirely particular interest groups with the Martin Lee group looking more at independence and the status that democracy will have than being political parties in our sense?

Mrs Fisher—I think the fact that we have now had a full electoral cycle under the election reforms in which these parties have participated means that they have established mechanisms to allow themselves to get a maximum number of people if elected. There are numerous positions in the district boards at that local level of government and right up to the Legislative Council in quite a complicated system. The functional constituencies and the geographical constituencies operate in tandem so each person gets two votes. So you have to be quite organised to organise a campaign to make sure that you maximise your chances in that system.

In terms of organisation for elections, I think they have some experience. Certainly, in the Democratic Party Martin Lee, as you rightly point out, has been long involved in the issues that he concentrates on. But on a number of issues there have been difficulties within his party. So I would come back to my earlier assessment. They are in the nascent stages of development.

ACTING CHAIR—Has any attempt been made to try and educate them in party processes? Have we invited individuals from the parties out here?

Mrs Fisher—I do not know if the parties have done that. Certainly parliament has.

ACTING CHAIR—Have we?

Mrs Fisher—Yes. There have been delegations and, in fact, we had one only a month ago.

ACTING CHAIR—Yes, but they were members of the legislature.

Mrs Fisher—Yes. I do not know about party relations.

ACTING CHAIR—They were not of the parties, in the sense, they were across the parties. What I meant was—

Mrs Fisher—Under the party arrangements.

ACTING CHAIR—Have we attempted to try and help them build up a party organisation in any way? I do not think we have, have we?

Mrs Fisher—I am not aware of activities by particular parties but I know that some of the parties in Australia do have democracy building arms, and it is not impossible that they might be involved—

ACTING CHAIR—Through Socialists International and that sort of thing?

Mrs Fisher—That sort of thing, perhaps. I am not aware of anything specifically.

Senator BOURNE—Michael Lee won whatever the Liberal International's award is for human rights a year or two ago. I do not know whether that means that he has any affiliation with Liberal International, but you would not know that either. I can check with him.

Mrs Fisher—I am not aware of that.

ACTING CHAIR—I want to have a look at the provisional legislature to see how

we are getting on with that. It is certainly a view that I hold that we ought to encourage the Chinese government to maintain the elected legislature until the next election. Has the plea that we made got anywhere?

Mrs Fisher—The basis of our policy has been to support the continuation of democratic institutions in Hong Kong.

ACTING CHAIR—But we have also said that we support—or I know that I have said it but I do not know what you have said it—the continuation of the existing legislature. It is partly elected and there are two bases with a separate government until such stage as the next election takes place. That is not the Chinese government's position. They have this provisional legislature and as soon as 1 July comes the legislature is going to terminate until such stage as the new process has been put in place. That is the position, is it not?

Mrs Fisher—That is the Chinese government's position, yes.

ACTING CHAIR—Could you just tell us a little bit about the provisional legislature? What is the composition of the ten-member preparatory committee? What is that all about?

Mrs Fisher—We do have a bit more recent information and that is that the selection committee has begun to meet. What China has done is that it has used the selection committee which it formed under the decision attached to the Basic Law. Under the Basic Law, there is a decision which talks about the composition of a selection committee to appoint the Chief Executive. Since it has felt it necessary to appoint a provisional legislature, it has decided that it should be that selection committee which will appoint the provisional legislature members. The 150 members of the preparatory committee to which you referred met on 2 November to select 340 members of the selection committee which is provided for under the Basic Law and annexe. They have picked those selection committee members and that selection committee will convene on Friday.

Qian Qichen will come to Hong Kong on Friday to open that process of nomination of finalists for the Chief Executive. The selection committee will then focus immediately on 11 December on selection of the Chief Executive, and on 21 December will choose the provisional legislature. The process for provisional legislature is likely to run from 18 November to 9 December is quite complicated. Each candidate has to be nominated by 10 selection committee members. It does not sound like a lot, but it is quite something to be able to get the support of 10 members of the selection committee. Each of those 340 selection committee members can nominate up to five candidates. It is a very complicated system.

ACTING CHAIR—And they will take over from 1 July?

Mrs Fisher—China has said that because of its opposition to the Patten electoral reforms, the existing LegCo, which was elected for four years and was to go two years beyond 1 July, shall not sit after 1 July. From 1 July, it shall be dismantled and the provisional legislature shall make the legislation for up to one year beyond 1 July by which time China will have undertaken to have in place an elected LegCo as provided for in the Basic Law.

ACTING CHAIR—What has been the reaction of Hong Kong to the proposal? Have they said anything or are they just—I mean the Chinese citizens of Hong Kong.

Mrs Fisher—I have not seen any polls on the actual question of the provisional legislature, but in the media and amongst the decision makers and so on and the Hong Kong government—there is the Hong Kong government per se, the Hong Kong LegCo, of course—a large number of members have been quite voluble in opposition to this. People like Emily Lau and Christine Loh who have come here and I know have spoken to you have been opposed. But there has also been a bloc which has been quite silent and has not said much, particularly the business grouping of the LegCo. So I guess the answer would be mixed.

ACTING CHAIR—We have got a note here that says the Bar Association, the president of the Law Society, Confederation of Trade Unions and the Democratic Party have all withdrawn from the selection committee of both the chief executive in the provisional legislature. Have they expressed views opposed to the process or is that just that they do not want to be compromised?

Mrs Fisher—They did not want to be compromised, although the Law Association, the Bar Association, did endorse the eight lawyers who decided to go for selection. They did endorse them, but the Bar Association itself said it would not be part of the selection committee process.

ACTING CHAIR—Endorsed them. Do you mean that those whose names went up as nominees of the preparatory committee members, they were accepted as being able to do so without prejudice to the membership of the Bar Association, or do you mean something more than that?

Mrs Fisher—Actually something more—I am just trying to find a reference to that. I believe it is something more than that but I will have to double-check because I have not got it right in front of me.

ACTING CHAIR—What about the democratic parties: although they have withdrawn from the process, and the trade unions, have any of their members actually been nominated in the same way as the members of the bar society?

Mrs Fisher—Yes, two members of the ‘pro-democracy’ camp have been—

ACTING CHAIR—Nominated.

Mrs Fisher—Selected for the selection committee.

ACTING CHAIR—And does the Democratic Party go for it?

Mrs Fisher—No, the democrats have been quite committed as a party—

ACTING CHAIR—Opposed.

Mrs Fisher—Not to being part of that process, but at the same time they have responded to an indication from Qian Qichen that he wanted to have a dialogue with the Democrats. The Democrats have come back to that invitation by reiterating their opposition to the selection committee, to be participating on that, but to saying that, yes, they would like to have dialogue with the Chinese.

ACTING CHAIR—Have you any questions on the provisional legislature, Vicki?

Senator BOURNE—No.

ACTING CHAIR—Can we go over to the government then and start with the chief executive—

Mrs Fisher—Can I just say that I have just found that reference. The president of the Law Society and the Hong Kong Bar Association declined to participate in the selection committee process, but on 2 September this year the Bar Association verified the membership of eight of its members who chose to apply individually—verified the membership of the Bar Association of those eight members.

ACTING CHAIR—Good. We will just move to the chief executive. First of all, does the department or the government feel that the fact that a former chief justice's and the present chief justice's names have been mooted as possible candidates for the position of chief executive in any way will compromise the integrity of the courts?

Mrs Fisher—I do not think you were here when—

ACTING CHAIR—No, I am sorry.

Mrs Fisher—Senator Bourne asked me a question about the candidates and it would not surprise you to know that we do not have a position on any of the candidates or contenders for the position. It is up to the Hong Kong people—

ACTING CHAIR—Yes, that was not really what I was saying, but I think one of them has withdrawn. I just wondered if you felt that nominating members of the court was

in any way a suggestion that members of the court could see office other than that as members of the judiciary and consequently could be compromising the independence of the judiciary. But you have not a view on that either?

Mrs Fisher—I do not. I note that over the course of the centuries, the British appointed governors from a range of fields. But I do not have a view.

Mr Lamb—From our standpoint, we would not see this as being particularly relevant to the question of the independence of the courts. The courts' future would be assured more by the Basic Law and the way it will work than by appointments of this kind. If the person chosen as best qualified by a Hong Kong process were to be a person who had previously been chief justice, then that is again something which is within their scope.

Ms Pergaminelis—The gentleman who was the Chief Justice of Hong Kong has subsequently resigned that position to stand for election as chief executive.

ACTING CHAIR—He has stood down?

Ms Pergaminelis—Yes, he has.

ACTING CHAIR—That puts him in a different position altogether. I have no quarrels once he has resigned. It is when remains chief justice that I think the position is different. Could I just go on to the actual process of electing the chief executive and the members of government. I know a little bit about the process of electing the chief executive. What about the other members? They will be all appointed in the same way as they have been by the British government, I presume. The secretaries will be appointed by the Chinese government under the Basic Law, will they?

Mrs Fisher—That is the executive council?

Mr SINCLAIR—Yes.

Mrs Fisher—Yes, the Executive Council will be.

Mr SINCLAIR—And they will have a similar executive council—in nominal power and authority—to that which exists now and they will sit within the LegCo in the same way as the members of the rest of the executive council.

Mrs Fisher—As it operates now, that is exactly right.

Mr SINCLAIR—I see. Talking about the candidates to be first chief executive, how many candidates are there now and what is the state of play? You said there is to be an election later this month.

Mrs Fisher—Yes. As I was explaining earlier, there have emerged 30 candidates, of whom four are considered contenders now.

Mr SINCLAIR—And who would the four be?

Mrs Fisher—There is Mr Peter Woo, who is a business person; Mr C.H. Tung—who I mentioned earlier—who is a prominent business person; Mr T.L. Yang, the former chief justice; and Mr Simon Lee, who is another business person.

Mr SINCLAIR—Those are the four?

Mrs Fisher—They are the ones considered to be the strongest contenders, but there are also views about various ones of those as well.

Mr SINCLAIR—What exactly is the process? The process is going to be that they will go through that selection committee format that you spoke of a while ago, and a name having emerged from that process, the Chinese government will accept or reject the person—or where will the Chinese ultimate authority be determined?

Mrs Fisher—The selection committee will choose.

Mr SINCLAIR—So if one of those 30—presumably it is more likely to be one of the four—emerges and the selection committee says, ‘That one,’ then—

Mrs Fisher—That is the person who will be appointed.

Mr SINCLAIR—The Chinese government does not have the power to veto that?

Mrs Fisher—The Chinese government has appointed the selection committee and, as I understand it, the person chosen will be referred to the Chinese People’s Government.

Mr SINCLAIR—Yes, that is right.

Mrs Fisher—The name of the person goes to the CPG.

Mr SINCLAIR—But the central government still has the capacity to say, ‘No, we refer it back to you’ for some reason.

Mrs Fisher—As I understand it, yes.

Mr SINCLAIR—What is the tenure of that appointment?

Ms Pergaminelis—It is for five years, and the person may not serve for more than two consecutive terms.

Mr SINCLAIR—Is it intended that the Chinese government will exercise—much as the British government—an ultimate power of veto over decisions taken by the executive council, or is it only with respect to finance? Is there any limit on their veto power?

Mrs Fisher—No. The Hong Kong special administrative region will be responsible for its own management in all matters, except for foreign affairs and defence.

Mr SINCLAIR—So if they decided to build a new road or a new port, or a new airport, they can go and raise the money and do it? Or is that also an exception?

Mrs Fisher—Of course it is up to the Chinese government as to how it will implement the undertakings. But under article 48 of the Basic Law the Chief Executive's job is to lead the government of the Region; to be responsible for the implementation of the Basic Law; to sign bills; to sign the budgets; to decide on government policies; to nominate and to report to the Central People's Government the appointment of various officials; to appoint or remove judges and holders of public office; and to implement the directives issued by the Central People's Government in respect of the relevant matters provided for in this law. That might answer one of your questions. The chief executive is also to conduct external affairs and other affairs as authorised by the central authorities—

Mr SINCLAIR—Yes, that is where the real—

Mrs Fisher—and to approve the introduction of motions regarding revenues or expenditure. The rest of article 48 is about petitions and complaints and criminal matters.

Mr SINCLAIR—I will look at some of the areas within that for a moment. Concerning migration, if there are Vietnamese or southern Chinese refugees coming into Hong Kong, is that a matter for the local government?

Mrs Fisher—The Chinese government has specifically said that the immigration laws which exist now will continue to be implemented and administered by the Hong Kong Special Administrative Region.

Mr SINCLAIR—So the control of the movement of people will still, virtually, be seen slightly differently—

Mrs Fisher—To control on the mainland, yes. It is to be implemented, specifically, by the HKSAR.

Mr SINCLAIR—What about the police, where do they fit into the system?

Mrs Fisher—It is quite specifically referred to in the Basic Law that the police shall remain the responsibility of the Hong Kong Special Administrative Region.

Mr SINCLAIR—Does that mean that the head of the police and the authority of the police will remain the same or does it mean that the Chinese military are able to have a local authority as they tend to exercise within the Chinese—

Mrs Fisher—Just as the British have a garrison stationed in Hong Kong, so will the Chinese have a PLA garrison stationed in Hong Kong. The relationship of the commander of that garrison and the commissioner of police is not yet clear but the Basic Law does specifically provide, in quite clear terms, for the police enforcement functions to be carried out by the HKSAR whereas the CPG, the Central People's Government, is responsible for the garrison.

Senator BOURNE—How are negotiations going on when the garrison should come in?

Mrs Fisher—It will come in on 1 July, there is no doubt about that.

Senator BOURNE—I thought it might come a bit earlier.

Mrs Fisher—There has been a lot of discussion between the British and the Chinese. The Chinese have drafted a garrison law to apply to their garrison after consultation with the British and examination of the documents applying to the existing British garrison, and there is some discussion going on about an advance party coming. The British government has indicated publicly that it is very much in favour of having advance parties coming to prepare for the transition but on the basis of existing Hong Kong law which means they are subject to the civil jurisdiction of Hong Kong.

Senator BOURNE—How big an advance party are they looking at?

Mrs Fisher—They have already had parties—

Senator BOURNE—I have seen a few in there, yes.

Mrs Fisher—in for a quite a number of years.

Senator BOURNE—Thanks.

Mr SINCLAIR—The terms of the actual authority of the garrison, is that laid down by the Basic Law? You said it was subject to negotiation. Are the parameters within the Basic Law which determines the extent to which—

Mrs Fisher—I believe the garrison is referred to in the Basic Law.

Mr SINCLAIR—Where is that set out?

Mrs Fisher—There is also a separate law being drafted that applies to the garrison. If you look at article 14 of the Basic Law it says:

The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region.

The Government of the Hong Kong Special Administrative Region shall be responsible for the maintenance of public order in the Region.

That is the important distinction. In other words, the garrison will not be responsible for the maintenance of public order, that is a responsibility of the administrative region. It also says:

Military forces stationed by the Central People's Government in the region for defence shall not interfere in the local affairs of the Region. The Government of the Hong Kong Special Administration Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief. . . Members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region.

Expenditure for the garrison shall be borne by the Central People's Government.

That is interesting because expenditure is currently borne by the Hong Kong government.

Mr SINCLAIR—And does that, like many of the other provisions of the articles, rest after 1 July entirely on the goodwill of the Chinese people? There are no sanctions in any way, are there?

Mrs Fisher—As indeed does the whole implementation of the Basic Law.

Mr SINCLAIR—Yes, I thought that.

Mrs Fisher—The Basic Law is a domestic law.

CHAIR—I am sorry I had to step out for a while, and so you may have covered this, but it seems to me there are some areas that potentially could lead to significant changes from what the intent of the agreement is, because there are some areas in the Basic Law that really mean that the whole thing can almost be put on one side. For example, as I understand it, in article 23 it says:

The Hong Kong Special Administrative Region shall enact laws . . . to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

That sort of thing, it seems to me, potentially is a major inhibitor in terms of democracy

and political activity. Similarly, article 158, as I understand it, vests the power to interpret the Basic Law in the standing committee of the National People's Congress.

Whilst some of that is delegated to the courts of the special administrative region, on matters relating to the powers of the central government or the relationship between the central government and the SAR, interpretations get referred back to the standing committee. You can go on to 159 and 160 where quite clearly it seems to me anything the central committee wants to pick up and change it is within its rights to do so. So there are very few guarantees, if you like.

Mrs Fisher—Those articles are the sovereignty articles. They are the articles which reflect the change of sovereignty that is going to take place on 1 July. This is why in the policy stance that we have adopted we have worked always for the full implementation of those undertakings. On your question about article 23, this has been the subject of debate in the media, largely because it is a subject which is unresolved.

There are two processes which have been going on for some years now: the process of localisation of British laws to be continued to be enforced in Hong Kong after 1 July and the process of adaptation of laws. This is the process of adapting those regulations and legal provisions that apply in Hong Kong now so that they are consistent with the Basic Law after 1 July. There has been quite considerable progress on the localisation of laws.

On the adaptation of laws the British side has put a number of packages of proposed amendments and so on to the Chinese side which is currently considering those. Related to that are things like the Official Secrets Act and definitions of article 23 which remain with the Chinese side. Indeed, it is now with the Chinese side to decide what it does about those things.

Mr SINCLAIR—What about penalties, things like the death penalty, people who are going to be gaoled; are they all in part of that category?

Mrs Fisher—The continued application of current laws in Hong Kong is being planned for. This is part of the localisation process.

Mr SINCLAIR—I see.

CHAIR—When we talk about article 23, as with so many anti-subversion laws that are used in different countries around the world, all sorts of things are conducted under that sort of heading. What confidence have we got in the mechanisms that are being put in place and the way that the agreement so far is being implemented and appears to be being implemented? Certainly, for example, in LegCo it is not being implemented in accordance with the agreement—as I understand it. What confidence have we got that those things are in fact going to operate as intended in the joint agreement? How much do

we seem to be already getting off the laid down track?

Mrs Fisher—I started out by saying that the undertakings set out in the Basic Law and Joint Declaration are very detailed undertakings. They are not undertakings that the incoming sovereign power had to make. They are undertakings which the incoming sovereign government has chosen to make, just as the incoming sovereign government has to choose how to implement them, bearing in mind that Hong Kong is an international centre where Chinese companies and government banks, and so on, are involved extensively. The main power of suasion, if you like, that outside factors have is related to the continued economic prosperity and growth of Hong Kong. That is certainly an element of the views that we put to China on these things.

You made a passing point about the Basic Law: you felt that the provisional LegCo was not consistent with the Basic Law. We had discussed when you were out this whole question that there are different views about this and it has not been resolved legally.

CHAIR—If the fundamental proposition is that because of its commercial importance it is in China's interests to go along with the agreement in the spirit and the letter of that joint agreement, how much confidence do we have that, in fact, Hong Kong is that critical in economic terms? We all go along with the basic proposition that it is very important, and it is certainly important to us. You mentioned earlier that Hong Kong is a significant economic player in our terms—I think the sixth largest in services exports, and fourth in manufacturing, from my memory. Over a period of time, is that likely to be sustained, or are places like Shanghai or other economic areas possibly going to usurp Hong Kong's significance and importance in large measure? Therefore, if Hong Kong's economic importance diminishes, maybe we will find some of these other things starting to be put on one side.

Mrs Fisher—That is the \$64 million question and it is very speculative, as Chris was saying.

CHAIR—That is why I asked the brains.

Mrs Fisher—We can only point to statements by Chinese leaders to the effect that the way of life of Hong Kong is not going to change and that Hong Kong will continue to be a major international monetary and economic centre. But in terms of Australia's interests, we know what our interests are, that they are extensive. On that basis, we have no problem with letting various authorities know what our interests are and where we would like to see the policy direction go for Hong Kong into the future. We will certainly be continuing to assert those interests.

Mr Lamb—One of the things that we discussed, Mr Chairman, when you were not here, was the degree to which the one country, two systems future will feed to both sides

of the system picture. Who knows how much over time, experience of Hong Kong's own development with law, commerce, or whatever, will influence the way other parts of China will want to act? You mentioned Shanghai. I have no basis for what I am about to say, but it is quite possible that there will be people in Shanghai who will say that because of the way that Hong Kong's administrative region works, there are things that need to be done in Shanghai. So, in looking at what kind of influence China might wish to exert on Hong Kong 25 years from now, one would have to guess, first of all, what kind of China it will be that might want to do that. It is very hard to make those kinds of judgments today.

CHAIR—And presumably, if there are entrenched rights in the human rights field in Hong Kong, people in Tibet may have some views on that sort of thing, as well, which could affect the Chinese government's view. On the subject of the judiciary, there has been some media speculation that in advance of the agreement coming in, there have been some judgments where the view has been expressed that they have, perhaps, been coloured with the anticipation of the change on 1 July next year. Is there any evidence to substantiate that?

Mrs Fisher—I am not sure what you are referring to.

CHAIR—I do not have the details with me but, certainly, I have read newspaper comment that some of the judges are tending to give rulings that they think will be viewed favourably by Beijing, rather than necessarily the rulings they might have given in other circumstances. Is that something that has come to your attention?

Mrs Fisher—No, I have not seen anything.

CHAIR—Perhaps, I need to dig that out.

Mr Lamb—Nor have I, if I could say so. I was in Hong Kong a couple of weeks ago and there is no reference by any of the people I saw to that kind of thing. There is some caution that has to be attached to the way some of the reporting might be done about it. I would be very interested to know what it is that people have said.

CHAIR—I will find out and then come back to you on that. Going back to the chief executive position, which you were talking about when I came back in, one of the leading candidates was perceived to be Miss Anson Chan. She has decided not to run, as I understand it. Do you have a view on why she did not and what role she may play? As I understand it, we would believe that she would be an effective person at the head of the public service there.

Mrs Fisher—We certainly do not have a view on who runs for the Chief Executive and who does not. We would only say that the existing Chief Secretary has a very fine record of public service. It is generally viewed in Hong Kong as quite important

that she retain a role for the continued confidence of the civil service.

I just point out an element of fact. By saying that she is not interested in the Chief Executive position, she is not ruling herself out to continue on as Chief Secretary and head of the civil service.

CHAIR—Thank you.

Mr SINCLAIR—There seems to be some confusion as to whether they are going to speak Cantonese, the extent to which English is going to continue or whether Mandarin is going to be adopted as the language of government. Could you try to explain to me how you see the position?

Mrs Fisher—To our knowledge, there is going to be continuation of the status quo, although in the courts, for example, Mandarin is now a language to be used. It has started to come into practice that there will be an interpreter there and that people can use Mandarin if they want to. I think a lot of the civil servants are boning up on Mandarin.

Mr SINCLAIR—Peter was talking about the confusion, but the only area where I have seen it commented on was in relation to a judgment given in English where the person was found guilty, but apparently the Mandarin translation found him innocent.

Mrs Fisher—That could be interesting.

Mr SINCLAIR—There was total confusion as to just where they were going. I did not know if there was any development on it, but that was the only real disaster.

Mrs Fisher—I think it is a slow process. People are starting, voluntarily, to learn Mandarin.

Mr SINCLAIR—In relation to the Joint Liaison Group, I was interested in the issues that are still outstanding. We have been given a list from April, but I am just not too sure if some of them have changed—I think some have. Could you give us a list of the outstanding matters for negotiation?

Mrs Fisher—Yes. The key ones relate to what we referred to earlier in terms of the adaptation of laws that Britain and the Hong Kong authorities have put to the Chinese side. They have put a series of packages of recommended amendments to existing Hong Kong law which would bring that law into line with the Basic Law. So far they have not had any return from China, but there are still six to eight months to go on that.

A key issue which we have been urging both sides to focus on very soon is the question of right of abode and nationality. In other words, continued right of abode for people who currently have abode in Hong Kong and, specifically, the right of abode for

our people living there who are of Chinese descent to be sure that they will be able to continue to do business there with confidence. In that regard, there has been a decision recently of the National People's Congress to clarify the terms of nationality provisions beyond 1 July, which has been very helpful. But we are urging very specific indications of implementation.

One of the things which has been decided is that returning emigrants—in other words, returning Hong Kong Australians; people who go back to Hong Kong who want to live there—may choose to make a declaration of foreign nationality. We would like to know the mechanics: how this is likely to be implemented and how often do they have to do it. Questions like this are being considered now. I was told when in Hong Kong recently that it is hoped that by December these issues will be clarified.

There are a number of other things. The specific role of the JLG is to consider various bilateral agreements, treaties and so on. Every one which has something to do with Australia has already been ticked off by the JLG. I think there are still some there that have to be looked at—aviation agreements and so on. It is a process of the group working through the list.

Mr SINCLAIR—The one I am interested in is the suggestion about winding back the bill of rights, particularly the extension to which the media is going to be allowed to continue to operate without restraint. I just do not know where they are up to on that. I wonder if you would be able to give us some idea.

Mrs Fisher—As you would be aware, we mention in the submission that, at the end of 1995, the Legal Subcommittee of China's Preliminary Working Committee looking at the transition recommended that various elements of legislation relating to the Bill of Rights should be repealed, in effect—that is, the Hong Kong Bill of Rights Ordinance 1991, which is reproduced for you in these attachments, and a whole range of specific amendments to legislation which came in after 1991 in Hong Kong law to adjust Hong Kong law so that the Bill of Rights could be implemented.

That Preliminary Working Committee has now disbanded. Mr Qian Qichen is the former chairman of that committee. There has been no ruling by China on that. In fact, as we have said in the submission, China has been silent on those issues. So we do not know whether any action to wind back that legislation is going to take place. In terms of the Joint Liaison Group, there has been no indication that the Chinese side wants to make those changes.

Mr SINCLAIR—What about freedom of the press?

Mrs Fisher—Freedom of the press is specifically included in the Basic Law. Freedom of expression is specifically enunciated in the Basic Law. Again, it is one of the issues where the proof will be in the pudding. The related question we have discussed of

self-censorship is a matter that has been under discussion in Hong Kong.

Mr SINCLAIR—What about the privileges that are part of the bill of rights? Part of the advantage of having a LegCo is that you are able to exercise the privilege of being able to say what you like without fear of being hung, drawn or quartered. I am not too sure whether that, as you suggest, is going to be a matter of self-censorship or otherwise.

Mrs Fisher—Perhaps I should be clearer. The legislation to implement the Bill of Rights is Hong Kong legislation, but the Basic Law, which is in Chinese law already, does provide for freedom of expression.

Mr SINCLAIR—Freedom of expression in China is a different thing, I think, to that that we see.

Mr Lamb—To come back to the issue of one country with two systems, the interpretation domestically within Hong Kong of freedom of expression will be an internal affair. The legal system that will be set up with the common law safeguards around it is the one that will decide on issues of freedom of expression. That is an important point.

Mr SINCLAIR—I understand that. With respect to that and other issues, Chris Patten, in his opening speech to LegCo the other day, laid down the number of areas that he believed are matters and issues to be watched. Would you concur with those? They really seem to me to be fairly basic and they address some of the matters that we have been canvassing in our questions to you.

Mrs Fisher—We noted that Governor Patten has put those down as benchmarks. Certainly they are areas which we are closely interested in.

Mr SINCLAIR—That was a very good Public Service response.

Mrs Fisher—The government has not made a public policy stance on any of the particular things.

Mr SINCLAIR—Okay, I will forgive you.

Senator BOURNE—As far as the ICCPR goes, it is in the Basic Law now and that may or may not continue. What about reporting? You have got in your submission that the UK said that the question remains subject to negotiations whether Hong Kong will report back or whether China will report back on their behalf. Then there is the other option that China will decide that it has not signed the ICCPR, therefore, it should have nothing to do with Hong Kong and it is in contradiction with the constitution, et cetera. Has anything further happened on that?

Mrs Fisher—Yes. The Human Rights Committee issued a report on Friday in

Geneva and did specifically address this question. We will give the committee a copy.

The committee urged the government of Great Britain and Northern Ireland to ‘take all necessary steps to ensure effective and continued application of the provisions of the covenant’—including reporting rights—‘in the territory of Hong Kong in accordance with the joint declaration of the Basic Law’. It requested the government of the United Kingdom to continue to report on the human rights situation in the territory of Hong Kong up to 30 June 1997. In other words, recognising explicitly up till then that the United Kingdom still has reporting obligations.

As we pointed out, there are a number of options. Either Hong Kong could prepare a report of its own or China could accede to the covenants and start making reports of its own. That is up to China. Nonetheless, the Basic Law does provide in Article 39 that those two covenants shall specifically continue to apply to Hong Kong as they do now.

Senator BOURNE—Freedom of religion, I think, is enshrined in the Chinese constitution but not necessarily freedom of conducting religion. In Hong Kong the Basic Law allows people to keep going. Because it is not Defence or Foreign Affairs, they can keep conducting religions as they have in the past. Do you think freedom of religion will be maintained?

Mrs Fisher—I can only say that we have these undertakings that matters of domestic, non-foreign policy, non-defence issues will be administered. Article 32 of the Basic Law specifically says that Hong Kong residents shall have freedom of religious belief and freedom to preach, conduct and participate in religious activities in public.

Senator BOURNE—That is an extension of the Chinese constitution.

CHAIR—Thank you very much for your attendance here today. If there are any matters on which we need to talk to you further, we will be in touch. I think that is highly likely. We will send you a transcript of the evidence that you have given today so that you can make any corrections of grammar and fact and so on. I very much appreciate the time and effort you have put into your submission and to talking to us today. We will doubtless talk to you again in the future, particularly after we have been to Hong Kong. It might be appropriate to have a further session.

Mrs Fisher—Thank you very much, Mr Chairman. A person who has made a major contribution in preparation of this submission is sitting on my right, Maria Pergaminelis, and I would like to thank her for her efforts.

CHAIR—Thank you very much.

Mr Lamb—So, Mr Chairman, we will stand by and look forward to an opportunity to come back to the committee again if you would like us to return to give

further evidence. If you wish us to answer questions in writing, we would be happy to do that as well. We look forward to staying in touch with you.

CHAIR—That is likely to happen in March. Given that we are going in January to Hong Kong and February will be a very bad time from the sitting point of view, March is the likely time that we might want to have you back and talk to us.

Mr Lamb—We will fix our calenders this afternoon.

CHAIR—Thank you very much indeed.

Mr SINCLAIR—Could I also suggest that if there matters that arise that you believe should be drawn to our attention, would you mind doing so, because it is possible we may not be aware of them?

Mrs Fisher—Yes.

Mr SINCLAIR—Particularly matters regarding the JLG and its negotiations, if there are issues where you see problems or something that we might need to canvass when we are in Hong Kong, it would be appreciated if you could let us know.

Mrs Fisher—We have very close relations with the secretary of the committee. We have organised a briefing for before the visit for the chairman and others.

Mr SINCLAIR—Thank you very much.

[11.11 a.m.]

BUFFINTON, Ms Fiona Kathryn, Manager East-Asia Regional Support Office, Austrade, PO Box 2386, Canberra City, Australian Capital Territory 2601

FORSYTHE, Mr Peter John, Executive General Manager East-Asia, Austrade, PO Box 2386, Canberra, Australian Capital Territory 2601

CHAIR—On behalf of the subcommittee, I welcome officers from Austrade. The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give your evidence in private you may do so and the subcommittee may request that and the subcommittee will give consideration to your request. I invite you to make a short opening statement before we proceed to questions.

Mr Forsythe—First of all, Austrade's main submission was done in conjunction with our colleagues in DFAT, in particular sections 1.2 and 7.3 of that submission, which related to the bilateral economic and commercial contacts with Hong Kong.

So the comments I will make this morning relate specifically to views from a more Austrade point of view—a more Australian business point of view. I would like to make four or five points in relation to that. The first is that from a Hong Kong business perspective, and from our own Austrade perspective, there is an increasing belief that post-1997 business is going to be pretty much business as usual.

We would say 'mainly but . . . ' to have a bit of an out on that, but essentially there is increasing confidence from the business aspect that it will be business as usual. You can add the usual sorts of caveats to that and concerns about the increase of corruption, the place of the rule of law, the freedoms of the press and so forth. From a business perspective, we have seen it wax and wane over the last couple of years, and as the time actually approaches there is an increasing sense of confidence there.

That is from a Hong Kong perspective and another aspect of that would be from the perspectives of Australian companies that we have knocking on our doors. One thing that strikes us about Australian companies coming into the Hong Kong market is the extent of ignorance about the issues relating to post-1997 Hong Kong—the ignorance of the joint declaration, ignorance of the Basic Law, and what these in turn mean for the running of Hong Kong. To the extent that a committee such as this and the report that it will produce would try to address this ignorance, we think that would be a very good outcome.

Secondly, relating to this, we believe that Hong Kong will remain a key entrepot. An increasing amount of trade is going through Hong Kong into China, which has been growing very strongly, and with the issues relating to the opening up of South China, we would see that becoming an even more important aspect of the Hong Kong economy.

We would also point out that there would be no essential changes to the trade regime, in terms of quotas and tariff issues and so forth in the Hong Kong import regime. Again, this is an issue which Australian companies who are going into the market, rather than those that are up there in the market, are not very well aware of.

Change of sovereignty also, we believe, will lead to further opportunities for Australian companies, particularly in infrastructure developments and particularly in the South China region. There are also efforts by Shenzhen, the special economic zone right on the border with the New Territories, for it to clean up its own act in terms of its quotas and tariffs in what we would call the parallel or grey area of exports into China. We believe that to the extent that is regularised, it will lead to further opportunities for Australian companies.

The final point I would make is the importance of the south China link. We, within Austrade and for Australian companies, are taking actions to address the fact that there is an increasing interdependence between Hong Kong and southern China. One example I would give is in terms of joint trade displays where instead of bringing Australian companies just into, say, Hong Kong, we are also running parallel trade displays across the border in Guangzhou and finding that the linkages between those two are helping us to get more business to the area as a whole.

CHAIR—Thank you, Mr Forsythe. Perhaps you could flesh out for us a little, in terms of our trade with Hong Kong, not just the total volumes or where they rank as a country in terms of a trading partner but the types of products and services that we tend to do well in and perhaps how much of it is actually Hong Kong bound and how much of it actually gets transformed or just passed straight through to mainland China, so that we can get a feel for that dynamic. Then you could fill us in on which Australian companies are the major players and what their view of the situation is.

Mr Forsythe—The first part of your question relates to the range and composition of goods, and a point I would make in relation to that is that, for the region, Hong Kong takes the greatest variety of goods from Australia. Our single largest export happens to be a food stuff, crustaceans, but in areas of telecommunications or ETMs more broadly, elaborately transformed manufactures, we have a much wider range of goods that are being shipped out of Australia into Hong Kong than to any other part of the region. That is significant, in other words, it is a very sophisticated market for us. We are doing well across the range of goods exports, not just in the primary or food stuffs area.

The second part of your question relates to re-exports or the extent to which Hong Kong is a base for re-exports. The latest figures we have are that 26 per cent of our goods going into Hong Kong are re-exported into China and that has grown steadily every year since 1991 when the figure was 14 per cent. So we can see a trend upwards there in terms of re-exports into China, leaving 74 per cent in the market itself.

Another aspect of our trade with Hong Kong is the importance of our services exports. Again, they are much more important into Hong Kong than into any other part of the region. There are about \$1 billion worth of services exports made up primarily of education and tourism but also, increasingly, financial services in banking and insurance.

CHAIR—There are various international obligations—World Trade Organisation and various other APEC type arrangements—that Hong Kong has been committed to up until now, but to which China may not have been committed at the same level, perhaps. For example, a World Trade Organisation arrangement or some of the other trading arrangements that Hong Kong has come to. Will the new arrangement in Hong Kong and China on 1 July next year affect any of those trading arrangements that exist with Hong Kong at the present time?

Mr Forsythe—This is addressed to some extent in the DFAT submission. Could I just clarify the question: are you asking about the extent to which Hong Kong's membership of, say, APEC or WTO will be affected by the change in sovereignty?

CHAIR—Yes.

Mr Forsythe—The short answer to that is no, it would not be, although it would come in under the name of Hong Kong, China.

CHAIR—Who are our major Australian players there?

Mr Forsythe—Yes, I neglected to answer that before. Let me draw attention to the DFAT submission on this, on page 27. It says that, in terms of major Australian companies in Hong Kong—we are talking now about companies that are actually based in Hong Kong as opposed to just the exporting companies—they would include names like National Mutual, BHP, Pioneer, Leightons, Datacraft, Telstra and all of the major Australian banks.

We have a total of 300 companies based in Hong Kong which, I believe, is the largest group of Australian companies offshore, perhaps with the exception of Europe or the United Kingdom. We also have 1,200, or more, members of the Australian Chamber of Commerce. That makes that chamber of commerce the second largest in Hong Kong after the Americans and our largest chamber of commerce overseas. So there is a very substantial Australian presence there.

CHAIR—You mentioned earlier the obvious proximity of the new economic zone just across the border. I think that Shanghai is also developing quite rapidly as a new economic zone. What is Austrade's assessment of the likely development pattern in terms of the economy of Hong Kong vis-a-vis some of those other zones? Do you think that it is going to become the dominant player, or is it going to be subsumed? What is the scenario

that might be expected? If I were a businessman going to set up in that part of the world, what scenario would you be painting for me?

Mr Forsythe—If the first part of question is: will Hong Kong be subsumed or overtaken by other cities in China, I think that my short answer to that would be, no, it will not. I would recall the words of a Shanghai vice-mayor when he was asked this question. A lot of people see Shanghai as the next Hong Kong, regaining its prominence of the 1930s. He pointed to a number of the inset ceiling lights, and said ‘It is just like these lights up here. There are some that are brighter than others, but they can all increase in brightness, and not necessarily take away from anyone.’ So, I suppose that it is not a zero sum game. Shanghai can develop and Hong Kong can develop.

And importantly, from the Hong Kong perspective, you need to actually look at what is happening in terms of the reality of the infrastructure developments there: the reality of the airport; the ports, and the transport links that it has already growing massively into Southern China. You take all of that together, and look at what is happening in Shanghai. Certainly, what is happening in Shanghai is fantastically impressive and will grow, but Hong Kong is equally growing. So I would see it as being a major city, and the richest city in China, too, for quite some time to come.

Mr SINCLAIR—Let me pick up on a few of those questions if I can. I have long been interested in the extent to which the financial links that Hong Kong have developed are going to change after 1 July. I mean, demonstrably, the Australian Stock Exchange and the Sydney Futures Exchange are interested in trying to build up their market. To what degree do you think Hong Kong is going to be able to retain its role as the financial centre for that part of the world? Essentially, you have only Tokyo, Hong Kong, Singapore and Sydney. I just wondered how you saw that Hong Kong role post-1 July 1997.

Mr Forsythe—Again, I think one looks at the reality of the infrastructure and what they have in terms of the stock exchange at the moment. It is growing in terms of its capitalisation. It is somewhat larger than the Australian Stock Exchange. Just a few years ago, we used to be larger than it; it is now larger than us. And the history of its development; the extent of experience that is there, as contrasted with the relative lack of experience in terms of Chinese stock exchanges, would again, in my mind, say that that is going to continue to be a very important element of Hong Kong, and a very important part of the region. I do not see any reasons that post-1997 should be affecting the importance of the Hong Kong Stock Exchange. Indeed, if anything, it would probably increase it.

Mr SINCLAIR—You do not think that in respect that Shanghai is likely to take over as the Chinese—

Mr Forsythe—I do not see so at the moment because I do not think 1997 is a magic date on which Shanghai could suddenly stop from being a very thin and volatile

market, and change into being a much denser and less volatile market.

Mr SINCLAIR—I was just curious on that base. The second thing, in terms of looking at the finance movement from Hong Kong, there was and has been quite significant outward flow of capital. That presumably is continuing but stabilising. How do you see that between now and the time of handover and to what degree have those who have moved their funds out started to move them back in? Is that measurable at all?

Mr Forsythe—I have to say I do not have the actual figures for Hong Kong's inwards and outwards capital flows in front of me, although if you wish I could take that on notice.

Mr SINCLAIR—If you could, that would be very interesting, were it possible.

Mr Forsythe—I would make the comment, however, that it has always been a free capital market and it always has been awash with capital in and capital out. A measure of capital in must be the property market. The property market has bumped up quite sharply in recent months. Indeed, just the other night I was talking to people in the commercial and residential real estate market in Hong Kong and they were saying just how much the market had rebounded. Foreigners coming back into Hong Kong are also on the rise. So if these two factors together are an indication of capital flows as well, one would be assuming that those would also be coming back in strongly, as well as moving out strongly. Hong Kong has always been a major capital exporter as well, particularly into China.

Mr SINCLAIR—One of the real roles of Hong Kong in recent times has been as the key link between Taiwan and China. Do you think that is going to change?

Mr Forsythe—It will change eventually; whether 1997 is the trigger for that is a moot point. I think that the reason that Taiwan and China economic relations would change would be that they establish direct shipping relationships, they establish direct air contacts across the straits. That is a very tough question. It is not going to happen, in my view, prior to 1997. As long as that does not happen, as long as you do not have the direct links, the only real alternative to that is Hong Kong. It was worked well, continues to work well and I would expect to see that continuing.

Mr SINCLAIR—There would be no reason why direct links between Hong Kong and Taiwan should in any way be affected by 1 July, is there?

Mr Forsythe—No.

Mr SINCLAIR—Even though the Chinese government will control foreign policy.

Mr Forsythe—That is right. There are certainly going to be changes in Hong

Kong in relation to, for example, flying of the Taiwanese flag. We have seen some issues recently in one of the suburbs of the new territories where there has been a Taiwanese community there which is a mini-Taiwan, if you like, and there has been some redevelopment of that area. It has caused a lot of angst, it has caused concern about the treatment of the Taiwanese community post-1997. So there has been some angst in that respect but, in respect of the trade and investment which is flowing through there, that continues to be strong. To the extent that it is affected, it is affected more by the Taiwanese concern not to have too many eggs in one basket.

Mr SINCLAIR—If you read behind the military activity in the Straits of Taiwan and if you read generally of the decisions being taken by the Chinese government, they seem to be becoming a bit more hardline in their political approach to Taiwan. If that is so, you still do not think that is going to unduly impinge on the role that Hong Kong plays in between the two?

Mr Forsythe—I think it has certainly impinged on the mind-set in Hong Kong and, as I just mentioned, not putting too many eggs in one basket. I think I should clarify that what I mean by that is that they have now got a look south policy to try and ensure that their investments into the mainland are not too large a proportion of the total basket of their investments overseas. So that sort of thinking, which is cautionary thinking anyway, would obviously be underlined by the fact that they perceive perhaps more hardline actions on the part of the mainland. Having said that, that was about a six months ago thing and there is probably a softer change in recent times.

Mr SINCLAIR—Of course, for a long while there has been commercially and in trade terms a great deal of rivalry between Hong Kong and Singapore. Hong Kong are saying, 'We are bigger and better and there is more trade and finance, and all the rest of it.' How do you see the Singapore relationship with Hong Kong post 1 July next year? Is there any significant reason for change?

Mr Forsythe—Singapore have certainly been working in a quiet but fairly effective way in Hong Kong to try to draw into Singapore companies' regional headquarters on the basis of a number of strengths they perceive they have. That includes cheaper land, for example. Importantly, there is the degree of concern or uncertainty about Hong Kong which is used as one of the levers they play on to draw more investment into Singapore. In doing that they have been reasonably successful. Quite a few companies have moved their headquarters to Singapore. Also, Kuala Lumpur is increasingly important as a regional headquarters.

Mr SINCLAIR—A number of major companies such as Jardines have moved out of Hong Kong. In terms of the major companies are there any more of those that you think will go, or has that stabilised and probably we have seen the last of them?

Mr Forsythe—From what I can see there is no other major company of that sort

of size that has taken similar steps, or is contemplating taking similar steps. But, again, that is one question that I would like to take on notice.

Mr SINCLAIR—In terms of Australian investment and movement, there are quite a lot of Hong Kongese who have moved into Australia, got residence here and the families still seem to be here and the business interests have been resumed. Is that pattern continuing? In terms of education, Hong Kong is now our principal source of students. I am just curious how you see all that, and is that related to that movement of people back here to have a safety net, in citizenship terms?

Mr Forsythe—Yes, I think so; it is certainly related. The answer to the first part of your question about whether it is continuing is yes. They call them in Hong Kong the astronaut group, that is those who have got families overseas and who, essentially, live in Hong Kong. That is continuing and I do believe there is a link. The extent or what percentage of the students going to Australia are connected to that I think would be difficult to work out. Australia is seen as a primary education provider anyway, but certainly there are many Hong Kong families who are sending their children to be educated in Australia because of their links through having become citizens here.

Mr SINCLAIR—How does Singapore rate in that?

Mr Forsythe—You mean as a source of students?

Mr SINCLAIR—As a source of students, people seeing Singapore as a place to be educated and as a place for a safety net and citizenship.

Mr Forsythe—Yes. I certainly have not heard Singapore often mentioned as that. Hong Kong people would look to Canada, US, Australia, New Zealand and the UK.

Senator BOURNE—As far as telecommunications and information industries, and also education services, which I see have been identified as priorities for Australian businesses in Hong Kong, is there any trepidation that information services may be cut back a bit the way media services are possibly being cut back with self-censorship? Do Australian businesses seem to be not as keen in getting into that sort of area as they have been in the past? Is that happening?

Mr Forsythe—No. If the question is whether Australian companies are exhibiting increased concern about that, to the extent that we are in touch with them the answer is no. And I would also add to that the fact that the Chinese market is becoming very important in the telecommunications market and is gradually opening up—gradually being the important and underlined word. It is certainly opening up within China as well. Australian companies that we talk to in the IT areas are concerned about issues like competitiveness and the number of people in the market, tender pricing or whatever. They do not say, ‘Gee, post-1997 it’s going to be more difficult for us.’ That does not come up

as an issue.

Senator BOURNE—Do we have anybody with internet services in Hong Kong?

Mr Forsythe—Hong Kong has a lot of internet providers.

Senator BOURNE—We do not have any?

Mr Forsythe—We do not have any that I am aware of.

Senator BOURNE—The other thing is foreign ownership of businesses. There are a lot of limits, as far as the Chinese are concerned, within China. Is that a concern?

Mr Forsythe—Again, according to the underlying laws that are to apply, and the Basic Law, there should not be any change to that. I do not see why there would be any reason for the Chinese to change that. Why would they do it?

Senator BOURNE—Thank you.

Mr SINCLAIR—Before you leave communications; there is an agreement—and I am damned if I know what it is called—which allocates slots in the sky for countries with satellites. Does Hong Kong have its own little niche up there? If so, will that be retained by Hong Kong or by China?

Mr Forsythe—No, it does not at the moment; it is in the footprint of a number of satellite stations.

Mr SINCLAIR—They were originally rationed to each country. You could each have your section of the sky—and if you did not take it up then others could move in. I just did not know what Hong Kong was doing. It does not have any satellite of its own?

Mr Forsythe—No, it does not have its own. It gets beamed in by Australia TV, the inmarsat, STAR TV and so forth, but not one—as far as I am aware—that is specifically a niche for Hong Kong.

Senator BOURNE—Where is STAR based? I thought that was based in Hong Kong.

Mr Forsythe—Yes, it is based in Hong Kong.

Mr SINCLAIR—Has it got its own satellite or is it tuned to inmarsat—or one of the international satellites?

Senator BOURNE—It must be an island. We should ask Rupert Murdoch.

Mr Forsythe—I guess we are all confessing ignorance on this issue.

Mr SINCLAIR—We might ask our secretary to find out. I remember it has always been a matter of dispute and it is a fairly interesting part of what a country owns. I had not thought of it until you raised that question.

CHAIR—The ethics of the way of doing business in Hong Kong and China in the sense of corruption—which is the only word that comes to mind—as I understand it might be a bit different. Do you see the change making a major impact in Hong Kong?

Mr Forsythe—There certainly is increased concern in the media and amongst companies that we speak to about that. I think it is, to a large degree, seen as being almost inevitable that some of the business practices that are happening in China will happen increasingly in Hong Kong, just through the increased presence of Chinese business in Hong Kong. So that is certainly a concern. To the extent that it is a concern, it is stated up-front and there are people that are willing to talk out about it and make it an issue. I think that is an important way of trying to keep Hong Kong as transparent as possible and as transparent as it has been. As I said at the outset there certainly is concern that that would happen and almost a sense of inevitability that some aspects of that will happen.

CHAIR—I get the impression from you that, generally, in terms of the state of confidence of the business community that is reasonably good, although there is some hedging of bets, obviously. For example, how has the stock market reacted in Hong Kong?

Mr Forsythe—The stock market is good, it is up to 12,000-odd. Just a couple of years ago it was six, so it has doubled its index. It was only a couple of years ago that people were betting it would be down to half of that. The stock market itself has been very buoyant.

CHAIR—In terms of the central government's potential to intervene in the economic or the political affairs of Hong Kong in the next year or two, do you have confidence that they are going to really remain aloof and let it run, or do you think there will be some intervention, particularly given, for example, that Hong Kong is very prosperous but the Chinese economy is not in such good shape and there might be a temptation to plunder some of the benefits, to put it bluntly?

Mr Forsythe—The Chinese system itself, the Chinese bureaucracy and the Chinese way of doing business has always been one that relies a lot more on what they call relationships, relationship building and using relationships. It is called in Chinese 'guanxi', a word you have probably heard of. Those that are involved with business in Hong Kong are going to naturally try to exert those sorts of pressures on doing business in Hong Kong, so I think the answer is that there will be efforts to leverage into business in Hong Kong.

The last part of your question was about plundering, I presume into the foreign

exchange holdings or whatever of Hong Kong. We would not see that as being an aspect of that, rather that it is in the ways in which business may be done and the ways in which groups are put together for tenders for infrastructure development or whatever. Some of the sorts of ways in which business is put together in China will increasingly become ways in which one will have to look at it in Hong Kong, but I do not see it as being out and out plundering there because that would lead to massive loss of confidence in Hong Kong.

I think we do need to accept the fact that the Chinese are not starting themselves from the point of view of wanting to mess up Hong Kong; that is not their desire. Some of the business practices come into use in Hong Kong but not an out and out plundering of the territory because that would really be the thing that would kill the golden goose.

CHAIR—Given that Hong Kong is almost—perhaps Singapore might argue about this—the epitome of an open, free market and China has tended to be somewhat more sheltered in its approach to life—although clearly they have moved much more into an open economy in recent times—do you see the new arrangement being a good instrument for moving expertise from Hong Kong perhaps more into mainland China and opening up the Chinese economy even more?

Mr Forsythe—I think the answer is yes. I would add to that that it already has been. Hong Kong has already had a major impact on the way in which Shenzhen across the border, the economic zone, looks and the way in which companies in Guandong province operate. In Beijing these days it has become fashionable to speak a few words of Cantonese up there, or to sing Cantopop. It has become cool to be Hong Kong influenced in China. So we have already seen that and no doubt as time goes on we will see more of that. A lot of expertise that drives business efficiency in Hong Kong is already being transferred into China.

CHAIR—You mentioned that a number of Hong Kong Chinese really have an each way bet in terms of some resources being put overseas even if they are staying there. Obviously a lot of those people are taking citizenship of other countries or getting residency elsewhere. But from our point of view of dealing with China, there are a number of Hong Kong Chinese who have been here for some time and, if you like, are genuinely Australian in that sense rather than perhaps residents of Hong Kong hedging their bets.

Given the need for networks and people contacts, I would assume that a lot of those people are involved in our companies doing business there. Do you see that the new approach to sovereignty in terms of Hong Kong becoming part of mainland China—or one nation with two systems, but nevertheless there is a distinct shift in the sovereignty position—is likely to adversely affect Australian citizens who want to do business there? Are they going to be discriminated against in any shape or form, or just treated like you or I might be? What is the prognosis there?

Mr Forsythe—The treatment of these people in China, the Australians of ethnic Chinese descent who go back and do business in China, has generally been a good one. We obviously have some cases that we are less than happy with but generally it has been a good relationship and it has helped to build the relationship between Australian business and Chinese business. I do not see why 1997 would make any impact on the way in which people who are Australians of ethnic Chinese descent will be treated in China. I do not see 1997 having that kind of an impact.

Mr SINCLAIR—Part of the nature of the growth of the New Territories and the character of a lot of what has happened in China has been based on its role as an entrepot port. We have the airport which seems to be going along. It will, I gather, be allowed to operate as a major place of allowing aircraft movement but there seems to be a little bit of a feeling that instead of air traffic control being in Hong Kong, it is going to be switched to China and all that is going to affect aircraft movements and the role of Hong Kong as a main linking point to Asia.

Can you tell us a little bit about that. I am not too sure of how far it has moved. I mentioned the New Territories only because I know a lot of the Cathay people seem to live there. I gather that air traffic control is to be moved out of Hong Kong and the whole of southern China is going to be controlled from some other airport and there is apprehension about the implications of that.

Mr Forsythe—I have not seen that report.

Mr SINCLAIR—I was told that, I do not know whether it is right or not. One of the airline pilots told me.

Mr Forsythe—I had not heard that. I know that air traffic control in that region already has a lot of interconnection between the various air traffic control areas because it is such a busy part of the world. Just in that region you have got Zhuhai, you have the Shenzhen airport, you have the Guangzhou airport, you have the new Guangzhou airport, you have the Kai Tak airport and you have Macau airport. That is about half a dozen airports in a 100-odd kilometre radius. There is already a lot of cooperation between the air traffic control areas but as for the shifting of air traffic control from Hong Kong into southern China, I have not seen a report to that effect. Again, we will take that on notice.

Mr SINCLAIR—Yes, take it on notice. I do not know whether it is air traffic control or whether it is controlling the movement of aircraft generally. Obviously, they will have to have a local air traffic controller.

Mr Forsythe—That is right because certainly there is local air traffic control.

Mr SINCLAIR—There would have to be a localised air traffic control but the suggestion was that Hong Kong will no longer necessarily be the main switch over point

in the way that it has been in the past because elements of movement of aircraft are going to be switched to the Chinese mainland. However, you are not aware of that.

Mr Forsythe—We have not seen a report on that but we will take it on notice.

Mr SINCLAIR—How is the new airport getting on?

Mr Forsythe—Very well. It is going to be on schedule and it is going to be a good airport.

Mr SINCLAIR—It will certainly be a bit safer than flying into the present airport. What about the new container berth development, that has also been approved, has it not?

Mr Forsythe—Yes, that is right, the CT9 terminal.

Mr SINCLAIR—When will that be?

Mr Forsythe—I have a time in my mind that is 1998-99.

Mr SINCLAIR—Yes, that is the period I had in mind but I did not know whether it was so. That will make a big difference to the port of Hong Kong and its ability to be able to handle cargoes, and that also is relative to what is happening with Shanghai.

Mr Forsythe—Yes, and it relates to the point I was making before about the extent of what is actually happening in infrastructure developments in Hong Kong.

Mr SINCLAIR—Is there any parallel development at any other port along south China on the mainland?

Mr Forsythe—There are major developments in most Chinese ports. Just near Hong Kong, for example, there is a port called Yantai which is being developed as a major bulk and container terminal. You would have to have at least a dozen port developments going on up the coast but they tend not to be as large scale or as integrated as Hong Kong. Also, they tend to be in shallower waters. Hong Kong is one of the few deep water ports in China.

Mr SINCLAIR—And it does not have to be dredged, that is the other big advantage. What about commercial law and its application? Do you have any apprehension that there is going to be a change? You are talking about corruption and the possibility there, but the laws in Guangzhou and the provinces that adjoin Hong Kong in the south are different to the laws in the rest of China. They will remain different, presumably, after next year too; will they not?

Mr Forsythe—Yes. Certainly there are national laws relating to commerce and

trade and there are also some specific laws that relate to special economic and trade development zones and some that are specific to individual zones, such as Shenzhen. According to the Basic Law and according to Chinese law, there is no reason why the laws that relate to that commercial area in China should be changed. According to the Basic Law, the laws in Hong Kong itself should also remain those that are in force at the moment.

Mr SINCLAIR—So the commercial contracts negotiated in Hong Kong will remain as they are.

Mr Forsythe—Yes.

Mr SINCLAIR—If they are negotiated in Shenzhen or somewhere else they will be as the law there.

Mr Forsythe—Remain according, exactly, yes.

Mr SINCLAIR—What about Macau. Macau used to have an entirely different status. It is going to be integrated to a far greater degree into China; is it not? It has a little longer to go, but it does not seem to have retained its separate identity.

Mr Forsythe—Yes. It certainly came to an earlier agreement in relation to Macau. It is being handed back in 1999. The commentators on Macau would say that there has been a much greater degree of involvement by China within the whole of the process of working out the mechanics for it to be returned to China.

Mr SINCLAIR—But in terms of the role of Hong Kong, do you see that Macau will in any way be a rival or a threat?

Mr Forsythe—Macau is not on the radar screen of Hong Kong at all. It is only an hour away by fast ferry. If you travel to Macau and have a sense of that atmosphere as compared with the atmosphere in Hong Kong, you would know why I say that it is not on the radar screen. It is a very much smaller economy. It is a relative backwater and in no way could it be seen to be a threat for Hong Kong.

Mr SINCLAIR—Have the business people who have made money in China set up bases in Hong Kong? There seems to be a group of people who have been doing quite well on mainland China. Are they still essentially basing their operations in mainland China or have any of them moved to Hong Kong?

Mr Forsythe—There is a lot of money out of mainland China and Hong Kong of property stock held—up to a quarter perhaps is held by interests, ultimately on the mainland. So the short answer to your question is yes, there has already been a lot of investment in a variety of areas from shipping to transport to oil and petroleum

distribution in Hong Kong through to important holdings in real estate and untold thousands—nobody knows quite how many—of Chinese companies who have established businesses or representation offices or subsidiary companies in Hong Kong.

Mr SINCLAIR—Are they really Chinese government or is there individual ownership involved?

Mr Forsythe—Some of them are Chinese government, some of them are semi-government and some of them are individual. There is an increasing blurring in China of just what is meant by government when many government enterprises are establishing subsidiary corporations and then floating those corporations off. So there is a blurring of distinctions. The short answer to that question is that it is across a variety of areas, including increasingly private ownership.

Mr SINCLAIR—What about town planning and all that sort of thing? Is that all going to be controlled by the local authority after 1 July next year? We have been talking about port development and building and the fact that property values are going up and that sort of thing. What is going to develop with that?

Mr Forsythe—At the moment, that would be through the municipal councils in Hong Kong. We know that the Chinese have said that subsequent to 1997 they will be replacing the three tiers of government, which would include those councils. So there would be some change in that. But one would see the town planning aspect of Hong Kong coming back to a version of the different municipal councils that we now have there.

Mr SINCLAIR—The reason I asked was that the standard of building safety and the requirements have been standards that are a lot of higher than a lot of other Chinese and Asian centres. Do you suspect that that will change after 1 July?

Mr Forsythe—I think the people that are involved in setting those standards and administering those standards are part of a public service in Hong Kong which is very proud of its high standards of operation and which would be determined, in my view, to see that there was no derogation of those standards. So I would see that it comes down to being a practical matter of the people who are actually involved in setting and administering those standards. Those people, from what we know of them in Hong Kong, are very keen to ensure that what has made Hong Kong great—and that is high standards and transparency in operation—will continue.

Mr SINCLAIR—How are they going to recruit the public service after next year? I have not caught up with that.

Mr Forsythe—There should be no change in the format of recruitment through public advertisement and through graduate trainee courses.

Mr SINCLAIR—They have a very high standard of civil service.

Mr Forsythe—They do.

Mr SINCLAIR—You do not expect that that will change?

Mr Forsythe—No. There has been concern about departures out of the public service. But we believe the Chinese have come to acknowledge the extent of the importance of the very professional public service in Hong Kong and have been making much more conciliatory noises about them, which has tended to stop the outflow of senior public servants. At the moment, there is no sense of any kind of panic amongst them, rather they have jobs through 1997. There is an acknowledgment both by business and by the Chinese government of the importance of keeping that very strong professional service in place.

Mr SINCLAIR—What about pay and conditions of service? How are they to be determined?

Mr Forsythe—I would see that there would be no change to the remunerations, although there have been some mutterings of differentials between public servants at senior levels in Hong Kong and those who are coming from China who might be paid at different levels. So there have been a few rumblings on that issue, but the statements that have been made in response to those rumblings have been very much to say that it is important to keep the remuneration at the levels they have been because that is an important reason that the civil service in Hong Kong has managed to remain so relatively corruption free. Because of poor salaries, they do not need to go off and make money on the side.

Mr SINCLAIR—Are those conditions laid down in the Basic Law?

Mr Forsythe—Not that I am aware, but I am not a Basic Law expert. Are you saying about the conditions in relation to standards of service?

Mr SINCLAIR—I am interested in how they apply.

Mr Forsythe—We could certainly check that.

CHAIR—Mr Forsythe, thank you very much for appearing here today. You have a number of questions on notice, which you will obviously come back to us on. If there are other matters which the committee wants to pursue with you, the secretary will write. You will get a copy of the transcript of your evidence so that you can make corrections of grammar and fact. It has been a pleasure to talk to you, thank you.

Mr Forsythe—Thank you very much, Mr Chairman.

FISHER, Mrs Denise Margaret, Director, Hong Kong, Macau and Taiwan Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

Mr SINCLAIR—Mrs Fisher, you were giving evidence before. Are those conditions of service to public servants laid down in the Basic Law?

Mrs Fisher—Provisions for people qualified to serve in the public service are made on that basis.

Mr SINCLAIR—How are they going to determine their conditions of service after 1 July?

Mrs Fisher—Conditions of service will continue.

Mr SINCLAIR—Yes, but it is not those that are there now. What salary and conditions would be set for those who come in after 1 July; do you know? Perhaps you might take that on notice.

Mrs Fisher—We will have a look at that.

Mr SINCLAIR—Take it on notice. That would be the best way to deal with that.

[12.07 p.m.]

CHEY, Dr Jocelyn Valerie, 7 Rosetta Avenue, Killara, New South Wales 2071

CHAIR—On behalf of the subcommittee, I welcome Dr Jocelyn Chey, former Australian Consul-General in Hong Kong, to our proceedings and I thank you for coming. In what capacity are you appearing?

Dr Chey—I am appearing as a private citizen.

CHAIR—The subcommittee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private you may ask to do so and we will then give consideration to that request. I invite you to make a short opening statement and then we will ask you some questions, if we may.

Dr Chey—I very much appreciate the opportunity to speak with this committee. It is an important topic and one that is close to my heart. During the period when I was posted in Hong Kong as consul-general—that is, from 1992 to 1995—there was the development of a direct relationship between this parliament and the Legislative Council of Hong Kong and the establishment of parliamentary friendship groups in both places. This gave me great satisfaction.

It is my view that the mutual support and the concern shown by members and senators in this way is already, and can continue to be, one of the most useful ways to underwrite that high degree of autonomy which is promised to Hong Kong when it takes up its new existence as a Special Administrative Region of the People's Republic of China. This inquiry into human rights issues in Hong Kong flows naturally from this relationship, and I hope that the committee will continue to monitor developments in Hong Kong over the next few years and take appropriate action.

I know that the committee has been well briefed by various departments on issues raised in the inquiry. The main point that I would like to make this afternoon to this committee is that, no matter how much human rights in Hong Kong are governed by legislation and regulation, ultimately their implementation will rely on the goodwill of the government of the People's Republic of China.

In my view much international reporting and comment on matters relating to Hong Kong and China at the present time is biased against China. If we give China credit for good intentions regarding Hong Kong's future then our concerns for the protection of human rights in the territory will be greatly diminished.

That is a general summary of what I would like to say. If members would like me to expand on that in more detail I will continue for another 10 minutes.

CHAIR—I think it would be useful if you could.

Mr SINCLAIR—It would be very helpful to us.

Dr Chey—I am told that there used to be a sign in old Chinese tea-houses and restaurants that read, 'Mo tan zhengzhi'—'Don't discuss politics'. Presumably, this was because the proprietors thought that in the heat of argument people might start throwing the tea cups or the chairs, and then that would bring the local constabulary in, and perhaps when you see—

Mr SINCLAIR—Like a beer-hall!

Dr Chey—When you see the carrying on at the moment in Taipei, there might be something volatile in the connection between the Chinese and politics. So there may be something in it.

In Hong Kong, political parties have been legal since 1990, and since that time Hong Kong people have discovered the seductive arts of politics. But Hong Kong people know that the decisions regarding their fate are made, up to this point, in London, the colonial capital, and they also know that this remoteness is not going to change in the future. Beijing holds all the cards from this point on.

So Hong Kong people's enthusiasm for politics is real, but it is tempered by an intuition that politics is the art of the possible. Chinese, as you know, are among the world's most pragmatic people, and they also love gambling, so they can size up the betting odds. The Chinese art of warfare as taught by Sun Tzu did not recommend that kind of suicide attempt on an unassailable stronghold; there is a sense of realism and this tempers Hong Kong people's views on the territory's future.

There are points on which they know they can and hope to influence the Chinese government, and there are others where they know there is no possibility. I think human rights fall into a kind of borderline category, as I will explain.

Chris Patten, the Governor of Hong Kong, has often said that the kind of political system Hong Kong will enjoy in the future is ultimately determined by what the people of Hong Kong themselves want. There is much truth in this remark.

Of course, Britain and the British government's views are less crucial to Hong Kong than in the past, and the big decisions are increasingly made by China, that is Hong Kong and Chinese people. I believe that Patten and the British government have been motivated by that kind of deep-seated British sense of decency and fair play, and the desire to leave Hong Kong in as good shape as possible in 1997, giving local people the best possible chance of securing a high degree of autonomy as promised in the joint declaration.

I also believe that the Chinese government wants to take over and maintain Hong Kong in good order, both for the benefit of Hong Kong people and the Chinese nation. So the fundamental question is: what kind of political future and what types of political rights do Hong Kong people want? I cannot represent Hong Kong people, of course, but I can make some comments.

First of all, Hong Kong is a city of young people. More than half the population were born in Hong Kong. This is something new; older people were mainly born in China, they suffered during the war, and they suffered during the cultural revolution and natural disasters. Generally speaking, they, however, still lacked a kind of long-term commitment to Hong Kong, or concern about Hong Kong's political prospects, because they regarded themselves as being unfortunate sojourners there and temporary residents.

Most young Hong Kong people have grown up in the territory, in years of unprecedented prosperity, and they have had opportunities to travel and see the wider world that their parents never dreamed of. As the transition to 1997 comes, they cherish their home city more and more. As they travel abroad and in China, they understand what Hong Kong stands for, its openness and its freedom compared with other places in Asia. And this colours their approach to the question of what kind of political rights they think Hong Kong should enjoy.

The Joint Declaration does not go into details. It contains some particular language; it refers to Hong Kong's 'way of life.' This way of life is not defined, but most Hong Kong people that I have met say that it includes all those things that make Hong Kong special, including relative personal freedoms and civil rights. But they do believe that this way of life is defined in the context of a future existence in the Chinese cultural domain.

Hong Kong people refer to themselves as Hong Kong Chinese, that is a kind of Chinese with Hong Kong characteristics. In the past they have not pursued the goal of political independence. Now that they are reaching the end of the colonial period, people naturally feel themselves, more and more, to be Chinese and proud of their Chinese heritage.

I do not want to go into details about the history of negotiations between Britain and China, but I would just make one comment: in my view they have been marked by a very deep-seated and radical lack of trust on both sides. It is not surprising that this has prevented an entirely satisfactory outcome. It has had the affect also of politicising Hong Kong people into two camps, creating one pro-British and one pro-China.

Generally speaking, the pro-British camp includes those who owe their education and their status to Britain. In that group I would include lawyers, academics and English-educated journalists. They are, as you can see, many of the people who are most aware of the importance of civil and political rights. On the other side, and gathering strength as 1997 approaches, is the Chinese camp. It includes people with day-to-day links with the

PRC, including trade unionists and business people. The leaders of the commercial world in any part of the world are inclined to regard human rights issues as lesser priorities for government and put their emphasis more on the maintenance of a level playing field for business activities.

In Hong Kong there has been increasing polarisation between these two camps. I think when the British go, it is likely that some parts of both will coalesce into a kind of middle ground that you might call a pro-Hong Kong lobby. At the moment, as you know, the majority party in the Legislative Council is the Democratic Party. This clearly and legitimately represents Hong Kong people. One key question to be answered is the place of this party in the future government. This will be determined during the first elections to be held in the SAR and the conduct of these elections will deserve careful study.

The Democratic Party has spoken out strongly on many of the matters of interest in this inquiry, including the preservation of Hong Kong human rights under the terms of the relevant UN conventions. However, referring back to the distinction that I just drew between two camps, clearly it falls more easily into the pro-British than the pro-Chinese camp and so it is distrusted by Beijing. Although it has recently improved its relations with China, it seems it will not form part of the interim Legislative Council.

If the committee is interested in the relationship between the Democratic Party and the general public in Hong Kong, I would recommend looking at the paper *Political Participation in Hong Kong: Trends in the mid-1990s*, by Dr Joseph Cheng, who is an Australian on the staff of the City University of Hong Kong, which was presented to the recent annual conference of the Asian Studies Association of Australia. In the interests of time I have a short summary of that, but I will not go into the details.

Finally, I would like to make some remarks about China's approach to the Hong Kong transition. As I said, China holds all the cards. Most of the Hong Kong advisers appointed by Beijing are business people. Hong Kong plays a most important role in the development of the Chinese economy, as you have heard from Austrade. Any downturn in the Hong Kong economy will impact on Chinese foreign trade and on key areas of their economy. Within China itself, Chinese leaders' domestic political control depends on them providing continuous economic growth and material rewards for the population. Hong Kong is a contributor to this strategy, but economic growth is also China's objective in Hong Kong.

Secondly, Deng Xiaoping's fundamental aim in the original negotiations with Britain was to reassert China's sovereignty over Hong Kong. Sovereignty is also the key issue in Beijing's relations with Taiwan. As you know, the 'one country-two systems' formula was originally proposed as a means of peaceful solution to reunification with Taiwan. This is still the main reason for Chinese commitment to the successful implementation of this formula in Hong Kong.

China defines sovereignty in different and more rigid terms than we do in the West. Beijing has said that the central government would intervene in Hong Kong if there were any threat to Chinese sovereignty. I think there are some aspects of the globalisation of the economy in Hong Kong and the region that might, in the future, appear to conflict with the Chinese definition of sovereignty.

Just now I heard you raising questions about the operations of telecommunications or media companies based in Hong Kong and how these might be viewed by the central government. One might speculate that, if Beijing perceived a threat to sovereignty in Hong Kong from these commercial operations, the central government could intervene. Australian companies could then become caught up in such a situation.

The other areas where Beijing has said that it might intervene include cases of 'subversion', 'politicisation' and 'internationalisation'. All these terms appear in the Basic Law but none of them is defined. To some extent I think that these references illustrate Chinese suspicions of British intentions and I hope that once the British have left Hong Kong these fears may dissipate. But the committee also might like to consider whether the Basic Law reference to 'internationalisation' might affect Australian links with Hong Kong.

China is aware of the extent of our trade and investment interests in Hong Kong and of the strong immigration and people links. Hong Kong is a full member of APEC and this has been endorsed by China. Its international links with Australia and other countries have been sanctioned and endorsed by China. The Chinese government approved the opening of the Hong Kong economic and trade office in Australia.

None of these appears to fall into the category of 'internationalisation' which would arouse central government interest, but all of these links in the future will serve to buttress Hong Kong's high degree of autonomy. Therefore, it might reach a point at which there might be some Chinese concerns about any of them. The vagueness of their definition, I think, needs to be further explored in discussions with China. I think it may relate to China's suspicions of American support for Taiwan and for the possibility of Hong Kong playing some role in an international hostile conspiracy. Perhaps the opportunity may arise in the committee's discussions to clarify these points.

To sum up, Australia is an important trade partner and shares a common perspective with Hong Kong on many regional issues. We have strong people-to-people bonds and other community links. In my view, Australia's relations with Hong Kong are based on an expectation that Hong Kong will continue to enjoy its present international status as spelt out in the Basic Law. That includes regular contacts between the legislative council and the Australian parliament. These will help to reinforce that high degree of autonomy endorsed by Britain and China, and will also help to secure the protection of human rights in the territory.

CHAIR—Thank you very much. In essence, I think you were saying at the beginning of your comments that we need to take the good faith of the Chinese government and Hong Kong needs to accept the good faith of the Chinese government, perhaps more than the media and some commentators are prepared to do in comments we are reading. Why are you so optimistic that we can take that Chinese government intention in good faith, given their record on human rights or democracy in areas such as in Tibet or Tiananmen and so on? Is the economic benefit from Hong Kong so overwhelming that they are going to really change what has been, in the human rights area, something of an established pattern of behaviour?

Dr Chey—I think in many of these areas that the Chinese government have not focused their attention clearly on the importance of civil and political rights. First of all they saw Hong Kong as an issue in national sovereignty. Now they see it as a business economic issue. Those advisers that they have appointed have been mainly business people who tend not to focus very much on human rights issues. In their united front tactics they have cultivated individuals and leaders of the community. They have not yet fully engaged with the next level in Hong Kong, which is a level of growing importance—that is, community organisations, lobby groups and pressure groups of all kinds which not only represent interests in town planning and water management but also represent interests in preservation of religious freedom, academic freedom and so on.

This will evolve naturally as they take over the responsibility for running Hong Kong. These are very important groups in Hong Kong. They are used to being heard. I am sure they will continue to find ways to make their voice heard.

CHAIR—You made the point that, in terms of Australia's ongoing relationships, the people-to-people contact was very important. I think you mentioned the parliamentary contact, for example, and how there had been an Australian-Hong Kong friendship group, which I think has been reasonably active.

Those groups and those contacts, particularly at a parliamentary level, are very much predicated on relationships often under the umbrella of Commonwealth parliamentary association of democratically elected bodies. Given the way that the transitory arrangement for the LegCo is being handled, do you think it is going to be possible to maintain that on the same sort of basis?

Dr Chey—The Basic Law permits the government of China to support the continued evolution of elected government in Hong Kong, ultimately, to a fully elected legislature. The provisional legislature will be appointed, but it has undertaken to hold elections in Hong Kong. I think we should watch those elections to see if they really are freely elected.

CHAIR—The concern behind my question stems from my understanding that, in the original agreement, the existing LegCo was meant to carry on over the changeover

period and that the Chinese government has changed that situation and come up with this provisional arrangement. Therefore, what confidence can we have that it really is going to become a democratic body because the provisional arrangement and the way that is being selected is certainly not a democratic process, as I understand it?

Dr Chey—They have said that they will hold elections as soon as practical after 1997. I think this is the first real test of the sincerity of their intention.

CHAIR—Yes, indeed.

Dr Chey—That is why I think it is very important to watch that.

Mr SINCLAIR—I was trying to find which section of the Basic Law you were referring to when you said that internationalisation could impact on Australia's position. Which article did you have in mind?

Dr Chey—I do not have a copy with me, I am afraid.

Mr SINCLAIR—I will bring you one.

Dr Chey—The reference to central government intervention in Hong Kong has been made in a number of speeches. There is not a reference in the Basic Law that says, 'The central government will intervene in Hong Kong in the following cases.'

Mr SINCLAIR—No.

Dr Chey—But these terms appear in the Basic Law.

Mr SINCLAIR—So you mean that, because that power with respect to external affairs is to be retained in the hands of the central government, they could intervene in that special relationship that has existed with Australia? Is that really what you meant?

Dr Chey—They have referred to their concern about the internationalisation of Hong Kong. The international status of Hong Kong is spelt out in the Basic Law, but in rather vague terms.

Mr SINCLAIR—So you think that might in some way prejudice our relationship. They are not a member of the British Commonwealth now—I do not know whether they have had observers—but there will be a different relationship in that sense. But it is more because you think that they will be looking at Hong Kong becoming part of China, and therefore the internationalisation that occurs would be subject to the general application of Chinese foreign policy and attitudes to other countries rather than what that special relationship—

CHAIR—It may be that you are talking about article 23, which actually talks about prohibiting foreign political organisations or bodies from conducting political activities in the region—that is, the SAR—prohibiting political organisations or bodies in the region from establishing ties with foreign political bodies, and so on. Would that be the area that you are talking about?

Mr SINCLAIR—In any event, while you are looking for that, if you have anything further that you would like to add to what you have said, perhaps you could—

Dr Chey—I have found it. It is article 23.

Mr SINCLAIR—Article 23 in particular. Yes, I see.

Dr Chey—It mentions subversion and so on.

Mr SINCLAIR—Yes—which is obviously very capable of being applied in a—

Dr Chey—In the area of economic commercial international connections, there would appear to be no problem. There are also references to Hong Kong's international links—cultural, sporting, educational and so on—which are probably all right. The concern is political activities, but where does politics begin and end? We had ping-pong diplomacy in a period of our relations with China, so it is very hard to define exactly what it is. I think obviously Taiwan is the most sensitive issue because that is still a sovereignty issue.

Mr SINCLAIR—That is the trouble I have with the idea of one China, two systems. The relationship with Taiwan still seems to be very dominant. Obviously, we are looking at China as it is now. China herself is going through a very significant process of change, and the relationship with Taiwan seems to be a flashpoint. If anything, it has become a little more aggressive. But I do not know whether that is a product of the new regime—while Deng Xiaoping is still alive—still trying to assert that they are different, or whether it is an ongoing one.

There also seems to be an apprehension about American relationships at the moment, and I do not know whether that will change in any way following President Clinton's re-election. In other words, are the concerns that you are expressing about the Hong Kong relationship being predicated on what you see as the ongoing China position, and are they in particular aggravated by what are a number of seeming flashpoints—the change of generations in China, attitudes to the United States, attitudes to Taiwan—or do you think that they are more fundamental? In one sense it is very difficult to know where China's attitudes on a lot of these issues are going to be in 10 to 20 years time. Would you like to express a view on any of those matters?

Dr Chey—That was a very big question and obviously from someone who has been following events for a very long time. Certainly China is evolving. The concern

which I raised about the negative aspect of reporting on China might be illustrated by a headline I read in the *Financial Review* a month or so ago. It was talking about China's economy stalling or something like that. It was actually reporting that the Chinese government had managed to bring its quarterly inflation rate down to eight or nine per cent from its previous level of 11 per cent. I would have thought that this could be regarded as being a positive rather than a negative. With so many things in the case of China, if it is possible to give them a negative spin they are all given a negative spin at the moment.

CHAIR—Some of us feel the media do that in a number of areas, I have to say.

Dr Chey—Certainly within China they are very conscious of this and see this as being generated by the influence of the American media. Which way China is going to evolve I am not sure but taking Hong Kong into the body politic of China may well provoke changes within the Chinese system. It is an experiment and it is the Chinese way of initiating change to start by taking a particular area of China and using that as a testing ground for changes which may then be made in other areas. This was the thinking behind the original establishment of the economic development zones in Shenzhen and other places.

It is quite possible that if Hong Kong is absorbed into China and the absorption goes successfully that many of those elements which have made Hong Kong successful and remain successful may then be reproduced in other places in China. We think about the effects on Hong Kong of 1997 but we also need to look at what may be the effects on China in 1997. That is another question.

Mr SINCLAIR—I have heard you say on other occasions that you thought that effect of Hong Kong on China might be even greater than the impact of China on Hong Kong.

Dr Chey—In the long term I think it might be, but who is to analyse it as China is such a large and complex country? There will be other changes that come from other developments within China and from international developments.

As for the United States and China, that is a whole new topic to discuss. Certainly, if you look at investment and trade you will see there is a very important relationship. Many major American companies are looking very seriously at the Chinese market and have already made investments there or are considering investments. It may not have been politic to talk too positively about the China relationship in the lead up to the election in the view of that negative bias in the media but I would not be at all surprised if when the presidential election is over the United States moved quite rapidly to consolidate its important business and commercial relationship.

Mr SINCLAIR—Thank you very much, Dr Chey. I know it was a complex area

but it is obviously one that is going to have a great bearing on our own relationship because, to a degree, we are bystanders when you look at the major players.

In terms of two other countries and future effects on them, would you like to tell us how you see the Japan-Hong Kong relationship after 1 July 1997 and how you see the Britain-Hong Kong relationship after 1 July 1997? They are big issues but they are going to have a bearing on our own relationship in Australia.

Dr Chey—The British one is a bit simpler to deal with. There are important British companies operating in the Far East and Hong Kong is their base and they will remain there. Many of those companies have strong links with Australia and it is an issue that interests and concerns us.

You mentioned Jardines. Jardines' main focus of interest in their operations is China and the Far East and they will stay there, and so will Swires and Hongkong Bank and Cable and Wireless and all the other big British names. Most of those have got close links with or operations in Australia, so what they do will be of great interest to us.

Britain itself will have only the same kind of role in Hong Kong that other European countries have, because Britain's main area of interest obviously is the European union and developments there and in the surrounding region. I would see that those British companies might well, since they have links with Australia, bring those Australian operations more into the focus of their far eastern operations than they had done—this is just speculation, without going into details, but I think that is an interesting area to look at.

There are a very large number of Japanese companies in Hong Kong—and Korean and Taiwanese, of course. Japan is watching very carefully what is happening in a typically Japanese kind of cautious way. There are a lot of discussions in the Japanese Chamber of Commerce. Japan has got very big interests, but the Japanese-Chinese relationship is one that is complicated by history and, while there are mutual benefits on both sides, there is also not quite the same level of distrust that I mentioned between Britain and China, but they do see each other as potential competitors as much as collaborators.

It is a very fraught relationship and one that is very difficult to resolve from the Chinese point of view. They are still waiting for the Japanese to accept responsibility for the atrocities they committed in China during the war. There are still many people both in Hong Kong and China whose memories go back to that period and it is not easy for this relationship to be improved without something more being done, I think, on the Japanese side on that.

Mr SINCLAIR—Thank you very much. Sorry for the basic question. I will hand over to my colleagues now.

Senator BOURNE—Dr Chey, it seems that if the rule of law can be maintained, if the police stay in control, and the garrison is not called in too much, then most other basic rights follow from that. Do you believe that that can be achieved? Do you think it is something that will be given priority at the handover?

Dr Chey—It is guaranteed in the Basic Law and I am sure China is going to observe the letter of the Basic Law to the best of their understanding. The difficulty comes in the potential for conflict between two very different legal systems—the Chinese legal system and the British-Hong Kong legal system. There are only a very few people who understand what the potential conflict is.

I think in Hong Kong I would only have met five or six British trained lawyers—Western trained lawyers—who have any understanding of the Chinese legal system. I think from what they tell me, there would be no more than that number on the Chinese side who have any real understanding of the British legal system. That indicates that things could easily go wrong.

I think it is interesting the role that Australian lawyers play in this, because we have taken more interest in Asian law than the British have. For instance, in Sydney University Centre for Asian Law and in Melbourne University a lot of work has been done and there is obviously a potential contribution that could be made by support and contacts between legal professions trying to guard against these rifts developing. I can see potential.

Two of the candidates for the chief executive, of course, are lawyers. It is not our role to decide who will be appointed but I could see definite pluses if one of those people with a legal background were to take up that position, because they would then be much more aware of the need to preserve the cooperative relationship and not let it become a relationship of conflict rather than cooperation.

Senator BOURNE—Do you think that there would be any encouragement of training of lawyers and judiciary from both sides in the system of the other side? So there could be Chinese lawyers and judges being trained in Hong Kong with the common law and lawyers from Hong Kong being trained in China with the Chinese system. Do you think there is a potential for that?

Dr Chey—Yes, I do.

Senator BOURNE—The other thing I wanted to ask you about is Shanghai. There has been some talk this morning of the fact that Shanghai is starting to bring back some of its former glory as a trading centre. It certainly seemed like that to me when I was there. There could be some rivalry between Shanghai and Hong Kong, or increased rivalry. Do you see that as something that could create problems or something that would be an asset, and do you think it is happening?

Dr Chey—I think the sense of rivalry is more on Shanghai's side. I do not think Hong Kong people seriously take this as a threat. If you look at it from the point of view of an international company that might be deciding where to base their operations, if their interest is in developing business in the Shanghai region, obviously they will be in Shanghai; if they are more interested in the southern Chinese region, obviously they will be in Hong Kong. If they were looking just to have one office to cover those two areas and possibly other parts of China, they would make their decision on grounds which highlight the difference. All those things that we have mentioned as possible concerns in the Hong Kong transition—rule of law, law and order, freedom of the press and so on—are concerns in Hong Kong, but in Shanghai they have not reached anything like the level that we are concerned about in Hong Kong, so the pluses are obviously on the Hong Kong side there.

In addition to that, from the business point of view, there are regulations which apply to the whole of China from which Hong Kong will be exempt, and probably number one of those is the free movement of capital in and out of Hong Kong. Until China has both a freely convertible currency and substantially deregulates its financial environment, there is no city in China which is going to match Hong Kong as a business centre.

Senator BOURNE—There is something I had not thought of. Do you know what currency it will be? Will it be the Hong Kong dollar, it will still be floated the same way and none of that will change?

Dr Chey—Yes.

Senator BOURNE—Thank you.

CHAIR—We talked about the democratically elected LegCo obviously not going to be there and we will have the provisional legislature, but potentially elections afterwards and the new permanent LegCo, if you like. Do you see any potential for some of the democratically elected people or the people from the democratic viewpoint in Hong Kong being involved in that provisional legislature? Do you think that is likely to happen? And if they are not, what impact do you think that might have on the smooth transition from its present status to Chinese control?

Dr Chey—My understanding is that the Democratic Party has said that they will not recognise the provisional legislature, so, as a party, they have ruled themselves out of participation. That leaves the possibility that some individuals, as individual members, might perhaps participate.

CHAIR—If they are not participating, do you think they will have any impact on the transition?

Dr Chey—I think the whole episode is very unfortunate. Obviously, it would have

been much better if there had been a through train, as was earlier discussed. If the period is short—if the Chinese really regard it simply as a transitional arrangement and hold elections as promised as early as they can—and if the Democratic Party is allowed to stand in the new legislature, in those proper elections, then the effect can be minimised that way.

CHAIR—You may not be able to answer this, but a thought that crosses my mind is: would some of the people who are the leading Democrats in Hong Kong at the moment perceive, perhaps, that they have a doubtful future and might have taken alternative citizenship as a safety option, shall we say? It seems to me that would then limit their effectiveness because they would be disqualified from being on any future legislative body. I think the Basic Law requires that you hold only Chinese citizenship and not any other citizenship. I wonder if you might be aware of whether there are some conflicts there for people in that movement. Maybe that is something we have to ask when we get to Hong Kong.

Dr Chey—Foreign citizenship is very prevalent in Hong Kong. There are estimates that maybe one to two million people of the six million population might be holders of foreign passports. So it is not just the Democratic Party.

CHAIR—I am talking in terms of their representation in any future legislature. As I understand it, to be qualified to be in the legislative council under the agreement, under the Basic Law, you have to be a Chinese citizen and you cannot be a foreign national. That, presumably, could cramp their style. Anyway, I may well ask somebody else that. Are there any other last questions?

Mr SINCLAIR—There are two things that we have not spoken on. You feel that it is more likely that China will be brought into the free trade world than Hong Kong into the restrictive tariff trade. That is just your belief; rather than being based on any signs or symptoms. It is based on the fact that China has tried Shenzhen and they are looking at ways by which they can gain access to the world. Is there any other basis for that concept that you seem to be suggesting?

Dr Chey—I do not think I was speaking specifically about tariffs; I was speaking in much more general terms.

Mr SINCLAIR—A wider sense, yes.

Dr Chey—China is committed to tariff reductions through the APEC process and their application to join the World Trade Organisation, which Australia supports.

Mr SINCLAIR—Yes.

Dr Chey—We can see that foreign trade is assuming greater and greater

importance in the Chinese economy. The big change in the Chinese economy over the last 10 or 20 years has been how they have moved from being an inward looking economy, where foreign trade was conducted all the time but was a very minor part of their total economic future, to where it is becoming more and more important. I do not see that that trend is going to be reversed, so they are going to become more and more subject to discussion of the importance of tariffs. No doubt they will have competing points of view expressed in China, just as there are in Australia and other places.

One thing they will be conscious of is that the American, the Japanese and other companies that are looking at putting investments in China are also considering the alternative attractions of investment in Indonesia or India or other parts of the world. So China has to match the conditions which other countries offer to them.

Mr SINCLAIR—I asked you about Britain, the United States and Japan. I did not mention Taiwan, although you mentioned Taiwan. Obviously, the present leadership has entered a bit of a fixation about where they are going in Taiwan. Taiwan has been one of the reasons for the significant growth in Hong Kong because it has been the vehicle through which so much of their investment and trade decisions have moved. Do you see that continuing after 1 July next year or do you think that Taiwan will find some other place if they cannot negotiate direct access and entry? They could go to Singapore, although it is a bit far away. They could go to a number of other venues. Have you any views on that?

Dr Chey—Just before replying directly to that, I think the biggest foreign investor in China at the moment is South Korea not Japan, which you might think because the Japanese economy is much bigger, and not Taiwan, although they are both ethnic Chinese. It is very interesting that Korea is becoming such an influential player. There are a lot of Korean companies in Hong Kong, too. Taiwan and China are like brothers. They talk. Sometimes we read about what is going on. I think a lot more discussion goes on directly between Taiwanese and Chinese at all levels—at party level, at commercial level—and these signals are not read in the international media. Some of the signs that we read in the media do not represent the whole of that developing relationship.

Obviously the Taiwanese economy and its development is becoming more enmeshed with the Chinese economy and you might say the Taiwanese continued economic success will depend on their getting their relationship with China right. I will go back to this negative press again, while the press have reported Chinese hostility towards Taiwan, there was another aspect which did not quite make the same headlines and that was the Chinese restraint in not going further than they did. So the China-Taiwan relationship can be read in both ways, both as a positive sign and as a negative sign. On the whole, I feel optimistic that these two brothers will find ways of resolving their domestic scrap. I hope that it remains a domestic scrap and does not become an international one.

CHAIR—I think we would all subscribe to that. Dr Chey, thank you very much for your attendance here today. If there are any other matters that we want to come back to you on, the secretary will write to you. We will also send you a transcript of your evidence to which you can make corrections of grammar and fact.

Luncheon adjournment

[2.00 p.m.]

BALKIN, Dr Rosalie Pam, Acting Senior Government Counsel, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory

LEIGH, Ms Kathy, Senior Government Counsel, International Civil and Privacy Branch, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory

CHAIR—On behalf of the subcommittee, I welcome officers from the Attorney-General's Department. The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give any evidence in private you may do so and the subcommittee will give every consideration to your request. I would invite you to make a short opening statement before we get into questions.

Dr Balkin—We do not wish to make an opening statement on behalf of the Office of International Law.

CHAIR—Perhaps it would be worth exploring some of the practical difficulties that might arise with the changeover next July in terms of having two legal systems. We have the Basic Law, which translates, as I understand it, in my non-lawyer's language, joint agreement between China and Britain. But it obviously has a number of clauses that give primacy to the Chinese government to interfere in those things. Could you give us your perception on how practical it is that those things might work in the future, the difficulties you might see and the things that we should watch for on an ongoing basis as to how the arrangement is working?

Dr Balkin—It is difficult to answer that question with any accuracy because we are talking about what might happen and what might take place in the future. It depends, to an extent, on how these arrangements and agreements that are included in the Basic Law and that are the subject of the joint declaration might be interpreted by the Chinese government. I think it is quite clear that what will happen is that Chinese law will take supremacy, although we understand that under the joint declaration a fair amount of internal self-determination will be given to Hong Kong. But I do not know how this will actually translate into Hong Kong laws retaining their validity for the indefinite future.

From the perspective of our Office of International Law, we have really had only a very brief look, and this was at the request of the Department of Foreign Affairs and Trade, into what might happen regarding the continuity of treaty arrangements which may or may not be implemented in China through local laws as they may or may not be here.

So we do not know what is going to happen with them. The process of negotiation of those particular treaties has been satisfactory to date, in that we have been able to express our concerns as to which treaties we wish to see continued into the future and,

under the Joint Liaison Group which will oversee the transfer, we have been able to bring to their attention those treaties we are concerned about. To date we have received a speedy response on their continued implementation. But it is difficult to say how exactly the laws will be applied.

CHAIR—Given that lawyers, judges and the court system in Hong Kong have been based on the British system and the Chinese have a fundamentally different approach, how do you see the compatibility of the meshing and the effectiveness of the working of those systems? Do you have a view?

Dr Balkin—A purely personal view is that difficulties may well arise from a normal conflict of law situation where you have two very different jurisdictions and a different interpretation, perhaps, of how the law should be applied. How it will be resolved is difficult to say at this stage.

CHAIR—What about the independence of the judiciary in Hong Kong after the changeover—do you see that being affected?

Dr Balkin—I would not like to comment on that, because it is really beyond my capacity to do so.

CHAIR—Are you able to give us any information on the Court of Appeal—when it is likely to be established, the membership, things of that sort?

Dr Balkin—No, I am afraid not. We have no information regarding that at all. I might say the department has not had very much input into those practical arrangements at all. We understand that most of the dealings have been through the department of foreign affairs and it is only when they come to us with a particular issue that we have had the necessity to look into it.

CHAIR—We have a number of questions of a particular nature that we were interested in pursuing—such as whether the judges might come from those who are already resident in Hong Kong or from mainland China, and things of that sort. But if you have not really got that information then we might put some of those questions in writing and either direct them to you or to DFAT to seek some information, rather than me asking you a long list of questions to which you are going to say, ‘I am sorry, I do not know.’

Dr Balkin—I think it might be better if the questions were addressed in the first instant to the Department of Foreign Affairs and Trade, then we can take them up with them on a case-by-case basis. A lot of those issues are political rather than legal, so it is very difficult to offer an opinion on them.

CHAIR—Are you in a position to talk about the Joint Liaison Group and the negotiations in respect of treaty arrangements?

Dr Balkin—Only to the extent that we have already covered in the submission we put to this committee.

CHAIR—Do you know what stage that Joint Liaison Group has got to in terms of the process of negotiating treaty arrangements for the transition and that sort of thing? I suppose what I am getting at is what is the current state of play—or are you only able to tell us what is in the submission?

Dr Balkin—That is right. The Department of Foreign Affairs and Trade could answer that more particularly. But it seems that the Joint Liaison Group is operative because it has already been considering some treaty matters that have been put to it and been able to provide the government with a response.

Senator BOURNE—We do not have an extradition treaty with either, do we? Do we have one with Hong Kong? I suppose it is just the British one.

Dr Balkin—We have the surrender of fugitive offenders agreement, I gather, but I am not sure if we have an extradition treaty as such. I could take that on notice for you.

Senator BOURNE—I was just wondering how any possible extraditions would work after the handover from either side, from Australia, or from Hong Kong. You can write that down, too, and get back with something. In fact, I will write it down and get it to you.

Dr Balkin—I will do that.

Senator BOURNE—I have one other question that you may be able to answer. I think that probably the ones we have got down for you, we should have asked of Foreign Affairs, so we will get back to them. Have you any idea from any sort of discussions that you have had on international law, whether it seems that China is any closer to signing the ICCPR? No idea?

Dr Balkin—Again, that is a question for the Department of Foreign Affairs and Trade.

Senator BOURNE—Right.

Dr Balkin—It is not information that normally comes to our department.

Senator BOURNE—Thank you.

Dr Balkin—I can look into the question of extradition treaties for you.

Senator BOURNE—Yes. That would be useful, if you can.

Dr Balkin—And from our perspective, I think that it would simply be continuing the arrangements that have been in place, if any, indeed, are in place, and it would go through the normal processes that all extradition treaties do. I can elaborate on these, perhaps in a written response to you.

Senator BOURNE—That is fine. Thank you.

CHAIR—The Basic Law gives overriding power ultimately to the Central People's Government, and in that sense, I think normally in legal systems as we understand them, an interpretation of the law and that sort of thing is reserved to a court, rather than to a political body. Whereas, under the Basic Law, those interpretations go back to the Central People's Government. Do you have a view about the likely impact of that, its efficacy, or what it could do to people's rights?

Dr Balkin—As I understand it, the Central People's Government or the courts—I am not quite sure of their titles—do not apply the same types of rules of interpretation that we have in our system. They are quite likely to be different, but in which way exactly, we really do not know. The systems are fundamentally different, I think, from an Anglo-Saxon system.

CHAIR—That is right.

Dr Balkin—It does not mean it is better or worse, I think, but just very different.

CHAIR—Okay.

Mr SINCLAIR—I have got a few things that I would like to ask. Have you been in consultations with the Department of Foreign Affairs and Trade about what would happen if one of the members of this Australian judiciary were invited to participate on a court of appeal in Hong Kong? And if so, what would be your attitude?

Dr Balkin—Not personally, and I am not aware of any such consultations having taken place.

Mr SINCLAIR—Would you mind finding out? Obviously, if we were invited, it would be material as to whether one of our judges would be in any way inhibited in accepting an invitation from the government of Hong Kong to sit on that court of appeal.

Secondly, in the nature of your discussions with Hong Kong, have you been in any way involved in the question of recognition of Australian legal qualifications for practising in Hong Kong?

Dr Balkin—Again, not that I am aware of, but I can take that question on notice and see whether it has come to the attention of the department. I do not believe it has, but

I can make an inquiry.

Mr SINCLAIR—It would surprise if it were not because it has been about for a long while, and it has been a matter which has been discussed with universities. I presume the Attorneys-General have been involved because at one stage you could be registered as a legal practitioner if you visited one of the Inns of Court in the UK, but not if you were admitted to practise at any of the Supreme Courts or the High Court in Australia. Would you mind finding out about that?

Dr Balkin—I certainly will.

Mr SINCLAIR—And, thirdly, have you in any way been involved as far as discussions regarding the treatment of boat people and their position? There have been quite a number of offences. People have been sent from Hong Kong and the detention camps back to Vietnam, and there have been a number of offences. Are you aware of the position at all, or is anybody in your division aware of it?

Dr Balkin—Not in the Attorney-General's department; the matter has not been referred to us. I think that that would be almost exclusively a matter for the Department of Immigration and Multicultural Affairs.

Mr SINCLAIR—The point of the question is what is going to happen to those people who were committed as a result of offences that they have committed in the detention camps? If they are going to be in gaol or whatever after 1 July next year, what happens to them? They presumably then would be subject in some way to Chinese law—and the Chinese law for example has a death penalty and all sorts of other consequences. You have not looked at the implications for anybody who is in gaol for a term longer now than nine months?

Dr Balkin—No, the matter has not come to the attention of the government.

Mr SINCLAIR—The next point which also relates to that is whether you are aware of the problem of the point of first asylum and boat people.

Dr Balkin—Yes.

Mr SINCLAIR—Are you aware of the position that has been taken by the Chinese with respect to the fact that they will no longer treat Hong Kong as a point of first asylum after 1 July?

Dr Balkin—Yes, I am aware of that.

Mr SINCLAIR—And what will be the position if they are referred to Australia? Have you looked into the situation if South Vietnamese boat people arrive in Hong Kong

and they decide that Australia is going to be the next destination? What is your attitude or the advice you have given the government?

Dr Balkin—We have not been asked to give advice on the attitude we should take, but I assume that the approach that the government would take would be exactly the approach that it has taken in relation to other groups of refugees that have been sent on by countries in South-East Asia. We understand that this has already happened, that over the past ten or so years there have been groups of refugees who have arrived at various countries in South-East Asia by boat and they have been re-victualled and sent on. They have not been allowed to land or they have not requested to land, and they have come to Australia. When they come to Australia they are treated like any other people claiming refugee status, if indeed that is what they claim. It is really up to them to put in a claim for refugee status, which will be processed according to the normal methods.

Mr SINCLAIR—But we would not say that because China has changed the law that they are not therefore landing at the first point of first refusal?

Dr Balkin—That really would be a matter of interpretation of the refugee convention. As far as I am aware there is no requirement for a person seeking refugee status to apply for such status at the first safe country. A person can be a refugee no matter how many countries they have gone through—

Mr SINCLAIR—Because of the status of the point of first asylum and the fact that you have had so many who have come to Hong Kong as refugees in the past, the Chinese have apparently said that they are no longer going to regard Hong Kong as a point of first asylum. That would mean that we would be able to say, ‘You might have said that but you would traditionally be the point of first asylum, therefore we reject you.’

Dr Balkin—I think that would be a matter for, as I say, interpretation and application of the refugee convention and whether we were obliged to consider applications for refugee status, irrespective of whether they had been refused asylum or not. Another factor that may complicate it is that it is quite possible that there might be some arrangements entered into with China on that particular ground, but that is really a matter which I cannot answer to. I think that would be a matter for the minister for immigration to decide. Obviously any arrangement that would be entered into—an MOU for example—would affect the way we would then treat or process persons coming on by boat.

Mr SINCLAIR—Have you or anybody in the department been looking at the judgments handed down by the courts in Hong Kong or is that not really within your bailiwick?

Dr Balkin—It is not really within our bailiwick. That would be very interesting but we do not usually look at the decisions of courts of other jurisdictions unless there is a

particular reason to do so.

Mr SINCLAIR—I just wondered, because of the nature of what is happening in Hong Kong, whether you had seen that as being a little bit different from some others. The other area that interests me as far as the legal system is concerned is that, obviously, there is going to be a number of issues that Australia will need to look at in terms of how the Basic Law is applied and how we are going to treat Hong Kong in terms of commercial law and so on. Have you some section of the department that is looking at the Basic Law and how the decisions taken after 1 July are going to be applied, or is that something that you will do later on? Obviously, there are going to be differences and I wondered how you were approaching the whole question of examining those differences.

Dr Balkin—To my knowledge, there has been no strategy developed within the department to handle these questions. We have only responded, on a case by case basis, to what has been brought to our attention or requested for advice from the Department of Foreign Affairs and Trade. I am not aware of that particular issue having been raised, yet. If it is, we will respond to it on that basis.

Mr SINCLAIR—I see, thank you.

CHAIR—Let me ask one other question then I will make a general comment. Have you looked at issues such as intellectual property and copyright and those sorts of areas in terms of how they might impact on Australian companies in their dealings with Hong Kong once the change comes, for example?

Dr Balkin—I do not believe so. I do not believe that that has come to the attention of the department yet. The department is quite practical in its approach. Unless the issues become real and we have to deal with it in a particular way, or the Department of Foreign Affairs wants some advice as to how it should formulate its policy in this area, we would not look at it for interest sake.

CHAIR—The committee's view is obviously that we are concerned to produce a report that is comprehensive, given the important trading and political relationships we have with Hong Kong and, obviously in the broadest context, with China. Clearly, there are a number of issues that we are looking at in that context, from the government point of view as well as from a business, commercial point of view and a human rights perspective. In that context, we certainly have a number of detailed questions that we think are legal questions, if you like, that we would like to get answers to and which we believe may well be appropriate to include in our report when we produce it.

I have had a second look in the last few minutes at your submission, which is fairly broad, it would be fair to say. From the answers you have given so far, a number of our questions have not been looked at in your department. What I might suggest we do is that I will get the secretary to write to you and pose a number of specific questions and

ask you to consider those.

It may not be an exhaustive list but it will give you an indication of the sorts of matters that we are interested in and there may be other things that those questions spark in your minds that would then become relevant because you will see where we are coming from, if you like. It may be then appropriate to ask Attorney-Generals to reappear before the committee at a later stage to deal with some of those issues. You may like to give us an updated, written response to those questions, but then we may well want you to come back and answer some more questions.

Dr Balkin—We would be happy to handle the matter on that basis. It would be quite useful, given that the department has so many different areas. There is the copyright area, the human rights area, and the international area, et cetera. If we had all those questions specifically directed and if they were sent to us we could make sure that we could give the committee a considered response as to what consideration has been given to date, or if none has been given, try to answer the question in the way that you would like.

Mr SINCLAIR—Do you mind if I ask: have you been through extradition treaties, double taxation agreements, et cetera?

Dr Balkin—I understand that there has been some consideration of those. I am not sure whether extradition treaties would be covered, but certainly mutual assistance in criminal matters and surrender of fugitive offenders agreements and investment protection and promotion treaties have been looked at. I am not quite sure in how much depth, but that has been a matter that our department has expressed concern on, that these continue in place. The matter was referred to the joint liaison group and I understand that we have received a satisfactory answer from our inquiries in that regard. But I think they only relate to very specific treaties. If you like, I can try and find an exact list.

Mr SINCLAIR—We really need to know what the position is with respect to China and in respect to Hong Kong now, and then what the position will be post 1 July.

Dr Balkin—Yes.

Mr SINCLAIR—I was asking before about prisoners who will be serving after the takeover or the handover, and I am just not too sure what their status will be and whether they will automatically just be taken back into China or whether they will continue. I think some of it is just covered by the Basic Law, but I have not looked specifically to see just what the position is. But I think it would be helpful if we got some of these, as the chairman suggested, and we can get a detailed answer and if need be we can ask you further questions on the matter.

Dr Balkin—Yes, we would be happy to do that. I might just add, though, that the responsibility for maintaining treaties lies with the Department of Foreign Affairs and

Trade rather than with our department, and so any negotiations to continue those agreements is routed through them and directed by them. But we can liaise with them in the response and get it back to the committee.

Mr SINCLAIR—I think it is really a matter of the legal implications of where we are. If there are future negotiations, I accept that is not the department's. Presumably you would be looking at the implications as far as Australian citizens are concerned, because one of the issues really is, if you have an Australian passport holder who is wanted for an offence in PRC currently doing business and residing and conducting business part time in Hong Kong, what is the position of that person after 1 July next year? Will they automatically just be taken into China and prosecuted according to the Chinese law, or are they still going to have some capacity to continue to function within Hong Kong as they have to date? That is the sort of question which at a legal level I would like to get an answer to, and I think it might be helpful to the committee.

Dr Balkin—Certainly. I will look into it for you.

CHAIR—Thank you for coming along today. We will certainly write to you, probably within the next couple of weeks or so, and we will look forward to that response, and then when we have read your response we will decide whether we need to have another face to face session. We will also send you a copy of today's transcripts so that you can make any corrections in relation to grammar and fact and so on. Thank you very much indeed.

[2.29 p.m.]

BUGDEN, Mr Laurence Kenneth, Assistant Secretary, Refugee and Humanitarian Branch, Department of Immigration and Multicultural Affairs, Chan Street, Belconnen, Australian Capital Territory

RIZVI, Mr Abul Khair, Assistant Secretary, Migration and Temporary Entry Branch, Department of Immigration and Multicultural Affairs, Benjamin Offices, Belconnen, Australian Capital Territory

SULLIVAN, Mr Mark, Deputy Secretary, Department of Immigration and Multicultural Affairs, Chan Street, Belconnen, Australian Capital Territory

WHEEN, Mr David George, First Assistant Secretary, Multicultural Affairs and Citizenship Division, Department of Immigration and Multicultural Affairs, Chan Street, Belconnen, Australian Capital Territory

CHAIR—Welcome. The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give any of your evidence in private you can ask to do so and we will give consideration to that request. I invite you to make a short statement before we get down to the business of questioning.

Mr Sullivan—Thank you, Mr Chairman, and thank you for the opportunity to appear today. You have a written submission from the department. It seeks to address two of the inquiry's terms of reference which are relevant to our responsibilities. These are:

.the condition of the remaining asylum seekers and the repatriation of those screened out under the Comprehensive Plan of Action for Indochinese refugees;

.the implications for Australia of the transfer of power from the United Kingdom Government to the Government of the People's Republic of China.

The department is monitoring the transition closely and expects it to proceed smoothly.

Our main interest is in the permanent and temporary movement of people from Hong Kong to Australia. As you are aware, there has been a steady increase in permanent and temporary people flows from Hong Kong to Australia over recent years. This is broadly consistent with global trends in the migration program, although in relation to permanent migration this has been influenced by Hong Kong specific factors, for instance, a surge in migration following the Tiananmen Square incident.

Movements of people are anticipated to continue within the framework of our current entry policies. The size and direction of immigration from Hong Kong show that people flows since the 1980s have been driven by economic considerations and temporary surges in response to political problems and uncertainties, such as those arising at the time

of the 1967 cultural revolution and the Tiananmen Square incident in 1989.

People flows after Tiananmen increased from around 7,300 settler arrivals in 1988-89 to some 13,500 in 1990-91 and some 13,000 in 1991-92, before dropping to 6,500 the following year. In 1995-96, 5,880 permanent entry visas were granted and, under the temporary entry program, 96,280 visitor visas—or 102,365 if we include temporary business entrants—and 3,798 student visas were granted.

Research which is discussed in our submission indicates that Australia has been particularly attractive because of its proximity to Hong Kong, educational opportunities and lifestyle, and the opportunity to pursue business interests in Hong Kong while based in Australia. The Hong Kong born and formerly resident in Hong Kong community of around 100,000 persons is an integral part of the Australian community. It consists largely of relatively young, professionally well-qualified persons. This is consistent with the tendency for Hong Kong migrants to enter into the skilled stream of the migration program, rather than the family stream.

Right of abode and Chinese nationality issues are of considerable interest to this community and other Australians wishing to travel to or working in Hong Kong. On the basis of current available information, the obtaining of Chinese nationality by ethnic Chinese does not have implications for the citizenship of Australians under section 17 of the Citizenship Act. Section 17 provides that an Australian citizen will lose his or her Australian citizenship if that person does any act or thing to acquire the citizenship of a foreign country. Chinese citizenship will be conferred on ethnic Chinese by right; it will not require an act or thing to acquire it.

While in our submission we indicate that the number of asylum seekers remaining in Hong Kong is 12,400, including 1,315 screened in-persons, the most recent advice available, obtained today, indicates that following further repatriation flights the total number has now reduced to 10,307, including 1,304 screened-in. It is anticipated that all the screened-out asylum seekers under the comprehensive plan of action, the CPA, will be out of Hong Kong by June 1997. The Hong Kong authorities are making a concerted effort to close the camps by that date. The CPA officially came to an end on 30 June 1996 and is considered a success with the global resettlement of over 125,000 Indochinese, including over 74,000 Vietnamese. With those opening remarks, Mr Chairman, I would welcome any questions.

CHAIR—Talking about the comprehensive plan of action, the CPA, could you perhaps give us some indication of Australia's involvement in that in the context of providing financial assistance, skill levels or bodies. Have we worked in a practical sense on that plan?

Mr Bugden—Australia's contribution to the CPA has been largely twofold. In the first case we have provided about \$10 million in funding to the UNHCR for the operation

of the CPA. Secondly, we have resettled in excess of 18,000 Vietnamese refugees.

CHAIR—I understand that there is a hard core group that is likely to be unplaced?

Mr Bugden—Mr Sullivan mentioned a screened-in number of 1,314. That is correct. The UNHCR is trying to resolve that situation by appealing to resettlement countries such as Australia to look again at the caseload. We are in the process of doing that now, particularly for those people who have links with Australia. We have been doing this for the past 12 or 18 months and we have got a number of cases that we are examining at this stage.

CHAIR—We as a subcommittee have received a submission complaining that the repatriation process under the UNHCR has been corrupt and in particular that there have been errors in the screening procedure, forced repatriations and a failure to acknowledge persecution of asylum seekers on return to Vietnam. Have you had any allegations of a similar nature? Have you had an occasion or opportunity to look at complaints of that type? Do you have a view on those sorts of allegations and their efficacy?

Mr Sullivan—Certainly, I think that we have played a very important role in the CPA with UNHCR. Allegations have arisen in several countries of first arrival on the screening processes. We have engaged with UNHCR in examining those allegations and are confident that the allegations do not hold, or should not be given much weight. In particular, I think that it is important to go through the screening processes in Hong Kong. In Hong Kong, your first interview with was a Hong Kong immigration officer where you completed a pro forma on what your claims regarding asylum were.

You then had a second interview. At that stage, a decision was taken as to whether you were a refugee. The UNHCR were given full mandate by the Hong Kong government then to examine any of the caseload in Hong Kong and substitute a decision that the person was a refugee over a decision of the Hong Kong immigration service. So, this was another group who had been refused by Hong Kong immigration who were then granted refugee mandate by the UNHCR. As well as that, in Hong Kong you had access to judicial review of decision making. I think that in Hong Kong, in particular, the screening in process was one which was clearly acceptable to us and the UNHCR.

The repatriation program is an orderly repatriation program. The Vietnamese require that the persons going agree to go and, certainly, it is being conducted that way. The UNHCR monitoring of those who arrived in Vietnam has reported that they do not see any subsequent persecution of returnees. Returnees are in the Vietnamese community and operating as members of the Vietnamese community.

CHAIR—We have not been able to do any independent verification of that.

Mr Sullivan—We have a mission in both Hanoi and Ho Chi Minh City and the

returned now are quite a significant part of the population. Certainly, both of those missions continue to report that from their perception, returnees are settled without persecution in Vietnam.

Senator BOURNE—You mention in your submission that Amnesty International backs up the lack of ill treatment. I do not think that I have seen that document. If you have a copy, can you just copy it and send it on?

Mr Sullivan—We will get you that, Senator. Amnesty was important. Amnesty has reported.

Senator BOURNE—So, that would be of use. Regarding the case of James Peng: do you know whether it is the case that there was an argument about whether he is, in fact, an Australian or Chinese citizen? If so, how many other Hong Kong citizens that we believe to be Australian citizens could that problem possibly occur with? How many people are in the same sort of danger?

Mr Sullivan—Without wanting to pass this on to Foreign Affairs and Trade, all we can really say is that James Peng is an Australian citizen and was granted Australian citizenship under the act. So, therefore, he is regarded by us as being—

Senator BOURNE—Yes. We have no doubt.

Mr Sullivan—In terms of the consular issues of a dual national in China, I think that it really is something which I should stay clear of.

Senator BOURNE—Fair enough.

Mr SINCLAIR—Let me follow specifically on that. If, you look at the position of an Australian national who has been conducting business quite happily in Hong Kong and is able to commute between Hong Kong and Australia, and wherever, but is wanted for some alleged crime within China, what would the position of that person be after 1 July next year? In other words, will China say that because you are now in China, even though Hong Kong does that have that protection of the Basic Law, you were therefore just automatically going to be prosecuted under the Chinese system and extradited to China for that purpose?

Mr Sullivan—I do not want to avoid that question. All I can say is that the person is an Australian citizen. It is my understanding, depending on their circumstances—and that gets quite detailed—that they have the right of abode in Hong Kong. Being now a part of China, where they stand under the rule of law of China, it gets into that division between the Basic Law and the special rules that apply to the SAR. But I think it is something that my colleague from foreign affairs, who is listening closely, would be in a much better position to answer. Certainly the right of abode issues and all of the issues

that go with it are evolving quickly now. I think we will have a much clearer picture soon. For the very simple cases, it seems to be quite clear, but it is when you get into these complexities that you are not sure of just where everyone fits.

Senator BOURNE—Do you have any idea of what the UK government has done about people whom they have not given passports to—that is, Hong Kong residents without UK passports? There was an enormous fuss about these people who are Hong Kong residents, citizens of Hong Kong. Do they have any sort of a system in the UK to take any of the extra people in who do not have the passports? Do you know if they have put anything in place in that regard?

Mr Sullivan—My understanding is that a number of people were granted right of residence in Britain. There is a backlog being processed currently by the Hong Kong immigration service for British national overseas passports, which give you the right of entry to Britain as a visitor but not the right of access. These are seen by some in Hong Kong as being a preferable travel document at this stage until the Hong Kong SAR passport is issued. But outside the program that Britain had—and I think we could get the committee some details on special grants of residence in Hong Kong—I do not believe there is any new special British program to take persons who are not eligible for such a passport.

Senator BOURNE—Does the department foresee any special reaction just after 1 July? Do you think any reaction that is going to happen because of people wanting to leave Hong Kong to come to Australia or anything like that will have already happened?

Mr Sullivan—It is probably true that it has already happened. While the focus is on emigration from Hong Kong, Hong Kong at the moment is one of the fastest growing populations in Asia through immigration with a net movement of expatriate Hong Kong people back to Hong Kong and certainly a movement of people from other parts of the world into Hong Kong. As the committee would be aware, there is quite real and dramatic interest in ensuring that you have a passport of another country in case. Except when these incidents occur where we get spikes in interest, generally there is confidence at the moment that the transfer will be smooth.

Senator BOURNE—I noted in one of the documents that immigration from China itself into Hong Kong is very large, and mostly family reunion, which I thought was quite interesting. Do we know if any of that migration, particularly the family reunion from Hong Kong to Australia, is increasing?

Mr Sullivan—I think it will increase. Mr Rizvi may be able to give you more information. Its basis in large numbers was through independent and business skills migration. As that works through, I am certain we will see a growing number of families come out. A lot of the families are eligible under the skilled category and they find it easier to just migrate as skilled migrants.

Senator BOURNE—Yes, exactly, and we have those families here now. Most of the young families are here now and somebody is going back all the time. It is bad enough from Gosford to Sydney and Canberra to Sydney.

Mr Sullivan—Chinese migration to Hong Kong has a quota of 150 persons a day. As I understand it, that quota will continue after transition.

Senator BOURNE—That is interesting. Thank you.

Mr SINCLAIR—There are a few things that I wanted to look at. As far as the department's involvement in the UNHCR is concerned, have we looked at the degree to which those who are essentially illegal immigrants from China resident in Hong Kong and who have acquired our citizenship have any particular problems as a result of the handover, or is that in the foreign affairs part of it?

Mr Sullivan—No. Our understanding is that about 35 per cent of the Hong Kong population is born in China and have made their way across that border at some time. If you are an ethnic Chinese in Hong Kong at the time of transition, you will become a Chinese citizen. The only way you will not become—

Mr SINCLAIR—Even if you are not a Hong Kong citizen. I do not know how many there are.

Mr Sullivan—If you are ethnic Chinese in Hong Kong, you will become a Chinese citizen. If you do not want to become a Chinese citizen, you will have to make a declaration that you do not wish to be one.

Mr SINCLAIR—I see.

Mr Sullivan—How you do that is being worked through. It is a process which is a very inclusive one which covers everyone. It even covers some of our staff who will, on the date of transition, become Chinese citizens. It will then be up to them to make a declaration of whether or not they want that to occur. But I do not think it will differentiate between someone who may have illegally crossed from China to Hong Kong. I think they will be embraced in exactly the same scheme.

Mr SINCLAIR—As far as their capacity to travel, that presumably will be subject to slightly different laws under the Basic Law to an average Chinese. They will be citizens of China but they will also be citizens or residents of Hong Kong and, therefore, they will be able to travel.

Mr Sullivan—That is right. They will have a Hong Kong identity card. They may have a BNOP—a British national overseas passport—and they will be eligible to apply for a Hong Kong SAR passport. Any of those documents are eligible travel documents for

those persons to travel and will not be subject to the same exit processing as a person in China is currently.

CHAIR—What happens if they are an Australian citizen resident in Hong Kong?

Mr Sullivan—Who is at the time of—

CHAIR—Somebody who lives in Hong Kong but has become an Australian citizen, what happens to their status?

Mr Sullivan—If they are an ethnic Chinese living in Hong Kong, regardless of whether they are an Australian citizen, they shall become a citizen of the PRC on 1 July 1997.

CHAIR—Unless they elect not to do so?

Mr Sullivan—No, they become one and then they declare they do not want to be one.

CHAIR—So what if they are an Australian citizen and they want to stay as an Australian citizen?

Mr Sullivan—They will stay an Australian citizen anyway.

CHAIR—Alright, they will be a Chinese citizen and an Australian citizen at the same time?

Mr Sullivan—They could be.

CHAIR—The fact that they retain their Australian citizenship either as a dual citizen or by rejecting the Chinese citizenship, what does that do to their residency status in Hong Kong?

Mr Sullivan—As I understand it, they retain a resident status in Hong Kong even if they declare they do not wish to be a Chinese citizen.

Mr Wheen—I think it is important to distinguish the nationality issue from the right of abode issue. The right of residence as distinct from nationality. I think that is a point we are wanting to stress.

CHAIR—That is good because that clarifies what I am driving at. You do not get punished for one if something happens in the other category.

Mr SINCLAIR—But if you have a right of abode you can travel on it, is that

what you were saying?

Mr Sullivan—That is right.

Mr SINCLAIR—So if present laws were to continue in Australia, for example, you would get a visa on your right of abode?

Mr Sullivan—That is right because you could establish that there is a right for us to return you to somewhere.

Mr SINCLAIR—I have a few other odd questions that are not altogether sequential. I asked a question a moment ago of the Attorney-General's Department about the point of asylum. As I understand it, there has been an announcement made by China that Hong Kong, after 1 July, is no longer going to be a port of first asylum. That obviously has implications for people who in time come into Australia. Have we determined yet what attitude we will have towards those who would seek to gain refuge, say, from Vietnam into Hong Kong? At the moment, unhappily, many of them have come through Hong Kong and been received by UNHCR and whatever. What is the position going to be after 1 July? Have you yet looked at that?

Mr Sullivan—Under the CPA we have participated in a multilateral approach to the outflow of boat people, particularly from Vietnam, and then moving it to a refugee screening process and moving to play a significant role in accepting people that have been determined to be refugees, and that is largely under the convention. We have to understand that China is a signatory to the UN convention on refugees and has obligations as a signatory to that convention. Hong Kong is currently a signatory through the UK being a signatory. The PRC is a signatory and so they do have protection obligations.

However, if they refuse to accept arrivals, which is something that other countries in the region have done, it is a matter of whether that stops the flow or whether the flow redirects to Australia. If the flow does redirect to Australia, we are signatory to the convention and anyone who arrives in Australia making claims on our protection obligations is assessed on entry as to whether or not such claims are being made against our protection obligations. If they are, we take them through a refugee determination process.

Mr SINCLAIR—We have said that Hong Kong is a point or a port of first asylum. Henceforth it will not be, according to the Chinese. Would we determine it to be so because China is also a signatory to that convention?

Mr Sullivan—It is only if a person has received the protection of another country in the past where we can say that we do not have a protection obligation, that that person has received protection.

Mr SINCLAIR—So we will be accepting the Chinese—

Mr Sullivan—A person who has been through Hong Kong now but not been through a refugee process cannot be returned to Hong Kong on the basis that Hong Kong is where they should be. It is only if a person has been through a refugee determination process and been granted protection that we can rely on prior protection.

Mr SINCLAIR—So, victualling a boat or providing water and all the rest of it are not categorised as—

Mr Sullivan—No. There is another convention. There is an international requirement on some states in some circumstances to actually assist a boat in distress by fuelling it and providing food. That is a common occurrence throughout a region.

Mr SINCLAIR—Yes, I know. It is that migration interrogation process which you would be looking at before you determine—

Mr Sullivan—Yes.

Mr SINCLAIR—What is the position with guest workers? There are quite a few guest workers or whatever you call them from the Philippines and elsewhere who presently work in Hong Kong. What is going to be their status? In other words, they are people of non-Han extraction.

Mr Sullivan—We will check this out but as I understand it they will have a continuing right of residence in Hong Kong. They will not become citizens of the PRC. It will depend on how long they have been there at the date of transition. That will determine how long that right of abode will continue for.

Mr Wheen—It also depends on their current status in Hong Kong. For example, if they are one of the Filipino domestic workers they currently are on their equivalent of our temporary residence permits and they have stayed for a limited period for a specific purpose. Once that purpose is no longer in existence or the period of stay ends then it is likely that they will be required to return to the Philippines. The group of particular interest includes people of ethnic minorities, particularly people with an Indian or Pakistani background who have been there for quite some time and have many generations. Those ethnic Chinese do not automatically get Chinese citizenship.

Mr SINCLAIR—Yes, there are quite a lot of Indians about.

Mr Wheen—Yes.

Mr SINCLAIR—So their position could be in doubt.

Mr Wheen—No, our understanding at this stage is that they will have right of abode—that is, unconditional stay in Hong Kong—and they will be able to acquire a Hong Kong special SAR travel document.

Mr SINCLAIR—What about a person born in Hong Kong of, say, Indian extraction?

Mr Wheen—Yes, the same situation.

Mr SINCLAIR—They are not given citizenship of the PRC?

Mr Wheen—That is my understanding. They would rather have the right of abode, unconditional residence in Hong Kong, and an entitlement to a SAR travel document.

Mr SINCLAIR—That is going to create problems for their children in 50 years time.

Mr Wheen—I think it is a moving feast, if I may say so, Mr Sinclair, in terms of working through the detail of some of this.

Mr SINCLAIR—You might have answered this in your submission and, as I understand it, there has been a related question. In relation to family reunion, a lot of people who were born in Hong Kong and who have Hong Kong citizenship have Australian citizenship at the moment, but their families do not necessarily do so because their points are somewhat lower. What is the position as far as those people are concerned and our general approach after 1 July? Will they just be treated under a family reunion program like everybody else and have to get the same number of points or are they going to be given some assistance?

Mr Sullivan—No, their circumstances will be no different than they are today—that is, they may enter Australia under whatever part of the program they are eligible under. If that is independent or concessional, they would need to have the sufficient points to enter. If it were in the preferential family, it would be on the basis of a spouse or on the basis of a parent where the balance of family test is met—or it could be one of the other special categories. But, in terms of Hong Kong post-transition, there will be no change to what there is today.

Mr SINCLAIR—Does that apply equally to student visas? We have a lot of Hong Kong people coming to Australia under student visas. I find the real pressure comes when they get towards the end of their course and they try to work out whether or not they want to go home or not. If one of their parents has Australian citizenship and they have had a student visa for a few years, will they be the same as everybody else?

Mr Sullivan—They will be the same as everyone else.

Mr SINCLAIR—They would get a few more points normally about that stage, depending on what their skills are.

Mr Sullivan—They need experience as well as a skill. Our program is based on not only qualification but the experience with it. So a new graduate does not get particularly good points until they have accumulated that experience.

The important point for a child is when they move from being a dependent child to an independent person. If that child is still dependent on a parent, then it is a preferential family category. If the child is independent, then they have to come in their own right as an independent.

Mr SINCLAIR—What is the position with medical students? Do they get a student visa to allow them to complete their residency?

Mr Sullivan—A full fee paying student is granted a visa for the period of their training, which would include their residency.

Mr SINCLAIR—I know they do not get a provider number, but that is another matter.

Mr Sullivan—No, they do not get a provider number.

Mr SINCLAIR—Thank you very much.

Senator BOURNE—If dissidents or people who have had some charge made against them by China wanted to get out before 1 July—which I think would be a very sensible move on their part—and come here, is there any special provision that would apply?

Mr Sullivan—Australia has been involved with dissidents before—certainly after Tiananmen Square. We have probably taken a number of dissidents and we stand fairly well in terms of our contribution there. Certainly I think we would examine any case put to us as to why we should take someone, but I think that our past record is a good one.

Senator BOURNE—I think you are right. I think it was ACFOA, at another meeting I was at, which suggested that there were 39 people in that category that they knew of in Hong Kong. They were not suggesting that we take 39 dissidents and take the lot, but I was just wondering if we had considered that or if there was any special—

Mr Sullivan—No. We are open to considering, but I do not think there is any special consideration of it going on.

Senator BOURNE—Thanks.

CHAIR—You have answered most of the questions this afternoon in the context of the factual situation. I would like to ask you to put a bit more of an interpretative hat on in a sense. Having looked at the totality of the arrangements in the context of migration and citizenship and so on, what are the areas of vulnerability that might cause some difficulty for us or for Australian citizens or Australian businesses in our relationship with Hong Kong/China in the way that the rules have been drawn up, and the practical implementation of those as opposed to the ideal theoretical implementation?

Mr Sullivan—The practical implementation is moving pretty much in line at the moment with the theoretical one. The issues for an immigration authority and for Australia are that we are able to maintain the entry regimes that we have in place in Hong Kong, and largely they have relied on a number of things. They have relied on the viability of the documentation of people in Hong Kong. Certainly we are impressed with the plans on the Hong Kong SAR passport. It is a good document forensically and its distribution arrangements that are being put in place are also very strong. So that was the first example where we saw the practice very much matching the theory.

We want to see the right of abode rules settled finally. We believe they are settled and settled very satisfactorily for the great majority of people in Hong Kong now, but there are these small issues at the side which we would like to see resolved. It is clear for an immigration authority that you must have, particularly before you confidently give people temporary entry permits to enter this country, knowledge that you can return a person to where they come from if they transgress criminally or if they transgress even just in an immigration sense.

Certainly with the progress on right of abode, again, the practice of it seems to be matching the theory, which is good. Hong Kong has provided Australia with a great number of highly skilled, employable migrants as well as a good share of the business skills migrants that come to this country and bring a lot of resource. We continue to look to Hong Kong as a source of such migrants. Again, there is nothing in what we are seeing happen in practice—as opposed to theory—that would see that stop. So as a vibrant source of migrant entry, it should continue.

As a tourist and student source, Hong Kong grows at something like 15 per cent per annum. In terms of tourist numbers and of student numbers, it is one of our top three or four markets for students and brings many millions of dollars into both those industries. Regarding a viable entry-exit arrangement, it is very important for us to keep that side of industry running and again, it is going all right.

The political stability seems to be fine. But that is not saying that nothing is going to happen that could upset that. For a while after Tiananmen Square, and certainly in the initial discussions between the British, the Hong Kong and the Chinese, I think our application rate at our consulate was probably one of the best barometers of political feeling within the colony. It just went up and down on a daily basis. I think our post

managers there could read the *South China Post* and say, 'It is going to be a very busy day for us.'

In recent years, that has stabilised. It is a steady migration stream. It is a growing temporary residence stream. We do not have an overstay problem with Hong Kong. We do not have people who are making prospective claims and saying, 'Look, I've got to stay; I could not possibly be sent back to China.' All the signals coming out of the PRC in recent years are that the Hong Kong transition will be smooth.

Mr SINCLAIR—I just noticed these figures on page 4 of your submission. They quite intrigued me. The number of visas granted in 1989-90, in 1990-91 and 1991-92 were significantly higher than it has been since then. Over the last few years, you had applications lodged increasing quite significantly from 6,670 in 1993-94 to 12,384 in 1995-96 and yet the number of visas granted has only gone up by 1,000. Is there any particular reason for that? I notice you have a percentage of north-east Asia total, but the figures are a bit different. Do you see the graph I mean?

Mr Sullivan—Yes. I think it probably reflects the fact that most of the Hong Kong immigrants come through the independent scheme. It reflects the growing difficulty in the last few years of passing the independence points test. The independence points test, or the pass mark, has been steadily rising to the point now where an independent coming to Australia must be probably under 30 years of age, have vocational English and be professionally qualified and experienced. Then they will get a hat as an independent migrant. So I think more and more you will find that a lot of Hong Kong applicants are able to enter the independent pool but are not able to meet what is now a very high pass mark for independent migration.

Mr Rizvi—I think that is right. I think the other thing to note is that in looking at this equation you need to look not only at the applications and the visas granted but also at the applications that are in the pipeline. The independent pipeline at the moment is very large and a substantial amount of those numbers that you see there would be in that pipeline.

Mr SINCLAIR—You do say here that the change in numbers may have been to global and regional wide influences, but it certainly seems a very marked increase over a relatively short period. I wondered whether there were any other factors involved.

CHAIR—Are there any more questions. Did you want to add anything to that?

Mr Rizvi—The pass marks in the independent and concessional family category were reduced in December 1993. That may have triggered an increase in applications.

Mr SINCLAIR—Yes, it is just that they have gone up so noticeably. As you have said, it went up from 6,670 to 11,125, and it cannot all be because 1 July is getting close

because everything began well before that. So it was not that they did not know that 1 July 1997 was coming up.

Mr Rizvi—In December 1993 the independent pass mark went from 110 to 100, which is quite a substantial reduction, and would have made the possibility of migrating to Australia much more open to the industry.

Mr SINCLAIR—Thanks very much.

CHAIR—Thank you very much for your attendance here today, gentlemen. We are most grateful. If there are any matters that we want additional information on, we will write to you. We will also send you a copy of the transcript of your evidence so you can make any corrections of grammar or fact.

Mr Sullivan—Thank you, Mr Chairman.

[3.17 p.m.]

FISHER, Mrs Denise Margaret, Director, Hong Kong, Macau and Taiwan Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

PERGAMINELIS, Ms Maria, Executive Officer, Hong Kong, Macau and Taiwan Section, Department of Foreign Affairs and Trade, RG Casey Building, John McEwen Crescent, Barton, Australian Capital Territory 0221

CHAIR—You have already previously stated your full names and so on. It might be useful, before we renew questions—as we are conscious that you have sat through just about all of the evidence we have had from other witnesses since you appeared before us this morning—for you to comment on particular matters that you may have picked up in some of that other evidence.

Mrs Fisher—Yes. The first general point I would make is that you might be reassured to know that we have had a regular process of inter-departmental consultation, which has involved all of the departments with whom you have spoken today. Some of the individuals may not have been the same, but we have had quite close dealings with a number of departments.

The areas where it struck me we could help to clarify, to the extent that we have information, are the nationality and right of abode issues, depending on how much detail you want to go into, and the question that Senator Bourne had on business people who might potentially get into difficulties and so on. There was a question about whether or not members of the LegCo could hold foreign passports. That was a very specific question. We can address that if you want to revisit that.

CHAIR—I think all of those will be useful. In terms of the IDC, who was on it? It seemed to me that, as you say, the individuals were not all the same, but when the Attorney-General's Department turned up it was almost as if it was news to them.

Mrs Fisher—We have had a chat to them and we will be in touch with those individuals to make sure that communication lines are cleared up.

CHAIR—Certainly, we had a long list of questions which we gave up trying to ask because we were clearly not going to get an answer. We will write to them.

Mrs Fisher—We can certainly address some. I did not note them all down because I thought you would revisit them, but we can address some of them.

CHAIR—We did not ask them all in the end.

Mrs Fisher—Yes, we can certainly address some of those now.

CHAIR—We got about a quarter of the way down and stopped.

Mrs Fisher—If you want to try them on us again—

CHAIR—Do you want to respond to those particular questions that you have already mentioned that you picked up? That might be useful.

Mrs Fisher—Yes. Let us just look generally at the questions of nationality and right of abode. As I said this morning, there are still some outstanding questions of implementation that we are raising with the Chinese and the Hong Kong authorities. But, to be fair, we think, as Immigration has said, the Chinese have certainly come a long way and have been quite forthcoming with statements, decisions by the National People's Congress, as recently as June, and the Hong Kong authorities themselves with presentations of what the current situation is.

The remaining questions that we have relate very much to implementation—that is, how procedures are actually going to work on the ground. In general, for the 5.5 million of Hong Kong's six million population, there is no problem. They are mainly ethnic Chinese who, under the definitions of Chinese nationality law, after 1 July 1997, will become Chinese nationals. There is no question about those.

Of the half million non-Chinese nationals, around 100,000 are what the Hong Kong authorities call 'real expatriates', by which they mean Anglo-Saxon people from other countries who are working and living in Hong Kong. I will come back to that 100,000.

Of the remaining 400,000, just under half are Filipino, Thai or Indonesian domestics who, as Immigration said, are there on a contract basis. The question of right of abode does not enter into it in terms of them wanting to stay there for a long period to do business. There is no question of nationality because they retain their individual nationalities.

So that leaves us with 200,000 non-Chinese nationals and the 100,000 real expatriates, if we want to call them that.

Mr SINCLAIR—You have also got the Indians.

Mrs Fisher—And the 9,000-odd non-Chinese ethnic minorities. So what happens to all of those?

We can discuss the non-Chinese ethnic minorities in a quite straightforward way. If I can refer you to page 20 and the bottom of pages 21 and 22 of our submission. The British government has provided assurances about those people. If the situation arises

where they are going to have only British nationality, Mr Major in a statement assured them that, if they were under pressure to leave, they could have a home in the United Kingdom. They will not be stateless citizens, neither will their children.

He put it in those terms because most of those people, undoubtedly, would want to stay in Hong Kong and continue to have the right of abode there and to go on as they do now. But they do have recourse to what is called here 'British overseas citizenship', which means that they are not stateless, they are British overseas citizens. At the moment, that does not allow them long-term access to the United Kingdom, but, as Mr Major says, if they were under pressure of any kind, Britain would accept them as long-term nationals.

CHAIR—Sorry to interrupt, but has that actually been legislated in Britain or is that just a statement of good intent?

Mrs Fisher—It is a statement by the Prime Minister and there was a subsequent statement, more recently, which strengthened that.

CHAIR—When Major is gone in five or 10 years time—without pre-empting who might win the next election—what happens?

Mrs Fisher—That is a good question.

CHAIR—Do the people enter that category when they one day want to turn up on Britain's doorstep? What real basis have they got for saying, 'Let us in,' other than a statement made by a former Prime Minister some time ago, which, in my experience, does not carry too much weight in any country?

Mrs Fisher—That, of course, is not for me to make any comment upon. We can certainly follow up with the British Foreign Office to see what legislative backing that might or might not have.

CHAIR—I am not doubting Major's intent, but I am saying that, if somebody wants some legal protection, the substance is not there.

Mrs Fisher—We will raise that question with them.

Senator BOURNE—While you are raising that, would you mind just finding out for me what statements have been made by Mr Blair in relation to that question as well?

Mrs Fisher—Yes, we will certainly do that. Let us come back to the 100,000 non-Chinese ethnic origin expatriates in Hong Kong.

CHAIR—Does that include the Gurkhas?

Mrs Fisher—The Gurkhas leave Hong Kong because they are part of the British garrison. So it does not include them, no.

Senator BOURNE—Most of them; some are not, though. Some are now with local security firms, I understand.

Mrs Fisher—If they are non-Chinese ethnic minorities, they would come under the 9,000 people that we have been talking about. Now we are talking about non-Chinese, non-ethnic minorities. In other words, the broad range of expatriates who are of non-Chinese origins.

If those people want to have the right to abode in Hong Kong, they have to establish that they are permanent residents of Hong Kong—that is, that they have lived for seven years continuously up to 1 July or up to and beyond 1 July 1997, or if they have been living there for a lesser period than that they have established permanent residency. There is a sequence of criteria that the Chinese authorities have established, including things like paying income tax, having a domicile, living for long periods, which they say will be interpreted flexibly. If someone is based with a company in Hong Kong and had to go on a posting for two years at some stage and come back the authorities would accept their assertion that their permanent residence is in Hong Kong. There are two ways that they can establish right of abode—seven years continual permanent residence or providing some other earnest of continued permanent residence.

For the 200,000 non-Filipino, Thai, Indonesian, Chinese origin foreign passport holders, this is the nub of the question. What happens to Canadians, Australians and Americans who are of Chinese origin who want to continue to have right of abode in Hong Kong or who want to go back and do business with Hong Kong on a long-term basis establishing right of abode there?

In Australia's case we think we have—and the figures are very hard to come by—anything between 30,000 and 50,000 Australians with some sort of right of abode or business in Hong Kong that allows them to go there for long periods. We would say that many of those people—that is the best I can do—would be of Chinese origin. So it is an issue for us.

What we have been told is that for those people who are either already in Hong Kong with their Australian passport as of 1 July they come under the same conditions as the other expatriates if they can establish that they have lived there for seven years or if they give some other earnest of permanent residence in Hong Kong. If they do not do anything else they can retain their right of abode.

If they are not resident in Hong Kong before 1 July and want to go back after 1 July and settle in Hong Kong to do business or whatever on a long-term basis with their Australian passport, what they have to do to begin the process of acquiring their seven

years right of abode is to come to Hong Kong. This does not apply to Australian tourists of Chinese origin who just want to go to Hong Kong for a two week holiday or a one week holiday. This applies to people who want to go there and establish right of abode. Those people could just go, travel in on their Australian passport and start to accrue their seven years right of abode. In this case they will be considered to be Chinese nationals. I am talking about Hong Kong-born Chinese Australians. They could continue to do that and accrue their right of abode.

They could, however, decide that they want to be considered as Australians, in which case they can go to an immigration office and make a declaration of foreign nationality, in this case Australian nationality. What that bestows on them is a quite clear indication that they are not to be considered as a Chinese national. From our view point, in terms of consular protection, once they have declared that they are an Australian national, there is no doubt that we provide them consular assistance. That is the best understanding we have of the various categories of people up until now.

CHAIR—What happens with an Australian citizen who otherwise meets the residential requirements in Hong Kong, the seven years and whatever, who might well be acceptable in Hong Kong and be resident and have a flourishing business or whatever but who has Australian citizenship and may have been previously persona non grata for whatever reason in China?

Mr SINCLAIR—Or wanted for a perceived offence of some sort.

Mrs Fisher—If that person, commits an offence of sort and they have not made a declaration, they are treated by the Chinese as a Chinese national.

CHAIR—Given they are acceptable in Hong Kong now but Hong Kong is part of China, even though it might have a slightly different system, is the Chinese government likely to actually treat people who were not acceptable in China now differently now that they have taken over Hong Kong?

Mrs Fisher—I am not sure. Are you talking about—

CHAIR—We were talking earlier about the fact that the key issue from China's point of view is sovereignty. They want the economics to continue. But the key issue is sovereignty. Hong Kong is Chinese. It is one nation but two systems. Two systems is to accommodate the economics, but one nation is sovereignty. Therefore, if I were a Chinese person or of Chinese race but an Australian citizen and I previously, prior to next July, had established permanent residency with a business or whatever in Hong Kong but I was not acceptable in mainland China because of anything—

Mr SINCLAIR—If they go into Hong Kong and do business—

Mrs Fisher—And gets into trouble.

Mr SINCLAIR—Yes. Is he going to be automatically taken from Hong Kong, tried and whatever in China?

Mrs Fisher—It depends if that person committed an offence. If we are looking at a situation of someone who has been there and then gets into trouble, the answer is that if they have not made a foreign declaration they would be treated as a Chinese national.

CHAIR—But if they were there on 1 July and had previously got into trouble in some way with the Chinese government—

Mr SINCLAIR—Or perceived trouble, not necessarily got into trouble.

CHAIR—Perceived trouble, yes.

Mr SINCLAIR—And the Chinese wanted them for some reason.

CHAIR—What protection—

Mr SINCLAIR—At the moment they can go in and out of Hong Kong without restraint.

Mrs Fisher—The answer is they would be treated by China as they would treat any Chinese national of that category unless they made a declaration of foreign citizenship.

CHAIR—But if they make the declaration, will they then be able to travel between Australia and Hong Kong freely without the Chinese government doing anything about it?

Mrs Fisher—The question of whether the Chinese government will do anything about it is a separate question. If they did something about it and that person came to us for consular assistance, we would provide it because that person is an Australian.

Mr SINCLAIR—But they could be immediately extradited by the Chinese from Hong Kong?

Mrs Fisher—We do not have an extradition treaty with Hong Kong.

Mr SINCLAIR—No, but Hong Kong and China are going to be in a different relationship.

Mrs Fisher—Yes.

Mr SINCLAIR—The point is you have Australians who go back and forwards to Hong Kong at the moment.

Mrs Fisher—Yes, I see what you are saying.

Mr SINCLAIR—China has a number of people whom they regard as having committed offences. I was just curious as to whether those people are going to be protected by Hong Kong or whether, because after 1 July it is all going to be part of China, they will be able to immediately be taken into China and tried for whatever the alleged offence might be.

Mrs Fisher—It is an interesting question. I think it is not one that I can answer.

CHAIR—Do you want to take it on notice?

Mrs Fisher—Yes, we can certainly see if we can get an answer to it.

CHAIR—Well, perhaps we could go back to a couple of the other questions you have noted.

Senator BOURNE—One question on that last one. You know how its foreign affairs and defence is taken over by China? Is immigration considered part of that?

Mrs Fisher—China has been quite explicit that the Hong Kong Special Administrative Region will administer the Immigration Act—and this is quite unusual. There have been amendments put to the current Immigration Act, which have been put to China to have a look at. Clearly, the policy approach and guidelines are determined by Beijing because, as you say, it is a matter of sovereignty. But they are working in close consultation with the Hong Kong authorities.

I can confirm what the immigration department said earlier, that our understanding is that there will be another pronouncement on this in the next couple of weeks—probably by December. They are being very careful to dot all the i's and cross the t's before they make an announcement because they know that people have had so many questions in their minds up till now. But we feel certain that we will get something around the end of the year.

CHAIR—Have you got the next question you wanted to pursue?

Mrs Fisher—I think those were the key ones. Well there was that question of legislative assembly members. Let us cover that.

CHAIR—Yes.

Ms Pergaminelis—I think Mr Sinclair asked a question earlier about whether any foreigners would be able to become members of the Legislative Council. The answer is yes, so long as those members do not exceed 20 per cent of members of the Legislative Council.

CHAIR—I think it was probably my question. I had in my mind that somewhere it said that you had to be a Chinese citizen and you could not be a foreigner. Maybe that was for the chief executive's job.

Ms Pergaminelis—The Chief Executive is stipulated in that way.

Mrs Fisher—This is quite a remarkable aspect of the Basic Law. I am not aware of another country that allows its legislature to have 20 per cent of its people holding foreign passports. It is an expressed recognition of the reality of Hong Kong.

CHAIR—There are some in our parliament that have that view until recent events, but we will not go into that.

Mr SINCLAIR—Over lunchtime somebody raise a question that relates to this question of sovereignty. I do not know whether you can answer it or not. Apparently, there have been Vietnamese mother ships operating in Hong Kong waters and sampans have been going off these mother ships and conducting various burglaries and things. The courts have been apparently fairly soft in their punishments because they do not want the people to hang around until after 1 July. Then they do not have to be concerned with them.

I do not know whether you are aware of it, but, obviously, there are going to be problems with, for example, those who have committed offences in refugee camps. What exactly is going to be the position of those criminals who are confined for a period that goes beyond 1 July? Are they covered somewhere in this citizenship business?

Mrs Fisher—I have not seen anything specific. The nearest I have seen is an indication that those people who enter Hong Kong illegally and are subsequently legalised cannot acquire right of abode. They can be allowed to stay in the right of conditional stay, but they cannot be there with right of abode. Equally, there are several nuances of difference between status. If you are in a place on right of conditional stay, the condition is basically that, if you commit a crime, you can be deported. Whereas, if you are there with the right of abode, that is not necessarily the case.

Mr SINCLAIR—That is as long as they have somewhere where they can be extradited to. That is part of the problem, as I understand it.

Mrs Fisher—That is right. There are locally settled 1,500 to 2,000 Vietnamese refugees and that is what this clause relates to.

Mr SINCLAIR—Did you want to add anything to the answer regarding the point of first asylum? I asked a question in regard to that.

Mrs Fisher—Yes. That is an Immigration portfolio question. I think you have got the answer there. There were some of those legal questions. I do not have them in my mind, but you can go through them.

CHAIR—We have got quite a number of legal questions. They are of this nature. For example, do we know when the new court of appeal is to be established?

Mrs Fisher—From 1 July.

CHAIR—Have any of the judges been selected? What is the process of that selection?

Mr SINCLAIR—Can Australian judges participate?

Mrs Fisher—My understanding is yes.

Mr SINCLAIR—There is no decision. Presumably the court would have to let them go, but there would be no objection from the government if one of them were invited to participate.

Mrs Fisher—No.

CHAIR—Presumably, judges from mainland China could be appointed.

Mrs Fisher—Yes, we discussed that before because of the differences of tradition.

CHAIR—That is right. The registration of lawyers might be another issue.

Mrs Fisher—Yes, you are quite right. Mr Sinclair is probably aware of that inquiry into services in Hong Kong last year. Were you on that committee? I think you might have been.

Mr SINCLAIR—I was not, but I am now chairing and trying to finish it.

Mrs Fisher—I see. Do not ask us for another update. Obviously, that has been an issue there and yes, there are different conditions for Australian lawyers.

CHAIR—We had a number of questions in terms of the Joint Liaison Group and treaty relations.

Mrs Fisher—Yes, that is right. We have attached a list of conventions and

multilateral treaties which the Joint Liaison Group has already agreed shall continue to apply to Hong Kong. What remains to be done and what is currently being finalised is: for each of those conventions, depending on whom the depository is of the convention or the multilateral treaty—in many cases it is the United Nations, but not in all cases—a joint letter has to go from both Britain and China to advise the depository that Hong Kong will continue to participate in whatever capacity.

That process is taking place now. The British have confirmed that that is going on with the Chinese now. That is important because it means that what the JLG has said will take place legally.

CHAIR—Presumably we had agreements with Britain that applied to Hong Kong but which were not compatible agreements with China. Extradition might be one of those. I am not sure.

Mrs Fisher—No.

CHAIR—But given that sort of triangular relationship of Australia, Hong Kong and Britain and the reverse triangle of Australia, Hong Kong and China, are there areas of difficulty there? How is that going to be resolved?

Mrs Fisher—Maria coordinated a review of all those treaties we have with Hong Kong, China and Britain. She may like to comment on that.

Ms Pergaminelis—In the course of last year in consultation with other government departments, we had a look at Australia-China, Australia-UK and Australia-Hong Kong treaties to see how they stood up in terms of ensuring that the legal framework of the relationship was in place after the transfer of sovereignty. What we have found is that our arrangements in terms of what will apply to Hong Kong after 1997 bilaterally have in the large part already been acted on.

For example, the bilateral air services agreement, had to be negotiated in the early 1990s so that we could have a separate agreement from what had applied before. Our bilateral air services arrangements prior to that were covered under the Australia-UK air services agreement. We separated that out and negotiated a bilateral Australia-Hong Kong air services agreement.

Similarly, in the case of mutual assistance, my understanding was that these matters were handled previously under Commonwealth arrangements. In September, we signed with Hong Kong a mutual legal assistance agreement that has been endorsed by China, like all Australian-Hong Kong bilateral agreements, to see us through the transfer of sovereignty.

CHAIR—What about areas like intellectual property rights, copyright and so on?

Those are obviously vexed questions and they are questions that we have had differences with China on for some time in a number of areas, particularly in computer software, Aboriginal art and all sorts of things like that. Presumably we have in place reasonable arrangements with Hong Kong. We certainly do not have them with China in many respects. How is that going to be affected with the transfer?

Mrs Fisher—We do deal specifically with Hong Kong on those issues. China has agreed that, for issues like that, even though they have an international context, because they are trade economic issues, Hong Kong continues to have autonomy in that sense. Hong Kong has been quite active, for example, in the APEC environment on services and also within the WTO GATS process—the General Agreement on Trade Services.

We have been working closely with them and Hong Kong will continue to have an autonomy in that. That is not to say that there are no difficulties. We do have intellectual property matters we raise with them from time to time. We do not have the same sorts of difficulties that we have had with some countries, particularly with China.

Maria has just reminded me that one of the things that came up last year was the question of patents and copyrights. Hong Kong has its own register for those, so we deal directly with Hong Kong.

Ms Pergaminelis—And it will continue to have that register.

CHAIR—Dr Chey, whom you heard, seemed to be quite optimistic about how the arrangement was going to work on an ongoing basis. Would you generally agree with that assessment or do you have more reservations?

Mrs Fisher—I noted that she did say there is always the potential for a slip-up. In general, as we said this morning, our starting point is that China has made these undertakings, and therefore we expect China to adhere to those undertakings. We really will not test that until 1 July and thereafter, but certainly the basis of all our discussions with China on Hong Kong, and with Hong Kong, and with other governments indeed, is on the basis that China will adhere to its commitments—not just the letter, but the spirit of the commitments it has made.

CHAIR—I think we are probably questioned out. It has been a long day. Are there any other matters that you wanted to add?

Mrs Fisher—I think we have said what we hoped to be able to say. We look forward to working closely with Margaret, as always. There are a number of things scheduled in the next couple of months such as the provisional LegCo chief executive, and we are very happy to keep you informed on this.

CHAIR—I just want to slip in one more question that I had forgotten. On 7

November in the *Far Eastern Economic Review* there was an article entitled 'Loud Silence' in respect of Hong Kong, written by Laurence Leung, who I think was a former director of immigration in Hong Kong since 1989 and has been involved in various dealings with British passports and one thing and another. Although I have not read the article in detail as I have just had it drawn to my attention, I understand there are some concerns about the integrity and transparency of some of the administration in terms of passports and citizenships and so on. Whether this individual has been involved with proper or improper procedure or not I am not making any suggestions about at this stage, but certainly there are concerns being raised. Have we looked at that?

Mrs Fisher—We have seen those reports, and I was interested in Mark Sullivan's indication several times during his presentation that this is something his department looks at very closely. I know it was closely involved, for example, in advising the Hong Kong government. We were involved as a government on the mechanisms for the passport and so on, so it was interesting that he made those comments. I do not have the quote, but he accepts that they are secure.

CHAIR—Thank you for your attendance. As I say, we may still come back to you, of course, and we look forward to working with you in the future. We will send you a transcript of this evidence as well so that you can make any corrections of grammar or fact. I would like to thank the *Hansard* staff, the camera staff, all the witnesses and all the committee staff for their assistance during the day's hearing.

Resolved (on motion by **Senator Bourne**, seconded by **Mr Sinclair**):

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

Subcommittee adjourned at 3.50 p.m.