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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 23 September 2002

Members: Ms Julie Bishop *(Chair)*, Mr Wilkie *(Deputy Chair)*, Senators Barnett, Bartlett, Kirk, Marshall, Mason, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Evans, Mr Hunt, Mr Peter King and Mr Scott

Senators and members in attendance: Senators Barnett, Kirk, Mason and Mr Adams, Ms Julie Bishop, Mr Ciobo, Mr Evans and Mr Hunt

Terms of reference for the inquiry:

Treaties tabled on 17 September 2002

WITNESSES

Committee met at 10.06 a.m.

BLACKBURN, Ms Joanne Sheryl, First Assistant Secretary, Criminal Justice Division, Attorney-General's Department

IRWIN, Ms Rebecca, Acting Assistant Secretary, Office of International Law, Attorney-General's Department

MANNING, Mr Michael Grant, Principal Legal Officer, Criminal Justice Division, Attorney-General's Department

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

MILNER, Mr Colin, Director, International Law and Transnational Crime, Legal Branch, Department of Foreign Affairs and Trade

TWOMEY, Ms Margaret, Assistant Secretary, Northern, Southern and Eastern Europe Branch, Department of Foreign Affairs and Trade

URBANSKI, Mr Tony, Director, Southern Europe Section, Department of Foreign Affairs and Trade

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. Today, as part of our ongoing review of Australia's international treaty obligations, the committee will review two treaties tabled in parliament on 17 September 2002, and I understand that representatives from the Department of Foreign Affairs and Trade and the Attorney-General's Department will be with us for the proceedings, with witnesses from other departments joining us for discussion of the specific treaties for which they are responsible. To begin our hearing we will take evidence on the proposed Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters, and I welcome representatives from the Attorney-General's Department and the Department of Foreign Affairs and Trade. Would one of you like to make an introductory comment before we turn to questions?

Ms Blackburn—I have a short opening statement to provide context for the treaty which is under consideration. This is a bilateral treaty for the provision of mutual assistance in criminal matters. Australia began negotiating a network of such treaties in the 1980s. We now have 20 such treaties in force, four are awaiting entry and enforcement, and negotiations are continuing with several other countries.

Mutual assistance in criminal matters is a relatively modern form of international cooperation. It covers a broad range of assistance for criminal investigation and prosecution and the pursuit of the proceeds of crime. This can include measures for which no particular legal authority is required such as the service of documents for foreign criminal proceedings, the location of persons and the taking of unsworn statements from witnesses.

However the main importance of mutual assistance in criminal matters lies in the provision of assistance which requires the exercise or modification of measures of compulsion in the

requested country. It is a streamlined and expanded form of the traditional process of court to court assistance through letters of request. The services that fall into this category are: taking sworn evidence from witnesses; requiring production of physical evidence by a notice to produce; obtaining and executing search warrants; making prisoners available to give evidence or assist with criminal inquiries in the requesting country; and measures to locate, restrain and confiscate the proceeds of crime committed in the requesting country. Mutual assistance treaties establish clear international obligations for these matters and provide for requests and responses to be channelled through a specified central authority in each country, which promotes compliance with the obligations and effective communication on the precise nature of the assistance required and how it may be obtained. Mutual assistance in criminal matters does not include extradition, execution of foreign criminal judgments or the transfer of prisoners to complete sentences imposed in foreign countries.

Where possible we seek to base treaty negotiations on the Australian model mutual assistance in criminal matters treaty. The present treaty is generally similar to the model treaty and we assess the differences as matters of technical detail which are within acceptable bounds. There is only one significant variation, which relates to article 17.3. Article 17.3 is a provision which states:

The Requested State shall, to the extent permitted by its law, give effect to a final order forfeiting or confiscating the proceeds of crime made by a court of the Requesting State.

In some cases Greek law permits confiscation of the proceeds of crime for which no-one has been convicted. At this point in time Australia would not be able to enforce such orders under the treaty. At present this is a point of incompatibility of law.

Importantly, the treaty includes all the safeguards required by the Mutual Assistance in Criminal Matters Act 1987. This would enable Australia to refuse assistance for political or military offences if an investigation or prosecution involved discrimination against the alleged offender on grounds of race, sex, religion, nationality or political opinion. It also permits refusal of assistance in a case of double jeopardy or where an essential national interest would be compromised by provision of the assistance.

Lastly, we are not obliged to provide assistance for an offence punishable by death, although this is a somewhat formal consideration, as both parties have abolished the death penalty. Given the size of the Greek-Australian community, the need for cooperation on judicial matters arises regularly. Although the treaty is not essential in order for Greece to provide Australia with assistance, it will provide a proper framework and enable these requests to be dealt with efficiently and effectively. Thank you.

CHAIR—I would like to ask some more questions on background. Could you tell us a little more of the history of this development? You said it is a relatively modern form of cooperation between states. When was the model mutual assistance treaty developed and which countries have we signed treaties with?

Mr Manning—Briefly, the model was developed in the late 1980s—I do not recall the precise year in which it was developed. It was approved in, I think, about 1986 in its original form. There have been some minor amendments since then. We currently have, I think, some 24

mutual assistance treaties in force with other countries. We could provide a list on notice but I cannot quote you the full list off the top of my head.

CHAIR—That would be useful. Thank you.

Mr Manning—Broadly speaking, they are mostly with countries in Western Europe and the Americas, with a sprinkling in East Asian countries such as Hong Kong, Korea and, I think, the Philippines.

CHAIR—The United States?

Mr Manning—Yes, we do have an agreement with the United States. We also have one with Canada and Mexico.

CHAIR—Thank you. There was mention of minor technical variations existing between this treaty and similar treaties. Have you highlighted for the committee all of those minor technical variations?

Mr Manning—We have not noted every one of those in detail. Many of them would appear to be of no significance in practical terms. Often, for one reason or another, in the course of negotiations a country will wish to replace a particular term with another or perhaps rearrange the structure of a provision because they feel it is clearer in a particular way. But quite frequently those sorts of changes do not produce any substantive impact on the meaning of the treaty, especially bearing in mind that when you are talking about international agreements the rules of interpretation are less strict than for domestic legislation. So there are quite a few relatively minor matters which were identified in the course of our examination of the treaty following negotiation, but none of them were considered to be of great significance. They were all considered to be purely technical in character.

Senator MASON—Ms Blackburn, you mentioned before that about 20 of these mutual assistance treaties have been concluded over the last 12 or 15 years. I know that mutual assistance treaties have come before this committee over the last few years, and in the past I think we have both discussed issues relating to mutual assistance. I have a simple question: how do we determine the order of priority in which we conclude these treaties with certain countries? Is it because with some countries concluding the treaty may have greater utility—it may be more important to have a mutual assistance treaty with, for example, the United States—or do we do it because it is easier to do it with certain countries because of their legal system, or is there some other reason? How do we determine the priorities for the conclusion of these treaties?

Ms Blackburn—I can only speak of the decisions that I have been involved in over the last 12 months—which is the time that I have been in this area—but I suspect that it has remained the same over the period of time we have had them. There are probably two primary forces. First, we can get a request from another country to conclude a mutual assistance treaty. In those cases, we would almost invariably go through a process of assessing whether that is a country with which we wish to enter into a mutual assistance relationship and to invest resources in the negotiation and conclusion of the treaty.

From the Australian perspective, we go through a process of looking at the countries with which we do not have mutual assistance treaties and those with which we think we ought to, and that is based primarily on the demands of the law enforcement agencies. As you would appreciate, these requests are invariably made on behalf of the DPP, state law enforcement authorities and the AFP, because they are of assistance to the investigating and prosecuting process. So quite a lot of the time the issue comes up that we are making requests to countries with which we do not have treaties; if we are starting to make enough of them, there is an obvious benefit in concluding a treaty with that country.

Senator MASON—So law enforcement agencies might say, for example, that there is a need to have one with Thailand because of the potential for drug importation or whatever?

Ms Blackburn—Indeed. As you know, we have a process where we can make requests to countries with which we do not have treaties, but having a treaty makes the process more certain and more efficient. So, if we start to build up a significant volume of requests, it is simpler in the longer term to have a treaty arrangement with the country. There are, of course, some countries which, in the absence of a treaty, cannot provide the mutual assistance that we request. In those cases, obviously we would be seeking to conclude a treaty with them.

CHAIR—At whose request was this treaty negotiated, Australia or Greece?

Ms Blackburn—I understand that the negotiations on this treaty started in the late 1980s, so I have no idea why we decided to start negotiations with Greece. Certainly my experience is that we have a continuing relationship with Greece in terms of both extradition and mutual assistance. The treaty has taken some years to reach a conclusion, and we are very happy that it has reached the conclusion at this point in time.

CHAIR—So you are not able to say whether this was at our request or the request of the Hellenic Republic back in the eighties?

Ms Blackburn—No, I am sorry, I am not.

Mr Manning—I can add a historical note. During the late eighties, Australia was engaged in a fairly extensive process seeking to develop a network of both extradition and mutual assistance in criminal matters treaties with countries that it had thought itself likely to have dealings with. Although I cannot recall with precision, I would assume that almost certainly it was at Australia's initiation that these negotiations commenced.

CHAIR—Can you give some indication why it would take 15 years to negotiate a treaty of this type?

Ms Blackburn—It is not possible to give you precise answers. Our experience is that either we will make a request or the country will make a request. You will have an initial level of activity to produce a draft. In the case of this one, we had been unable to get the Greek authorities to finalise the text of the treaty. The Prime Minister's visit earlier this year seemed to have an energising impact on the treaty.

CHAIR—Yes, I was going to ask what gave rise to the final negotiations and signing. Obviously, face-to-face contact had something to do with it.

Ms Blackburn—Ministerial visits are a well-recognised way of encouraging the conclusion of treaty negotiations.

CHAIR—I see.

Senator MASON—It was the Prime Minister's visit to the Acropolis, Chair!

CHAIR—It is on the record now!

Mr HUNT—I have two quick questions. The first is: have there been any substantive objections or contributions from the community, either in Australia or in Greece, that you are aware of in relation to this treaty?

Ms Blackburn—No.

Mr HUNT—The second one concerns an interesting point in the treaty that assistance will be refused in cases involving political or military offences. Is Greece a signatory to the ICC, and what implications does that have for the International Criminal Court obligations that we have recently undertaken?

Ms Blackburn—My colleagues may also wish to comment on this. This treaty has no relationship to the ICC obligations. The mutual assistance obligations to the International Criminal Court are contained in the International Criminal Court legislation and the statute of Rome, which established the court. This treaty and the Commonwealth Mutual Assistance in Criminal Matters Act specifically exclude provision of assistance for the prosecution of political or military offences.

Mr HUNT—Given that we have signed a direct agreement with Greece, it would not be something that somebody could use in defence and say, 'You can't extradite me under the ICC because we have excluded, through a subsequent act, any assistance in political or military offences'?

Ms Blackburn—No. To the best of my understanding, there is no relationship between these two activities. If you wish to pursue the prosecution of the offences which are covered in the International Criminal Court legislation, you do that through the provisions in both the international convention which established the International Criminal Court and the legislation which sets out Australia's obligations under that. The Mutual Assistance in Criminal Matters Act is not provided for the purpose of those activities, and I would see no basis on which it would be used for those activities.

CHAIR—So the criminal matters in this treaty do not deal with the three crimes of the International Criminal Court.

Mr HUNT—No, I understand that. What I am interested in is whether a creative defence lawyer seeking to avoid an extradition could use the fact that, while we have a general agreement and obligation under the ICC, we might have been specifically contracting out of it, albeit inadvertently, by expressly excluding assistance in political and military prosecution. That is all; I am just being cautious.

Ms Blackburn—I do not believe so. This treaty and this legislation do not deal with extradition at all. They are about the provision of information for the purposes of investigation and prosecution. These treaty arrangements and this legislation are to enable Australian law enforcement agencies to request the assistance of Greek law enforcement agencies to obtain information, either through sworn statements, unsworn statements or through physical evidence, and for that to be provided to Australian authorities for Australian authorities to use in prosecutions in Australia—and obviously in the reverse instance where the request came to us from Greece.

Senator KIRK—In article 5.1 of the treaty, reference is made to assistance being refused in circumstances where the sovereignty, security, national interest or other essential interests of a requested state might be impaired. What might constitute a breach of sovereignty?

Mr Manning—The only comment I can make on that, Senator, is that it is conceivable that a foreign government's investigation might happen to cross over with some form of security investigation of our own where it might potentially threaten that investigation if we were to disclose evidence to that country or to take the particular action that they requested at the time when they wanted it done. That is probably not a complete description of the possibilities, but it would be an example of the sort of potential issue that might arise. It is certainly not a usual event.

Ms Blackburn—To add to that, section 8 of the Mutual Assistance in Criminal Matters Act sets out a number of grounds on which assistance can be refused, including specific reference to where:

> (d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Australia;
>
> (e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Australia);
>
> (f) the provision of the assistance would impose an excessive burden on the resources of the Commonwealth or of a State or Territory;
>
> (g) it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

Both the treaty and the act provide a very broad discretion to determine whether the provision of assistance is overruled in the interests of Australia to do so.

Senator KIRK—And that broad discretion rests with Australia to determine?

Ms Blackburn—Indeed; the legislation vests the discretion in the Attorney-General. It is exercised either by the Attorney-General, by the Minister for Justice and Customs or by delegates within the Attorney-General's Department.

Senator BARNETT—I have a question related to Mr Hunt's question regarding confidentiality, article 9.1. Under the national interest analysis in clause 14, it talks about the requesting

party being able to keep the information confidential. I am wondering how far that extends—if it extends to parliamentary committees such as this to find out how many requests have been made of the receiving partner—and to what degree that provision can be used to keep matters confidential.

Ms Blackburn—In terms of providing information on the number of requests received and responded to, the number granted and the number refused, that provision has no impact. We provide that information regularly in public forums. The provision is specifically directed to confidentiality in the case of individual requests, because the requests quite often are seeking information as part of an ongoing investigation; information which, if disclosed, could impair the successful completion of that investigation. So here we are very much talking about the confidentiality of operational information. I can give you a simple example. We have in the past made requests for assistance to other countries for them to intercept cargo coming into the country we are making the request to. That has been done as part of an ongoing—sometimes AFP, sometimes international law enforcement—activity, and we would always request that the requesting country keep that information confidential, for obvious reasons.

Senator BARNETT—And that would be consistent with other treaties that we have signed?

Ms Blackburn—Yes.

Senator BARNETT—Why have we entered into a treaty here rather than an agreement which may have been able to be finalised somewhat quicker than the 12 to 15 years that we are looking at for a treaty? What is the legal status between those two—the difference?

Ms Blackburn—As I mentioned earlier, under the Australian Commonwealth Mutual Assistance in Criminal Matters Act, we can request mutual assistance from Greece and we can respond to requests from them currently. The move to a treaty is, as I mentioned earlier, to make the process both more certain and more efficient. I cannot think how you would have something in between called an agreement, because obviously what we are seeking to do here is create binding treaty obligations between both parties.

CHAIR—As opposed to ad hoc assistance as and when requested?

Ms Blackburn—Because, as mentioned, under the act we can ask for assistance but Greece is not obliged to provide it and, similarly, they can ask us and we are not obliged. This treaty is to impose obligations on both parties to cooperate to the extent that they can and within the limitations contained in both the treaty and the Australian legislation.

Senator BARNETT—But couldn't you complete or draft and finalise a legally binding agreement between the two entities?

Ms Blackburn—I ask that my colleagues from the Office of International Law take that question.

Ms Irwin—Generally there are different sorts of international agreements that states can enter into, and the committee would be well aware of the various agreements that we have. Treaty level documents between states generally create binding obligations at international law. States

will also then enter agreements of less than treaty status. They may be memorandums of understanding. They might be agreements in a broader sense. The key distinction between those is that the treaty level documents are binding at international law and, as Miss Blackburn has stated, they create legal obligations between the two countries to do what is in them. The documents of less than treaty status are not technically binding at international law.

Senator BARNETT—Is that right? Thank you.

CHAIR—Are you not happy with that answer?

Senator BARNETT—You surprised me with your last comment that they are not binding in international law. International agreements between sovereign states are just not binding? It is a bigger picture here, but you have thrown me with that statement.

Ms Irwin—It is just a distinction between agreements which are at international law legally binding between states. For example, if either a state did not complete the obligations under them or there was some disagreement about the way they were being implemented between states, there would generally be open to both states a dispute resolution mechanism to come to some legally binding agreement. In relation to the documents of less than treaty status, there will not always be the same standard of recourse that a state can go to.

Senator BARNETT—I can accept that there is a different level of standard but still there is a standard there and strong implications that agreements between two sovereign states are still binding. They do not have to be treaties to be legally binding.

Ms Irwin—Obviously I think when states, particularly Australia, look at entering agreements, whether they are going to be of treaty status or not, in any agreement that the government considers signing up to they will look at the obligations seriously and intend to adhere to them. The distinction is more one of the difference at international law between the two types of agreements.

CHAIR—Mr Fewster, did you want to add to that?

Mr Fewster—Can I just refer to the treaty making handbook? There is a definition here of the distinction between a treaty and an MOU, perhaps. The word 'treaty' perhaps is interchangeable with the word 'agreement' for this purpose.

CHAIR—The distinction should be between a memorandum of understanding and a treaty.

Mr Fewster—An agreement of less than treaty status, as my colleagues have indicated, does not compel the people who sign it to international legal obligations whereas a treaty does. That is the essential difference.

CHAIR—So it is a question of enforceability?

Mr Fewster—I think so.

Senator BARNETT—I can understand that.

CHAIR—Senator Barnett will have a sleepless night now!

Senator BARNETT—Yes, with all these legally binding agreements that we thought were legally binding. I can understand that with regard to an MOU, but I thought a legally binding agreement was different. I will not go into it now. I think we have covered it—

CHAIR—I think you had better read the handbook.

Senator BARNETT—I would be very pleased to get a copy.

Mr Fewster—We could certainly provide you with one.

Ms Blackburn—I think it is probably worth adding that I do not think it was the fact that it was a treaty document that meant it took as long as it did. My experience of these treaties is that you need some—

CHAIR—Political will to conclude it?

Ms Blackburn—That is very well put. Thank you.

Mr ADAMS—On Security Council resolutions, in a practical sense, how would this work in the case where Greece ring us up and says that they have a couple of shady characters out here in Australia and they want some information on them. They want us to send them any information we have.

Ms Blackburn—That is more or less what happens. However, there is a degree of formality to it. It requires a written request that meets certain standards as to the information sought.

Mr ADAMS—What sort of standards are we talking about?

Ms Blackburn—Essentially—and I will ask Michael to take this into more detail—there is a requirement for them to provide us with information which shows what the offences are that they are investigating—

Mr ADAMS—They have to produce a bit of evidence that the person may be involved in something?

Ms Blackburn—They do have to produce quite considerable detail to convince us it is a legitimate investigation of a crime which is of sufficient seriousness to warrant us putting the resources in responding to it.

Mr ADAMS—So there is a criterion, Mr Manning?

Mr Manning—There are a set of criteria for the contents of a formal mutual assistance request set out in the mutual assistance act. While it specifically indicates, I think in section 11,

that we cannot simply refuse a request on the grounds that it does not include all of these criteria, we would normally expect to negotiate some kind of additional information if the request were seriously deficient against those criteria. The essence of that is to give sufficient information about the identity of the persons concerned and the nature of the matter under investigation to give a reasonable guarantee of bona fides.

Mr ADAMS—That would not be on anything of a political nature; is it only of a criminal nature? Are there safeguards in the act for that?

Mr Manning—There are safeguards in both the act and the treaties against providing assistance in relation to political offences. It would mean that we would reject a request which we perceived to be essentially concerning a political offence.

CHAIR—The national interest analysis states that these mutual assistance treaties are a recent development to combat serious crimes across international boundaries. This committee has shown a particular concern for quantifiable analyses of the national interest in respect of treaties. Are you able to give us any quantifiable measure or indication of where and how such treaties have assisted Australian law enforcement agencies in combating international crime?

Ms Blackburn—I am not sure of the extent to which you want quantifiability. We could certainly provide the committee with information on the numbers of mutual assistance requests which have been made to Australia and which Australia has made to other countries. I am sorry I do not have that information here but we can provide that to you fairly readily.

CHAIR—Are you able to do that country by country? There are 24 agreements in existence and it would be interesting to compare the numbers from different countries pursuant to different treaties.

Ms Blackburn—Yes, we can do that with some degree of accuracy by using our own databases of the requests received and made by Australia. Certainly, my experience in the past 12 months of dealing with these requests is that they are almost invariably dealing with people who are engaged in significant criminal activity which involves the transfer of funds or substances between countries.

CHAIR—Providing this information will not breach any secrecy provisions?

Ms Blackburn—Not in terms of the numbers of requests made and the countries from which they are made.

Mr ADAMS—We like to think that all of the work that goes on does achieve a purpose and that these treaties achieve something. Is there any follow-up on how many cases get to court either in Greece or in Australia?

Ms Blackburn—The question is one which I have been asking myself in the last couple of months in terms of looking at the extent to which you can use external performance indicators as a measure of your impact. We are not able to do that at the moment but it is certainly an obvious question: having provided the information, did it lead to successful conviction of the people charged?

CHAIR—And vice versa—what has been the outcome of requests on Australia to provide information?

Ms Blackburn—That is correct. It is certainly something that I think we should be taking on, in terms of looking at the efficacy and effectiveness of the process.

CHAIR—Standing back for a moment, can you indicate how this particular treaty fits into the broader framework of international cooperation between law enforcement agencies? Are there other treaties or agreements in place with Greece which aid in criminal investigations and, if so, where does this fit?

Ms Blackburn—The mutual assistance treaties are the primary process by which information for the purpose of investigation and prosecution is obtained. As this committee is well aware, we also have extradition treaties which then enable people to be transferred between countries for the purpose of that prosecution. There are also law enforcement cooperation arrangements at the operational level between law enforcement agencies. They would be the primary method of providing information—for example, in the financial information area, financial intelligence units are able to provide information directly to each other as part of a mutual assistance progress. So there is a web of arrangements from the operational level to the very formal process of extradition.

Mr Manning—If I may, I will add one point in relation to the value of mutual assistance treaties in that context. The amount of direct assistance between law enforcement agencies varies to some extent, depending on the legal system of the countries concerned. As a general statement, it would be fair to say that civil law countries such as Greece tend to have a more judicially supervised process of investigation; therefore it is more difficult to get informal assistance and, for that reason, the mutual assistance process whereby we can make a formal request is a more important part of the cooperative process.

CHAIR—There being no further questions, thank you very much for your time this morning. It has been most helpful. I now call on witnesses from the Department of Transport and Regional Services and the Department of Foreign Affairs and Trade to give evidence relating to the agreement between the government of Australia and the government of New Zealand relating to air services.

[10.43 a.m.]

IRWIN, Ms Rebecca, Acting Assistant Secretary, Office of International Law, Attorney-General's Department

CHATER, Ms Julie, Acting Assistant Secretary, New Zealand and Papua New Guinea Branch, Department of Foreign Affairs and Trade

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

MILNER, Mr Colin, Director, International Law and Transnational Crime, Legal Branch, Department of Foreign Affairs and Trade

HOBBS, Mr Matthew Erik McIver, Policy Officer, Aviation Industry Policy, Department of Transport and Regional Services

PARLE, Mr Andrew John, Acting Assistant Secretary, Aviation Industry Policy, Department of Transport and Regional Services

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would one of you like to make some introductory remarks before we proceed to questions?

Mr Parle—I would like to read into the record a short statement. The government's international air services policy states that Australia should pursue bilateral open skies arrangements with like-minded countries, subject to the national interest. Australia's bilateral relationship with New Zealand, which has geographical proximity and a high level of traffic flowing in both directions, presented a logical open skies partner for Australia.

In 1999, the government established that the high-priority targets for open skies would be New Zealand, Singapore, the United States and the United Kingdom. Australia has active open skies negotiations with the remaining three countries. In November 2000, New Zealand was the first country that Australia reached agreement with for open skies arrangements. The agreement builds upon the principles contained in the Australia-New Zealand Single Aviation Market Arrangements agreed in 1996. By facilitating the development of the single aviation market between the two countries, the agreement will promote benefits for inbound tourism, freight operations and greater air travel options for Australian consumers.

I would like to briefly turn to the features and benefits of the agreement. In addition to confirming the existing liberal aviation rights between the two countries contained in the SAM arrangements, the agreement builds upon this framework to remove some of the remaining restrictions in the aviation arrangements between Australia and New Zealand. The major liberalisation benefit included in the agreement is that it reinforces the rights established under

the SAM arrangements of 1996 that allowed Australian and New Zealand owned carriers to operate trans-Tasman and domestic services in both countries without restriction. The SAM arrangements provide New Zealand owned airlines, as the only foreign international airlines, with the ability to operate on Australian domestic routes. Australian carriers also have the right to operate domestic routes between points in New Zealand. This is a unique feature of Australia's aviation relationship with New Zealand that it does not currently have with any of our other bilateral partners. The requirement that a designated airline of a country be owned by nationals of that country has been removed under this agreement. The requirement that a country's designated airlines be controlled by nationals of that country will be retained. These liberalised ownership arrangements allow potential foreign investment in airlines to occur in the future without having a negative impact on airline operations.

The agreement also allows tariffs for air transportation to be established by each designated airline or SAM carrier, based upon commercial considerations in the marketplace, rather than requiring government approval. The previous air services arrangements between Australia and New Zealand were extremely liberal, with the only substantive limitations being on the number of services the airlines of one country could operate beyond the other country. Australia's airlines were approaching this limit and its removal provided increased opportunities for expanded services by Australian carriers.

One of the beyond-rights issues that existed under the previous arrangements between the two countries was that airlines were restricted in operating fifth freedom services. Fifth freedom rights include the right of an international airline to operate from one country via another country to the other and then continue to a further country. This open skies agreement with New Zealand removes all restrictions on fifth freedom services. This will allow Australian carriers to operate unlimited services to New Zealand, possibly via another point, and beyond to our third country bilateral partners. The agreement also provides New Zealand carriers with reciprocal rights to operate fifth freedom services between and beyond Australia.

In addition, pure freight carriers under these arrangements are granted seventh freedom rights. Seventh freedom rights allow all cargo airlines of one country to base an aircraft in the other country and to operate to a third country without commencing services in their own territory. Seventh freedom rights are distinct from fifth freedom rights as they do not require the airline to commence its journey in the country that has designated the airline. Under the new agreement, Australian and New Zealand international carriers may now exercise seventh freedom rights on dedicated freight services from points in each other's territory. Therefore, the new agreement puts in place liberalised arrangements that provide full traffic rights for airlines to operate behind, between and beyond the territories of the parties to the agreement. For example, New Zealand carriers can now operate services originating in the United States through points in New Zealand and Australia and beyond points in South-East Asia without restriction, assuming that they hold the necessary rights with these third countries.

The agreement also includes provisions that act to remove secondary barriers within the single aviation market for the airlines of each country. This is achieved through the Australian and New Zealand governments agreeing that their domestic competition laws will apply to ensure fair regimes for airport access through slot management and non-discriminatory and fair pricing of aviation related user charges. The agreement provides for competition authorities

responsible for administering the competition laws in Australia and New Zealand to assist each other in investigations and enforcement actions in relation to competition policy.

Another new feature of this agreement is that the agreement also has application to non-scheduled or charter operations as the rights granted under the agreement are not granted solely to designated airlines or SAM carriers of the scheduled airlines. Therefore non-scheduled operators also receive benefits under the agreement. As a result, the aeronautical authorities of both Australia and New Zealand will adopt a liberal approach in respect of non-scheduled operations consistent with the traffic rights exchanged under the agreement. To facilitate air services between the countries, the agreement also includes standard reciprocal provisions on a range of other aviation related matters such as safety, aviation security, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other party and to sell fares to the public.

A final benefit of the agreement is that it provides airlines with the flexibility to develop seamless intermodal travel options through cooperative arrangements with surface transport operators. In conclusion, the open skies treaty between the two countries has been the product of a number of years of hard work and negotiation and it provides a liberal framework for the operation of scheduled air services behind, between and within Australia and New Zealand by the designated airlines of both countries and single aviation market carriers.

CHAIR—Thank you, Mr Parle. Would you summarise the differences between an open skies agreement and the standard draft air services agreement with which the committee is quite familiar?

Mr Parle—Yes. The open skies agreement is a liberal agreement, whereas under our normal bilateral system we negotiate and trade access into and out of Australia with our bilateral partners. The aeronautical authorities of each side can call each other to meet to discuss such access issues as capacity, route rights and traffic rights. Under this agreement we have removed virtually all the barriers that pertain to the normal bilateral treaties.

CHAIR—Is this the first agreement of this type?

Mr Parle—This is the first agreement of this type.

CHAIR—Are there any problems that we have encountered with the other air service agreements that will still exist or in fact will be covered by this open skies agreement?

Mr Parle—Problems?

CHAIR—Any issues that have arisen under the standard air services agreements with other countries that we have been able to overcome.

Mr Parle—I think that one of the great problems for governments is that they want to remove as many barriers as possible, to allow businesses to make decisions about how they operate in a market. They are the problems that we get from time to time under our standard agreements because an airline from another country may want to increase services to, say, Sydney. But it is a trading issue and we need to negotiate a package of benefits, a balance of

benefits, for both sides. Under this agreement we have removed all those barriers and carriers—Air New Zealand and Qantas in particular as well as other airlines in both countries—can make decisions about entering or leaving this market.

CHAIR—I guess New Zealand is an obvious country for a single aviation market. Are negotiations under way with any other country for a similar open skies agreement?

Mr Parle—Yes. We have active negotiations with the UK, the US and Singapore. They are all in different levels of activity. We have some issues in each one of those bilaterals in trying to negotiate what we see as a liberal and open agreement. The United States have a different view from other countries on open skies. They have negotiated something like 57 agreements around the world, but they use their text. They do not want to move away from that text, so it is very difficult for us to try to have the arrangements that we would like to see reflected in an open skies agreement. They go to things like ensuring that there is no discrimination in terms of slot allocation for airlines to operate into and out of airports in each other's countries and to competition law issues, where we feel that, as these documents are really a transitional document to a very liberal aviation regime, we need to at least focus on competition law and competition policy to ensure that there is no discrimination in terms of the airlines that operate into each market.

Mr MARTYN EVANS—How does one become a designated airline? Given that this is an open skies agreement, it still seems to speak of designated airlines. This says to me that there are issues about who becomes a designated airline in each country.

Mr Parle—It goes straight to the ownership and control issues. We have removed the barrier on ownership. Designation comes about by, for example, a New Zealand carrier having its principal place of business in New Zealand and being controlled by the nationals of that country. There is a difference, as well, in that we have designated airlines and we have SAM—single aviation market—airlines. They are airlines that can be 50 per cent owned by either New Zealand or Australian nationals, but the chairman of the board must be either a New Zealand or Australian national and there must be a majority of either New Zealanders or Australians on that board. That is because SAM is a different beast; we are talking about a carrier that can operate domestically within Australia or domestically within New Zealand. Designated carriers can only operate internationally between Australia and New Zealand and beyond, or via other points. There is a difference.

Mr MARTYN EVANS—Can any new airline arise and require to become designated as of right if it meets the criteria of ownership?

Mr Parle—Yes.

Mr MARTYN EVANS—If, for argument's sake, a government were willing—I know they are not—to grant Qantas its wish on legislative ownership changes, would it then cease to be a designated airline?

Mr Parle—No, because under this agreement the test is principal place of business. The principal place of business for Qantas is Australia.

Mr MARTYN EVANS—I am sorry, I thought you said they still had to be controlled by—

Mr Parle—They have to be controlled, as well. I will go back one step. In terms of the Australian government's policy on liberalising these bilateral agreements, we focus only on principal places of business as being the test for designation, but other countries—and in this case, New Zealand—wish to keep a control provision in there. Therefore, the control aspect is still available under this agreement. Getting back to your question, it is very hard to define 'control'. The principal place of business for Qantas is Australia. It operates domestically in Australia and from Australia internationally. Even if it had its foreign ownership limit raised, you would expect that the operating control of that airline would still be with Australians.

Mr MARTYN EVANS—But the control test stays in the treaty?

Mr Parle—The control test stays in this treaty.

Mr MARTYN EVANS—And it would apply to Qantas?

Mr Parle—It would apply to Qantas.

Mr MARTYN EVANS—So the tests would be principal place of business and control?

Mr Parle—Yes.

Mr MARTYN EVANS—And then?

Mr Parle—And then, if New Zealand wanted to make an issue of it, there would be a negotiation under way pretty quickly between both governments about definitions and where control—

Mr MARTYN EVANS—And matters of fact, yes. But the only party that could test and raise that matter would be the government of New Zealand?

Mr Parle—Under this treaty, yes.

Mr MARTYN EVANS—And the only mechanism of determination and arbitration would be a negotiation between the governments?

Mr Parle—Yes.

Mr MARTYN EVANS—They could not resort to the courts?

Mr Parle—No, they cannot. There is a dispute settlement procedure within this agreement but that is another process that runs and is judged by a judge.

Mr MARTYN EVANS—And an airline can have the designation as a right. But if a future government of unknown derivation said to a future airline of unknown quantity, 'We don't think your control is in Australia. We suspect your owner is a Murdoch character; born in Australia

but subsequently converted to another country's citizenship. We suspect some of your shares have trusts in three countries and so on—maybe they're controlled in Luxembourg. We don't think you're genuinely Australian controlled. We deny you designation under the treaty.' How can an airline then say, 'We think we're designatable?'

Mr Parle—It comes back to matters of fact. If we take it from the very start, the government would not lightly designate a carrier. The Australian government would ensure in designating that carrier that it believed that it was Australian.

Mr MARTYN EVANS—But I am talking about a situation where the airline felt that it was eligible to be designated but the government refused because, for example, they did not want more competition for Qantas, Air New Zealand and so on. If we are going to have an open skies policy, what if we have an airline that is eligible but the government say, 'No, we think there's enough competition already, guys'? These things have happened in the past.

Mr Parle—But I think that is the issue about this open skies agreement. This is about developing competition and opening it up.

Mr MARTYN EVANS—It is right now, yes.

Mr Parle—If the New Zealand government at some time in the future decided that it wanted to test the ownership and control issues under designation, and an Australian airline had been designated by the Australian government to the New Zealand government—we would believe that before we designated it—we would pursue that through negotiations to ensure that that carrier had access.

Mr MARTYN EVANS—No, what I am really saying is that the whole question of the availability of new airline entrants depends on designation, and designation is not really a matter of right. It still depends very much on government to government cooperation in both countries. So it is ultimately still very much an issue that governments can frustrate competition if they want to.

Mr Parle—Sadly, in negotiating this treaty, we wanted to ensure that principal place of business was the only test, but we were not able at the negotiation table to rest on that as the only test for designation.

Mr MARTYN EVANS—So it all still hinges on designation.

Mr Parle—Designation hinges on more than principal place of business, yes.

Mr HUNT—I would like to follow up on that. Under this question of designation there are actually five tests under article 2, two of which are substantive and one of which relates to control. Another one relates to principal place of business and three relate to legal compliance and 'capacity to carry out its conduct as an effective airline'.

Mr Parle—Yes.

Mr HUNT—What you are saying is that New Zealand effectively inserted this notion of control. Why, then, isn't control defined? That is what looks like it is buying trouble, because control is undefined. As well as that, it is absolutely foreseeable that at some stage in the future Air New Zealand will come under Singaporean control. It is arguable that that will be the case. Control is undoubtedly a function of, if not a completely dependent variable of, ownership, and that is quite testable. I am intrigued as to why it is not defined at all.

Mr Parle—It has never been defined in any bilateral treaty, and there are 3,000 of them around the globe. No-one has ever been able to come up with a definition that everyone would accept.

Mr HUNT—Then why use a term that is highly contestable rather than ownership?

Mr Parle—Ownership and control have been part of the bilateral system as the provision for designation since 1947.

Mr HUNT—But in this particular case we are seeking to open up the capacity for trade between and within the two countries. It looks like it is setting up a provision here which could be used against either country. I am intrigued, because control is not defined. There is a very arguable case about the ownership of Air New Zealand, in particular—either under its present situation or under what is a highly foreseeable future change.

Mr Parle—As I said, it really is something that is part of history: no definitions for ownership or control at all. You are right in one sense, but the spirit of this agreement is that it is an open agreement, and we would expect that the spirit of the agreement would be adhered to. If that were not the case—

Mr HUNT—But I do not know what the spirit of the agreement is, when you say 'control'. But we cannot define control. Does that mean that Singapore moves beyond 25 per cent; is 25 per cent the current Singapore—

Mr Parle—No, four per cent of Air New Zealand. The New Zealand government, injecting $885 million into Air New Zealand last year, took 82 per cent of the company.

Mr HUNT—Okay, but prior to that they had 25 per cent.

Mr Parle—Prior to that they had 25 per cent. This is part of an ongoing issue, though, around the globe: liberalisation, consolidation between carriers—

Mr HUNT—I agree—

Mr Parle—We are trying to remove the barriers.

Mr HUNT—but I think use of the term 'control' actually places additional barriers.

Mr Parle—I can only agree with you, but that was the negotiation that ensued and that was one of the issues that the New Zealand authorities were very keen to see in place. Over time, I

would hope that we would be able to remove those barriers. Ownership and control is an issue that we have been pursuing in a number of fora around the globe; trying to establish that the best way forward for everyone would be removing those impediments to foreign investment in carriers to allow carriers to enjoy profitable and viable operations. Part of that is that 'principal place of business' makes it easier to bring foreign investment into your airline. I agree that control is an issue, and it does create an impediment if used. But at one level we would expect that we would have some very strong negotiations with the New Zealand government if that trigger were ever pulled.

Mr CIOBO—Mr Parle and Mr Hobbs, there are a couple of points I want to clarify, in particular with respect to tourism. But before I do that I am interested in section 2 of the annex, which deals with 'Operational flexibility'. I wonder whether you would mind outlining for me the manner in which you see that operating, and specifically whether or not that gives rise to allowing airlines that operate in a single market to operate domestically within Australia between domestic airports—or is it just transnational flights?

Mr Parle—No, they can operate fully domestically as a SAM carrier. A SAM carrier is separate from a designated carrier, in the sense that there are a number of tests to get you into that market. But once you are in it, you can operate domestically. Air New Zealand can start domestic operations in this country between Sydney, Melbourne, Brisbane, Dubbo.

CHAIR—They might even have a direct Perth-Canberra flight.

Mr Parle—They could do that.

Mr CIOBO—At the moment in the Australian aviation market do we have CSOs in place?

Mr Parle—There is nothing in terms of formal CSOs, no.

Mr CIOBO—So this would of course allow cherry-picking to take place. That would be the most obvious—

Mr Parle—It would be a commercial decision for the airlines. If an airline believed that Sydney-Melbourne was a market that it would like to access rather than Sydney-Dubbo, it would make that decision. This is about the commercial decisions that airlines make.

Mr CIOBO—With respect to inbound operators, in particular Freedom Air and those types of operations that currently operate from New Zealand into ports such as the Gold Coast, how do you see this having an impact? This would not really alter it, to any great extent, unless it made it more commercially feasible for them to then add on services to those types of operations; is that right?

Mr Parle—That is right. It comes down to a commercial decision for the airline. The arrangements between Australia and New Zealand were reasonably liberal to begin with. This takes it that next step. You might recall that I mentioned that non-scheduled carriers have rights under this agreement as well. That provides for Australian or New Zealand charter operators to make decisions about whether they serve secondary gateways or establish services between

Australia and New Zealand or whatever. It is fully open. There would not be too many agreements in the world where non-scheduled operations are covered by the treaty.

Mr CIOBO—With respect to access to terminal infrastructure—

Mr ADAMS—May I butt in? You were talking about charters. Did you say they were not regulated in other parts of the world?

Mr Parle—No. I was saying that, of the approximately 3,000 bilateral treaties globally, there would be very few, if any, that contained reference to non-scheduled operations. We have a very open charter regime and we would approve operations for an Australian non-scheduled operator—

Mr ADAMS—We have had that for some time.

Mr Parle—Yes, but it is when they want to operate to a country that is quite conservative in allowing non-scheduled operations that it is up to the other government to approve or disallow those flights. That is the problem. But, under a treaty like this, charter operators have the rights of the treaty to fall back on—traffic rights and other things like that.

Mr ADAMS—Singapore Airlines have been flying charters into Australia for a long time, haven't they?

Mr Parle—Yes.

Mr CIOBO—When it comes to the likes of a New Zealand operator who may choose to operate within Australia, it seems to me that terminal infrastructure is fundamental to operating any kind of airline service at all. In your discussions with, I presume, the ACCC, can you give me an idea as to their view in terms of obtaining that access? It has been a real sticking point historically and we have seen that now on a number of occasions with various new domestic operators. Is there going to be any liberalisation so that we can expedite the process for access to terminal infrastructure?

Mr Parle—Since the unfortunate collapse of Ansett and the opening up of terminals at each major airport in Australia to common users—apart from one airport—that issue has to some extent gone away. The access to infrastructure is available to start-up carriers at most major airports in Australia. Even with Sydney airport there is a common user domestic terminal available. There is a negotiation that has to be undertaken between the airline and the owners of the terminal, but it is available.

Mr CIOBO—There is a willingness on behalf of the owners of the various airports to recognise this represents potential benefits for them?

Mr Parle—Of course.

Mr CIOBO—And they have indicated a desire to invest as well—possibly in you?

Mr Parle—I think that in each one of the purchases of privatised airports the buyers have indicated that they want to expand the business.

Mr CIOBO—With respect to the tourism operations, I take it you probably had discussions with the ATC and with groups like that. What was their response to it? I can understand if there were some in the community who might try to play up the cherry-picking aspect of it. Overall, could you give me a summary of their view or of what you interpret their view as being?

Mr Parle—In the broad, everyone was very supportive of an open skies arrangement with New Zealand, because of its liberality, and of just taking it those extra steps. There is the context that we started this negotiation before Ansett collapsed last year, so the points you are making about problems domestically most probably were not as focused in those days as they were as of September last year and onwards.

Senator BARNETT—I will ask a question related to Mr Ciobo's about industry response in your consultation process. Mr Ciobo mentioned the ATC, but what about the other industry players? You have indicated that you have consulted with them all. Was it all favourable?

Mr Parle—All was favourable.

Senator BARNETT—Clause 9 of the NIA talks about improving:

... access by Australian airlines to aviation markets beyond New Zealand ...

To what extent does that apply? I am in my head trying to work out how that works—I presume it means Fiji, Noumea, Tahiti and places like that. How does that work and where are those places?

Mr Parle—They are everywhere. 'Between and beyond' is to everywhere. There are no restrictions.

Senator BARNETT—So to the US?

Mr Parle—It could be to the US or South America onto London if a carrier has the rights to do that.

Senator BARNETT—How does that work? Are they a designated carrier or do they have to make application?

Mr Parle—An example is that, under this agreement, Air New Zealand can operate from the US via points into New Zealand via other points into Australia and then beyond to other points. They do not have to start or finish their services in the country that designated them, so they do not have to start in New Zealand. It is very open.

Senator BARNETT—It really is opening up the Pacific as well, would you say?

Mr Parle—Yes.

Senator BARNETT—The whole place.

Mr Parle—In fact, apart from the severe financial troubles that Air New Zealand have found themselves in in the last 12 months, they were operating at least five or six services beyond Australia to the US directly into Los Angeles weekly.

Senator BARNETT—Are there other similar agreements around the world?

Mr Parle—As I said, the US have 57 open skies agreements, but they are not as liberal as this in the sense that there is no way that we would expect that the United States would allow an international partner to operate domestically within their country.

Mr ADAMS—But would most of their airlines have gone broke?

Mr Parle—They would most probably be—

Senator MASON—That is because of the unions!

Senator BARNETT—Is this a leading edge agreement?

Mr Parle—Very close to it, yes.

Senator BARNETT—You mentioned these other agreements with the UK, the US and Singapore. How far away are they from being resolved?

Mr Parle—They are at different stages of resolution. There are issues in each one of them that have not allowed us to go the final distance.

Senator BARNETT—Are we talking months or years or are you not sure?

Mr Parle—I cannot really put a time on it.

CHAIR—Some of the treaty making we have observed is decades old.

Mr Parle—We would hope that that does not occur.

Senator BARNETT—Where do the shipping arrangements fit in? I am not up to date with that in terms of transport and in terms of free trade. You have talked about open skies. What is the status of our shipping arrangements?

CHAIR—Open seas.

Senator BARNETT—Open seas?

Mr Parle—I think they are totally deregulated in that sense. That is not really my area of expertise.

Mr ADAMS—So there is no consideration when we are negotiating a treaty that we are dealing with a government airline which is basically funded—although I do not know how much of Air New Zealand the New Zealand government owns now—

Mr Parle—About 82 per cent.

Mr ADAMS—So we are letting a government owned airline come into the Australian market, and we have no government owned airlines. We don't give any consideration to that? It is like Singapore Airlines, which is totally owned by the Singapore government. If they come and fly in Australia under a similar treaty, we do not give any consideration to the fact that they are government owned?

Mr Parle—In the context of this agreement, at the time of the negotiation, Air New Zealand was not government owned. It was a just an issue of bad luck and bad judgment, or whatever.

Mr ADAMS—But I take it that no government policy considerations are given to the fact that we are dealing with government owned airlines; is that correct?

Mr Parle—No, we would not.

Mr ADAMS—There is no number on the charters, is there? Two hundred charters a year could be negotiated—if they wanted to fly 200 charters into Tasmania and they could get the people on them.

Mr Parle—It is a commercial decision of the airline.

Mr ADAMS—I did not quite pick up on the freight issues. In relation to freight, you said that they do not have to stop or start from where they are designated.

Mr Parle—In terms of freight, there is an even further step of liberalisation. It is called the seventh freedom—

Mr ADAMS—The seventh freedom?

Mr Parle—We have more than seven freedoms—

Mr ADAMS—There are great terms in treaty making!

Mr Parle—In terms of cargo, an Australian all-cargo airline could base an aircraft—

Mr ADAMS—In Auckland?

Mr Parle—in Auckland, and operate out of Auckland to anywhere.

Mr ADAMS—Literally up to Texas, over to Japan and back down to Sydney?

Mr Parle—The only issue, of course, is that you have to have those rights from the other government. This is a web that you need to continue to—

Mr ADAMS—A pretty tight web, I would think.

Mr Parle—It has been around for 50 years or so.

Mr ADAMS—So is this the start of undoing that little—or big—web?

Mr Parle—This is the start, and I think that there are a number of like-minded countries around the globe that see that liberalisation of air services is something that should be pursued. In APEC there are a number of economies that are keen to do that as well.

Mr ADAMS—Even though there are many airlines that are not in the world airline industry anymore and there are a lot of major airlines in difficulty?

Mr Parle—There is no doubt that the global economy, September 11 and issues such as that have obviously affected the aviation industry globally. That in effect in a lot of cases has seen airlines seeking to get some sort of protection from their government or at least to ensure that their governments do not expand and liberalise services quite as quickly as may have been the case prior to—

Mr ADAMS—Maybe we did too much in Australia.

Mr Parle—I think that we have a plan and we have been progressively trying to move this forward. The Productivity Commission's review of international aviation and the government's response to that set us down a path of liberalisation, not only bilaterally but multilaterally as well. We have been pursuing that since. We do not believe that we need to pull back from that at this stage. It is not an easy course to follow.

Mr ADAMS—We had a major collapse of an airline which caused enormous problems for individuals who worked for that airline, for people who were travelling, for school children getting home. Do you think that had nothing to do with liberalisation of airline agreements in Australia?

Mr Parle—I am not too sure that it did. We have had a deregulated domestic industry for many years. The ability of foreign carriers to enter this market and operate domestically has been there for a number of years. Competition obviously has had an effect.

Mr ADAMS—The government refuses to allow Qantas to take up foreign capital, so it is not quite as free.

Mr Parle—Obviously, the government decided that it would not remove the foreign investment limitations on Qantas, but that is 49 per cent today.

Mr ADAMS—Only. But other capital can come in. What you mean is that other capital can come in, like Virgin Blue.

Mr Parle—Yes, other carriers can establish in this country.

Mr MARTYN EVANS—Could I ask one quick question. The one area where we are not setting this on the deregulatory path is the passport question with New Zealand. We still have full formality for the passengers in crossing that border. Even if the airlines are getting more freedom, the passengers to that extent are still subject to those controls, which for a period they were not. Is there any move towards some examination of this one market, where we do get a fair bit of freedom, for a biometric or some other way of relieving people of the full obligation of that formal identification of the passport system? Given that the American-Canadian border is so big—they in fact use driving licences—are there any options that we can look at, in terms of relieving that formality? If we have to have the full ID system, could we go to some biometric or whatever, given that that is a market we can control a bit better, and maybe trial something for the future?

Ms Chater—I am not aware of any review of that nature at the moment. I think we would need to take that question on notice and get back to you.

Mr MARTYN EVANS—A lot of people who perhaps do not have passports would like to travel to New Zealand, because families could make that trip. It is an easier option for Australians looking for a holiday. We have a very deregulated market with New Zealand in terms of travel rights and so on. Then we have that full formality of the passport control, which does add a lot of obligations to Australians and New Zealanders. Perhaps that is one area, given the options for biometrics now and given that it would be a good trial market. I know that the Canadians and the Americans have problems with ID—in the sense of the potential for terrorism or whatever—but they still allow driving licences on that very troubled border. Perhaps Australia can again review that option. I would appreciate a reply in the fullness of time, when you have had a chance to think about it.

CHAIR—And then we will move to one currency.

Mr MARTYN EVANS—That was my next question, and seven states.

Mr ADAMS—You do not even need your driver's licence to come to Tasmania.

Mr HUNT—Just to summarise, given that we already have CER and SAM, what is it that Qantas will be able to do the moment we ratify this treaty that it cannot do under the existing arrangements? I know we have discussed it but I just need to understand it for myself.

Mr Parle—There were restrictions under the old agreement that limited the amount of fifth freedom rights that Qantas could operate beyond New Zealand. Therefore, there was a limit on the frequencies that it could operate from Auckland, say, to points in South America, the US or wherever. They have been taken out of the equation totally. It is unrestricted.

Mr HUNT—The first thing is the beyond rights.

Mr Parle—Yes.

Mr HUNT—Is the domestic capacity to fly between Queenstown and Dunedin changed or unchanged?

Mr Parle—It is unchanged. That was part of the SAM agreement. You have to remember that there were two separate arrangements: the old treaty and the SAM arrangements. The SAM arrangements were less than treaty status, but this agreement combines all those arrangements.

Mr HUNT—Has the capacity to fly between destinations in New Zealand and Australia for Qantas changed or is it unchanged?

Mr Parle—It is unchanged.

Mr HUNT—Okay. So between Australia and New Zealand it is unchanged, and within New Zealand it is unchanged. It is only, effectively, the beyond rights which has changed.

Mr Parle—Yes, but under the other arrangements it was a route schedule that did have a restriction. Qantas now can start a service to New Zealand and beyond New Zealand, from anywhere beyond Australia—flight number, sell the ticket, everything. They can go from South-East Asia to Australia to New Zealand and then beyond. That is something—

Mr ADAMS—Auckland to Christchurch, and back to Hobart?

Mr Parle—That is right. In fact, they could operate that way as well if they wanted to. Outside Australia, through Australia, to Auckland, to Christchurch, and then out again.

Mr HUNT—I see.

Mr ADAMS—Hobart-Melbourne.

Senator BARNETT—Is that a new thing?

Mr Parle—Beyond Australia it is, yes. Under the old arrangements, services had to start and finish in your country of designation.

CHAIR—I thank the representatives from the Department of Transport and Regional Services for being present this morning. I also acknowledge the assistance from the Attorney-General's Department and the Department of Foreign Affairs and Trade.

Resolved (on motion by **Mr Hunt**, seconded by **Senator Kirk**):

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

Committee adjourned at 11.30 a.m.