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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 23 June 2003

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

Senators and members in attendance: Senators Kirk, Marshall, Mason, Stephens and Tchen and Mr Adams, Ms Julie Bishop, Mr Ciobo, Mr Martyn Evans, Mr King, Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled in May and June 2003

WITNESSES

Committee met at 10.05 a.m.

BURNESS, Mr Mark, Director, Medicare Eligibility Section, Medicare Benefits Branch, Department of Health and Ageing

RAYNER, Mr Craig, Assistant Director, Medicare Eligibility Section, Medicare Benefits Branch, Department of Health and Ageing

BROOKING, Mr Alexander John, Director, Northern, Central and Eastern Europe Section, Department of Foreign Affairs and Trade

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

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

MANNING, Mr Greg, Principal Legal Officer, Public International Law Branch, Office of International Law, Attorney-General's Department

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. As part of the committee's ongoing review of Australia's international treaty obligations, the committee will review three treaties tabled in parliament on 17 June 2003 and the international unitisation agreement in relation to the Sunrise and Troubadour fields tabled on 14 May 2003. These treaties have attracted a substantial number of submissions, which have been authorised for publication and may be accessed on the committee's web site or obtained from the secretariat.

I understand that witnesses from the Department of Foreign Affairs and Trade and the Attorney-General's Department will be with us for today's proceedings, with witnesses from other departments joining us for the discussion of the specific treaties for which they are responsible.

Agreement on Medical Treatment for Temporary Visitors between the Government of Australia and the Government of the Kingdom of Norway, done at Canberra on 28 March 2003

CHAIR—I now call representatives from the Department of Health and Ageing and the Department of Foreign Affairs and Trade. 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 of Representatives 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 Burness—Yes. I would like to ensure that I do not mislead parliament.

CHAIR—That is a good idea.

Mr Burness—In the first instance I want to rectify a small issue in the NIA at paragraph 16. I have copies of this page which I can hand out.

CHAIR—Is it a substantial amendment?

Mr Burness—It is a very minor amendment. It is a clarification of the percentage which was done for the committee. Paragraph 16 reads '0.02 per cent'; it should read 0.007 per cent. This is one of a number of what we call reciprocal health care agreements. We have approximately eight of those agreements at the moment, and this is the ninth. It follows the same pattern and format as those previous agreements. We have these agreements with countries which we believe have matching health systems and their major function is to protect the Australian population when they are travelling overseas, to ensure them a safe health environment when travelling for business, tourism or family reunions. The substance of these agreements, basically, is that we are provided treatment in the country with whom we have made the agreement and the other country is entitled to access our Medicare system. All of the agreements are done with countries whom we believe have reasonably matching health care facilities of an equal standard so that we have reciprocal health care agreements in terms of the environments in which people are operating.

CHAIR—On the point of matching health systems, how is that determination made? Who makes the determination that a particular country has a health system that is comparable or matching?

Mr Burness—I think this agreement has been something like about five years in the making. We have been over there on numerous occasions to discuss fully with them their health system, examine their health system's access et cetera.

CHAIR—How is a particular country selected as being appropriate for this type of bilateral agreement?

Mr Burness—It starts in a number of ways. Some of them are countries we know a lot of people are travelling to and some of them are done through various members of parliament approaching the department and saying, 'We have got constituents who are interested.' We also have various embassies who approach us and say, 'We would be interested in having a reciprocal health care agreement,' and we have individuals who write to us, saying, 'I am going home and I would like to know if there is an agreement. If there is not, could we have one?'

CHAIR—What were the circumstances that led to this agreement with Norway?

Mr Burness—I do not think I could tell you off the top of my head after all that time. I think it may have flowed from the discussions we were having with reciprocal health care countries in the region—Sweden, Finland and Denmark—and Norway, as part of the Scandinavian group, may have raised it with us.

CHAIR—So you cannot say at this stage whether—

Mr Burness—Not off the top of my head; I could find out for the committee.

CHAIR—I would appreciate that. So you cannot say at this stage whether it was an approach from Norway or Australia—you cannot say which country initiated the negotiations and, if it was Australia, you cannot say why?

Mr Burness—It would have been on the basis of whether there was reciprocity, firstly, in terms of the health situation—you do not go beyond it if there is not. If there is then it is a case of bilateral interests. Clearly, we have an interest where there is a matching health system to, if it is at all possible, have a network of health agreements around the world to protect Australians.

CHAIR—You say there are eight other agreements to which Australia is a party. Are there any differences between this agreement and any of the other eight? If so, what are those differences?

Mr Burness—There are differences. For instance, Italy and Malta only operate for a period of a maximum of six months. The Irish agreement and the New Zealand agreement do not provide a rebate with access to community doctors, mainly because, for instance, when the New Zealand agreement was originally negotiated they had a system where if you visited a GP in New Zealand you got a rebate. They changed their health system in New Zealand and we reciprocated in the sense that our agreement was then changed to remove that access. In New Zealand, you would have access through public hospitals and you would have pharmaceutical access, but you would not get a rebate in terms of access to a GP.

CHAIR—Could you take me through the process step by step? For example, I am a visitor to Norway and I need pharmaceuticals and public hospital treatment. How do I prove who I am and that this agreement applies to me?

Mr Burness—Primarily, you would go over there and have the knowledge that the reciprocal health care agreement applies.

CHAIR—How would I know about that?

Mr Burness—There is a public information process in place through the department of foreign affairs. When you get a passport it has a small document with it and in there is a list of all the countries we have reciprocal health care agreements with. There are pamphlets which are provided through the Medicare offices, and there is obviously the communication of this agreement when it is formally brought into action, which will go out publicly as well.

CHAIR—Do you need a visa to get into Norway?

Mr Burness—No.

CHAIR—So if I were travelling and I already had my passport—I just had to book my flight—how would I know that this agreement is in place?

Mr Burness—Part of our network is through the travel agencies, and the health insurance people are all notified, through the network, of an agreement when it comes into place—it would be added to the agreements. Once you arrived in Norway and you wished to access health care, it would principally be done on the basis of your passport. They would simply take note of your entry into a health situation—they would ask who you are, like they do in any situation like that

and you would probably say, 'I am from Australia.' They would ask, 'Do you have your passport with you?' and on the basis of that passport and your standing there they would then give you access to their health system.

CHAIR—So that is the paperwork?

Mr Burness—Under the agreement.

CHAIR—Can you describe the treaty making process—or the ratification process—in Norway? What requirements need to be undertaken there before this treaty can enter into force? I understand from the Australian perspective—but from the Norwegian side.

Mr Rayner—This agreement was signed on 28 March, I think, and at the moment it is going through the Norwegian parliament.

CHAIR—Do they have a similar treaties committee?

Mr Rayner—They have an approval process through their parliament, yes. We are just waiting to hear from them.

CHAIR—If this agreement were in place and you were able to fit within the criteria, would you bother with insurance, if you were just travelling to Norway?

Mr Burness—Our advice to people has been that it is a very rare individual who would travel from Australia just to Norway. To start with, you may well have a stop off in Singapore or Bangkok. You may get ill on the flight and you could be dropped off due to that. Most people would do a European circuit in some form when they go overseas, either within the Scandinavian environment or down into Europe itself, so we recommend to people that they still retain some form of travel insurance.

CHAIR—But what if I were just travelling to the Scandinavian countries?

Mr Burness—I would still be advising you to take out some form of travel insurance, simply because if you get ill on the plane between here and Singapore and you are dropped off in Singapore because you are too ill, then you face a vast exposure.

CHAIR—We do not have one with Singapore?

Mr Burness—No, we do not.

Mr MARTYN EVANS—In that context it has always concerned me, as this network of agreements and treaties with other countries is expanding, that I do not notice a proportionate drop in insurance premiums for health. I wonder whether Professor Fels is on the case. Will we see a 57c drop in the European travel insurance policies when the treaty with Norway comes into effect, and so on? I just picked the amount of 57c out of the air, of course, and I do not mean that to be a real figure, but as we expand this network of agreements—as we obviously should do, and it is a reasonable and obviously beneficial policy for people—how do we know? Is the department liaising with the ACCC and insurance companies? Have you had any communication

with the insurance companies and the ACCC about this to ensure that, as you expand and take into account other countries, there will be a proportionate decline—or at least a commensurate incorporation of these factors into travel insurance?

Mr Burness—Because of the numbers involved—I think it is something in the vicinity of three million Australians who go out every year, and we are talking a few thousand in that three million—I would have thought the impact on the policy costs of insurers would have been very marginal.

Mr MARTYN EVANS—For Norway, yes. Norway is a lovely country, but it is relatively small on Australia's tourist horizon. But as you point out, Norway is but one country in a chain of countries, and obviously we are adding to the list. I am not referring just to Norway; I am using Norway as an example of yet another country we have added to the list. Obviously at some point this is relevant.

Mr Burness—As to having discussions with the insurance industry and the ACCC, the answer is no, we have not.

Mr MARTYN EVANS—But at some point, do you think this is relevant?

Mr Burness—Very marginally, I would have thought. Certainly I have not worked through any prospect that there would be any significant impact through reduction in costs in any way, because of the advice I gave the chair—that is, a lot of people would still take out travel insurance, because this is one country out of many which they would visit where we do not have reciprocal health care agreements. Therefore its impact, in terms of the overall market of travel insurance, I would have thought, was very small.

Mr MARTYN EVANS—For the total numbers?

Mr Burness—Sure, but it is an issue that I can certainly take on board.

Mr MARTYN EVANS—I am not unrealistic about this. We cancelled our pensions agreement with the UK recently because of the disagreement over the age pension indexing. If we had terminated our health agreement with the UK, I would suggest that might have an impact on travel insurance. I suggest you might find that the travel insurance industry would use that as an excuse to put the prices up. I agree totally with you that the situation with Norway will not result in an immediate, dramatic decline in the price of travel insurance. All I am saying is that this is a very good program of reciprocal agreements. At some point I think the industry must take this into account. That is my only point.

Mr Rayner—The industry would not adjust their premiums prospectively. I think they would wait to see the drawing rates, the claiming rates, on their policies.

Mr CIOBO—What is the rationale for the carve-out of student visas?

Mr Burness—The immigration department has a policy in which an overseas student, before they get a visa to come into Australia, must take out what is called overseas student health cover.

That is the rationale for it. The Norwegian government did not see that as something that should be included in this agreement, when these students are required to have some sort of insurance.

Mr CIOBO—So that is part of the mandatory requirements to obtain a student visa to come to Australia?

Mr Burness—Broadly, yes.

Mr CIOBO—Do you know what percentage of Norwegian travellers inbound to Australia are on student visas?

Mr Burness—No, I do not.

Mr Rayner—I do not think we have a figure on that.

Mr CIOBO—I would have thought it would be a fairly significant percentage, but I do not actually know either, so perhaps you could find out.

Mr Burness—I could.

Mr CIOBO—What is the rationale that underlies these agreements? I know that we have got eight other existing agreements of this order. What is the underlying philosophy behind expanding this sort of public health network internationally?

Mr Burness—If I take you back historically to approximately 1990, there was a section in the Health Insurance Act which enabled you to get a rebate for a service overseas. So, if you saw a GP or a medical practitioner overseas, you could come back here and claim a rebate. That was removed in 1990. So that was part of the reason. Because the rebate had been removed, I believe the minister at the time expressed an interest in expanding the network of reciprocal health care agreements. They did predate that time. The process then, as I understand it, was basically to protect Australian citizens overseas in terms of their health costs. That is particularly relevant to people who, for instance, are aged or have significant pre-existing conditions for which they cannot get insurance or cannot get any insurance at all but, in terms of a medical assessment, are perfectly fit to travel. Simply, because they cannot get insurance, they are somewhat entrapped, and this was seen as a very good way of enabling those sorts of people to have the ability to travel overseas, where it was possible.

Mr CIOBO—What is the interplay then between this sort of agreement and someone who has private medical insurance for international travel? Do they opt into the public-private system? What is the actual relationship?

Mr Burness—It is basically there so that you can take out an insurance policy in a private capacity. Let us assume someone is going overseas for six months and for three months they are going to be in Norway. It does mean that they have the option to take out an insurance policy that covers them for the rest of their trip, but not for the time that they are in Norway. In that regard it would assist them as an individual. I presume it also gives a person peace of mind. Insurance, as I said, has pre-existing conditions limits on policies, and all those things are

forgone in terms of your access to good and adequate health care whilst you are in that foreign country.

CHAIR—I have one quick question about consultation. Consultation was obviously undertaken with those listed in the NIA. There does not seem to be any consultation with the private sector or industry groups. Was there any reason for that? Would that normally have taken place?

Mr Burness—We have got a very good network with the industry. We have a network with the medical profession, the Pharmacy Guild and the hospital system through web sites, newsletters and information leaflets which we send out giving them information, but they have basically said: 'We're happy. Let us know when the next agreement is coming onstream through this network.' That network will be turned on once this committee is satisfied and the agreement is ready to be implemented, which is three months after an exchange of letters.

CHAIR—In the recent tradition of this committee, I should also ask you about data. Paragraph 18 of the NIA states that there is a lack of data on which to base any accurate analysis of costs. That is a matter that we referred to in the agreement with Ireland, but in this NIA you state in paragraph 18 that the data will be available in the future. What sort of data are you talking about? How reliable will it be? When will it be available? If data is available on reciprocal costs in the future, will we be able to use that in some sort of evaluation process for later agreements?

Mr Burness—The data I am talking about in paragraph 18 is basically the hospital data, admissions into hospital. That depends on the states and territories and the outcomes of their reporting mechanisms under the Australian health care agreements. They are working at the moment through their capacity to do that. At the moment the data is highly inaccurate, mainly because you get someone recorded as being from Greece when actually they have been living in Australia for 20 years but when they went into hospital they said their home country was Greece. How much surety I can give this committee at this time is not a lot. It depends entirely on the states as to the mechanisms they put in place for capturing that data. We are in continual discussions with them through the Australian health care agreements for data collection for all sorts of purposes, including this one.

CHAIR—So the idea is to eventually be able to get some sort of reciprocal costs analysis?

Mr Burness—Yes, nationally. That would be my hope.

CHAIR—Ours too.

Mr Burness—Yes, appreciated.

CHAIR—There being no further questions, thank you very much for your time this morning. We appreciate the presentation and your attendance here this morning.

[10.28 a.m.]

RAY, Mr David George, Europe, Americas, Japan and Korea Unit, Department of Education, Science and Training

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

McCOLL, Mr Peter Geoffrey, Director, United States Section, Americas Branch, Department of Foreign Affairs and Trade

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

SCULLY, Mr Mark James, Executive Officer, Department of Foreign Affairs and Trade

MANNING, Mr Greg, Principal Legal Officer, Public International Law Branch, Office of International Law, Attorney-General's Department

Exchange of notes, done at Canberra from 7 April to 17 May 2003, amending the agreement between the government of the Commonwealth of Australia and the government of the United States of America for the financing of certain educational and cultural exchange programs, done at Canberra on 28 August 1964

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I 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 the parliament. Mr Ray or Mr McColl, would you like to make some introductory comments?

Mr Milner—Chair, with your indulgence, I will make an opening statement.

CHAIR—Thank you.

Mr Milner—Thank you for the opportunity to make this opening statement. The proposed treaty action is a relatively minor amendment to the agreement between the government of the Commonwealth of Australia and the government of the United States of America for the financing of certain educational and cultural exchange programs, done at Canberra on 28 August 1964. We usually refer to this agreement as the Fulbright agreement. The background to this agreement is found in the program of educational cooperation that Australia and the United States began in 1949. In 1964, the two countries signed the Fulbright agreement, which was a bilateral treaty that created a new foundation to run this program in an expanded form relating to educational and cultural exchanges.

This treaty provided for a board of directors to run the program. The term of appointment for a director was up till the date of falling one year after 31 December following the date of

appointment of a director to the board. It has been decided that this board would be run more effectively if the term of appointment for directors was extended up till a date two years after 31 December following the date of appointment of a director. Consequently, it is now proposed that an amendment be made to the Fulbright agreement formally establishing that members of its board of directors may serve an extra year of appointment.

As you will see from paragraph 14 of the national interest analysis statement, it is the government's view that a two-year term would enhance the efficient functioning of the board of directors. It would also create greater certainty of appointment for board members, thus encouraging greater interest and involvement. Administratively, it would be a more practical and less time-consuming alternative to annual reappointments. This extension to the term of board members is the only amendment that is being proposed. No other changes to the Fulbright agreement will take effect if this treaty action is implemented. Thank you, Madam Chair.

CHAIR—There are currently five Australian directors?

Mr Ray—That is correct, Madam Chair.

CHAIR—Who are they? Who are the current Australian directors of the Fulbright Foundation?

Mr Ray—The Australian board comprises three non-government members and two government members. The two government members are from the Department of Education, Science and Training and the Department of Foreign Affairs and Trade. The non-government members are Professor Ashley Goldsworthy and Ms Elizabeth Whitelaw. Mr Bill Burmester is the current Department of Education, Science and Training representative. Mr Christian Bennett is the Department of Foreign Affairs and Trade representative. The Minister for Education, Science and Training is currently considering possible candidates for a fifth Australian member.

CHAIR—Are those current members in their first year? Will this extension apply to their term?

Mr Ray—Mr Bennett is in his first year, and the other members are continuing members from last year.

CHAIR—So will this apply to their tenure as directors?

Mr Ray—Yes. It is proposed that, following the change in the treaty coming into effect, the minister will then possibly reappoint the members plus the other members for two years.

CHAIR—Another two years?

Mr Ray—That will take place at the end of this year.

CHAIR—So in effect they could serve three years?

Mr Ray—Yes, reappointments have commonly been the norm for this board.

CHAIR—What is the maximum period that any one board member has served?

Mr Ray—My understanding is the longest someone has served has been Professor Mal Nairn. He has served since about 1997. I understand Professor Goldsworthy has also served for some considerable time.

CHAIR—How often does the board meet?

Mr Ray—The board meets, as I understand, every three months—about quarterly.

CHAIR—Was there any particular reason why two years was selected as the appropriate extension for better functioning of the board rather than three or four or five years?

Mr Ray—The action or request to change the treaty came from the board itself. We consider that the change from one to two years would ensure continuity for the board members and also enable greater administrative savings for the department. The choice between one and two years primarily was at the request of the board. The department is quite happy with that. The minister makes the appointments which is delegated authority from the Prime Minister. So we support the board's recommendation to change it from one to two years.

Mr WILKIE—Does the agreement or the amendment in any way change how an Australian might apply for a scholarship?

Mr Ray—No, not to my knowledge.

CHAIR—Are there any other changes to the structure and appointment of the board of directors that could enhance its functioning or is this it?

Mr Ray—We would consider that this would enable board members to follow through issues to a greater extent. For example, one issue that the Fulbright Commission has been seeking with the government is tax deductibility of contributions from sponsors. We would see an issue like that as enabling board members to follow through issues that are long term in nature.

CHAIR—How many people are currently overseas on a Fulbright—from Australia.

Mr Ray—There are currently 25 from Australia.

CHAIR—And from the United States?

Mr Ray—There are 22.

Mr ADAMS—I would like to know how people apply for the Fulbright.

CHAIR—I am sure they will be happy to receive your application.

Mr ADAMS—I think I am beyond this one.

Mr Ray—People apply to the Fulbright Commission. They have a web site where applications are received. That is considered then by a selection committee, which includes the board itself and previous alumni. Australian Fulbrighters usually undertake their study from 1 July to 30 June, to fit in with the US academic year.

Mr ADAMS—What criteria are used in that selection process?

Mr Ray—I believe the criteria vary. I have here from their web site a listing of the criteria that are used. Generally, from my understanding, it is primarily through excellence in previous academic performance and also in terms of the proposals for their research and study.

Senator TCHEN—You mentioned that there were five directors, but in your background note you said that the board consists of 10 members. I take it the other five are American appointees?

Mr Ray—The five American appointees are appointed by the American ambassador.

Senator TCHEN—What are their terms of appointment?

Mr Ray—Their terms, I understand, are exactly the same as those of the Australian board members.

Senator TCHEN—So they will have a concurrent change as well?

Mr Ray—Yes. My colleagues from the Department of Foreign Affairs and Trade might want to come in here, but effectively this will affect both the Australian and the American members because it is a change to the treaty, and the treaty encompasses both parties.

CHAIR—What steps will have to be taken in the United States in order for this to become effective.

Mr McColl—In the United States the Senate has to ratify treaties and therefore changes to treaties.

CHAIR—So this would be treated in the same way as other treaties they deal with that have got to go through the Senate.

Mr McColl—Exactly.

CHAIR—Thank you very much. I think that concludes the evidence in this matter. Thank you for appearing before us this morning. We appreciate your presence here.

[10.38 a.m.]

ALDEN, Mr David, Manager, Eastern Tuna and Billfish Fishery, Australian Fisheries Management Authority

ROBERTS, Mr Leslie John, Manager, Eastern Tuna and Billfish Fishery, Australian Fisheries Management Authority

KALISH, Dr John,, Program Leader, Fisheries and Marine Sciences, Bureau of Rural Sciences, Department of Agriculture, Fisheries and Forestry

LEE, Mr James Michael John, Acting Director, International Fisheries, Fisheries and Aquaculture, Fisheries and Forestry, Department of Agriculture, Fisheries and Forestry

ATKIN, Mr George, Assistant Secretary, Pacific Islands Branch, Pacific, Africa and Middle East Division, Department of Foreign Affairs and Trade

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

KERSLAKE, Ms Emma, Executive Officer, Pacific Regional Section, Pacific Islands Branch, Pacific, Africa and Middle East Division, Department of Foreign Affairs and Trade

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

Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, done at Honolulu on 5 September 2000

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 Lee—I would like to make a statement, and then a supplementary statement will be made by my colleague from the Department of Foreign Affairs and Trade Mr Atkin. The western and central Pacific Ocean is the location of the largest and most valuable fishery resource in the world. The area includes a number of coastal states, of which Australia is one, and it is fished by a number of distant water fishing nations. In 1994 the Forum Fisheries Agency convened the first of seven multilateral, high-level conferences to promote responsible fishing in the region. Subsequent to the first conference, the United Nations Fish Stocks Agreement was adopted, which required coastal states and fishing states to cooperate on the establishment of regional management arrangements for straddling or highly migratory fish stocks. This convention is one

of the first regional fisheries management organisations, or RFMOs, to be negotiated under the auspices of the United Nations Fish Stocks Agreement.

Regionally, there has been a move of fishing capacity by distant water fishing nations from the Northern Hemisphere into the western and central part of the Pacific Ocean. It is therefore critical now more than ever before for Australia to be engaged in the regulation of this fishery. fThe case for why we should be part of this new RFMO is that the tuna and billfish stocks of the western and central Pacific Ocean underpin the viability and profitability of the long-line and recreational fisheries off Australia's east coast. A number of stocks within the Australian fishing zone are close to being fully fished and there is a need to ensure high seas access for the continued growth and development of the east coast fishing industry.

Australia needs to be part of the new commission, as continued access to the high seas and allocation of high seas resources will be dependent upon Australia being a member of the commission. By being engaged we are in the best position to influence, push for and contribute to responsible fishing practices that would benefit the east coast fishing industry. Further, as a party to the United Nations Fish Stocks Agreement, Australia needs to be a member of the commission if it is to be allowed to fish on the high seas in the convention area.

Australia's obligations under the convention would be implemented through the Fisheries Management Act. Australia is in the process of implementing a management plan for the long-line sector of the east coast tuna and billfish fishery. Once implemented, the management plan will clearly state how the fishery is to be managed and will be the vehicle by which Australia's obligations under the convention would be applied.

In arriving at this point in the convention drafting and ratification process, the Department of Agriculture, Fisheries and Forestry-Australia has been as inclusive as possible and has consulted widely. Representatives of industry, both commercial and recreational, and environmental NGOs have regularly been part of the Australian delegations to the original conference process and to the subsequent preparatory conferences. Federal departments and state governments have been kept informed of progress and outcomes. Since March this year there has been a strategy of wider community consultation, and I think it is fair to say that there has been broad support from all quarters for Australia's continued involvement.

To date, five Pacific countries have ratified and we are aware of two more depositing their instruments of ratification. The Philippines and another three Pacific coastal states, including Australia, are advanced in the ratification process. It now looks increasingly likely that the convention will come into force some time in the middle of 2004, based on 13 ratifications.

Of importance to Australia is the cost of being a member, and this is still a matter to be resolved. Government will need to bear some costs of participation as there are direct benefits to Australia as a whole from being engaged. However, operational costs such as those relating to monitoring, control and surveillance will be borne by industry, and industry is aware of this. Once fully established, it is possible that Australia's annual contribution will be upwards of $130,000, but it could be greater in the initial years when the distant water fishing nations are still yet to join. It should be noted that many of the obligations imposed by the convention are already being met through the current activities of the Australian Fisheries Management Authority and the Department of Agriculture, Fisheries and Forestry-Australia.

This convention is critical to the sustainable utilisation and management of the fisheries resources of the central and western Pacific Ocean. Australia has been a party to the process from the very beginning because it is acknowledged that the commission it will create will protect the highly migratory fish stocks that pass through Australian waters and will allow us to be well placed to ensure that those stocks are effectively and sustainably managed.

Mr Atkin—Australia's participation in the negotiations in preparation for the Western and Central Pacific Fisheries Commission not only focused on optimum utilisation and sustainable management of our own fishery resource but also involved a concern to ensure the ownership of a substantial natural resource on a regional level. Many Pacific island countries have developing economies and so an effectively managed and viable fishery will make a significant contribution to overall economic and political stability in the region. With the total yearly worth of the fish stocks in the western and central Pacific Ocean estimated at over $2 billion per year, the fishery resources in the Pacific represent both a major resource and a major development prospect for Pacific island countries, especially for the Micronesian atoll states of the central Pacific and for Tuvalu.

Effective management of and adequate returns to Pacific island countries from regional fisheries are important elements in regional stability and regional economic development. Sustainable development of regional fisheries and better capture of economic returns from them could substantially improve these countries' economic self-reliance. Conversely, the depletion or collapse of fishery stocks or the failure of Pacific island countries to capture adequate returns could lead to a greater reliance on their part on foreign, and particularly Australian, direct assistance. Mismanagement of such a significant resource would potentially impact adversely on national administrations and exacerbate already emerging social problems that are the source of increasing demands on Australia's development aid to the region.

CHAIR—Could we concentrate for a moment on the status of this treaty. Six nations have ratified. Is that correct?

Mr Lee—We have had official advice that five have deposited their instruments of ratification. We are aware of two other countries that—

CHAIR—Who are they?

Mr Lee—The Solomon Islands and Kiribati.

CHAIR—That is good. What about Micronesia?

Mr Lee—The Federated States of Micronesia, yes.

CHAIR—Fiji?

Mr Lee—Yes.

CHAIR—Kiribati?

Mr Lee—Yes.

CHAIR—The Marshall Islands?

Mr Lee—Yes.

CHAIR—Papua New Guinea?

Mr Lee—Yes.

CHAIR—Samoa?

Mr Lee—Yes.

CHAIR—That is six. The Solomon Islands would be the seventh.

Mr Lee—Yes. There were five plus two. I will just check.

CHAIR—We had Kiribati as having ratified.

Mr Lee—It is the Federated States of Micronesia, Fiji, the Republic of Kiribati, the Republic of Marshall Islands, Papua New Guinea, Samoa and Solomon Islands.

CHAIR—Solomon Islands makes seven. There are five water fishing nations, also in attachment 3—China, France, Japan, South Korea and the United Kingdom. The distant water fishing nations have not ratified?

Mr Lee—If I can qualify that: the major distant water fishing nations are Japan, Korea, China, Taiwan, the United States and the European Union. The Philippines is also generating quite a significant distant water fishing fleet. None of those parties has ratified the convention. All we are aware of is that the United States has flagged with Congress that it is something that needs to be addressed in the near future.

CHAIR—They have flagged it?

Mr Lee—Yes.

CHAIR—Do we have any intelligence on any of the other nations? I am trying to understand how many are likely to ratify.

Mr Lee—This is very much a crystal ball situation. Thirteen ratifications are required for the convention to come into force. The European Union is an observer and Taiwan has special standing within the process at the moment. The European Union and Taiwan will most certainly ratify, as well, as soon as the commission comes into being. Once they have ratified, it is highly likely that China will follow suit, bearing in mind that Taiwan has joined.

CHAIR—We will come to that in a moment. If seven nations have ratified or are about to ratify and you suggest that we are going to get to 13 by 2004, who else will ratify?

Mr Lee—All except one will be Pacific countries. The odd one out is the Philippines. We know that New Zealand and the Republic of Vanuatu, in addition to Australia—

CHAIR—That is three.

Mr Lee—With the Philippines it is four, if you are counting Australia. That brings us to 11. We are not sure of the status of Tonga. They have just recently had a change, at the bureaucratic level, within their fisheries department and they are just getting a handle on what this means for them. From the meetings that we have had with delegates from Tonga, they are certainly aware of the benefits to them of joining. They have not actually said that they have started the process. That would be 12.

CHAIR—Who is the 13th?

Mr Lee—There are three other possibilities. Niue have some concerns which they would like to have addressed relating to the cost of joining the commission. There is the Republic of Palau and the Republic of Nauru. These are all Pacific parties. They are the ones that have the fish resource either in their EEZs or in the adjacent high seas area. They recognise the benefits from sustainably managing this resource. That is why it looks likely that it will be ratified based on interest from the Pacific region.

CHAIR—What are the realistic prospects for ratification, when Tonga has not even started the process and there are some countries that may not have proceeded very far?

Mr Lee—There is significant regional solidarity through the Forum Fisheries Committee and its agency. At the most recent preparatory conference in Fiji, the attitude taken by the members of the Forum Fisheries Committee on how to approach negotiations on the Western and Central Pacific Fisheries Convention was quite enlightening. They stood as a group and pushed issues as a group, and we see no reason why they will not all want to be parties to this and why they will not, if not currently actively working on ratification, shortly begin.

CHAIR—Are all of the nine potential countries you have mentioned members of the South Pacific Forum Fisheries Agency?

Mr Lee—All except the Philippines, yes.

CHAIR—Your expectation is that the membership of that agency will ratify in due course?

Mr Lee—Yes.

CHAIR—Just on that point, obviously our interest—as in Australia's interest—is to be a member of the commission. What is the likelihood of Australia being elected—I assume—a member of that commission?

Mr Lee—Once the convention comes into force and the commission is created—

CHAIR—Upon the 13 ratifications?

Mr Lee—upon the 13 ratifications, parties are automatically members of the commission.

CHAIR—So everybody is a member of the commission?

Mr Lee—No, sorry; those that have ratified are members of the commission.

CHAIR—If more and more parties ratify, the commission just expands upon ratification?

Mr Lee—It does, yes.

CHAIR—So you have to ratify to be in it?

Mr Lee—Yes.

CHAIR—On Taiwan, the NIA states that Chinese Taipei has signed the convention under arrangements for its participation. Paragraph 38 says:

This was possible through annex I to the convention.

Can you explain how this came about?

Mr Lee—Can I defer to one of my colleagues from the Department of Foreign Affairs and Trade to answer that question?

CHAIR—Thank you.

Ms Kerslake—The negotiating process was obviously quite a difficult one, given the participation of both China and Chinese Taipei throughout. Several versions were developed during that MHLC process. But the overriding principle here is the conservation and management of the fisheries resource. Taiwan is a major worldwide fishing nation and, insofar as working towards conservation and management, there is a requirement to recognise the need to involve Chinese Taipei in that form. The mechanism that was used, as mentioned, is annex I, which is deals with fishing entities. Taiwan is not actually classed as a party to the treaty; it is a fishing entity.

CHAIR—Did you say they are not a party to the treaty?

Ms Kerslake—Insofar as state parties, it will be a fishing entity involved in the work of the commission. Annex I provides:

After the entry into force of this Convention, any fishing entity ... may—

CHAIR—Where are you reading from?

Ms Kerslake—Annex I, Fishing Entities.

CHAIR—I am just trying to find it in our papers.

Ms Kerslake—Unfortunately, I have a booklet so I cannot make a reference to that.

CHAIR—I have something called Annex I, but it is Delineation of Unit Area and Unit Reservoirs.

Mr ADAMS—Taiwan has been mentioned with respect to many situations of illegal fishing taking place, with funding maybe coming from Taiwan—although not from the government of Taiwan, of course. Having Taiwan as part of this process is significant in those terms, isn't it? The importance of having Taiwan as a part of this convention is to make them a part of the monitoring and whatever process we pull from this convention to help protect migratory fish stocks. Is that the idea of getting Taiwan in there?

Ms Kerslake—You obviously want everybody fishing in the area to be a member, but, as you have mentioned, to monitor and control all the vessels you obviously need those most active within the area to participate. That is correct.

Mr WILKIE—I see there is enabling legislation that needs to be brought in for some of this to come into force. Has that legislation been prepared?

Ms Kerslake—The legislation required minor amendments to the Fisheries Management Act, and we are in discussions with AFFA and AFMA about the preparation of that legislation.

Mr WILKIE—Okay. So there is no timetable at this stage for that to be introduced?

Ms Kerslake—No. As I understand it, it will probably be part of any multifaceted bill that AFFA put through.

Mr MARTYN EVANS—Obviously, for a treaty like this—and the management of fish stocks over such a wide area for a highly migratory species—to be effective you will need a great deal of surveillance and research of the species themselves into the available stocks, their distribution, their breeding habits and all of those kinds of things. It will be very difficult to do across such a wide sea area and so many different countries. What is the commission's plan if the treaty is ratified by enough people and the whole plan comes into effect down the track? How do you plan to tackle the issue of research into the relevant species and fish stocks, as well as the surveillance of the fish stocks and establishing the databases?

Mr Lee—I might initially address that question and then ask my scientific and operational colleagues to provide more information. The convention text is quite clear on the need for monitoring, control and surveillance of fishing activities within the convention area. It is also quite clear on the need for management arrangements to be based on sound scientific advice. There is preliminary work being done by these preparatory conferences, looking at what monitoring, control and surveillance, or MCS, needs to be applied in the convention area. They are looking at boarding and inspection, VMS or vessel monitoring systems and observer coverage.

The commission recognises that there is already established within the region a vessel monitoring system operated by the Forum Fisheries Agency, that there are vessel registries and the like also operated by the Forum Fisheries Agency and that it would be appropriate for the

commission to investigate the Forum Fisheries Agency as service providers for these particular services rather than developing them themselves at, one assumes, great cost and over a long time. It is effectively the same with the science issue, where already significant scientific work is going on in the region through the Secretariat of the Pacific Community and other scientific and educational organisations. There is an acknowledgement of that and already a tapping into that scientific information. I would like to pass to John Kalish from the Bureau of Rural Sciences to say more on the provision of scientific services to the commission.

Dr Kalish—There are already extensive scientific arrangements in place for the central and western Pacific fish stocks. There is an informal body under the auspices of the Secretariat of the Pacific Community, called the Standing Committee on Tuna and Billfish, constituted by the majority of Pacific island countries and including all of the Forum Fisheries Agency members. In many cases their participation is subsidised by a range of distant water fishing nations and, of course, Australia and New Zealand. This body has been very effective. It has operated for 15 years—in fact the 16th meeting is taking place in Mooloolaba in July—and has been very successful in providing information on stock status and ensuring that cooperative research takes place throughout the central and western Pacific region.

At the present time, the Preparatory Conference for the commission has been seeking to establish scientific arrangements for the central and western Pacific region in the long-term and for the commission itself. The design of the scientific processes is actually fairly complex and somewhat controversial due to the need to ensure that scientific advice is independently derived and objective but at the same time allows participation by national entities. One of the main issues under discussion now is the relative importance of input from national scientists as opposed to independent scientists operating on a purely objective basis. Other arrangements are well under way, and we hope to have a process in place similar to that currently existing under the Standing Committee on Tuna and Billfish.

Mr MARTYN EVANS—Putting aside for a moment the monitoring and surveillance of the fishing vessels themselves, we are talking about the policing of an enormous area of ocean, especially of countries which are not necessarily signatories to the convention. We can talk about that in the moment, but just looking at the science of this, fishing science is not yet absolutely a done deal. There is still some controversy about how one projects forward what is a sustainable stock and so on. An amount of research has been done about how one develops what is a sustainable level of bluefin tuna and so on but this is not necessarily a totally agreed science across fishery scientists in the world.

What level of research program are we talking about and what is the level of commitment of these countries across the Pacific? Further, what degree of unanimity is there to support a research program that will actually integrate all of the national programs we have in place now—although only in the major research countries like Australia and perhaps New Zealand and Japan and so on and not necessarily in each of the island countries—to get an agreed research and sustainability program across an area this size? What level of commitment are we talking about in terms of dollars and so on? Are we just talking about integrating some existing national research program and picking up some research papers that are already out there or are we talking about a new independent research program of substantial proportion which will produce a new integrated research fisheries management program for this whole oceanographic region?

Dr Kalish—There is already extensive cooperative research throughout the central and western Pacific region, carried out predominantly under the auspices of the Secretariat of the Pacific Community, which has wide-ranging membership, and the Pelagic Fisheries Research Program, based at the University of Hawaii, which extends funds to countries other than the United States. These programs fund cooperative research in the order of millions of dollars, and of course there are the national programs. I also refer back to that Standing Committee on Tuna and Billfish which takes the national efforts and consolidates them into a single assessment ultimately. A stock assessment of fishery research takes into account a wide range of information. This information is gathered from a range of independent national programs; nevertheless it can be consolidated effectively, and the standing committee body ensures that that consolidation does take place. I do not envisage at this time that there is any need for a higher level of funding to ensure effective research. The stock assessments for the central and western Pacific region are probably some of the best for tuna stocks currently carried out in the world.

Mr MARTYN EVANS—I am glad that you said earlier in your assessment that this is to be based on the best scientific evidence. If we turn to article 5, we can see in paragraph (b) that we are to ensure that such measures are based on 'the best scientific evidence available'. But we then go on to basically pollute this high-minded concept, sadly, by incorporating the very best of European high-minded political doublespeak in their precautionary approach. This precautionary approach is then defined in about 35 different ways in the 35,000 different treaties that the Europeans and their colleagues have got to. In every different conference that they ever manage to attract, there is this politically correct approach to the issue and they refer to this precautionary principle frequently. If you look at every document that has come out of a European Commission inspired conference, they have incorporated the precautionary approach and they do it again in this document, I assume. The precautionary approach is applied to this document in section (c):

... in accordance with this Convention and all relevant internationally agreed standards and recommended practices and procedures;

You then have to refer back to the original document to see just what this precautionary principle is. The precautionary reference point that we adopt here is in annex II of the original document, which is relatively harmless. In annex II, the precautionary reference point is:

An estimated value derived from an agreed scientific procedure ... which corresponds to a state of the resource and/or of the fishery and can be used as a guide for fisheries management.

That sounds relatively harmless. I do not think one would find too much objection to that. But what concerns me about section (c) is that the precautionary approach is 'in accordance with this convention and all relevant internationally agreed standards and recommended practices and procedures'. What is a relevant internationally agreed standard and recommended practice and procedure?

Dr Kalish—Certainly, that is a complex issue. In terms of dealing with the precautionary approach in all areas of endeavour, it would certainly be a minefield. Specific conferences have taken place in relation to tuna resources and highly migratory fisheries resources which have dealt with the application of the precautionary approach to management of those resources. Hopefully, those would be the ones that would be applied. But this wording in section (c) is

somewhat ambiguous in that it provides an open range and may not necessarily allude to that precautionary approach activity relating to tuna alone.

Mr MARTYN EVANS—Why doesn't Australia insist on people applying what we carefully managed to get them to apply in section (b), which is 'the best scientific evidence available'? Why doesn't Australia, through its Department of Foreign Affairs and Trade, always insist, in agreements like this, on what we got in paragraph (b)—the best scientific evidence available? Why do we let them get away with then qualifying it in paragraph (c), as we often do, by applying the precautionary approach on all relevant internationally agreed standards and recommended practices, which no-one can ever define for me when they come before the treaties committee? This comes in frequent agreements, which my colleagues will recall—it is in just about every other agreement of this ilk. You may not have seen these, but we have the benefit of seeing all of these treaties. We always get this in paragraph (c), because there is always a paragraph (c). They have the best scientific evidence available and then they qualify it by drawing up some totally irrelevant approach which no-one can ever define and which always gets them away from the best scientific evidence available. I would just put that on the record for your edification and advice—always stick to the best scientific evidence; it will serve you well. In any future agreement, do not let colleagues get away with something which you can never define, because it will always serve you badly. If we can get back to looking at the research later on, I would certainly appreciate it if you could perhaps draw our attention in some subsequent written advice to that centre—the university. I do not need a full copy of the research program; I just need a brief note as to where we can find the research program, perhaps, if we want to look on the Internet or something. We certainly do not need a copy of the full detail of it, just a reference to where that program is and where the centre is in which that program is to be found.

Mr ADAMS—Yes, just a short reference. Thank you.

Senator TCHEN—Firstly, I have a question on article 3(1). In article 3(1) there is a description of the convention area. It is from the south coast of Australia due south along the 141-degree meridian of east longitude to its intersection with the 55-degree parallel of south latitude and so on. Can you tell me in layman's terms whether that includes the Southern Ocean?

Mr Lee—I must admit that I do not know the northernmost boundary of the Southern Ocean. I would have to look at that. I believe 60 degrees south is in the Southern Ocean. The reason for the 60 degrees is that it abuts the jurisdiction of the Committee for the Conservation of Antarctic Marine Living Resources, another regional fisheries management organisation that looks after the fish stocks of the Southern Ocean.

Senator TCHEN—In that case, can I put a question to Mr Atkin or Ms Kerslake. Annex 1 describes a 'fishing entity' but it does not define what a fishing entity is. At the moment I understand it applies only to Taiwan, or Chinese Taipei I should describe it. For example, what is stopping the Mayor of Port Lincoln, which is a major fishing port, using annex 1, which says 'by a written instrument delivered to the depositary, agree to be bound by the regime established by this Convention', to become a signatory entity? I know that fishing fleets from Port Lincoln certainly fish in the convention area.

Ms Kerslake—I would like to take some of that on notice to provide you with a written explanation of the interrelationship and the development of the language on the fishing entity of

Taiwan. The formulation is written in such a way as to only provide for participation by Taiwan. One of the issues that I would like to talk about is article 22, which goes to cooperation with other regional fisheries management organisations. Port Lincoln specifically fishes for southern bluefin tuna. During the preparatory conference processes it was recognised within this that, although southern bluefin tuna occur within this convention area, the parties to the Western and Central Pacific Ocean Tuna Commission recognise that the Commission for the Conservation of Southern Bluefin Tuna is the primary and responsible organisation for dealing with southern bluefin tuna.

Senator TCHEN—If annex 1 applies specifically to Taiwan—and I understand what the obligations are for the countries that sign up to the convention—what are convention obligations for non-signatory fishing nations? Do we sink them on sight?

Ms Kerslake—This is quite a complicated system, as you would understand. We have referred to the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement. The United Nations Fish Stocks Agreement does develop a scheme of regional fisheries management organisations and commits signatories to that agreement to create and participate in regional fisheries management organisations. There will be the relationship as provided in the treaty between members of the commission and another member of the commission and there will be a relationship between members of the commission and UN Fish Stock Agreement signatories, who have certain obligations under that agreement. Then there will be the relationship between members of the commission and non-parties to any international instruments. Through the processes we are going through at the moment and the preparatory conferences on monitoring, control and surveillance, and boarding and inspection and all those types of things, we are dealing with our relationships on how to deal with vessels operating within the convention area at those differing levels.

Senator TCHEN—In other words, you cannot tell me yet.

Ms Kerslake—Do you want to play through a scenario, and then I can give you—

Senator TCHEN—Yes. Suppose the convention has been ratified and the commission then establishes certain fish stock policies within the convention area, and lo and behold a non-party fishing fleet heaves into sight and commences depleting the fish stock, what can the commission do?

Ms Kerslake—If they are a member of the UN Fish Stocks Agreement, they are treated identically to members of the RFMO in certain situations. There is a lot that can be said about that. Unfortunately, if they are a non-party and if they are fishing on the high seas, there is not a lot you can do. If they are fishing within an EEZ, where most of the fish are, they are obviously in breach, and it is within that party or coastal state's sovereignty to act independently on that. Under UNCLOS, the only right you have to arrest, board and inspect a vessel on the high seas is if its nationality is in dispute or it is not flying a flag.

Senator TCHEN—In other words, if it is a non-party not only to this convention but also to the UN convention, there is nothing we can do. Can you or Mr Atkin tell me whether China is a signatory or a ratifying nation to the United Nations Fish Stock Convention?

Ms Kerslake—I would have to take that on notice.

Senator TCHEN—As we heard earlier, annex 1 is specifically provided for Taiwan. I assume that fictitious arrangement is to pacify the concerns of China, yet I note that China is not even a signatory to this convention let alone in the process of ratifying it. In the process of trying to bring China into the fold, we humiliate a country which is a major trading partner of ours and a major democratic country in the western Pacific: for what purpose?

CHAIR—Are you asking for a comment on this or is this your statement?

Senator TCHEN—What can we do if China does not appreciate the niceties we have shown?

CHAIR—First of all, can we ascertain China's status on these matters? Somebody at the table must know the answer to that.

Mr Lee—Yes. I can tell you that China is not a signatory to the United Nations Fish Stocks Agreement.

Senator TCHEN—I saw that on the list. Do you know whether they are in the process of ratifying this convention?

Mr Lee—No, I do not. I can take that on notice and find out.

Senator TCHEN—Have they shown any interest in ratifying this convention?

Ms Kerslake—It is very difficult at this point in time to get a feel for China. Unfortunately, due to the SARS epidemic, the Chinese were not allowed to travel to the most recent meeting in Fiji.

CHAIR—Do they normally attend?

Ms Kerslake—Yes. They normally attend the meetings and they hold the deputy chair position of the preparatory conference.

Mr Lee—Certainly, the commission might not have powers to force rogue states to toe the line. However, there is a significant—

CHAIR—Rogue states in the fishing sense?

Mr Lee—Yes. The regional fisheries management organisation is working under a set of rules that are based on the fish stocks agreement. The Indian Ocean Tuna Commission is an FAO—food and agricultural organisation—based fisheries organisation. It is at the high level where bilateral pressure is brought to bear on countries to be party to it rather than being outside. So work is done to get countries to either become members of the commission or at least to observe the rules and regulations and management arrangements that are put in place by the commission.

Mr CIOBO—With this type of treaty, I am most interested in the enforcement and compliance sides of it. I notice article 26 makes reference to when an agreement is not reached

within a two-year period with regard to boarding and inspection of fishing vessels. Could you outline what steps are being put in place to obtain consistent boarding and inspection procedures and also how that will relate to those countries that do and those countries that do not sign up to this treaty?

Mr Lee—I could provide a general statement and then ask my colleague from the Department of Foreign Affairs and Trade to follow up, but it would probably be easier if I just let my colleague comment from the start.

Ms Kerslake—As you may be aware, three working groups operate within the preparatory conference process. That preparatory conference process is to take us from the time the treaty was signed, to keep moving forward and to prepare the groundwork for setting up the commission. The first one is on finance and administration, the second one is on science and the third one is on monitoring, control and surveillance. The first stage of negotiations on monitoring, control and surveillance is on the boarding and inspection scheme—that is, to begin the development of such a boarding and inspection scheme as referred to in article 26 (1) and (3) about the right to board and inspect vessels on the high seas and to try to have, as closely as possible, the same sort of scheme operating within EEZs as on the high seas.

Mr CIOBO—If we had, for example, an Australian naval vessel on the high seas, is that the sort of enforcement and boarding party that must be clearly recognisable?

Ms Kerslake—The definition of what those parties will consist of is still being worked on at this stage—whether it will include any vessel Australia wishes to register, be it a customs vessel or a naval vessel or one of the other vessels operated by the Australian Fisheries Management Authority, and whether the Australian Fisheries Management Authority uses its officers as inspectors. At what level that will move forward is still being discussed.

Mr CIOBO—Can you just outline for me the difference in compliance between those that do and those that do not sign up to the treaty, those that do and those that do not ratify?

Ms Kerslake—The difference will be in the high seas area, or what is known as the doughnut holes. A large amount of the Pacific, as you would have seen from the map, consists of multiple EEZs with just small amounts between them. Those people that are not signatories to the treaty will still be able to fish on the high seas. Parties to the convention, or members of the commission and other members of the commission, will have some sort of reciprocal boarding and inspection of one another's vessels on the high seas. However, under UNCLOS, the only right, if they are not a party to UN fish stocks or a party to this commission, is if you cannot determine the identity of that vessel in those small high-sea areas.

Mr CIOBO—That is the only ground for boarding?

Ms Kerslake—Yes. There is one other small area where you may board a vessel, and that is if you seek the authority from the state flying the flag and they give you the authority, as the flag state of that vessel, to board the vessel for fisheries inspection purposes.

Mr CIOBO—I have a question with regard to subsistence fishers and the situation that exists there. What exactly does that entail? What sorts of volumes are we talking about, or is it a method of catching? What sorts of parameters are there on that?

Mr Lee—Is the question on subsistence fishing?

Mr CIOBO—Correct.

Mr Lee—And how they might fit within—

Mr CIOBO—What are the parameters; how does someone fall within that or fall outside of that? What is the definition of it?

Mr Lee—There are two or three aspects that determine whether somebody is fishing on a commercial basis or for sustainability: the size of vessels, their location, how far off the coastline they are and the method of fishing they are using. My understanding is that there are internationally recognised definitions of what constitutes a commercial operation as opposed to any other sort of operation. In the word 'commercial' I also include recreation. The recognised definition would be applied in this circumstance as well. I have not answered your question, because I do not know the specifics of what defines a commercial operation. I can find that out for you.

Mr CIOBO—It would be great if you could take that on notice.

CHAIR—Mr Lee, will you be able to get back to the committee secretariat with that information? Is that the idea?

Mr Lee—Yes.

CHAIR—Thank you.

Senator KIRK—My understanding is that this treaty was signed on 30 October 2000. Is that correct?

Mr Lee—Yes.

Senator KIRK—Why is Australia only proposing to ratify it now? What is the reason for the delay between signing and ratification?

Mr Lee—There is a little bit of history associated with this particular convention. To get distant water fishing nations and the Pacific parties who effectively own the resource together and to beat out a treaty meant there was significant compromising going on in the negotiation of the treaty. We have known there was going to be a preparatory conference process continuing the work towards establishing the commission and, along with a number of other parties, we wanted to see the direction which the operational aspects of the convention were going to take and see how others were going to react. Certainly Japan, who are not signatories, did not want to be part of the preparatory conference process for the first two meetings. They then realised that it was probably to their detriment that they did not participate, and they have subsequently re-engaged.

The convention was written in such a way that there were two ratification processes: one within three years and one post three years. We never thought that there was any need to hurry into the ratification process, because the interest from the distant water fishing nations was such that they were treading lightly—they were concerned about what this might mean for them. I think they are becoming more and more comfortable as the process goes on, and I guess that is where other countries are coming from too—they are comfortable with the convention text, what it means, and the preparatory conference work that has gone on since then. Certainly that is Australia's position—from a fisheries agency aspect we are very comfortable with the progress that has been achieved.

Senator KIRK—You mentioned a distinction between a process within three years and one post three years. If we signed it in October 2000 and if we were to ratify it before October of this year, that would keep us within the three-year period. Could you outline the distinction for me?

Mr Lee—Ratification could occur if seven states from below 20 degrees north—I think that line just about crosses through Manila—and three parties north of that line agreed, which would bring the convention into force. I will defer to my colleague from the Department of Foreign Affairs and Trade in a moment, but that facility recognises that there are two components to this: the distant water fishing side and the side of the Pacific areas that have the resource in their EEZs. There are a couple of other subtle reasons why there is this north-south issue, and I will ask Emma to elaborate on that.

Ms Kerslake—I will go through 'enter into force' under article 36 just quickly for your benefit. It is quite complicated. The convention can enter into force 30 days after the deposit of a final instrument of ratification from three states situated at 20 degrees north latitude and seven states situated south of that point or after the three years. So after the three years both processes will be running at the same time. There can be 13 ratifications, wherever they come from, so it would be six months after the 13. There is a difference, I suppose, when they are operating as a coastal state compared to those operating as a distant water fishing nation. During the negotiation process I was not directly involved in MHLC7 but there was the need to include the rights of both. We have discussed in the NIA the chambers that operate in article 20 as well to recognise the distant water fishing nations and the Pacific island countries, which is a fall-back. There is three-quarters majority voting for matters of substance as well.

Senator KIRK—I guess I am just trying to determine—in terms of the timetable, if Australia does not ratify the agreement, say, in the next three months—whether that is going to have any impact on our say in the way that the commission develops or in the way that this is going to operate?

Mr Lee—If the convention is ratified and the commission is created and we are not a signatory, then we have obviously missed the boat. Until such time as we are a party we will not be able to influence the management, or even leading towards the allocation, of resources if particular stocks are found to be at maximum sustainable yield. By being a party, obviously, we are able to influence that significantly. As a party within just a Pacific grouping—if the convention is ratified by the Pacific grouping—then certainly the Pacific can aim to establish arrangements that best suit them. That has actually come up in discussion in the margins of the preparatory conferences, where some parties have said, 'Why should we be bashing our heads against a brick wall on this particular issue when all we've got to do is sit back, achieve 13

ratifications, and then we can do whatever we want?' The convention actually says that we need to do this in good faith. We keep pointing out that we really do need to be trying to do this to cater for all parties involved, and certainly we would like to be there. Australia has been in this process from the beginning. If we were there, it would be seen as evidence of Australia's commitment as one of the original members of the commission as well.

Mr ADAMS—I am interested in getting the science right so that we know what is there and what has been taken. Has there been any discussion in relation to certifying fish that are taken from the western Pacific and central Pacific so that we have a trail to follow? Does Mr Milner from the criminal branch look after the issue of illegal fish being sold in fish markets around the world?

Mr Milner—That is not a subject that I recall coming into my area.

Mr Lee—If I could make a general comment on that issue, it is well recognised that illegally caught fish are now a tradable commodity around the world. Regional fisheries management organisations are now implementing catch documentation schemes to keep tabs on significantly valuable fish resources. Certainly, as part of a scientific program, catches are recorded and data is collected on volumes. If it were seen that there was a need to introduce a catch documentation scheme for a particular species under the jurisdiction of this commission, then I am sure the commission would investigate that and implement such a catch documentation scheme.

Mr ADAMS—But it has not come up in the process so far as one of the aims or objectives?

Mr Lee—No, it has not come up—and I will confirm this with my colleague—because I do not believe the species we are currently fishing in the convention area are of significant value. They tend to be not sold as individual fish and, as a consequence, are very difficult to track using a catch documentation scheme. Highly valuable fish that are sold as individual fish are much easier to keep tabs on.

Mr ADAMS—Of course.

Mr Lee—I am not sure if there are any stocks—

Mr ADAMS—We are talking about tuna then?

Mr Lee—Yes, and there are also billfish, which would possibly come under this commission. At the moment, the focus is on tuna species but billfish species would also come under the control of this commission.

Mr ADAMS—Are they going into cans; is that what you are saying? Or are these sold as individual fish?

Dr Kalish—The total catch last year for the central and western Pacific was about 1.9 million tonnes. Of that, about 1.2 million tonnes was skipjack tuna, which is almost all going into cans. That provides 60 per cent of the world's canned tuna so it is an extremely important resource from that point of view. The value of that tuna has varied dramatically and made the fishery for canned tuna almost uneconomic.

Mr ADAMS—What has?

Dr Kalish—The fishery for skipjack tuna. Several years ago, the value per tonne was about $US550 and it was almost impossible to break even under those circumstances. Certain measures by the industry have resulted in an increase in value to the order of $US800 to $US1,000 per tonne. Nevertheless, that is not adequately lucrative to incite illegal, unregulated or unreported fishing. There is a significant fishery for yellowfin tuna of about 475,000 tonnes and for bigeye tuna of about 115,000 tonnes. These fish predominantly go to the sashimi markets in Japan and certainly there would be a potential for illegal fisheries to catch these animals. In the Indian Ocean a scheme has been enacted in relation to bigeye tuna.

Mr ADAMS—There is a convention, isn't there?

Dr Kalish—Yes, there is an Indian Ocean Tuna Commission. They have a convention and a resolution that has instigated a bigeye tuna catch documentation scheme. I believe it is likely that a similar documentation scheme would occur in the Pacific. This is primarily driven by Japan to ensure that the fishery is not overfished, and discourage illegal, unregulated and unreported fishing.

Mr ADAMS—I am glad we are moving in that direction. There are concerns about recreational fishing catches being part of this. How big a catch is made by recreational fishermen? I know there is a lot of tag and release fishing that goes on now. I think 90 per cent of the Australian game fishing industry is about tag and release. What catch limits are you talking about for this area?

Mr Lee—I must admit that I do not have the information on that. I do not know if any of my colleagues do.

Dr Kalish—I can make a general comment. There has recently been a National Recreational and Indigenous Fishing Survey that seeks to determine levels of catch for a range of recreational species, including yellowfin tuna and striped marlin—which are important target species for the recreational fishers off the east coast. The catches are extremely low compared to those catches taken by the Australian commercial industry, and almost minuscule or microscopic as far as the western and central Pacific Ocean is concerned. Also, the majority of those fish are caught and then released, as you indicated.

Mr ADAMS—Mr Milner, are there many drugs coming into the central and western Pacific area through fishing fleets? Is there any drug trafficking through the fishing fleets of those areas?

Mr Milner—Offhand, I really would not be able to comment on that. I am not aware of that being a problem at all. The Department of Health and Ageing might know more about that.

Mr ADAMS—I do not think there are any other takers. My last question is on jurisdiction and flags of convenience ships. We have had problems in the southern oceans with all sorts of flags being used and people trying to disguise shipping. The problem is also identifying where the cash is. I know that Hong Kong and Taiwan are being held up as probable sources of income for funding some of the ships that were tied up in Western Australia. I take it that some illegal

fishing for some of these species is taking place in these waters. How big a problem is ships using other flags or disguising their identity?

Ms Kerslake—There are two aspects to the flag of convenience IUU fishing. As my colleague from AFFA said before, the differentiation with the southern oceans is the value of the fish when running a tuna long-line vessel as compared to a southern oceans vessel. Flag of convenience is a difficulty everywhere. Two things to note on that are that the Food and Agriculture Organisation recently had its committee on fisheries meeting which looked into IUU fishing and the work that was undertaken there. Work is being undertaken specifically by the Japanese and RFMOs worldwide on what is called a white listing of vessels to allow vessels within the convention areas, and Australia has done some work on proposed white listing registers as well.

Mr ADAMS—What does 'white listing' mean?

Ms Kerslake—Rather than blacklisting a vessel so it just changes its name, you register the well-behaved vessels. I suppose it is similar, if I could make some sort of analogy, to insurance premiums whereby the longer you have them the more bonuses you get. The forum's fisheries agency itself in the Pacific area has a vessel register which lists vessels which adhere to the terms and conditions and what are known as the MTCs—minimum terms and conditions—for the Pacific area. There is a conference early next year again looking at the worldwide issue of IUU fishing and the cooperation that can be undertaken between one regional organisation and another to try to eliminate these vessels altogether. That conference has been promoted and will happen in Rome early next year.

Mr ADAMS—That is very good to hear.

Mr WILKIE—I see that the East Coast Tuna Boat Owners Association Inc. have been concerned about the costs of implementing this with their fleet. They have asked whether any compensation measures will be put in place to help them get over their costs. Has anything been considered along those lines?

Mr Lee—Certainly we have had a significant amount of dialogue with the East Coast Tuna Boat Owners Association through Hans Jusseit, the executive director. He has raised some concerns about what might ultimately be the costs imposed, and he understands that the work that is going on at the moment has not actually determined what costs might be imposed, but he realises that Australia already has in place world-leading monitoring, control and surveillance practices. There are unlikely to be additional controls imposed over and above those. The costs that are currently borne by the industry are likely to be the costs that they will wear to participate in this particular convention. Again, you would need a crystal ball. We cannot say for sure that is what will happen, that the cost will be approximately the same, but we are in contact with him. He has been part of the delegations to these conferences and we are trying to keep him informed of where we are coming from and make sure that he is comfortable with the progress that has been made on those cost related issues as far as the industry are concerned.

Mr WILKIE—But generally I think you are saying that their concerns are relatively unfounded.

Mr Lee—No, not unfounded. But, as for the level of the costs, no dollar values have yet been spoken of, so it is very difficult to say that it will cost industry X or 10 times X. We just do not know. But from our reading of it, our understanding of the way the commission will pan out is that the costs will not be a significant impost in any way on the east coast tuna industry. I do not know if there is any more comment from—

Mr Roberts—I would just make the comment that, as part of the Fisheries Management Act, we apply government cost recovery policy to those Australian operators. I would also add that the arrangements which we will have in place very shortly for vehicle monitoring and MCS arrangements for our own fleet will, I expect, meet the requirements in the central and western Pacific.

CHAIR—That concludes the hearing on this treaty. Thank you very much for your presence here this morning and for your contribution to our consideration.

[11.51 a.m.]

HARTWELL, Mr John, Head, Resources Division, Department of Industry, Tourism and Resources

WALKER, Mr Ian, Manager, Timor Sea Team, Resources Division, Department of Industry, Tourism and Resources

BUCKLEY, Mr Michael Thomas, Manager, Business Income Division, Department of the Treasury

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

KLUGMAN, Ms Kathy Kay, Director, East Timor Section, Department of Foreign Affairs and Trade

MORAITIS, Mr Chris, Senior Legal Adviser, Department of Foreign Affairs and Trade

SERDY, Mr Andrew, Executive Officer, Sea Law, Environmental Law and Antarctic Section, Department of Foreign Affairs and Trade

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

Agreement between the government of Australia and the government of the Democratic Republic of Timor-Leste relating to the unitisation of the Sunrise and Troubadour fields, done at Dili on 6 March 2003

CHAIR—While the representatives are taking their places, I ask the members of the committee to consider the authorisation of two submissions in relation to this agreement that were received subsequent to our last meeting. There is a submission from Dr Andrew McNaughtan that has been sent to you and a submission from Matt Coffey, which was emailed to the secretariat this morning.

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

That submissions Nos 11 and 12 be received as evidence and authorised for publication.

CHAIR—I welcome officers from a number of departments. 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 manner and may be regarded as a contempt of parliament. Would one of you like to make an introductory statement, and then we can proceed to questions?

Mr Hartwell—I would like to make an opening statement. Thank you for the opportunity to do so. The Greater Sunrise gas field, which composes the Sunrise and Troubadour deposits, lies in the Timor Sea, some 500 kilometres north-west of Darwin. A map of the area is available for members of the committee, should they wish. The field lies partly within the joint petroleum development area established under the Timor Sea Treaty and partly outside the joint petroleum development area into an area where Australia exercises jurisdiction. It should be noted, however, that East Timor also claims jurisdiction over this area outside the joint area.

The Greater Sunrise field is a world-class petroleum resource containing an estimated 8.4 trillion cubic feet of natural gas and 295 million barrels of condensate. It is estimated that 20.1 per cent of these resources lie within the JPDA—the joint petroleum development area—and 79.9 per cent lie outside it. This apportionment ratio was included in the Timor Sea Treaty. It is estimated that if the field is developed using a floating gas-to-liquids technology then revenues to Australia will be around $8.5 billion over the life of the project with exports of around $1.5 billion annually. Its development will also provide significant revenue to East Timor. The efficient development of a petroleum field requires that it be developed in an integrated way. A unitisation agreement achieves this. Article 9 of the Timor Sea Treaty deals with unitisation and states:

(a) Any reservoir of petroleum that extends across the boundary of the JPDA shall be treated as a single entity for management and development purposes.

(b) Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

The Timor Sea Treaty also deals explicitly with the unitisation of the Greater Sunrise field deposits in annex E, which specifies the 79.9-20.1 per cent initial apportionment ratio already referred to. Annex E also provides for the apportionment ratio to be altered by agreement between Australia and East Timor.

Negotiations on the international unitisation agreement were complex, especially in relation to ensuring that it was substantively without prejudice to either country's maritime boundary claims and in respect of fiscal arrangements. The final IUA therefore represents a negotiated outcome. The IUA was signed by East Timor and Australia on 6 March 2003. The IUA provides a comprehensive framework for the development of the Greater Sunrise field. It covers matters such as the administration of the unit area, taxation, the method and point of valuation for petroleum produced, the approval of development plans, employment and training, abandonment provisions, the use of facilities by other developments, occupational health and safety, environmental protection, customs, security and dispute resolution procedures. The IUA meets all of Australia's primary objectives. It provides for a single administrative system to apply across the whole unit area—and a map of the area is included in annex 1 of the IUA—both inside the JPDA and outside the JPDA with regard to such matters as health and safety and the environment which provides for administrative efficiency.

In other respects, where appropriate it provides for Australian law to apply in that part of the unit area outside the JPDA and for the regime established by the Timor Sea Treaty to apply within the JPDA, thus not prejudicing Australia's maritime boundary claims. It provides the comprehensive fiscal framework which was needed to provide investors with the certainty that

they need to make investment decisions. The fiscal terms defined in the IUA apply to that portion of the production attributed to the JPDA where 90 per cent of production is attributed to East Timor and 10 per cent to Australia. Normal Australian arrangements would apply to that portion of production attributed to Australia.

It is neutral in respect of development options allowing the field to be developed in the most cost-effective manner while meeting environmental, health and safety obligations. It provides a robust mechanism for review of the apportionment ratio should geological information suggest that such reapportionment is required. The IUA was developed in close consultation with the Sunrise joint venture partners to ensure that it would provide the certainty needed for investment decisions. This involved, when appropriate, exposure to drafts of the text and continued detailed discussion on issues. Madam Chair, that concludes my opening statement.

CHAIR—Thank you. One matter I want to ascertain before we go around the table for questions is the information that has been presented to the committee in relation to East Timor's economic situation. Attached to our papers was annex 3, which is a schedule with statistics drawn from a report that says May 2002 but it would appear that the economic indicators are actually 1999 figures or thereabouts. We are informed through some of the submissions that we have received that the economic situation in East Timor has changed dramatically since 1999. Are there more up-to-date figures available, particularly in the economic indicators of GDP, growth, unemployment and the like?

Ms Klugman—You have put your finger on a big problem that we encounter in many areas of our dealings with East Timor: the paucity of good statistics that show us the real picture. There are further problems, too, because the statistics that we do have tend to reflect what is going on in Dili, in the capital, and very little about what is going on outside Dili, where most of the people live and where poverty is a more serious problem. You are quite right in saying that the World Bank, the IMF and the Asian Development Bank are doing some work to bring those statistics up to date. The East Timor government proposes to move forward with a census and some associated basic information gathering, probably early next year. So our statistical understanding of what is happening in economic terms in East Timor is very much a work in progress.

CHAIR—Would you accept that the economic situation has changed drastically since 1999, since the statistics that we have been provided with?

Ms Klugman—The statistics we saw in the early period of the INTERFET intervention in East Timor in 1999 are very much skewed by our presence in East Timor. With the coming of independence on 20 May last year, and with the drawing down progressively of the UN mission presence in East Timor, you can see very quickly that growth is dropping away rapidly in East Timor. We are beginning to see what might be the real picture on the trade balance as well, which has been completely distorted by imports and exports associated with that UN mission. We are not there yet—the UN mission is still on the ground in East Timor, and the current mission is likely to be there until mid next year—so this is something that we will have to keep reviewing as we go forward. AusAID, too, are doing quite a lot of work on this as they move forward with their rethinking on their country aid strategy for East Timor to make sure that Australian aid is actually going where it is needed in East Timor.

CHAIR—Are there not more up-to-date projections or estimates from the World Bank that could be supplied to the committee? Obviously, when we report on this, we need to give an accurate assessment of the position of East Timor. I doubt that an unemployment rate of 7.8 per cent reflects reality. That figure could be misleading.

Ms Klugman—The East Timorese President is quite active on the issue of unemployment. He makes the point that those who create statistics on unemployment ignore the fact that generation of income in East Timor, in a society like East Timor, generally falls underneath the radar of the World Bank and the IMF when they are developing their statistics. We will certainly see what we can draw together in cooperation with AusAID to give you a fuller picture of the current economic situation.

CHAIR—That would be useful. If we could receive it shortly, I am sure the secretariat will be very pleased. Mr Hartwell, could you confirm the status of the Timor Sea Treaty? It has been ratified?

Mr Hartwell—The Timor Sea Treaty has been ratified and the administrative apparatus under the Timor Sea Treaty is now in operation—that is, the establishment of the designated authority—and, as well, there is a joint commission.

CHAIR—Have any concerns been raised about the composition of the commission? Two members are nominated by Australia and one by East Timor.

Mr Hartwell—That is not the case in relation to the joint commission on the Timor Sea Treaty. There are two nominated representatives from East Timor and one from Australia.

CHAIR—In the Sunrise commission, though, it is the other way around.

Mr Hartwell—That is right.

CHAIR—Has any concern been raised in relation to the Sunrise commission?

Mr Hartwell—No, not that we are aware of.

CHAIR—By what mechanism will Australia ensure that the obligations of the regulatory authorities are observed by the joint venturers?

Mr Hartwell—I am sorry; could you repeat that for me?

CHAIR—In relation to the obligations of the regulatory authorities that are to be observed by the joint venturers—

Mr Hartwell—As the international unitisation agreement states, the area within the joint petroleum development area will be administered under the provisions of the Timor Sea Treaty, so the joint venture operators would have to comply with the provisions of the Timor Sea Treaty. Within the area outside the joint development of petroleum area, they would work under obligations related to the Australian Petroleum (Submerged Lands) Act. So there are two legal apparatus applying in that context.

Mr WILKIE—I see that this is probably the first unitisation agreement we have had for petroleum. What sorts of dispute resolution procedures do we have in place if parties cannot agree?

Mr Hartwell—There are dispute resolution mechanisms outlined in the IUA and there are also dispute resolution mechanisms outlined in the Timor Sea Treaty. Either of the regulatory authorities—that is, the regulatory authorities under the Timor Sea Treaty or under the Petroleum (Submerged Lands) Act in Australia—may refer disputes to the Sunrise commission in the first instance for resolution by consultation and negotiation. In the event that the dispute cannot be resolved by the commission, disputes can be submitted at the request of either Australia or East Timor to an arbitral tribunal according to annex IV of the agreement. The details of all of those dispute resolution mechanisms are outlined within the unitisation agreement itself and within the Timor Sea Treaty.

Mr ADAMS—We received a written submission from people in relation to the Timor association saying that we are basically ripping off East Timor as a country. What is the reply to that?

Mr Hartwell—My reply to that would be that both sides have signed on to the unitisation agreement. We believe, and I believe the East Timorese are in agreement, that the unitisation agreement is in the interests of both countries. It should be noted that important revenues will be going to East Timor under this arrangement.

Mr ADAMS—So you think it has been a fair process of negotiation and giving and taking to get to where we are, from our point of view?

Mr Hartwell—Yes. The negotiations were robust, but I think it has been a fair process and it is a fair outcome.

Mr Moraitis—The East Timorese government themselves, in introducing legislation in recent months, have been very positive and have welcomed the outcome for them. They are, as we are, very happy with the negotiated outcome. As Mr Hartwell said, it has been a robust process of negotiation and a very complex one involving a lot of resources—and obviously that is to be expected—but at the end of the day both sides sat down and worked out a mutually satisfactory arrangement which benefits both. Certainly East Timor and their government recognise that.

Mr WILKIE—I will just make the comment that I think 'robust' is very well understated.

CHAIR—That was not necessary. One matter that arose during our deliberations on the treaty was in relation to employment and training. Article 18 in this agreement provides for preference in employment and training to be given to nationals or permanent residents of Australia and East Timor. How are these people going to be recruited and what is going to be the nature of the training, particularly with respect to the East Timorese? What sort of employment prospects are there?

Mr Hartwell—In that context, obviously the training and employment will be considered somewhat in the future. We do not at this point in time have a development that—

CHAIR—We are looking at 2009, aren't we?

Mr Hartwell—Yes. We are looking at possibly the first time that you might get offtake from the petroleum developed there as being around 2009, but there are processes in place to ensure that the East Timorese do participate in the activities within the Sunrise area. Certainly the companies involved there have some training programs on the ground at the moment in East Timor. I do not know if my colleague Mr Walker, who is closer to this issue than I am, would like to comment.

Mr Walker—I think what Mr Hartwell has said largely covers it, but the exact mechanisms by which this will work will be very much in the hands of companies and exactly how that will transpire will depend to some extent on their development plans and how they take over their overall operations. As Mr Hartwell has already said, there is already some work going on in East Timor from the Sunrise joint venture partners. I would classify that as preliminary rather than highly substantive at this stage.

CHAIR—Given that the development is not likely to occur until some time in 2009, which just seems forever away, perhaps this is a hypothetical question but could somebody explain to me how the taxation regime will apply to the Greater Sunrise project if taxation within the JPDA is in accordance with the Timor Sea Treaty and taxation for Greater Sunrise outside the JPDA is in accordance with Australia's domestic taxation arrangements? How will that work for the joint venture partners?

Mr Hartwell—I could make some comments on that, but I call on my Treasury colleague, if he wants to take that one.

Mr Buckley—The arrangement is that the resource is divided virtually 80:20 between Australia and East Timor. Twenty per cent of the resource which is in the JPDA area is taxed under the principles of the Timor Sea Treaty, which means that 90 per cent of the tax revenues go to East Timor and 10 percent of those revenues go to Australia. The resource which is allocated to Australia is taxed under Australian principles, so the petroleum resource rent tax applies to that part of the resource and company tax applies to the income derived from that. That is the essential split of the tax arrangements.

CHAIR—Did you have anything to add to that, Mr Hartwell, or does that cover it?

Mr Hartwell—No. That seems an appropriate answer.

CHAIR—My last question is in relation to the environment. Are there any environmental safeguards in place? How are we dealing with environmental issues under the unitisation agreement? Are there safeguards in place to ensure that the resource is depleted in an environmentally responsible fashion?

Mr Hartwell—Certainly that has been a major issue, and we and East Timor are both very conscious that any development that takes place within the unit area should have the highest environmental obligations. When you do have a unit area where you are applying two bits of law—as has been said, with Timor Sea Treaty obligations applying to 20.1 per cent within the joint area and then Australian law applying to 79.9 per cent—that obviously makes for a

challenge. We have agreed with the East Timorese that it would not be very sensible to have two different sets of environmental obligations on either side of that boundary. There will be a common approach to the environment. In Australian law, that is that the environmental regulations under the Petroleum (Submerged Lands) Act will apply.

CHAIR—Given the consideration that this committee had of the IUA during the review of the Timor Sea Treaty, I think that we have addressed most of the issues that are of concern.

Mr KING—I just had one. I just wanted to know about this split. Do you think it is a generous split to the East Timorese or not?

Mr Buckley—The split is determined by the geographic boundaries and—

Mr KING—There is an issue about the boundaries too, that the boundaries are actually determining the split.

Mr Buckley—The IUA was based on the existing boundaries. I think A-G's may be able to comment on that, but the IUA has been entered into without prejudice to those boundaries.

Mr KING—I guess I am really asking: how generous have we been?

Mr Buckley—But then if you go to the other side the resource which lies within the JPDA is allocated on a basis of 90 per cent to East Timor and 10 per cent to Australia .

Mr KING—I understand what you have said about that.

Mr Buckley—So a 90:10 split is the split which was viewed as very—

Mr KING—Yes, but 90 per cent of what?

Mr Buckley—Ninety per cent of the value of the resource.

Mr KING—It is really an 80:20 split Australia's way when you look at the—

Mr Buckley—If the resource is split 80:20, then the taxation can only follow the allocation of the resource.

Mr Hartwell—It should be said that we believe it is a fair split. Within the joint area, which again is an agreement to disagree because we have never been able to set a permanent maritime delimitation, we have agreed to give 90 per cent of the revenues to East Timor, as has been said. In relation to the unitisation agreement, the 20.1 per cent that lies within the joint area, 90 per cent of the revenues will go to East Timor and then Australia will claim the revenues on the other side, the 80.1 per cent, from the unit development in the Sunrise area because that is an area which is in Australian jurisdiction.

Mr KING—Is Sunrise being developed before Laminaria and Bayu-Undan?

Mr Hartwell—Sunrise will likely, as has been said, not come on stream before 2009. At the moment it is uncertain about what the development proposal will look like. Obviously the joint ventures are out there seeking markets, whether that be within Australia or whether that be overseas. Laminaria is a large-producing oil field on the west side of the joint area which has been in production for some time. Bayu is a proposal, project, totally within the area. The development approvals for that project have already been indicated, and that will come on stream for liquids in 2004 and gas hopefully around 2006. So one is already an existing producing facility; one is shortly to become one. They will be in advance of Sunrise.

Mr KING—Just in the long term, do you see the JPDA, the joint development area, as being a sensible arrangement? It seems to me that really what needs to be done in terms of planning on a diplomatic scale is to look at doing what Indonesia and Australia never could do; namely, arrive at an agreement as to where their boundaries should be limited.

Mr Hartwell—While permanent maritime delimitation might be the optimum in the longer run, these are very difficult and complex issues and they do take a long time to sort out.

Mr KING—Are you setting about doing that or not?

Mr Hartwell—There has been an agreement—and I might ask my Foreign Affairs colleague to comment on that in a moment—to look at the issue of permanent maritime delimitation. But, in the meantime, it would seem wasteful for us and, in particular, East Timor to miss the opportunity to exploit a rich hydrocarbon resource for the benefit of both of our countries. I think that having this joint administrative arrangement is certainly a sensible idea, given the complexities and difficulties that will emerge in trying to settle permanent maritime delimitation.

Mr KING—So it is expedient to live with the earlier diplomatic failure?

Mr Moraitis—It is mutually advantageous to take the opportunity. In the immediate future, we have resources that need to be exploited for the benefit of both sides. This arrangement is an agreement to disagree. Then, once this is up and running, and now the IUA is finalised, we can start looking at that bigger question of a maritime boundary. We fully recognise that, under our UNCLOS obligations, we have to sit down with all countries—not just East Timor but obviously with all partners—to work out our permanent boundaries. We have to have permanent boundaries, but it is a complex issue.

Mr KING—In the longer term, what is appropriate?

Mr Moraitis—That is what we will have to look at. Obviously, one side has maximalist claims and the other side has maximalist claims, and we will see—

Mr KING—I am just a bit concerned that we are fudging this and putting it off forever. These sorts of issues really ought not to be put off forever.

Mr Moraitis—No-one is expecting to put it off forever. In fact, it has always been understood that once the Timor Sea treaty and the IUA are finalised and ratified—and here we are before JSCOT on the IUA; hopefully we will have it ratified in the near future—we can then start on permanent boundary delimitation, which is a process that my department, Attorney-General's

and colleagues with an interest in these areas work on assiduously across the board, not just with East Timor but also with countries such as New Zealand, Indonesia and France. We have colleagues working in Paris today on this issue. So is an ongoing process. This, as I said, is an opportunity to finalise an immediate opportunity. That is what we have done. We are very happy with that outcome.

Mr KING—You have obviously worked very hard and successfully on that. Thank you.

Mr WILKIE—If negotiations on the seabed boundaries do not go our way down the track and, for example, Greater Sunrise came completely within Timor-Leste's jurisdiction, is there any opportunity for them to come back and sue us for loss of revenue or is that tied up in the agreement?

Mr Hartwell—That is difficult to answer. But, obviously, should there be a permanent maritime delimitation which changed the existing basis on which this IUA has been drawn up, this agreement would have to be revisited—that is logical. I really could not comment on legal action. I am not sure if Rebecca from Attorney-General's wants to have a go at that.

Ms Irwin—It would be difficult to speculate on how East Timor might want to pursue that, but article 27 of the IUA does make it clear that, in the event of a permanent maritime delimitation, the terms of this agreement would need to be reconsidered. Perhaps that would be an issue that East Timor may want to pursue, but I would point out that East Timor has signed up to this IUA at the moment and, like any country that signs up to an international agreement, one would expect that both sides fulfil their obligations under that agreement in good faith. If there comes a point in time when that agreement is no longer in force, countries may raise issues at that point in time.

Mr WILKIE—It just seems a bit of a loophole to me, because I know that the treaty itself talks about still being able to discuss the boundaries in good faith. Therefore, if in fact the boundaries did go the other way down the track, I would have thought it does leave it open for them to take action against us. I would have thought that might have been dealt with in IUA to prevent that occurring, but you are saying that it has not been dealt with. Thank you.

CHAIR—We congratulate you on the work that has been done in relation to both the Timor Sea Treaty and the international unitisation agreement. Thank you for your presence here this morning.

Resolved (on motion by **Mr Wilkie**, seconded by **Mr King**):

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

Committee adjourned at 12.24 p.m.