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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 18 August 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 Evans, Mr Hunt, Mr Peter King and Mr Scott

Senators and members in attendance: Senators Kirk, Santoro and Tchen and Mr Adams, Ms Julie Bishop, Mr Evans and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 12 August 2003

WITNESSES

Committee met at 10.11 a.m.

JENNINGS, Mr Mark, Senior Adviser, Office of International Law, Attorney-General's Department

ADAMSON, Ms Margaret, Assistant Secretary, European Union and Western Europe Branch, Department of Foreign Affairs and Trade

AYYALARAJU, Mr Sridhar, Executive Officer, Administrative and Domestic Law Section, Legal Branch, 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

SMITH, Mr Paul, Director, Protection Privileges and Immunities Section, Department of Foreign Affairs and Trade

Agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel, done at Sydney on 19 November 2002

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 12 August and two treaties tabled in June 2003. 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 discussion of the specific treaties for which they are responsible.

We are now taking evidence on the agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel, done at Sydney on 19 November 2002. I advise witnesses that, although the committee does not require you to give evidence under oath, 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. Does one of you wish to make some introductory remarks and perhaps draw the committee's attention to any specific aspects of this treaty?

Mr Smith—This agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel forms part of a series of bilateral employment agreements or arrangements that Australia has included with countries in which the Australian government has a diplomatic or consular presence. The purpose of a bilateral employment arrangement is to allow the dependants of Australian diplomatic and consular personnel to engage in paid employment while posted in another country and, on a reciprocal basis, to enable dependants of diplomatic and consular officials posted to Australia to engage in paid employment. This agreement will apply to dependants at the Australian Embassy

in Brussels, which is also the Australian mission to the European Union. For Belgium, it will apply in practice to employees at the Belgian Embassy in Canberra and the Belgian Consulate-General in Sydney.

Such agreements are important to Australia for a number of reasons. First, they assist the Australian government in recruiting and retaining high-quality employees with dependants willing to serve abroad. Dual-income families are now an accepted part of Australian life and many spouses have established careers. Moreover, the financial commitments facing families today often make it unattractive for a spouse to cease working in order to accompany his or her partner on an overseas posting.

The lack of opportunity for spouses and dependants of diplomatic and consular personnel to engage in paid employment overseas therefore acts as a disincentive, either for officers with families to serve overseas or for their families to join them on their posting. While bilateral employment agreements do not guarantee employment for dependants, they at least allow for that possibility. Furthermore, they enable the Australian government agencies represented abroad to deliver on their broader commitment of providing family friendly work environments.

The benefits that agreements of this nature bring to foreign governments mirror those that come to the Australian government. In particular, the arrangements assist foreign governments to find staff keen to serve in Australia and bilateral employment agreements assist our national interest through helping to ensure that capable people will come here to represent their countries.

We generally prefer that the arrangements take the form of an instrument of less than treaty status. A number of countries, however, including Belgium, require that the arrangement be of treaty status. We currently have about 21 less than treaty status bilateral employment arrangements. There are five bilateral employment treaties; Belgium will make the sixth.

Negotiations for employment arrangements are based on a standard Australian text normally. This agreement with Belgium reflected an unusually high level of mutual understanding on key issues and the Belgians moved with great speed to ensure that it was ready for signature during their Crown Prince's visit to Australia last November. There were no substantial changes in our standard text and the agreement follows closely that text. The only two points I make here are that the Belgians queried our definition of whether the agreement would extend to service or domestic staff. We made it clear that this would not be the case. The Belgians agreed to this.

The second point I make is that we could not agree to a Belgian proposal that would have, in effect, given up the prerogative of the Australian Minister for Foreign Affairs to waive immunity should a dependant working under the agreement find themselves in trouble under local laws. This refers in particular to articles 3 and 4 of the agreement. Once again the Belgians agreed to our approach. In short, we are very happy with this agreement which, in our view, protects and advances our national interests very well.

CHAIR—Thank you, Mr Smith. You have indicated that Australia has five agreements and this will take it to six.

Mr Smith—Yes.

CHAIR—With whom are the other treaty status agreements?

Mr Smith—We have a list: they are with Brazil, Chile, France—which I gather has not yet been ratified by the French parliament—the Netherlands and Spain.

CHAIR—What has been the impetus for this agreement? Why is it Belgium at this stage and not some other country, given that there are 21 arrangements and, I understand, some 13 in the pipeline?

Mr Smith—The pressure came from the visit of the crown prince last year. My colleague might be able to expand more on that.

Ms Adamson—Madam Chair, to add a point or two to Mr Smith's remarks, certainly I would observe that the visit by the crown prince last year provided an opportunity for quite some momentum to be developed in regard to the conclusion of this arrangement and hence, happily, it was possible to conclude this arrangement, as well as the other arrangements that we speak of today—these three treaties.

CHAIR—In the case of all six treaties, has it been at the insistence of the other nation that it be of treaty status?

Mr Fewster—The Belgian treaty being finalised was contingent on the agreement having treaty status. The particular arrangement which the Belgians have is that they need ratification by their parliament of agreements that cover this sort of subject. Although, as my colleague indicated, our wish is that normally these are less than treaty status, to accommodate the Belgians on this occasion we went down the treaty route.

CHAIR—Is there any reason why we would not want treaty status? Is it just a matter of convenience? I am interested because other countries consider these sorts of arrangements to be appropriate for ratification and treaty status and yet we prefer instruments of less than treaty status. Is there any reason for that?

Mr Ayyalaraju—The main reason is that Australian law already permits dependants of diplomatic and consular officials to work in Australia. It is already provided for under the migration regulations and therefore it is not necessary for us to conclude an arrangement of treaty status.

CHAIR—You indicated that negotiations were under way for similar agreements. Can you comment on the progress of those negotiations in relation to the other 13 nations? I take it they are all less than treaty status instruments?

Mr Smith—To my knowledge, they all are less than treaty status. We have a number in the pipeline. They have not gone very far. We have covered the field pretty well. We recently conducted a survey of all our missions overseas with whom we do not have agreements or arrangements of this nature and found that in most cases there was no possibility of reaching such an agreement with the host nation or that for other reasons—perhaps due to local conditions—dependants of our staff were unlikely to want to work. In some cases countries

permit dependants of diplomatic and consular staff to work anyway, without any arrangement being made and therefore there is no particular need.

CHAIR—Are there any particular countries where dependants are not currently permitted to work where they would be likely to get work and would want to work, so that we would be keen to pursue those countries?

Mr Smith—Italy is the main one at the moment that we are working on.

CHAIR—How many employees are there at the Australian Embassy in Belgium and how many people are likely to be affected by this?

Ms Adamson—I do not have the precise number of eligible Australian employees in the mission in Brussels, but certainly it is one of our medium to larger size Australian representations abroad. It not only has responsibility for Belgium and Luxembourg but is also responsible for Australia's relationship with the European Union, NATO, the Council of Europe, the European Environment Agency and the World Customs Organization. There are quite a number of Australian staff employed there.

CHAIR—When you say 'medium size,' are we talking 10, 50, 100?

Ms Adamson—No, it certainly would not be going towards 100. It would be approximately 15 to 20. But this I could correct for the record, Madam Chair.

CHAIR—Fifteen to 20 people would be affected, potentially?

Ms Adamson—Yes.

CHAIR—Thank you.

Mr ADAMS—Is there any substantial difference in this agreement as opposed to any other agreement we have?

Mr Smith—No. It follows very closely the standard pattern of such agreements.

Mr WILKIE—Is this in any way different to the agreements we have already recommended for ratification? You said that a few more of these are likely to be coming forward. When are we likely to get others that might need treaty status?

Mr Smith—The one with Italy is perhaps the next cab off the rank, so to speak. Negotiations are proceeding. I could not say exactly when or how long it will take.

Mr ADAMS—How does this work? Do we set up something within DFAT to offer tasks to overseas diplomats' spouses? Are we proactive in it? I have seen some of our diplomats overseas have a husband or a wife around.

Mr Smith—How does it work in practice? Normally—and certainly in Australia—dependants would be expected to find their own so-called gainful employment. In some cases the diplomatic

mission might have programs that help dependants of staff look for work as they arrive. That depends very much on the mission itself.

Mr ADAMS—Wherever it is. In some countries there would not be a lot of opportunity, would there?

Mr Smith—No. In the case of the Belgian Embassy in Canberra, there are only two people, I think, who would be covered by the agreement anyway, and three or four in Sydney.

Mr ADAMS—I guess there would be opportunities for employment for our people in Belgium. But in other parts of the world where we might have agreements, the opportunities are pretty limited, aren't they?

Mr Smith—They are very limited in some places, which can help to explain why in some countries there is very little or no interest in having the arrangements. In Belgium there would be a medium level of interest.

Mr ADAMS—How does that affect the number of people taking up posts? In today's world, where we often have two professionals together as spouses, does that pose difficulties for our professional diplomats?

Mr Smith—It can make quite a difference to the willingness of people to go overseas if they know that their spouse can work in a particular place. Sometimes people will look for assignments in countries where they know a bilateral agreement exists.

Mr ADAMS—So that they can get a visa under these arrangements.

Mr Smith—Yes.

Mr ADAMS—Is that one of the reasons that helps drive these things forward?

Mr Smith—Yes.

Mr Fewster—I can vouch for that. My wife would not go overseas unless we were going to a post that had one of these agreements.

Senator SANTORO—For this treaty, as well as for the other five or six agreements in place and others that are being worked out, would the usual recognition of overseas qualification procedures apply, in terms of bridging courses or other official recognition processes?

Mr Smith—Yes.

Senator SANTORO—For example, if somebody is qualified to be an engineer in Belgium, they would have to qualify according to Australian standards which apply to everybody else not in the diplomatic corps?

Mr Smith—It would be very unlikely that a dependant would get work in a host country if they did not have the appropriate qualifications according to that country's laws. Normally those

qualifications would be not dissimilar to those existing in Australia. I would not imagine that somebody who wanted to work as an engineer in Belgium would qualify if they did not also qualify here.

Senator SANTORO—That is the question I am asking: would the recognition of overseas qualification as it applies for any business migrant, or any other migrant, kick in for staff and relatives of diplomatic staff?

Mr Smith—Yes. There would be no difference.

Senator SANTORO—Thank you.

CHAIR—Thank you for your time this morning. Is there anything further you wish to add?

Ms Adamson—I have now managed to do a head count of the number of Australian staff at Brussels, in particular the number of positions available to Australians carrying diplomatic status there. Currently that number would be 12.

CHAIR—Thank you for adding that to the record. I am sure we will not have too much difficulty with this one. Thank you for giving your evidence to the committee.

[10.32 a.m.]

JENNINGS, Mr Mark, Senior Adviser, Office of International Law, Attorney-General's Department

ADAMSON, Ms Margaret, Assistant Secretary, European Union and Western Europe Branch, 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

PEARCE, Ms Christine Florence Francoise, Assistant Director, Tourism and Working Holiday Makers Section, Temporary Entry Branch, Department of Immigration and Multicultural and Indigenous Affairs

THURBON, Mr Phillip, Director, Tourism and Working Holiday Makers Section, Temporary Entry Branch, Department of Immigration and Multicultural and Indigenous Affairs

Agreement between the Government of Australia and the Government of the Kingdom of Belgium on 'Working Holiday' Arrangements, done at Canberra on 20 November 2002

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 and then we will have some questions. Perhaps you could bring our attention to any aspects of this agreement that may make it different from others.

Mr Thurbon—I will give a brief opening statement in relation to the working holiday maker program and the matter that is before the committee today.

CHAIR—Thank you.

Mr Thurbon—The Australian working holiday program provides young people from arrangement countries with the opportunity to have an extended holiday in Australia and to supplement their travel funds through casual work. The program is open to nationals from arrangement countries who are aged between 18 and 30. It provides a range of cultural, social and economic benefits for participants and the broader community. Young people from overseas arrangement countries benefit from a working holiday by experiencing the Australian lifestyle and interacting with Australian people in a way that is likely to leave them with a much better understanding and appreciation of Australia than would occur if they travelled here on visitor

visas. This contributes to their personal development and can lead to longer-term benefits for the Australian community.

The relationships established during a working holiday can help generate increased tourism interest in Australia and future business and commercial links with other countries. The reciprocal nature of the working holiday program also means that young Australians can share in the same benefits which are available to overseas working holiday makers. They can experience the world. The skills and cultural appreciation which they acquire during a working holiday overseas and which they bring back home benefit their own and Australia's future.

The working holiday program also provides direct benefits to the Australian economy. Most of the money that they earn is put back into the economy, thereby generating growth and employment. As a result of their propensity to travel widely and visit remote destinations, the money they spend reaches a broad cross-section of the local economy. In September 2002, Ministers Abbott and Ruddock released a report titled *The working holiday maker scheme and the Australian labour market* which showed that working holiday makers spend an estimated $A1.3 billion annually, based on 80,000 arrivals per year. There is strong evidence that working holiday makers create more jobs than they take. Based on the same figure of 80,000 arrivals, some 8,000 full year jobs are created by the demand generated by this client group.

One of the key recommendations of the Joint Standing Committee on Migration in its report, *Working holiday makers: more than tourists* published in 1997, was that the Australian government should actively pursue new reciprocal working holiday agreements with other countries, taking into account the nature of Australia's relationship with the country, including current and potential cultural, social, trading and tourism links, the extent to which young Australians will have reciprocal opportunities to benefit from a working holiday in the relevant country, the overstay rate in Australia of visitors from that particular country and the likely impact which an agreement with that country will have on program numbers.

In 1997 Australia had reciprocal arrangements with seven countries—namely, the UK, Canada, the Republic of Ireland, Japan, the Netherlands, the Republic of Korea and Malta. Following the recommendation of the joint standing committee to increase the number of arrangement countries, Australia successfully negotiated arrangements with a further seven countries—namely, Germany, Denmark, Sweden, Norway, Hong Kong, Finland and the Republic of Cyprus. Last November 2002, an agreement was signed with Belgium. Negotiations with Italy, Taiwan, France and Greece are well advanced. Negotiations are also progressing with Spain, Andorra and Estonia.

The negotiations with Belgium started in June 2002 following advice from the Belgian government that the relevant ministries were in support of the scheme. In August 2002, the Department of Immigration and Multicultural and Indigenous Affairs—DIMIA—received confirmation that a Belgian delegation, headed by the Crown Prince of Belgium, would come to Australia in October. This gave impetus to the negotiations, which were concluded in time to allow an agreement to be signed by Minister Ruddock and the Belgian Federal Minister and Deputy for Foreign Affairs Mrs Neyts-Uyttebroeck. In the final weeks of negotiations it became clear that the final document would need to be a treaty, as required by the Belgian Constitution; hence our appearance before the committee today.

CHAIR—Thank you. The first agreement was signed in 1997 after the standing committee report. Is that what you said?

Mr Thurbon—There were a number of agreements that were already existing, both informally and formally, prior to 1997. In 1997 we moved to the reciprocal approach and commenced signing new agreements based on that.

CHAIR—Are they in the same format, or are there specific issues that have to be negotiated with a particular country, depending upon the circumstances?

Mr Thurbon—We have a template. The minister for immigration has some mandatory benchmarks that we try to establish in each agreement so there is a level of negotiation to get to that point. For example, when you apply for a working holiday maker visa to come to Australia, you are guaranteed entry and you are guaranteed work rights in that one process. That one-step process is something we prefer to have young Australians take advantage of as well. There is often negotiation on that side because there are two- or three-stage steps in other countries.

CHAIR—Does this Belgian agreement come up to the template?

Mr Thurbon—It does.

CHAIR—Were there any issues that had to be ferociously negotiated?

Mr Thurbon—No. 'Ferociously' is an interesting word.

CHAIR—All right, less ferociously. Were there any issues that needed to be ironed out that you ought alert the committee of?

Mr Thurbon—No, it was relatively routine.

CHAIR—Given the estimate is that working holiday makers spend around $1.3 billion annually, I can understand why we would be keen to promote more of these agreements. At what stage are the negotiations with some of the other countries that you listed—Italy, Taiwan, France, and the like? When are we likely to see more of this type of agreement come before our committee?

Mr Thurbon—There are agreements outstanding for a number of countries, as I mentioned earlier. To use the examples you have mentioned, we are very close to signing an agreement with Italy; the detail has all but been agreed and we await notification for a suitable time to sign. Taiwan is similar. There is still some negotiation on wording, but it is technical detail now rather than the substance of the agreement. Would you like me to go through each agreement?

CHAIR—No. I would like to get an idea of whether we are likely to see a rush of them, or is it going to be a more ordered process?

Mr Thurbon—It will be a more ordered process. I think there is a possibility that Spain's might also be a treaty, but it is still early days. There would be no other treaty working holiday

maker arrangements that you would be likely to hear of. They would be the routine product, if you like.

CHAIR—One question on the wording: it says in article 1, paragraph 2(f), 'to have not previously benefited from this agreement'. Does that mean that a working holiday visa can only be granted once for each Belgian or Australian national, even if work was not undertaken during their holiday?

Mr Thurbon—That is correct. It is a once in a lifetime visa product.

CHAIR—We also have a three-month limit for work with one employer. What is the rationale for that?

Mr Thurbon—The rationale is that, with the working holiday maker arrangement, work is to be incidental to the holiday. It is a means to supplement other funds that they already bring with them to Australia, for example. We do not want it to turn into a temporary resident visa where it is purely for work, so having that component gives us some level of comfort that these people will, in fact, move on because they need to after three months anyway. Our experience is that that is generally the case.

Mr WILKIE—I do not have any questions. I would like to congratulate the section on achieving some great outcomes and look forward to seeing some more in the future.

Mr Thurbon—Thank you, Mr Wilkie.

Mr MARTYN EVANS—If one gains access to Belgium on a visa for 12 months, given the internal arrangements within Europe, does this mean travel then under the no borders arrangement within Europe? But not working, of course; I understand that the working permit is limited to Belgium. If one hops on a train in Brussels, Paris or Frankfurt or whatever—and clearly one does not need a visa—are you then covered within the internal no border agreement?

Mr Thurbon—That is a very contemporary issue you have raised. The agreements are bilateral and the arrangements are pursued on that basis, but I will defer to my colleague, Ms Adamson, because we are working with the Department of Foreign Affairs and Trade on this issue.

Ms Adamson—Mr Evans, I understood the question you asked concerned travel rather than employment in these other countries.

Mr MARTYN EVANS—Yes.

Ms Adamson—As I understand it, yes. As Mr Thurbon points out, we have a range of bilateral agreements with the member states of the Schengen Group and, indeed, you could leap on a train, as you say, if you are having a working holiday in Brussels, and travel internally within the European Union.

Mr MARTYN EVANS—Quite lawfully.

Ms Adamson—That is right—subject to those bilateral arrangements that we have with those other countries as well, in terms of the duration of stay.

Mr MARTYN EVANS—That introduces another element: are you saying that travel lawfully within the Schengen Group in Europe is conditional on our bilateral agreements with those countries? Or is it the case that, once lawfully within a country of that group, one can then travel lawfully within that group? The basis of my question is that having lawfully entered Belgium, are you then not permitted to travel within that group, on the basis only that you have lawfully entered Belgium on a Belgian visa as an Australian? My question was not predicated on our bilateral treaty, say, with France; it was predicated on this 12-month working visa with Belgium.

Ms Adamson—If an Australian traveller is within the Schengen Group, then that Australian traveller is able to travel internally from Schengen country to Schengen country, but in each country would be subject to the arrangement that we have with each of those countries bilaterally. This is the current situation.

Mr MARTYN EVANS—Right. Travel between them is lawful because of their entry into the group lawfully, but then within the country they become subject to the bilateral treaty in the country for their continued stay.

Ms Adamson—Indeed, that would also be my understanding. But an Australian may enter any part of the Schengen Group and be in that country according to the bilateral arrangement we have with that respective country. Being in that respective country you then have the right to travel around the Schengen Group, again pursuant to the duration of stay we have negotiated in each of those bilateral arrangements. That is the current situation.

Mr MARTYN EVANS—But if we had no treaty with one of those countries—let's say we have no treaty with country X which is a part of that group—

Ms Adamson—Mr Evans, we have agreements with each member of the Schengen Group, in terms of short stay. I am not speaking here in terms of the working holiday maker arrangement; I am speaking in terms of the right of an Australian citizen to have a short-term stay in each of the Schengen Group countries. A working holiday maker, of course, is a different matter. If the individual wished to work in a different Schengen country, of course it would be a different arrangement altogether.

Mr MARTYN EVANS—No, I excluded the working holiday makers. I was simply concerned about the rights one acquires within that group and whether, having lawfully entered Belgium for 12 months on a visa, that grants any rights outside of Belgium but within the Schengen Group. That becomes another issue because certain rights are acquired within Europe—but I suspect that is a discussion for another day.

Ms Adamson—Potentially so. Not to prolong this, I would anticipate that having this agreement, subject to ratification, with this treaty in place the traveller has a right to be in Belgium for 12 months on a working holiday maker arrangement but then, as I said, can be elsewhere travelling within the Schengen Group, according to those other bilateral arrangements.

Mr MARTYN EVANS—I asked the question not because of my interest in this matter generally but because of a problem that some young people may encounter, in that they arrive in Belgium, knowing they can stay for 12 months, but may be tempted to travel in Europe because of the simplicity of the travel and may not be aware of possible limitations on that travel because it will never become apparent to them because you are not stopped at borders, you are not required to produce passports on trains any longer. People may inadvertently breach conditions which you and I find hard to stipulate, even under these circumstances, where we might be aware of them if anyone is to be aware of them.

I think it extremely unlikely that young people would be aware of these technical limitations, if they indeed exist, at midnight on the German-Belgian border on a train when no-one is even going to challenge them. Those kinds of issues may well have to be explored. It is one thing if people fly over there on a two-week Contiki holiday; it is another thing when you actually give them a visa for 12 months and say, 'Go.' If you put them over there for 12 months on holiday they may well start exploring and find themselves at some point, when someone does the bureaucratic work, in breach in another country. The rules actually are quite complex, I suspect. But it is a question for another day.

What is the Medicare status of this treaty? We had that issue with Norway and I cannot see it quite so clearly elucidated; it does imply they are covered by all social security and other arrangements. Are they covered by Medicare?

Mr Thurbon—Working holiday makers are advised to take adequate health insurance coverage before they travel to either country.

Mr MARTYN EVANS—What about the Belgian working holiday people here? This treaty implies they are covered by Medicare, when you read it. It says that people are covered by all social security and other applicable rules, which I would take to include Medicare.

Mr Thurbon—That is not our intent. I will have to check the wording of this, Mr Evans, and get back to you on that, perhaps.

Mr MARTYN EVANS—It says 'will conform to the applicable regulations in the host country relating to social security'. It does not actually say it, but it does not exclude it either. I would read it to include it.

CHAIR—Mr Milner, can you throw some light on the subject?

Mr Milner—I will try, Madam Chair. I do stress that I have not been particularly involved in the negotiation of this treaty but, I might add, I have been posted in Brussels for five years. I imagine this is related to the applicable regulations concerning social security in relation to employment, given that this is a working holiday maker's treaty and that the normal procedures for travel between countries in relation to medical insurance coverage would apply.

CHAIR—So are you suggesting that, for the three-month period that they are working, they would be covered by workers' compensation, for example?

Mr Milner—That could be a possibility. I do know Belgium has very stringent requirements in relation to social security for people who are employed in Belgium.

CHAIR—If a Belgian worker was here and had an accident during the course of employment, would he or she be covered by workers' compensation insurance in Australia? Is that the case?

Mr Milner—That may well be the case. But it is perhaps a question we should take on notice, Madam Chair, to give you a more definitive answer.

Ms Adamson—I have been reminded that we are currently negotiating a bilateral health care agreement with Belgium, so this may, indeed, take up this particular aspect. I understand there will be a final meeting between the officials negotiating this agreement in October.

CHAIR—We will be reporting back to the parliament on this treaty in September. In the meantime, would it be possible for relevant persons to get back to us—in the absence of a reciprocal health care agreement at present—regarding the situation concerning both Medicare and workers' comp entitlements?

Mr MARTYN EVANS—At the moment it does require for conditions for worker remuneration and so on, which would include the Medicare levy. If you paid the Medicare levy, I think you would be entitled to Medicare treatment.

CHAIR—Thank you for your time this morning. We look forward to hearing from you, to the secretariat, regarding the points that have just been raised.

[10.53 a.m.]

JENNINGS, Mr Mark, Senior Adviser, Office of International Law, Attorney-General's Department

MORRISON, Mr Grant Gerard, Manager (Humanitarian), Strategies and Program Planning Section, Papua New Guinea Branch, AusAID

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

LEWIS, Mr David Jonathon, Executive Office (Bougainville), Papua New Guinea Section, Department of Foreign Affairs and Trade

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

THOMSON, Mr Gerald, Director, Papua New Guinea Section, Department of Foreign Affairs and Trade

Protocol, done at Sydney on 30 June 2003, concerning the Bougainville Transition Team made pursuant to the Agreement, done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol, done at Port Moresby on 29 April 1998

CHAIR—I call witnesses from the Department of Foreign Affairs and Trade and the Australian Agency for International Development. 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.

The committee is aware that this protocol was signed and entered into force on 30 June 2003. We have seen a letter from the Minister for Foreign Affairs prior to the signing, advising of the urgent need for the treaty to be in force in order for members of the Bougainville Transition Team to be deployed. Against that background, are there any introductory remarks you wish to make or any aspects of this protocol that you would like to bring to the attention of the committee?

Mr Thomson—Firstly, I would like to thank the chair for the opportunity to provide these introductory remarks. The protocol being tabled before the committee this morning established the Bougainville Transition Team, and it amends a 1997 agreement between Australia, Papua New Guinea, New Zealand, Fiji and Vanuatu concerning the Neutral Truce Monitoring Group on Bougainville, as amended by a 1998 protocol establishing the Bougainville Peace Monitoring

Group. The protocol was signed by Australia, Papua New Guinea and New Zealand in Sydney on 30 June and subsequently was signed by Fiji. Vanuatu has yet to sign the protocol.

I would like to say, from the outset, we strongly regret that we were not able to follow the normal procedures and to table the protocol before this committee for the required period prior to Australia signing it. As the foreign minister, Mr Downer, explained in his letter to the chair dated 25 June, we were unable to do so due to the timing of the decision to establish the Bougainville Transition Team and the very short period we had in which to finalise and sign the protocol before deployment of the team.

The Australian government decided to withdraw the Bougainville Peace Monitoring Group earlier this year. That decision was announced in February. Following requests from the Papua New Guinean government and all parties on Bougainville, the Australian government decided in late May that it would be prepared to lead a small civilian team to replace the Peace Monitoring Group on Bougainville. We were not in a position to commence detailed negotiations concerning the Bougainville Transition Team, including the protocol, with other signatories to the 1997 agreement as amended, until early June.

Given that we wanted to commence deployment of the Bougainville Transition Team on 30 June, the date on which the Peace Monitoring Group was to cease operations, the government felt it was necessary for the protocol to come into force between Australia and Papua New Guinea on or before this date. As such, we were regrettably unable to follow the usual procedures. The protocol was tabled before parliament on 12 August.

The protocol provides the essential mandate and legal protections needed to allow the Bougainville Transition Team to operate. In short, the protocol seeks to extend the same legal protection to members of the Bougainville Transition Team as previously provided to members of the Australian led Peace Monitoring Group and the Truce Monitoring Group before it. The protocol also ensures that members of the Peace Monitoring Group retain the same protections until it withdraws from Bougainville, which is scheduled to occur later this week or early next week.

In practice, the protocol means that members of the Bougainville Transition Team are subject to the exclusive jurisdiction of their respective state in relation to criminal matters. They are allowed to establish premises—which they have done in Arawa and Buka on Bougainville—to wear uniforms and to display flags. They are exempt from local taxation, licensing, import and export duties. They are free to use public utilities, transport, infrastructure and locally employed personnel. It is important to note that members of the Bougainville Transition Team are expected to respect the laws of Papua New Guinea.

The Bougainville Transition Team is a small civilian team currently numbering 17 personnel from Australia, New Zealand, Fiji and Vanuatu. It is continuing the work undertaken by the Peace Monitoring Group and its predecessor the Truce Monitoring Group in promoting, facilitating and instilling confidence in the peace process on Bougainville. The Bougainville Transition Team will also provide and instil confidence in the context of Bougainville's transition towards autonomy. It will support the United Nations Observer Mission on Bougainville until that body withdraws at the end of the year.

That is all I have to say, particularly concerning the Bougainville Transition Team and the protocol, but if the committee prefers I can also provide a brief outline of how the peace process has progressed on Bougainville since the committee last considered it in March 1999.

CHAIR—Are you in a position to do that now?

Mr Thomson—Yes, very briefly.

CHAIR—Please proceed.

Mr Thomson—Since March 1999 much progress has been made. In August 2001, parties to the peace process signed the Bougainville Peace Agreement. This is a comprehensive settlement, including provisions for weapons disposal, autonomy and a referendum on the province's future political status, which is not expected until 10 or 15 years after the autonomous government has been established. The Peace Monitoring Group was instrumental in building and maintaining the confidence needed to negotiate this agreement.

Since the peace agreement was signed, the Papua New Guinea government and parliament have approved changes to that country's constitution to allow for autonomy and a referendum on Bougainville. These came into effect on 7 August 2003, following verification by the United Nations Observer Mission on Bougainville that the second stage of the weapons disposal process was complete. The weapons collected in the weapons disposal process—over 1,900 to date—are held in double-locked containers under United Nations supervision.

In other significant developments, the Papua New Guinea Defence Force has formally withdrawn from Bougainville. The parties have finalised an agreement on amnesty and pardon for crisis related activities and the Bougainvilleans have prepared a draft constitution for autonomous government, which is currently being considered by the PNG government.

As our ambassador to the United Nations recently advised the Security Council, we recognise that there is no room for complacency in this process. In addition to concluding the formal peace process, which still has a way to go, Bougainville faces a number of serious challenges in the coming period which include establishing an effective and affordable administration, developing credible policing, legal and judicial arrangements and creating the right conditions for economic development. The deployment of the Bougainville Transition Team is the response of the Australian government and other governments in the region to the immediate requirement for an international presence to replace the Peace Monitoring Group and to support the United Nations Observer Mission on Bougainville.

CHAIR—Thank you. As I understand, the protocol was signed by Australia, Papua New Guinea and New Zealand on 30 June. What is the situation with Vanuatu and Fiji?

Mr Thomson—Fiji has now signed. I am not sure of the exact date.

Mr Milner—My understanding is that Fiji has very recently signed the protocol, but we do not have the date yet. New Zealand is the depository for the treaty.

CHAIR—Do we know what the intentions of Vanuatu are in this regard?

Mr Thomson—They do intend to sign. It is taking the Vanuatu government a bit longer than we had hoped. Their process has been put back a little bit because of the Solomon Islands situation and their role there.

CHAIR—There is a difference in the date the protocol entered into force—Australia and Papua New Guinea on 30 June and New Zealand on 16 July. Is there anything to explain about that?

Mr Lewis—That is under article 5.2 of the protocol, which sets out the process for coming into force. Once everyone signs, they need to go back and consult domestically and present a third person note to all the other signatories saying that they have fulfilled their domestic constitutional processes. That happened later with New Zealand. We received their note on that date.

CHAIR—You said there are 17 personnel in the Bougainville Transition Team. Is that right?

Mr Thomson—Yes, that is right.

CHAIR—Where do the 17 come from; in what numbers do they come from Australia, New Zealand, Fiji and Vanuatu?

Mr Thomson—The BTT is divided into two parts. Part of the team is responsible for doing liaison—the policy work, I guess—carrying out the mandate of the BTT and there are nine people in total in that part of the team. There are three from Australia—one from the Department of Foreign Affairs and Trade and two from AusAID; there are two from New Zealand, one from Fiji and one from Vanuatu. That gives a total of seven on the policy side.

Mr Lewis—There is an extra one.

Mr Thomson—We have two from DFAT, two from AusAID—that is, four from Australia—there are three from New Zealand, one from Fiji and one from Vanuatu.

CHAIR—That gives you nine.

Mr Thomson—That is right. On the other side, there are eight people who are employed on contract. I will hand over to AusAID to explain the numbers for that part of the team.

CHAIR—Thank you.

Mr Morrison—The logistical side of the BTT is managed by a contracting company which AusAID engaged for this purpose. They in turn have subcontracted eight specialists in logistical work. Those people are responsible for the overall implementation of the support function—that is, the identification of necessary equipment; the purchase and transport of that equipment; setting up accommodation facilities; IT capability; transport capability; negotiating with the PMG, which is still in place; the gifting of certain assets; the identification of what else is required; and the oversight of security matters. I will not go on, but that is the sort of area in which those eight people are engaged.

CHAIR—Who is the contracting company?

Mr Morrison—HK Shipping Pty Ltd.

CHAIR—Is that an Australian company?

Mr Morrison—It is an Australian company based in Sydney. They have worked for the aid program in the past.

CHAIR—Are the eight subcontractors Australians?

Mr Morrison—Some are New Zealanders, but the majority are Australian citizens, yes. They are all Australian or New Zealand citizens.

CHAIR—The majority of personnel come from Australia and New Zealand, and one from Fiji and one from Vanuatu.

Mr Morrison—Correct.

CHAIR—On the peace process side of it, you mentioned that 1,900 weapons had been collected. What sort of range of weaponry are we talking about?

Mr Lewis—We have some figures here. As of this morning, there have been 1,936 weapons contained. The breakdown the Peace Monitoring Group and the Bougainville Transition Team used was a division between high-powered, sporting, homemade and World War II weapons. The breakdown is approximately 314 high-powered, 309 sporting, 1,069 homemade and 244 World War II weapons.

CHAIR—Do we know where the high-powered weapons originated from?

Mr Lewis—We know that a number were from the PNGDF, which have been collected from both the Bougainville Revolutionary Army and the Bougainville Resistance Forces and acquired in separate ways during the conflict. We understand that a number were brought in during the crisis from other means. We are not entirely sure where they came from, but we can leave that to supposition.

CHAIR—Are there significant differences we ought be aware of between this protocol and the protocol that established the Peace Monitoring Group?

Mr Lewis—There are minimal differences. One of them was the deletion of a clause which called for the establishment and running of the Peace Process Steering Committee, which involved the nations involved and Papua New Guinea—all the signatories to the treaty. That was deleted on the basis that it had not met for a number of years and, if the Papua New Guinea government as the chair decided to call a meeting we would attend, so there was no need to formalise that process. There were a couple of minor amendments—Mr Milner may have some further details on this—for example, to reflect the fact that it is no longer a military operation and is now a civilian operation. It took away the military powers from the commander, for example.

Mr Milner—I have nothing to add.

CHAIR—Thank you.

Mr WILKIE—Obviously the agreement is already in place and has been there for a couple of months. If you were doing it again now, are there any significant changes you would make to the agreement, or would it be as it is?

Mr Thomson—I think it would be as it is.

Mr WILKIE—You have not had any problems with it?

Mr Thomson—No.

CHAIR—Are you in a position to provide the committee with the total financial cost of Australia's commitment to the peace process since 1997?

Mr Thomson—No, not going back that far.

Mr Lewis—We do not have that breakdown with us, but we do have the figure which was released publicly: approximately $150 million since 1997.

Mr Morrison—The aid program has spent approximately $150 million since 1997.

CHAIR—Is that in addition to—

Mr Lewis—That includes the Peace Monitoring Group.

CHAIR—Overall it is about $150 million, but can you give us a breakdown as to aid and running costs?

Mr Lewis—There were also additional costs above that, which Defence spent on the Peace Monitoring Group. We could track those down.

CHAIR—For the purposes of our reporting, although these figures have been released publicly, I would appreciate it if you could perhaps collect them together and provide us with the cost of the commitment to the peace process, including the aid.

Mr Thomson—The reason I stalled there was because I am not quite sure what the position of Defence is—how readily available the figures are. I have never seen any figures which state categorically what has been spent, including by the Department of Defence.

CHAIR—See what you can come up with. We might need to make a further inquiry. Are you able to anticipate the financial cost of the Bougainville Transition Team until the end of this year, or whenever it is anticipated that the United Nations observers will leave?

Mr Thomson—Yes, we can. AusAID can give you those figures.

Mr Morrison—Our projections are a bit rubbery because we cannot be sure what helicopter use, for instance, will be required and whether we will need to import more vehicles. Some will be gifted across from the PMG but, as you can understand, in that climate there is a lot of wear and tear on vehicles and they cannot be guaranteed to be operational for the whole time. We think probably, if the BTT leaves around the time that the UN mandate expires at the end of this calendar year, or in January some time, we could be looking at around $7 million.

CHAIR—Subject to you, Mr Thomson, coming back to the secretariat with any further breakdown of the costs, I thank you all for being here this morning and providing your evidence to the committee.

[11.12 a.m.]

JENNINGS, Mr Mark, Senior Adviser, Office of International Law, Attorney-General's Department

NELSON, Mr Paul Eric, Manager, Environmental Protection Standards, Australian Maritime Safety Authority

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 and Affairs and Trade

ALCHIN, Mr Robert John, Policy Officer, Regulatory Group, Department of Transport and Regional Services

Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, done at London on 15 March 2000

CHAIR—This protocol was tabled in the parliament on 24 June 2003. I call on witnesses from the Department of Transport and Regional Services and the Australian Maritime Safety Authority. 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. I appreciate this protocol has been tabled in the parliament, but are there any introductory remarks you would like to make or matters you wish to bring to the attention of the committee?

Mr Alchin—Yes, I will make some introductory remarks. The Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances aims to provide a global framework for international cooperation in combating major incidents or threats of marine pollution from hazardous or noxious substances other than oil. This protocol complements another convention, called the International Convention on Oil Pollution Preparedness, Response and Cooperation, which provides a similar framework for combating pollution by oil.

The obligations imposed by this protocol are set out in paragraph 10 of the national interest analysis. They have generally already been met by existing Australian legislation and policies. I will mention a couple of the more significant obligations. First of all, parties to the protocol will be required to establish measures for dealing with pollution incidents involving hazardous and noxious substances either nationally or in cooperation with other states. This obligation is already met by measures set out in the national marine chemical spill contingency plan which is managed by AMSA, the Australian Maritime Safety Authority.

CHAIR—Is there Australian legislation underpinning that? There would be.

Mr Alchin—It does not require legislation. That is set up as just an arrangement basically between each of the Australian states and the Northern Territory.

CHAIR—Thank you.

Mr Alchin—The second obligation is to require ships to carry a shipboard pollution emergency plan to deal with incidents involving hazardous and noxious substances. This obligation is already implemented, because a similar obligation is set out in MARPOL—the International Convention for the Prevention of Pollution from Ships—and was implemented some time ago. The third obligation is placed on seaports and facilities handling hazardous and noxious substances to have pollution incident emergency plans in place. These obligations are implemented through various Australian government, Australian state and local council regulations and vary across jurisdictions.

The national interest analysis does not include a detailed analysis and listing of all applicable rules and regulations relating to this issue. To do so, we thought, would have been a considerable undertaking, and we did not think it was really necessary. But there is, as indicated in the national interest analysis, a comprehensive—and, some might say, overlapping—array of rules and regulations dealing with this issue in both the specific and more general senses.

As the obligations on Australia have generally been met without Australia becoming a party to the protocol, you might ask the question: why should Australia become a party? The main reason is the obligation imposed on member states, or countries, to help one another in the case of a major chemical pollution incident. If there were a major chemical incident in Australia, we probably would have to rely on overseas assistance in responding. Another important reason for Australia to become a party is that it imposes obligations on the International Maritime Organization to develop an international approach to chemical spill response. That international approach includes IMO being required to develop international guidelines and provide technical assistance to states.

The protocol will enter into force 12 months after 15 states have become parties to it. The national interest analysis listed five states which were parties to it as at 31 May 2003. Since then, one more state has become a party: Uruguay acceded to the protocol on 31 July 2003.

CHAIR—They are not exactly falling over themselves to sign up, are they?

Mr Alchin—So we have six out of the 15 required.

CHAIR—Is there any reason why the whole 15 have not signed up?

Mr Alchin—No, not specifically. If we have a look at the history of entering into force of treaties negotiated by the International Maritime Organization we see that they do tend to take some time for member states to put in legislation and pass through the necessary processes. This is proceeding at a satisfactory rate in terms of other IMO conventions which have already entered into force. The wheels tend to move reasonably slowly, but we are satisfied with the progress.

CHAIR—I guess it is all relative.

Mr Alchin—Yes.

CHAIR—For the record, who are the five—now six—that have signed? We have Ecuador, Greece, Malta, Netherlands, Sweden. Is that right?

Mr Alchin—Yes. Then Uruguay.

CHAIR—Can you explain to me again your reasons for saying, Mr Alchin, why Australia should sign up? You said we would need to rely on overseas assistance and that the IMO requires guidelines. How does that impact on Australia?

Mr Alchin—It impacts primarily by being able to ensure that we have this international cooperation once the convention enters into force. By Australia becoming a party, we are assisting towards its entering into force. Hopefully, we might hasten it along. One of the things that some of the European countries look to, I think, is to see if somebody in this part of the world is becoming a party to it. If they see there is a worldwide spread of parties they think, 'Oh, well, maybe we should become a party too.'

CHAIR—Who are the other nine? Fifteen states have to sign the protocol.

Mr Alchin—Yes.

CHAIR—Do we have any in mind? Can you think of nine who are going to get there, or is this going to be a protocol that sits there ad infinitum?

Mr Nelson—All the member states of the European Union are firmly behind this protocol. I think there are at least 15 states that are members of the European Union—

CHAIR—If they came in en masse, that would—

Mr Nelson—If they came in, with the South American and other countries, that would certainly bring it into force. The European Union has indicated its support for this protocol, so we can assume, I think, that most of the other EU member states are proceeding in a similar way.

CHAIR—Given this time frame, why is it that this HNS protocol was implemented through CHEMPLAN prior to the treaty committee process?

Mr Nelson—In Australia, since 1988, we recognised a need for a contingency plan to deal with chemical spills. That process commenced in 1988. It was not until around 1995-96 that we had a proper national chemical spill contingency plan in place. The need for a chemical spill contingency plan certainly originated before and separate to this protocol coming along. This protocol provides important support for our national arrangements and, if you like, turns it into effectively an international contingency plan rather than just a national contingency plan.

CHAIR—My interest is really just in the procedural aspects and timing of it. Given that the protocol enters into force 12 months after the date on which the minimum 15 states sign or deposit instruments of ratification, can you explain to me why this was tabled in our parliament,

as I understand through CHEMPLAN, prior to it going through the treaties committee? Is that right?

Mr Alchin—I think CHEMPLAN is completely independent of this protocol. The need for CHEMPLAN was recognised in Australia. Irrespective of whether or not this protocol had been developed by IMO, Australia still needed a plan to cope with the spill of chemicals.

CHAIR—I understand. What are the costs associated with the implementation of CHEMPLAN?

Mr Nelson—There is a short explanation in the national interest analysis in paragraph 20.

CHAIR—And paragraph 20 says there will not be significant costs, as I understand it.

Mr Nelson—That is right; no significant costs. The only costs incurred to date have been in the area of training. Chemical spills are very different to oil spills. They react in different ways. Chemicals can turn into gases and disappear, they can float on the surface of the water, they can sink, whereas with oil spills you generally have something floating on the surface of the water and you can respond in a fairly structured and established way.

Chemicals are very different. For example, there are no millions of dollars in costs for buying new equipment. A lot of the chemical companies and the chemical terminals already have the necessary safety suits and specialist equipment and the fire brigades have specialist equipment, so there have not been significant costs. The training of the maritime personnel, port personnel and Australian Maritime Safety Authority personnel in dealing with chemical spills has probably been the only cost associated with the development of CHEMPLAN.

CHAIR—So there are no cost implications for shipping or seaports or handling facilities or anything like that?

Mr Nelson—No. There is a minor cost for shipping, because of the obligation to have a shipboard emergency plan. That can cost anywhere from $3,000 to $5,000 per vessel, with another $500 every time it is updated. But as Mr Alchin has already said, that obligation is already implemented under a separate convention and already in existing law, so it is not really an additional cost as a result of this protocol.

Mr MARTYN EVANS—It would cost a lot of money if there were actually an incident, wouldn't it? That is the expensive part. To what extent are ships routinely insured against such incidents? Is it usual that almost every ship would be insured effectively against that, or is it uncommon?

Mr Nelson—We put in place, around April 2001, a requirement for all ships visiting Australian ports to be able to prove they have insurance in place. It is called protection and indemnity insurance, which is ship's insurance. That was put in place because of some concerns that there might be ships out there which did not have any insurance. A couple of incidents happened in New Zealand, where smaller vessels had no insurance, so we felt this would be good to put in place. Since that insurance has been in place, I am pleased to say we have not had any ships identified that did not have the insurance anyway. They all have protection and

indemnity insurance up to quite sizeable amounts for any damage they might cause, whether it is oil pollution, chemical pollution or any other sort of impact they might have.

Mr MARTYN EVANS—I suppose, though, the ship most likely to cause an incident is the one least likely to be insured, and possibly we would not find this out until after the ship had come close enough to cause a problem. Does your check occur after the ship has docked and we have the papers and checked out the ship and so on, or does this occur at a point well before that?

Mr Nelson—That is a possibility. To minimise that we have involved the Australian Customs Service in our enforcement regime. I understand ships are required to report to the Customs Service before arrival—radio pratique, I think the wording is. They are required to report on all sorts of issues. One of them is, 'Do you have insurance coverage?' We have gone as far as we can to try and identify any ships before they arrive.

Mr MARTYN EVANS—That sounds like a very good scheme. I notice the protocol contains an annexure about the way the costs are broken up, which does put a fair bit of obligation on, say, Australia in the event that we were the unfortunate recipients. The protocol itself does discuss, in article 10, providing assistance in identifying sources of provisional financing of costs and so on. This relates, I suppose, to what the organisation itself does about its work. I assume that relates generally to how one might work out the costs.

Costs—and the financing of the costs—in the unfortunate event that there is an incident, have to be a big part of how this all works. You obviously want to prevent an incident in the first place but, ultimately, paying to mop it up effectively is a very big part of dealing with it. Insurance has to be one of the more effective ways. Because the people who cause the spills are the ones most likely to be unable to pay for them, insurance is obviously one of the more effective ways of ensuring they can pay for it; yet insurance does not seem to feature as prominently as one might have thought in the treaty itself. Has any thought been given to feeding that back into the loop within the treaty provisions, as to how we might deal with the problem of payment?

Mr Nelson—Currently, no, because there are several separate international instruments that deal with liability from ships. There is a completely separate convention that deals specifically with reimbursement of costs for spills from hazardous and noxious substances. The full title escapes me, but it is the 1996 convention on liability for pollution from hazardous and noxious substances and spills—words to that effect. That is a convention not yet in force internationally. Again, it is proceeding in the same direction as this towards international entry into force. There is a specific convention which has been developed to deal with exactly the question you raise, but until that convention comes into force we do have ordinary ships' insurance. We have put that obligation on ships visiting Australian ports as, hopefully, a stop-gap measure until we have a fully operational international regime.

Mr MARTYN EVANS—Will that operate in parallel with this treaty?

Mr Nelson—Yes.

Mr MARTYN EVANS—And together they will constitute a more effective mechanism.

Mr Nelson—Yes.

CHAIR—Regarding the parties to the protocol, are there particular countries or nations which would be the main transporters of hazardous and noxious substances globally? Could you perhaps identify those in the region?

Mr Nelson—European countries are very large chemical importers and exporters—countries like Norway, which I think may have already signed it. Europe and Japan would be the major exporters and importers. Japan is a party to the parent convention for this protocol. It certainly has not indicated that it is not going to sign this protocol. It is the same regime and, hopefully, Japan will perceive it to be on the same path and sign it.

CHAIR—Are there any other nations in the region? I am wondering about the intentions of any of our neighbours to adopt the HNS protocol and the impact that might or might not have on Australia.

Mr Nelson—I have not had any indication from any our immediate neighbours. New Zealand is a party to the original convention. I am sure that they will sign this—although I do not have any specific information—because they do have a very similar chemical spill response arrangement to us. I think Australia and New Zealand would probably be the two in our region that would sign soon. Other than that, I do not have any information about who else might sign in our region.

CHAIR—Thank you very much for your time before us this morning and for assisting the committee with your evidence.

Proceedings suspended from 11.30 a.m. to 11.49 a.m.

JENNINGS, Mr Mark, Senior Adviser, Office of International Law, Attorney-General's Department

HUTCHINSON, Mr Peter A., Director, Agreements Section, International Branch, Department of Family and Community Services

KUKOC, Mr Kruno, Acting Assistant Secretary, International Branch, Department of Family and Community Services

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 and Affairs and Trade

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

MURRAY, Mr Nigel, Manager, Superannuation, Retirement and Savings Division, Department of the Treasury

Agreement between Australia and the Republic of Croatia on Social Security, done at Zagreb on 13 May 2003

CHAIR—We will recommence the hearing. It is 10 minutes to 12, and we did invite witnesses to be here at 11.30. So insofar as we are able to deal with the Agreement between the Government of Australia and the Government of the Republic of Croatia on Social Security, done at Zagreb on 13 May 2002, we will. The agreement was tabled in parliament on 17 June 2003, but it was at the request of the Department of Family and Community Services that the committee agreed to delay the public hearing until today. I note that those witnesses are still not here, but in the meantime I will call on witnesses from the Department of Treasury 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 and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

I take it that had the department been here they would have made an introductory statement. I will not ask anybody to take that place. But can you indicate, Mr Milner or Mr Fewster, who actually negotiated this social security agreement?

Mr Fewster—Yes. As I understand it, these treaties are generally negotiated by the line agency, in which case it is the department that is not here at the moment. In a sense, we are very much in their hands in terms of the detail of the treaty.

CHAIR—Are you able to comment whether a model text was used as a basis for the negotiations?

Mr Fewster—Not specifically in relation to this treaty. My understanding is that they do use a model text.

CHAIR—Mr Milner, are there any differences you are aware of between this agreement and other agreements—or, indeed, the model text?

Mr Milner—As far as I am aware, there are no specific features of this agreement which would suggest that it is outside the ballpark as far as general social security agreements we have with a number of other countries go. I note the NIA does refer to the fact that the agreement incorporates the same general principles as a number of other agreements Australia has on social security. The key element of this, as with the other agreements, is the sharing of responsibility between the parties and providing adequate coverage for former residents of their countries.

CHAIR—Mr Murray, there are double coverage provisions. The regulation impact statement says:

Employees will no longer have a contribution made for them under the legislation of both countries. However, they will remain appropriately covered under the legislation of their home country, where they are likely to retire.

Can you comment on the double-coverage provision?

Mr Murray—Certainly. The agreement does include the standard provisions for Australia's double coverage model which go into these agreements. The basic aim of that is: where an employee is sent from one country to work temporarily in the other country, rather than having to pay twice under both countries' superannuation systems—as is currently the case—they only have to pay under their current home country's system. The provisions in the agreement with Croatia are our standard provisions which have been before the committee previously.

CHAIR—What do you do in circumstances of dual citizenship or dual residency? How do you determine the home country?

Mr Murray—The basis is the country of residency from where you have been sent. If I was sent to work in Croatia for two years, I would be covered by the Australian system for those two years and exempted from the Croatian system.

CHAIR—Is there any disadvantage if you were to retire in a country that was not your home country?

Mr Murray—For the purposes of double coverage, it is not—it is where you retire—and that does not affect what happened beforehand. If I were working in Australia as a resident and subject to the Australian super guarantee system and I were sent abroad for, say, two years, then I would be exempt from making contributions in that two-year period. Where I retire at a later date is not relevant for that purpose.

CHAIR—Mr Urbanski, are you aware of other social security agreements that are being negotiated within the southern European area?

Mr Urbanski—Yes. I look after the Southern Europe Section. There are a number of social security agreements affecting those countries, because we have large diaspora populations in Australia. We already have agreements in place with Malta, Cyprus and Italy. We are currently in the process of negotiations with Greece.

Mr WILKIE—Where a treaty may differ from one country to another, in what areas would those differences occur?

Mr Urbanski—You can have differences between the two parties. You can have differences from treaty to treaty. That is something the line agency on both sides negotiating it would take into account. There can also be different social security systems between the two countries so the negotiations are not exactly identical; reflecting differences in what each party wants to achieve and differences in the social security system.

Mr WILKIE—But the fundamental principles are the same?

Mr Urbanski—The principles are the same, yes.

CHAIR—I welcome the witnesses from the Department of Family and Community Services. Gentlemen, would you like to take your places. We were ready to proceed at 11.30, so we adjourned for as long as we could possibly bear and then commenced taking the evidence. This agreement was tabled in the parliament in June so the hearing of this evidence was adjourned from last time. At 11.30, as I said, we were ready to move to this agreement, so a number of questions have already been asked of other witnesses here. Is there any particular issue that you would like to bring to the attention of the committee? We have seen a number of these social security agreements before. We are aware of the model text that is generally used as a basis for negotiations. Is there anything about this agreement that you would like to bring to the attention of the committee? Indeed, are there any reasons you can proffer as to why we should not ratify?

Mr Kukoc—This agreement is in addition to Australia's existing international social security agreements. This agreement has all the standard provisions that other international social security agreements have. Apart from double coverage provisions, there is nothing that is very specific to this agreement. By the way, double coverage provisions were already part of some of the international society security agreements this committee already had.

CHAIR—Mr Murray has answered some questions on the double coverage provisions. This committee is keen to ensure that as wide as possible a group of relevant persons are consulted for the purposes of the treaty-making process. Was the New South Wales government consulted? It does not seem to be in the list of state and territory governments in the annexure.

Mr Hutchinson—To the best of my knowledge, the New South Wales government is routinely included on our consultation list.

CHAIR—That must be just an oversight.

Mr Hutchinson—I presume it is just an oversight in the attachment.

CHAIR—There is also reference to 68 Croatian groups whose views had been sought and annexure A lists 38 groups. I assume that only 38 responded from the 68 invitations, or is there some other explanation?

Mr Hutchinson—Certainly we did not get 38 responses. I think it was 68 groups, so I assume the reference to 38 is a typographical error.

Mr Kukoc—Yes, it is probably a typographical error. We did write to 68 Croatian community groups following advice from the Croatian Embassy. I believe we received only one letter back, from the Croatian Congress. That letter, I believe, was attached to the documents that were tabled on 17 June.

CHAIR—Of the welfare associations consulted, I note there was no welfare association from South Australia. I am sure Mr Evans was about to raise that. Was there any reason for that?

Mr Hutchinson—No specific reason.

CHAIR—Is there not one in South Australia to consult with?

Mr Hutchinson—The list we use is one that we have built up over time. If in fact we have not consulted with a South Australian group before then we would be more than happy to include any relevant groups on our list.

CHAIR—I am certainly aware of the Ethnic Communities Council of Western Australia, because I am from Western Australia, but if there is a similar group in South Australia perhaps you could take that on board.

Mr MARTYN EVANS—Yes, there is.

CHAIR—I take it from Mr Evans that there is.

Mr MARTYN EVANS—There is, yes.

CHAIR—So could they be included in the list of associations to be consulted?

Mr Hutchinson—Certainly. I believe the peak body has distributed copies of the agreement and an information letter to their state counterparts; I presume the South Australian body did get a copy of it.

CHAIR—Perhaps we will make sure; we will not assume.

Mr Hutchinson—Yes, certainly. If I could make one correction to my clarification before: it does appear that there were only 38 Croatian groups, and not 68. The 68 seems to be the typographical error.

CHAIR—Thank you very much.

Mr WILKIE—I have a quick comment. This is a fairly straightforward treaty. We have been dealing with quite a few social security agreements. It has been stated that there is nothing significantly different between this treaty and some of the others we have. I would ask you to have a look at the time to be at meetings in the future, please, because we almost deferred this meeting for a fortnight. We had deferred the meeting for some time and it would have meant the whole treaty would have been delayed for another two weeks for no real reason.

Mr Kukoc—Will you allow me, Madam Chair and committee members, to apologise. We got lost.

CHAIR—It is a confusing place. Thank you to the representatives from the Department of Foreign Affairs and Trade and the Attorney-General's Department and the witnesses who have attended before us this morning.

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

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

Committee adjourned at 12.02 p.m.