COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled in December 2003 and plant genetic resources treaty

FRIDAY, 13 FEBRUARY 2004

CANBERRA

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JOINT COMMITTEE ON TREATIES

Friday, 13 February 2004

Members: Dr Southcott *(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 Peter King and Mr Scott

Senators and members in attendance: Mr Ciobo, Senator Bartlett, Senator Marshall, Senator Mason, Dr Southcott, Senator Stephens

Terms of reference for the inquiry: Treaties tabled in December 2003 and plant genetic resources treaty

WITNESSES

Committee met at 9.22 a.m.

Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of the Italian Republic on the Civil Registry Documentation to be Submitted by Australian Citizens Wishing to Marry in Italy

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

WILD, Mr Russell, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade

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 six treaties tabled in parliament on 3 December 2003. 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. I should remind witnesses that today's proceedings are being broadcast by the Department of Parliamentary Services. Should this present any problems for witnesses, it would be helpful if they would raise this issue now.

To begin our hearing we will take evidence from witnesses from the Department of Foreign Affairs and Trade on the exchange of letters constituting an agreement between the government of Australia and the government of the Italian Republic on the civil registry documentation to be submitted by Australian citizens wishing to marry in Italy, which took place at Rome on 10 February and 11 April 2000. 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. Do you wish to make some introductory remarks before we proceed to questions?

Mr Wild—Yes. I will say something quickly. I am informed that Italy is a popular choice for Australians who wish to get married overseas. You will see in the NIA that there is a discussion of article 116 of the Italian civil code. It provides that a foreigner who wishes to marry in Italy has to lodge a declaration by the competent authority of his or her country saying that there are no impediments to the marriage. Because of our federal structure and the responsibility for the register of marriages, which I understand is with the states, it has not proved possible for Australians to produce a declaration from a single competent authority.

This has caused some problems for Australians who wish to marry in Italy, and it has caused quite a workload for our embassy in Rome, both in dealing with inquiries from Australians who get over there not understanding the situation properly and also in dealing with the various marriage offices in Italy when problems arise. This agreement was therefore struck in order to simplify the procedure and it sets up an alternative system whereby the requirements of the Italians can be met without the declaration. We are not a party to any other treaties of this type, although I understand that some countries do provide flexibility in relation to their arrangements through less than treaty level—I hesitate to call them this—understandings, which just simplify the process for Australians. I understand that the United States has a similar agreement with

Italy, of treaty status, and that it has had that since the mid-sixties. That is what this exchange of letters is based on.

CHAIR—The letters were signed in early 2000 and the treaty was tabled in December 2003. Is there any reason for the delay?

Mr Wild—I think it is fair to say that this agreement was made in an attempt to simplify the procedures, and I do not think that the people who made it understood fully the implications of the wording that had been used. They chose to use wording that was of treaty status. I think that at the time they did not appreciate the fact that that would require us to go through our full treaty-making procedures. When it did come to our notice that this deal had been struck, and with this wording, we did deem it that we had to go through our treaty requirements, and that is what we are now doing. I think there was an oversight initially, and we have since issued a circular to all of our officers overseas reminding them of the treaty requirements and reminding them that, if they do choose to use treaty level language, which is what this letter contains, then they need to go through the full treaty-making process, which includes of course the JSCOT consideration.

CHAIR—Was it Australia that suggested that the agreement be negotiated?

Mr Wild—Yes, it was. The impetus for it was a number of problems with Australians who had arrived in Italy wishing to marry and had gone to the relevant marriage offices and found out that there were problems in complying with article 116 and had then approached the embassy. It was decided between the Australians and the Italians that we would have to do something to rectify the situation.

CHAIR—I can see that Italy might be a special case, but does Australia have similar concerns with any other countries? If so, are those agreements likely to be done as a treaty or in some other way?

Mr Wild—As I said in my opening remarks, we do not have any other treaties about this. I am not aware of any other great problems with other countries. As I said, some other countries have different requirements and some other countries show more flexibility on the administrative side without the need to go for treaty level arrangements. I am not aware of any other countries where we are currently having similar problems.

CHAIR—You mentioned the United States agreement in the 1960s. Was that a treaty?

Mr Wild—That appears to be a treaty level agreement between Italy and the United States.

CHAIR—Are there any other countries that have these sorts of arrangements with Italy?

Mr Wild—I do not know. I could find out if you would like, but I do not know off the top of my head.

Mr Fewster—If I might interpose, generally our policy with this sort of level of what I will call an agreement in this case is that it should have less than treaty status with other countries except where, for a particular reason, the other side cannot get around it. We go then to treaty

level. Our general policy would be to have an agreement of this kind that would be less than treaty status.

Mr WILKIE—I am curious about the sworn statement where you have got four witnesses in front of a competent authority. Are there any qualifications for the witnesses?

Mr Wild—I do not know that. I could ask our embassy in Rome if you would like, but I do not know off the top of my head.

Mr WILKIE—I was just curious how difficult it would be for that process to occur.

Mr Wild—It did strike me as being a large number of witnesses, but I do not know if they have to be JPs or whether they have to be other Australians or what. I can find out for you. I will take that on notice.

Mr WILKIE—I am just wondering if they have to know the people who are making the declaration so that they are saying that they are definitely in a position to make it, and how difficult that would be if, for example, they are from Australia but they do not know anyone there.

Mr Wild—I will find out whether or not it is just a witnessing of the signature to confirm that they are who they say they are, or whether it is a witnessing as to the facts attested to in the statement that there is no impediment to their marriage.

Mr WILKIE—Thanks.

Senator BARTLETT—It might have saved Britney Spears if she had had to do that.

Mr Wild—Although it is a bit different.

Senator BARTLETT—This may sound like a flippant question, and I imagine it is not the case, but I just thought I would double-check: it is fairly improbable with a country like Italy, I would expect, but does this apply to registering same sex relationships in any way?

Mr Wild—I do not know the Italian law on that. I will have to take that on notice as well. Your concern is whether it would allow same sex marriages of Australians within Italy?

Senator BARTLETT—It is not a concern; I am just curious really.

Mr Wild—We can find out.

CHAIR—As there are no further questions, I thank you for your evidence.

[9.30 a.m.]

Agreement Establishing an International Foot and Mouth Disease Vaccine Bank

MERRILEES, Mr Dean, General Manager, Animal and Plant Health Policy, Product Integrity, Animal Plant and Health, Department of Agriculture, Fisheries and Forestry

TWEDDLE, Dr Neil Edward, Senior Principal Veterinary Officer, Office of the Chief Veterinary Officer, Department of Agriculture, Fisheries and Forestry

CHAIR—We will now hear evidence on the denunciation of the Agreement Establishing an International Foot and Mouth Disease Vaccine Bank, done at London on 26 June 1985. I welcome representatives from the Department of Agriculture, Fisheries and Forestry. Would you like to make an opening statement?

Mr Merrilees—Thank you. The termination of this agreement stems from a meeting of the International Vaccine Bank commissioners in May 2003, where all commissioners determined that it would be appropriate for the bank and the agreement to cease operations. The major reasons for that come from concerns about current standards of safety and quality in terms of the FMD antigens held in the bank, and also some questions about the particular facilities themselves. Australia supported the decision taken unanimously by all commissioners. Since then we have been putting in place a range of arrangements to make sure that Australia continues to have appropriate access to FMD vaccines.

The major strands of that process are to ensure that, firstly, the antigens that are currently held in the International Vaccine Bank will continue to be available until the end of the agreement, which is 30 June 2004. We have also negotiated temporary access and drawing rights to the European Commission FMD Bank, which will be in place until 31 December 2004. Currently, through Animal Health Australia, we are negotiating commercial FMD vaccine arrangements. We expect that contract to be finalised shortly, and that will provide for the progressive availability of the antigens that we have specified in that agreement, with full delivery in 12 months. The fourth strand there is that we are currently in negotiations with countries that are currently in the existing IVB, and we are looking at the possibility of forming a new vaccine bank which would have quite different arrangements to the current treaty. Hence our desire on the advice of Attorney-General's is to terminate this agreement.

CHAIR—In the national interest analysis, paragraph 21 states that the bank posed too great a risk. What was the risk?

Mr Merrilees—The risk really centres on the outbreaks of BSE in the UK. Since those outbreaks there have been concerns that any sort of biological material should be able to be demonstrated to not be sourced from animals that may have been subjected to BSE. As this bank predates the outbreak of BSE, there are not the records available to make those sorts of guarantees in terms of safety and quality, whilst from our point of view the risk to us is that it may restrict the nature of the vaccine strategy that we might apply if we had the unfortunate circumstance of having to respond to an FMD outbreak in Australia.

Mr WILKIE—In the cost of the agreement, what is likely to happen with the assets that are shared between the parties at this stage?

Mr Merrilees—The agreement provides for the assets to be disposed of and for any surplus as a result of that disposal to be shared amongst the treaty members. At this stage, we are uncertain as to whether there will actually be a surplus or a deficit. We do not expect that to be a large amount either way. The antigens themselves do not have a particular value, because of the limitations that I have indicated before, and they are the major asset in the bank.

Mr WILKIE—There is an amount of $50,000 referred to in paragraph 19 of the national interest analysis. Can you confirm that that is in Australian dollars, or is it in US dollars?

Dr Tweddle—It is in Australian dollars—and that is for the really worst case, if the antigens have to be incinerated or something like that. Antigen is a very expensive and high-security, dangerous material. It is not really anticipated that it will be anywhere near that, but we really cannot be sure until the British authorities go through the process of getting approval to dispose of it.

Mr WILKIE—Is there a likelihood of any further international agreements being negotiated about these sorts of activities?

Mr Merrilees—We are certainly in negotiations with the countries that are currently in the IVB. In fact, there will be a meeting later this month in London to explore that. But we would envisage that it would be quite a different sort of operation to the current IVB and would more likely have the antigens sourced from a commercial supplier. This is a very specialised area, as you would appreciate, and it is currently a government run facility, and our preference would be to align with a commercial supplier. Indeed, Australia's own contract will be with a commercial supplier.

Mr WILKIE—Out of curiosity, what is likely to be the cost for a single dose of vaccine?

Mr Merrilees—That is a very hard question to answer specifically.

Mr WILKIE—I noticed that part of the documents talked about one case where you can get 50,000 doses. I was wondering how that would relate to on-the-ground costs. Imagine if you needed to vaccinate entire herds across Australia—you are talking about a lot of vaccines.

Dr Tweddle—We did some calculations a few years ago—eight or 10 years ago—for a workshop situation and found that half a million doses of one of these concentrated antigens cost a little over £100,000. It is probably now in the order of £120,000 or £130,000—so that is, say, $A600,000. That is about a dollar for each dose of concentrated antigen. Then it has got to be formulated et cetera. So I suspect you would be looking at $A2 to $A3. However, this vaccine would be used in a very limited way under direct government control and by government officers or government contractors, so it would be covered under the Emergency Animal Disease Response Agreement as part of the eradication program for an outbreak should it occur in Australia. It is not something that is likely to be imposed on a particular producer.

Mr WILKIE—It does not sound like it is that onerous a cost, really.

Mr Merrilees—Can I add that the purpose of entering into these sorts of agreements is to guarantee that we have ready access to at least an appropriate emergency supply of vaccine in the event that we have an outbreak in Australia. As you would appreciate, we do not want to be left in the position of trying to obtain those sorts of supplies in an emergency.

CHAIR—The outbreak of BSE in the UK, as I recall, was in about 1996-97. When were concerns about BSE and how it might affect the vaccine first raised within the commission?

Dr Tweddle—The first case of BSE was diagnosed in 1986, and it was in 1994, I think, that the first case of variant CJD, which was attributed to the bovine disease, was announced. From 1986 onwards, vaccine standards have been progressively tightened, and the primary standard for bovine vaccines is that no bovine material from a country that has a history of BSE can be in vaccines. It was from the early 1990s that we started raising concerns and seeking information from the management of the bank in Britain about whether they could get this information about these antigens. One of the problems is that there has been a lot of rationalisation in the international vaccine industry. There are only a very small number of foot and mouth disease vaccine manufacturers, and several of these companies have been taken over again and again, so the records have been placed deeper and deeper in somebody's archive and are just not available. The other thing is that standards change, so some of the information was never collected in the first place, because it was never recognised that it was important—so it is not available.

CHAIR—That concludes the discussion on this treaty.

[9.41 a.m.]

Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, Modified by the Protocol of 17 February 1978

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

TAN, Ms Poh Aye, Director, Maritime Regulation, Department of Transport and Regional Services

CHAIR—The committee will now hear evidence on the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as modified by the protocol of 17 February 1978, done at London on 26 September 1997. I welcome witnesses from the Australian Maritime Safety Authority and the Department of Transport and Regional Services. 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. I invite you to make some introductory remarks before we proceed to questions.

Ms Tan—The International Convention for the Prevention of Pollution from Ships, commonly known as MARPOL, is the principal international convention dealing with the prevention of pollution of the marine environment by ships. MARPOL currently has five annexes dealing with the pollution of the sea. Australia is a signatory to MARPOL and has implemented four of these annexes, with the remaining annexes dealing with sewage discharges to be implemented shortly. The protocol of 1997 to amend MARPOL added a new annex, No. VI, which contains regulations to prevent and control harmful air emissions from vessels. The need for the protocol arose due to recognition by the international maritime community that air pollution from ships is one of the few areas related to shipping where there are currently no enforceable standards. The protocol sets limits on the emissions of sulfur oxides and nitrogen oxides from ship exhausts, prohibits the deliberate emission of ozone depleting substances and sets emission standards for shipping bodies and erectors.

Australia's accession to and implementation of the protocol will provide consistent national standards for commercial vessels trading internationally and will implement the full range of enforcement measures available under MARPOL. Accession is consistent with Australia's obligations to protect the marine environment as a signatory to UNCLOS. The obligations imposed are set out in paragraph 17 of the national interest analysis. Australia has already met a number of these obligations, including the obligation to control ozone-depleting substances, which has been met by existing Australian legislation. Emission limits set for offshore platforms are being met by Australian industry and sulfur content limits for fuel oil carried on board ships are also being met by the international and Australian oil industries.

Other significant obligations are an international air pollution prevention certificate, which is to be issued to Australian registered ships that are surveyed and found to be in compliance with

applicable construction and operational standards. AMSA and/or an approved classification society will undertake this survey and certification as part of its flag state control function. The inspection of ships visiting Australian ports is to be undertaken to ensure that they comply with regulations in the protocol and have the necessary certification on board. AMSA will undertake this task as part of its port state control function. Suppliers are to provide fuel oil for ships with a sulfur content of less than 4.5 per cent. Australian suppliers currently meet this standard, however they will also be required to document the sulfur content of the fuel by means of a bunker delivery note. This document and a sample have to be kept on board the ship and retained for three years after delivery of the oil.

There is a program for enforcement, including cooperation with other parties to the protocol. By becoming a party to the protocol, Australia will be able to enforce the full range of controls on air pollution from foreign vessels in waters over which it exercises jurisdiction and over Australian flag vessels wherever located on international voyages. These controls include regular inspections to ensure compliance and the ability to board a suspect vessel to obtain evidence of possible violations.

If Australia does not become a party to the protocol there is a risk that the level of environmental protection in Australia will fall short of internationally adopted standards, and that may encourage ships producing harmful emissions to operate in Australian waters as other countries tighten their regulation of air pollution. The costs of compliance for industry are expected to be minimal. Australia has already complied with a number of the convention's requirements and industry has indicated strong support for implementation of these measures. The protocol will enter into force 12 months after 15 states representing at least 50 per cent of the world's merchant shipping tonnage have become parties. The national interest analysis lists 12 states representing 54.25 per cent of the world's merchant shipping tonnage which were parties to the protocol as at 31 October 2003. As at today, this figure has not changed.

CHAIR—Thank you very much for that. Could the department comment on why the protocol was signed in 1997 but it is entering into force only this year?

Mr Nelson—These sorts of international treaties unfortunately sometimes take that sort of time to come into force. The process in a lot of governments of turning a convention into legislation can be time consuming. We appeared before this committee last year on a similar IMO annexe to the MARPOL convention that was passed in 1973 and entered into force only last year. So this sort of time frame is not unusual, unfortunately.

CHAIR—Can the department also provide the committee with the latest details of which parties to MARPOL 73/78 have acceded to annexe 6?

Mr Nelson—Yes, we have those details. Additionally, several countries have recently advised that they intend to accede to annexe 6 very shortly. They are Italy, Japan, Cyprus and the Netherlands. Those four countries are expected to sign within the next few months but we certainly have the list of the existing 12 available.

CHAIR—The countries that you mentioned are additional to the list as at 31 October 2003?

Mr Nelson—These are countries that have indicated that they are likely to accept the annexe in the next few months.

CHAIR—You mentioned that there is minimal compliance cost on shipping but there is an increased fuel cost as well. I think the NIA says that fuel oil will be about $57 per tonne more than regular fuel oil.

Mr Nelson—That will be the situation only in a particular area—in what is called a special emissions area, which I think is the Baltic Sea.

Ms Tan—The Baltic Sea and possibly the North Sea. At this stage I think there is only one area which has been designated.

Mr Nelson—Yes. The additional cost will be for any Australian ships that are trading in that area. I discussed this with Australian industry, and there are five or six Australian vessels that trade in that area. Of course, those same costs will apply to every ship trading in that area, so there is no disadvantage to anybody.

Mr WILKIE—You talked about regular inspections of ships coming into Australia and measures to enforce them. Who would be doing the enforcing?

Mr Nelson—The Australian Maritime Safety Authority. The requirements of this annex would be added to our regular port state control inspections. As well as looking at certification for things like oily water separators and the way ships carry oil, our inspectors would be looking at the sort of certification required for compliance with this convention—for example, emissions certificates attesting to the emissions from the diesel engines on board the ships. That would be added to our port state control inspection regime.

Mr WILKIE—Would that be for every ship?

Mr Nelson—No. I do not know the full details, but I think our inspection regime aims to examine 50 per cent of vessels over a period of time. We have a targeting inspection regime, so not every ship is inspected on every voyage, but we do have targets. We could take that on notice and advise you of exactly what they are.

Mr WILKIE—I know there would be targets. Could you also look at how the department is meeting those targets for inspections—what the actual is, as opposed to the target?

Mr Nelson—The authority produces an annual report on port state control. It gives the full statistics on the number of ships boarded, the sorts of flag states and types of deficiencies. We could certainly make that available.

Mr WILKIE—That would be great. I always think it is great to have these sorts of measures in place, but if we do not enforce them there is not much point in having them. Thank you.

Senator BARTLETT—When is the enabling legislation likely to appear here?

Ms Tan—We have put in a bid for the winter sitting. At this stage, drafting of the legislation is still in process.

Senator BARTLETT—What are the consequences for industry, in an environmental sense, if that does not get through this year, given that elections may cut things short?

Mr Nelson—The consequences for industry are not too significant, since most of the obligations in the annex have already been met in one form or another. It will just mean that we will not be able to enforce the standards on all the ships visiting Australia. One of the key provisions in the annex is that diesel engines fitted to ships after 1 January 2000 have to comply with certain emissions standards. Of course, that has been happening since 1 January 2000, so effectively, even though the annex is not enforced yet, the industry has been moving for some time towards compliance. So there is not a lot of significance in respect of the industry, but we would prefer to be able to enforce the standards throughout the inspection regime, and until we have the legislation we cannot do that properly.

Senator BARTLETT—Once the thing is enforced globally, any shipping that operates internationally will need to be compliant anyway, I suppose.

Mr Nelson—Yes. Any ship that comes to Australia, regardless of the flag, is required to comply.

Senator BARTLETT—I thought I saw something about the fact that if we do not have the legislation in place we cannot issue documentation or verification.

Mr Nelson—The issue there is that Australian vessels trading overseas will be subject to inspection by foreign states to make sure that they have the necessary certificates on board. Only when we are formally party to the annex can we issue those certificates, so we would have to make some sort of other arrangements with those inspection states to make sure our ships pass those inspections. There are not too many Australian ships trading overseas, but we would have to sort that out unless we were a party to the treaty.

Mr WILKIE—I have a quick question about the incinerators. I notice that the RIS states at paragraph 4.29 that the impact of this requirement on industry—to meet requirements with certain shipboard incinerators installed on or after 1 January 2000—has been kept to a minimum, as those fitted before 1 January 2000 can serve out their normal operational life. What sort of normal operational life would you get from a shipboard incinerator?

Mr Nelson—A shipboard incinerator will operate for an average of eight to 10 years. The sort of cost for a vessel that does not produce a lot of waste, such as a bulk carrier that does not have a large crew, is in the order of tens of thousands of dollars—say, $20,000, $30,000 or $40,000—ranging up to several hundred thousand dollars for a large cruise vessel.

CHAIR—Thank you very much.

[9.59 a.m.]

United Nations Convention against Transnational Organized Crime

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime

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

JOHNSTON, Ms Felicia, Acting Senior Legal Officer, International Crime Branch, Criminal Justice Division, Attorney-General's Department

JOSEPH, Ms Margaret, Senior Legal Officer, Criminal Law Branch, Criminal Justice Division, Attorney-General's Department

LEONARD, Ms Kerin, Acting Principal Legal Officer, International Crime Branch, Criminal Justice Division, Attorney-General's Department

ZANKER, Mr Mark, Assistant Secretary, Office of International Law, International Trade and Environment Law Branch, Attorney-General's Department

CHAIR—We will now hear evidence on the United Nations Convention against Transnational Organized Crime, which was done at New York on 15 November 2000. I welcome representatives from the Attorney-General's Department. I understand that the same witnesses are appearing to discuss this convention and the following two proposed treaty actions. Those treaty actions are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000; and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, also known as the people-smuggling protocol, done at New York on 15 November 2000.

Although the committee does not require witnesses to give evidence on 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. Do you wish to make some introductory remarks before we proceed to questions?

Ms Blackburn—I have a brief opening statement which covers the convention and the two protocols. Firstly, let me thank you for inviting us to give evidence to the committee today. We are pleased to be here to assist the committee with its inquiry into the convention and the

protocols. The globalisation of economic systems and developments in transportation and communications technologies has created significant new opportunities for organised crime. In this environment, transnational organised crime threatens the security and prosperity of all countries, including Australia.

The Convention against Transnational Organized Crime under consideration today provides a global approach to preventing and combating transnational crime. The convention was adopted by the UN General Assembly on 15 November 2000. Australia signed the convention on 13 December 2000, and it entered into force on 29 September 2003. The first conference of the parties to the convention is scheduled for 28 June to 9 July 2004. The purpose of the convention is to criminalise offences committed by organised criminal groups, to combat money laundering and to facilitate international cooperation in the fight against transnational organised crime. Australia already has extensive domestic policy and legislation designed to combat transnational organised crime. However, ratifying this convention will increase the effectiveness of domestic measures by providing a standardised approach to criminalisation and a mechanism for cooperation with a range of other countries in preventing, detecting and prosecuting transnational crime.

The main obligations in the convention are to criminalise offences committed by organised crime groups, including corruption and corporate or company offences; to deal with money laundering and enable the proceeds of crime to be attached; to protect witnesses testifying against criminal groups; to speed up and widen the reaches of extradition; to tighten cooperation to seek out and prosecute suspects and to boost prevention of organised crime at the national and international levels. The department has the view that Australia's obligations under the convention would be met by existing Commonwealth, state and territory legislation and the making of new regulations under the Mutual Assistance in Criminal Matters Act and the Extradition Act.

The people-smuggling protocol, which is also under consideration here today, supplements the TOC convention and forms a key element of the global approach to prevent and combat the smuggling of migrants, to promote cooperation among state parties and to protect people who have been smuggled. The protocol was adopted by the General Assembly on 15 November 2000. Australia signed the protocol on 21 December 2000, and the protocol entered into force on 28 January 2004. Again, Australia's existing laws under the Migration Act, the Commonwealth Criminal Code and the Proceeds of Crime Act are considered to be sufficient to meet obligations under the protocol. While Australia already has extensive domestic policy and legislation designed to combat people-smuggling, ratification of the protocol would demonstrate Australia's commitment to working with other destination, transit and source countries to combat this crime.

During the negotiations for the head convention, the UN also focused on trafficking in persons. It is a repugnant form of transnational organised crime involving the deception and degradation of thousands of victims around the world. The Asia-Pacific region has become a hub for trafficking in persons, particularly for the purposes of sexual servitude. All countries, including destination countries, have a responsibility to address this issue. The federal government recently announced a $20 million package of measures to combat trafficking and provide support for victims. These were announced on 13 October 2003. As part of that package the government announced its intention to ratify the trafficking protocol, subject to consideration of the protocol by this committee and the completion of the normal treaty processes.

The purpose of the protocol is to prevent and combat trafficking in persons, especially women and children, through a comprehensive international approach, including measures to prevent trafficking, punish traffickers and protect the victims of trafficking. The protocol was also adopted by the UN General Assembly on 15 November 2000. Australia signed the trafficking protocol on 11 December 2002, and the protocol entered into force on 25 December 2003. On signature of the trafficking protocol, Australia deposited the following declaration:

> The Government of Australia hereby declares that nothing in the Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders persons in respect of whom Australia would not otherwise have an obligation to admit or retain within its borders.

This declaration will remain effective following ratification of the protocol and indicates Australia's understanding that the treaty does not compromise the government's stance on unauthorised arrivals.

Except for article 5 of the protocol, the department is of the view that the Australian laws comply with the obligations under the trafficking protocol. The government announced on 13 October that in the package there would be a review of existing laws to ensure that the convention obligations were met. The proposal is to consider the introduction of additional trafficking in person offences in 2004 to ensure that trafficking in persons is comprehensively criminalised. The government would propose to ratify the trafficking in persons protocol after these legislative amendments are in place. Australia's ratification of the protocol will demonstrate Australia's commitment to eradicate trafficking in persons. Ratification has widespread domestic support amongst community groups working on trafficking issues.

The ratification of the convention and its protocols is important for Australian law enforcement cooperation with other countries. It will also support Australia's work as co-chair of the Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime. As co-chair of these conferences with Indonesia, the Australian government has taken an active role in promoting regional cooperation to break down the criminal networks responsible for transnational crime. I welcome your questions.

CHAIR—Thank you very much. We will firstly deal with the convention and then we will deal with the two protocols. When did negotiations on the transnational organised crime convention commence?

Ms Leonard—The negotiations for the head convention commenced at the end of 1999.

CHAIR—What prompted their commencement?

Ms Leonard—It arose out of a resolution from the UN General Assembly recognising that transnational organised crime was an increasing issue and that it would be useful for the UN as a body to look at an agreement which would facilitate cooperation in the fight against this crime.

CHAIR—Is this the first convention of its kind?

Ms Leonard—In such a comprehensive way, yes, it is. It does tailor into existing conventions on elements of crime such as money laundering.

CHAIR—Is something like Interpol set up under a convention? How does the cooperation under Interpol exist?

Ms Leonard—There is an agreement between countries, but it is not at the same status as a convention of this sort.

CHAIR—Australia signed the convention a bit over three years ago. Why has ratification only been proposed now?

Ms Blackburn—The government has been considering implementation of the TOC convention in line with other priorities, such as ratification of the Statute of the International Criminal Court and participating in the UN Convention against Corruption negotiations. The amount of time taken would seem to be a fairly ordinary amount of time to progress to the stage where we are confident that Australia is able to meet its obligation under the convention and to bring it forward through the treaty process.

CHAIR—Thank you. The national interest analysis said that the convention would support the work done by Australia as co-chair of the Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime. When did the ministerial conferences take place?

Ms Blackburn—There have been two ministerial conferences—in February 2002 and in April 2003.

CHAIR—As I understand it, the other co-chair, Indonesia, has often put out a statement saying it is important for countries to ratify the transnational organised crime convention, but at the time of tabling Indonesia had not ratified either the transnational organised crime convention or the protocols. Are they intending to?

Ms Blackburn—I will make two comments on that. The communiques which were put out following both of the Bali conferences by the co-chairs on behalf of all of the parties to those processes encouraged all regional countries to ratify the convention and its protocols. Indonesia signed the convention at the same time as a great number of other countries did. In that context, there are 147 signatories to the convention. There are presently 60 parties to the convention. Indonesia is a signatory but has not ratified it. I am sorry, but I do not have any indication of whether Indonesia is planning to ratify it or of the timetable which it is following for that.

CHAIR—Does anyone at the table have any information about whether Indonesia is planning to ratify it?

Mr Chew—We can take that on notice and find out.

CHAIR—I would appreciate that because, as you know, they have been making the same statements as we have at these regional conferences.

Mr WILKIE—I have a few questions about definitions and the interpretation of the terminology. The convention contains some generalised terms, and it might be beneficial to seek some clarification from witnesses about those terms and how they are defined. For example,

article 2(a) refers to an organised criminal group as 'existing for a period of time'. How is that period of time defined?

Ms Blackburn—I have some notes here on our approach to the question of creating offences for groups. The policy position which has been taken, except in the case of terrorist organisation offences, is that it is preferable that the criminal offences be based on the relevant conduct of individuals rather than the characteristics of a group, because there are difficulties in defining what the group is. Indeed, you have raised an interesting point about what is the period of time within which one has to operate in order to be classified as an organised crime group. The approach that has been taken under existing Australian law is to make the offences referrable to the conduct of individuals participating in those activities.

Ms Joseph—The existing offences in Australia which are relevant to the obligations under the TOC convention are of general application, so we do not have this notion of an organised criminal group incorporated into Australia's law. However, we do have very broad corporate responsibility and criminal liability provisions in the Commonwealth Criminal Code. These broad provisions basically ensure that Australia does meet its obligations under the TOC convention in relation to those members of an organised criminal group who do participate in the relevant Australian offences. We just take a different approach. We do not actually incorporate the notion of an organised criminal group into our specific offences. It is more that we refer back to the general principles of corporate responsibility that are contained in the Commonwealth Criminal Code.

Mr WILKIE—The national interest analysis at paragraph 28 refers to article 16.14, which states that the state should not be obligated to act if it has substantial grounds to refuse extradition. How are those substantial grounds determined, and how would a state notify those grounds to the requesting party?

Ms Blackburn—The Commonwealth Extradition Act provides a series of mandatory grounds on which extradition must be refused, and some of the ones which are covered here are already covered in the Extradition Act—certainly the punishing of a person on account of the person's race, religion, nationality, ethnic origin or political opinions.

Mr WILKIE—Would they be considered substantial grounds?

Ms Blackburn—I do not understand the question.

Mr WILKIE—It refers there to the state having 'substantial grounds' to refuse extradition. What would be substantial grounds? Can you give us some examples of what that might include?

Ms Leonard—It would include grounds such as those which Joanne Blackburn set out, where there might be discrimination on that series of factors. An element such as whether the death penalty was to be enforced in the other country would be a substantial ground for refusal of extradition.

Ms Blackburn—I wonder if you are perhaps going back to what substantial grounds we have for believing that the request has been made for those purposes. The assessment of whether the

extradition would be for those purposes would be based on material that is available to the decision maker at the time they take the decision. As with any finding, you would need to have substantial evidence available to support the view that if the person were returned they would suffer that form of prosecution or punishment, thus being one of the mandatory grounds in the Extradition Act for refusing extradition. Is that getting to where you wanted to go?

Mr WILKIE—Yes. The national interest analysis at paragraph 34 also refers to article 18 of the convention, where a state may refuse a request for mutual assistance on certain grounds, including that the request is likely to prejudice its sovereignty. How is that determined, and does such a decision need to be justified with reasons or statements?

Ms Blackburn—That is a ground which currently exists, from memory, under the existing mutual assistance legislation in Australia. Australia can refuse a request on the ground that it would affect its sovereignty. Under the current mutual assistance act we have no obligation to provide reasons. I think I mentioned earlier that the implementation of this convention would require us to make regulations under the mutual assistance act which would make the offences and the provisions of this treaty part of that domestic law. That means that, in relation to the offences under this convention, if we were dealing with a mutual assistance request and we refused the mutual assistance request, we would be obliged to give reasons in accordance with this treaty.

Mr WILKIE—These statements in the convention would be applied with a broad brush, but how are they going to be defined by each party, and what happens when people tend to apply their own interpretation to these broad brush statements to determine which way they respond? I am concerned that we do not get a uniform approach across states.

Ms Blackburn—I think the particular one you are referring to—whether a request is considered to impact on the sovereignty of the party to whom the request is made—is almost by definition a unique decision by the country which is considering the request. Every country must have the right to determine whether they consider that request impacts on their sovereignty. I am sure it will be interpreted in different ways by different countries.

CHAIR—I will now break the rule about the convention and the two protocols, because I think we could deal with this together. As I recall your opening statement, there will be no requirement for legislation to be introduced into parliament for the convention. It can be done under existing Commonwealth regulations under existing Commonwealth legislation. Was it only the protocol on people-trafficking that will require some new legislation to be introduced into parliament?

Ms Blackburn—That is correct.

CHAIR—So can the protocol on people-smuggling be done under existing legislation? No legislation is required in parliament—just regulations and so on?

Ms Blackburn—Our assessment is that the current Commonwealth legislation dealing with people-smuggling and related offences would enable Australia to meet the obligations under the convention. We already have several regulations under the Mutual Assistance in Criminal Cases Act and the Extradition Act which essentially make the offences that are in the conventions

extradition offences and offences for which mutual assistance can be granted. So we would propose to have the same process with the TOC convention. With respect to the people-smuggling protocol, it is our view that there is possibly a further step which we do need to take to ensure that trafficking is comprehensively criminalised. The government announced on 13 October that we would be reviewing the existing laws to ensure that they are fully comprehensive. We are in the process of undertaking that review. We have category A status for introduction of legislation in the current sitting of the parliament.

CHAIR—Legislation is required only for the people-trafficking?

Ms Blackburn—That is correct. In relation to people-smuggling, in our assessment, our existing laws are sufficient to meet our obligations under the protocol.

Senator MASON—In your opening statement, by implication you mentioned mutual assistance and extradition and, I suppose, proceeds of crime legislation. Will that legislation need to be amended? If so, will it change our obligations? What will need to be done to the domestic legislation to ensure that we now are compatible with the new protocol?

Ms Blackburn—Was the specific of your question the area of mutual assistance and extradition?

Senator MASON—Yes.

Ms Blackburn—Our view at the moment is that we do not need to amend our existing mutual assistance or extradition acts to accommodate the obligations we have under the convention and the protocol.

Senator MASON—My next question relates to something which perhaps you have been able to find, but I could not. Increasingly Australia is invoking extraterritorial criminality: the activities of Australian citizens overseas can be found to be criminal, most famously in the context of child sex matters and other areas. How does this impact on that, or does it?

Ms Joseph—The actual convention itself is focused on transnational crime and Australia is already very well placed to meet those obligations because many of our federal offences, as you say, do have this extraterritorial application. For example, we now have people-smuggling offences in division 73 of the Criminal Code, which have comprehensive extraterritorial application. For example, they apply when an Australian citizen or an Australian resident is participating in that activity. They apply when part of the conduct takes place in Australia or the people-smuggling takes place via Australia. So basically the fact that we already have legislation which does have this extraterritorial application does help us to meet obligations to criminalise transnational crime.

Senator MASON—So, in short, domestically we have already previously undertaken the obligations that Australia is taking on board in ratifying this convention and the protocols.

Ms Blackburn—In the text of the convention, the definition of transnational crime provides for four conditions in which the activity is expected to be covered: where it is committed in more than one state, where it is committed in one state but part of its preparation is in another, where it

is committed in one state but involves an organised criminal group that engages in criminal activities in more than one state, or it is committed in one state but has substantial effects in another state. Our assessment is that our existing laws, with their current extraterritorial application, will meet that obligation.

Senator MASON—So we are ahead of the world game.

Ms Blackburn—I think that is true in a number of areas.

Senator MASON—Very good.

CHAIR—In paragraphs 13 to 41, the NIA goes through what measures Australia is required to take under the treaty. Can the department provide the committee with some detailed comments as to which obligations—going from paragraphs 13 to 41 and including things like establishing jurisdiction, protection of witnesses, preventative measures and so on—duplicate existing undertakings in bilateral mutual assistance and extradition treaties? We would be happy for that question to be taken on notice.

Ms Blackburn—Do you mean the obligations which are set out in the convention and which we have detailed in the NIA?

CHAIR—Yes. Some are covered by existing legislation and some will require regulation. Would it be possible for the committee to receive some detailed comments as to which ones are covered under existing legislation and which ones will require regulation?

Ms Blackburn—I think we can respond to that now.

Ms Leonard—Most of the obligations you mentioned under the NIA are already covered under existing legislation. They relate primarily to offences and cooperation elements. Where we get to paragraph 26 in the NIA, under the heading 'Extradition', new regulations would be made to implement the requirements set out under article 16 of the convention. Those regulations would make states parties to the TOC convention extradition countries under Australia's Extradition Act. It would apply this convention between those parties for offences covered by the convention. Similarly, for 'Mutual assistance in criminal matters', beginning at paragraph 30 of the NIA, mutual assistance regulations would be made to apply the convention between the states parties under our existing Mutual Assistance In Criminal Matters Act. All other elements set out in the NIA would be met with existing Commonwealth legislation.

Ms Blackburn—That then has the effect of enabling the extradition and mutual assistance to take place without having a bilateral treaty. Where there is an existing bilateral treaty, it will simply run in parallel with the existing bilateral treaty obligations.

Ms Leonard—There are provisions in the convention to allow existing bilateral treaties to continue to operate between countries.

Ms Blackburn—Is that a sufficient answer to your question?

CHAIR—Yes, it is.

Mr Fewster—This might be an appropriate point to mention that, in consultation with our colleagues in the Attorney General's Department and the Office of Parliamentary Counsel, we are currently working on a proposal which, if it works as we think it will, would have obviated the need for you to ask that question. We want to link legislation and regulations of the kind to which you just referred directly to the text of the treaty via our database, the Australian Treaties Database. We are using the NIA number as the flag which will attach throughout the life of the treaty to the legislation and regulations, with a view that, when you go to the database, a link will take you directly to the relevant legislation and regulations.

CHAIR—That would be great.

Mr WILKIE—Does the TOC convention need to be ratified in order to bring its other protocols into effect?

Ms Leonard—Australia does need to ratify the head convention before it can ratify the protocols.

CHAIR—How many functions of the TOC convention are fulfilled by mutual assistance treaties?

Ms Leonard—By existing mutual assistance treaties?

CHAIR—Yes.

Ms Leonard—Existing treaties can fulfil a general function under the head convention in that there is already cooperation between Australia and number of countries that allows mutual legal assistance for a number of the offences covered if they have been criminalised in the other countries. The mutual assistance regime also adds generally to Australia's cooperation with other countries and links with law enforcement, so that also supports some of the cooperation elements in the latter part of the convention.

Ms Blackburn—In that context, we should recall that the Australian mutual assistance legislation actually enables Australia to receive a mutual assistance act from any country, whether or not we have a treaty relationship with them. The advantage of other countries ratifying these conventions and protocols is that this will then enhance Australia's capacity to make mutual assistance requests to other countries. We have a system in which we can take and process a request from any country, but that arrangement does not exist with all other countries, so we have bilateral treaty relationships with countries where they must have a treaty in place in order to receive and process a mutual assistance request.

CHAIR—The committee has looked at a number of mutual assistance treaties since 1996. Will the ratification of the TOC convention, which has a fairly wide coverage of state parties, remove the need for future mutual assistance treaties?

Ms Blackburn—It may limit the need for some of them, because a fairly broad range of offences is covered by this. If the other state party has ratified this convention, criminalised the conduct and implemented the convention, then the convention creates the obligation for that other country to respond to mutual assistance requests in that area for us. But sometimes we

have bilateral mutual assistance treaties because the other country, for its own constitutional requirements, must have a treaty in place in order to respond to our requests for mutual assistance.

Mr WILKIE—I am just curious about costs. Paragraphs 44 and 45 of the national interest analysis mention costs associated with the conference of the parties but do not give any estimated amount. Can the department provide the committee—and you might want to take this on notice—with some estimates of costs that will be associated with being a member of the conference of the parties? Also, are operational costs expected to exceed any cost currently associated with the obligations incurred under existing mutual assistance treaties?

Ms Blackburn—On the question of what costs will be incurred, I accept that that paragraph has a significant lack of detail in it. That is because these matters will not be discussed until the first assembly of states parties, which is in June this year. I mentioned the dates earlier, in my opening statement. It is expected that at the first meeting of states parties there will be discussion of whether there will be costs involved. There is a provision in the convention which encourages the making of voluntary contributions to funds to be run by the assembly to provide technical assistance. There is also a provision suggesting that one could use proceeds of crime confiscated assets funds. They are both voluntary provisions. There is no provision in the convention for the levying of mandatory membership payments. That is not to say, however, that the assembly of states parties cannot determine that states parties should make contributions to its activities. We would be unable to provide you with any information on that until after the first meeting of the assembly of states parties in June.

CHAIR—At the tabling there were several countries, including some very important countries in our region, that had not ratified the convention or any of its protocols. None of the UK, the USA, Germany, Italy, Japan, India, Pakistan, Singapore, Indonesia, Malaysia, Vietnam and Thailand has ratified it. I asked earlier about Indonesia, but my request is really more extensive. Does the department have an updated list of countries that have taken binding action with regard to the TOC convention since 3 December?

Ms Blackburn—We have the current list off the UN web site of countries which have ratified the convention, and we can provide that to the secretariat.

CHAIR—Thank you very much. Is the department aware of any other countries that are intending to or are about to ratify the convention?

Ms Blackburn—The Attorney-General's Department has no knowledge of other countries' intentions to do that.

Mr Chew—I have no information further to that current list.

CHAIR—I asked about Indonesia before, and I am sure the committee would be especially interested in Singapore, Indonesia, Vietnam, Malaysia and Thailand—in how far their processes have got and how close they are to acting. Is Cambodia a signatory?

Ms Leonard—Yes, Cambodia is a signatory.

CHAIR—We would be interested in Cambodia as well.

Mr WILKIE—Obviously the convention provides for participating states to have criminal offences for people involved in organised crime activities et cetera. What obligation is there on behalf of those states to actually prosecute? It is fine to have these laws on the statute books, but what obligations are there on states to actually prosecute people?

Ms Blackburn—There is an article—I believe it is article 11—which refers to prosecution, adjudication and sanctions. That asks a state party, at subclause 2, to:

... endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

Is that the kind of thing you were looking for?

Mr WILKIE—It is. What would happen to a state that was not fulfilling its obligations under that section?

Ms Blackburn—Sanctions against countries which do not comply with their convention obligations is a complex area.

Mr WILKIE—I imagine it would be. Who would bring a complaint of that nature, and how would it be dealt with?

Ms Blackburn—There is an arbitration provision in the text. Article 35 has a dispute settlement mechanism. I am not able to tell you whether or not that is a normal convention provision, but the TOC convention has a dispute resolution provision. I think we have indicated in our NIA that, on ratification, state parties are able to make reservation to that article. We have indicated in the NIA that Australia would not be making that reservation. There are, however, a number of countries which have ratified the convention and have done so with a reservation that means article 35 dispute resolution is not available.

Mr WILKIE—I will give you a hypothetical. I will refer to one of the other protocols, so I will break your rule, Chair. You might not want to answer this, and that is fine. If, for example, we caught people who were involved in people-smuggling activities, who should suffer very extreme penalties, and, instead of prosecuting those people, we sent them back to where they came from, would someone be able to bring an action of this nature against us because we had not prosecuted them?

Ms Blackburn—It would be theoretically possible for someone to say that they had a dispute with us because we had not taken prosecuting action. But, at this stage, this is an area of treaty enforcement in which I do not have any expertise. These questions would normally be handled by our Office of International Law, and the people who normally handle that are not here today. I am happy to take that on notice and try and give you some further information on action which could be taken against Australia if people thought we were not complying with our convention obligations, and, similarly, action which could be taken by a state party against another state party. I would be uncomfortable taking it—

Mr WILKIE—I am interested in that particular matter because we have taken a very strong stand—

Mr Zanker—I should answer that question because I am from the Office of International Law. It would be most unlikely that Australia would be in that sort of situation, given the penalties that are in the Migration Act and the attitude that has been taken towards people-smuggling. Generally, the situation with disputes with other countries is that you want to avoid arbitration if you can. The mechanisms for drawing attention to what we might consider to be shortcomings in the way other people are implementing their treaty obligations may include calling their ambassador and perhaps sending them a third-party note through the diplomatic channel, drawing attention to what we would perceive as their shortcomings in implementing their treaty obligations. Whether you would ever escalate the dispute further would depend on what the outcome is that you were likely to achieve. In some instances, as Joanne has said, in this particular treaty people have taken out a reservation to the dispute settlement mechanism because, basically, they do not want to become involved in compulsory processes. There are many treaties around, to which we are party, which do not involve the compulsory resolution of disputes; the settling of differences is by negotiation only. So it is really a matter of coming to the table and, hopefully, obtaining at the end of the day a satisfactory resolution under those circumstances.

Mr WILKIE—With respect: in terms of people-smuggling, we have done that recently. There was a boat off the coast of the Northern Territory, and people on that boat were involved in people-smuggling activities and would normally have suffered extreme penalties had they been prosecuted in Australia. We turned the boat around and sent them back. In that case—and I do not need a comment from you; this is my comment—we had the situation where people had committed an offence. Clearly, in my view, they should have been charged, yet we turned them around and sent them back without prosecuting them. Given the penalties, as you have said, that are there for people-smuggling, they should have been dealt with.

Ms Blackburn—Could I just clarify whether we ended up with anything that you wanted us to pursue on notice?

Mr WILKIE—I am curious as to what the procedure would be if someone felt that we were in breach of paragraph 2 of article 11.

Ms Blackburn—We will take that on notice.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

CHAIR—We now move on to the protocol that relates to trafficking in persons, especially women and children. First of all, regarding the declaration that Australia made on signature, can the department provide some comments on why this declaration was deposited, whether it is a standard clause in treaties of this type and how it may operate in practice?

Ms Blackburn—I will make some initial comments and then perhaps my colleagues from OIL or DFAT might like to add something. The making of a declaration on signature and

ratification is, I understand, a quite common practice which countries use to clarify the way in which they are interpreting the obligations. It does not operate as a reservation against the operation of the terms or a derogation from the terms of the treaty; it is purely declaratory. It continues, as I think I mentioned, in that, if Australia proceeds to ratify the protocol, that declaration remains as a declaration of the way in which Australia is interpreting its obligations.

CHAIR—This is a protocol that will require some legislation in the parliament. What new legislation will be required?

Ms Joseph—At the moment the department is reviewing the adequacy of Australia's existing offences of slavery, sexual servitude, deceptive recruiting for sexual services and extraterritorial people-smuggling aggravated by exploitation. All of those offences do already cover much of the activity which is described in article 3 of the trafficking protocol under the definition of trafficking in persons. As I said, the department is reviewing the adequacy of those offences against the definition of trafficking in persons which is contained in article 3 of the protocol. As you would be aware, article 5 obligates us to criminalise that conduct.

CHAIR—When do you expect the legislation to be ready for introduction into parliament?

Ms Blackburn—As I mentioned, we do have category A status for the current sitting. And I hasten to add that we are giving you any information about what the department are doing. However, no proposals for the details of the change have yet been submitted for ministerial approval. Our current proposal would be to seek approval for the preparation of an exposure draft of the amendments. The 99 amendments to the Criminal Code which introduced these offences were done after there was quite significant community consultation. It is an area that does tend to incite some controversy. So our proposal at this stage would be to prepare that legislation during the current sittings of the parliament and to seek to have public consultation on the changes which are proposed. That is of course assuming that the government accepts the proposals that the department are developing and agrees to proceed with public consultation on those proposals.

CHAIR—And that the committee recommends ratification.

Ms Blackburn—Indeed.

Mr WILKIE—Would the state obligations to enforce the protocol be covered by the head agreement?

Ms Blackburn—Yes, it is a protocol to the TOC convention, so it has to be read in conjunction with the convention for the primary obligations.

CHAIR—Going back to the declaration, have any other state parties to the protocol included a declaration such as this on signature?

Ms Blackburn—Can I take that on notice?

CHAIR—Certainly.

Senator MASON—Ms Blackburn, you mentioned before about public consultation with respect to this protocol. Public consultation is an area that this committee often asks about, as you would be aware—whether departments have discussed relevant issues with all potential stakeholders and so forth. Have you discussed this issue with all potential stakeholders, and who are they? I do not know that the people smugglers are potential stakeholders! Is there anyone in particular that this should be discussed with before—

Ms Blackburn—We are speaking only of the people-trafficking protocol, as I mentioned earlier.

Senator MASON—Yes.

Ms Blackburn—We are not doing any legislation proposals for the smuggling one. For the people-trafficking one, a range of stakeholders—Commonwealth-state—are involved in enforcement action. Obviously, at the Commonwealth level there are a number of agencies which have an interest in that legislation and how it is formed and enforced. There is also quite a large range of non-government organisations in Australia who deal with trafficking victims and a range of non-government organisations involved in the sex industry in those states where prostitution is legal. Consultation on the 99 offences covered all of those stakeholders, and I would expect that, subject to government agreeing to a consultation process, that is the range of people we would be looking to consult with.

Senator MASON—Terrific. Thank you for that. Chair, I raised this because the consultation process is always a difficult one in terms of timing. It is best that consultation happen beforehand so that the department can give evidence and tell us who they have consulted and what the results of that consultation were, so that people who were consulted can give evidence and so forth before us. I know that is not always possible, but where it is possible it is great if, before treaties are ratified, consultation occurs.

Mr Fewster—I would have to check the record, but I am pretty sure that over the last 12 months this convention has been raised in the Standing Committee on Treaties as well, which is the Commonwealth-state body on which all of my colleagues here are represented on the Commonwealth side. The states have certainly raised it, but I could check that.

Senator MASON—I am sure that is right. It was not even, really, a criticism; it was more that, as a matter of process, we go through this all the time—don't we, Chair?—

CHAIR—Yes.

Senator MASON—and it is better if consultation can happen earlier. But I am aware that there are complications.

Mr Chew—I imagine there may be some new state and territory legislation which requires introduction as well.

Ms Joseph—Because the obligation is limited to activity that is transnational in nature, complying with our obligations under the trafficking protocol only requires Australia to introduce new offences at a federal level.

Ms Blackburn—As you would be aware, we have the existing Commonwealth offences for slavery and sexual servitude. They were based on model offences produced by the Model Criminal Code Officers Committee. They have been implemented in four or five states and are under consideration in a number of other states. So at a domestic level there has been certainly quite extensive implementation by the states and territories of the model offences which were the basis of the 99 Commonwealth laws.

CHAIR—Is there anything more on this protocol?

Senator MASON—No.

Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime

CHAIR—Can the department advise why the TOC convention and protocols were not signed at the same time?

Ms Leonard—The signing conference for the TOC convention came quite quickly after the completion of negotiations for these instruments. The governments moved to sign the TOC convention immediately at the high-level signing ceremony in Italy. The people-smuggling protocols and the trafficking protocols raised a number of more extensive issues that the government wanted to consider before proceeding to signature.

CHAIR—Can the department advise why the third protocol to the TOC convention, which relates to illicit manufacturing of and trafficking in firearms, is not being proposed for ratification with the convention and the two protocols that are being considered today?

Ms Blackburn—We are very conscious that there are three protocols to the TOC convention. We have had the three of them under consideration. The firearms protocol we have not tabled at this stage, for two reasons. Firstly, for Australia to ratify the firearms protocol there will need to be legislation at state and territory level, because it covers a range of activities which are presently regulated by state and territory law. Secondly, the firearms protocol has been less enthusiastically subscribed to at the international level. From my figures, there are currently only 52 signatories and 12 parties to the protocol, so the firearms protocol, unlike the other two, is not yet in force internationally. So the decision was whether we would hold up TOC and the other two protocols until we were able to go forward with the firearms protocol. A decision has been made that there is a significant advantage for us in proceeding with the convention and the other two protocols. The firearms protocol will lag because of the need for further consultation and the need for state and territory laws to be passed. However, I should add that there is a firearms policy working group, which is a working group of the Australasian Police Ministers Council, which has been tasked with consultation with states and territories on the implementation of the protocol; and we certainly have it on the agenda of the working group.

Mr WILKIE—According to paragraph 18 of the national interest analysis, article 11 of the protocol requires that Australia strengthen border control as may be necessary to prevent and detect the smuggling of migrants. Can the department advise what has been done and what still needs to be done in this area to bring Australia into line with the terms of the protocol?

Ms Blackburn—It would be inappropriate for the Attorney-General's Department to comment on operational matters associated with border control. Those are matters for the department of immigration and also for the Australian Customs Service and the AFP.

Mr WILKIE—I imagine, though, it would be important to charge the people who have actually committed the offences if they have been caught. Can the department please do some research and advise me how many people have been charged with people-smuggling in, say, the last 10 years and what sorts of penalties they have received?

Ms Blackburn—Yes, I am happy to take that on notice; we have those statistics available.

Mr WILKIE—Thank you. Also, according to paragraph 21 of the national interest analysis, article 15 of the protocol requires that Australia take measures to provide or strengthen information programs to increase public awareness of the fact that people-smuggling is a crime and cooperate in the field of public information for the purposes of preventing potential migrants from falling victim to organised crime groups. Can the department advise what has been done and what may still need to be done in the area of raising public awareness, to bring Australia into line with the terms of the protocol?

Mr Zanker—That is really a question for the department of immigration, but I am aware that they have conducted significant leaflet campaigns throughout the Middle East, Indonesia and other source and transit countries. As far as I am aware, that is an ongoing program, but you might like to take that up with the department of immigration.

Ms Leonard—We also participate in a number of information-sharing activities through the Bali process, which was mentioned earlier.

CHAIR—Paragraph 25 of the national interest analysis refers to article 17 of the protocol, which relates really to state parties considering bilateral or regional agreements to enhance the provisions of the protocols. Can the committee have some information on what efforts Australia has made to this end to conclude bilateral or regional agreements or operational arrangements or understandings?

Ms Blackburn—If it is okay, I will take that on notice.

CHAIR—Certainly.

Ms Blackburn—There has been a range of activities, which obviously includes AusAID, DIMIA, AFP and a number of other agencies. I would be happy to coordinate an answer for the committee on that question.

CHAIR—Thank you very much. Since the tabling of the status list, have any further countries ratified the protocol?

Ms Blackburn—According to my latest information there are currently 112 signatories and 40 parties. I have a list that we can provide to the secretariat.

CHAIR—Thank you very much for appearing before the committee today.

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

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 10.59 a.m.