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JOINT COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 13 March 2000Monday, 13 March 2000

Members: Mr Andrew Thomson *(Chair)*, Senator Cooney *(Deputy Chair)*, Senators Bartlett, Coonan, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mr Byrne, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Bartlett, Cooney, Ludwig, Mason and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mrs Elson and Mr Andrew Thomson

Terms of reference for the inquiry:

Treaties tabled on 7 March 2000.

WITNESSES

Committee met at 10.00 a.m.

BOWMAN, Mr Norman Allan, Senior Legal Officer, Security Law and Justice Branch, Attorney-General's Department

FROST, Ms Robyn Louise, Principal Legal Officer, Office of International Law, Attorney-General's Department

HOLLAND, Mr Keith, Assistant Secretary, Security Law and Justice Branch, Attorney-General's Department

MANNING, Mr Michael, Principal Legal Officer, International Branch, Criminal Law Division, Attorney-General's Department

SCOTT, Mr Peter Guinn, Executive Officer, International Law Section, Legal Branch, Department of Foreign Affairs and Trade

CHAIR—I declare this meeting open. On 7 March 2000 there were nine proposed treaty actions tabled in both houses of parliament. Today, as part of our normal ongoing review of our international obligations, the committee will look at five of these proposed treaty actions. They are: firstly, the ratification of the Convention on the Safety of UN and Associated Personnel; secondly, the partial withdrawal of Australia's reservation regarding women's employment in combat and combat related duties in the UN Convention on the Elimination of All Forms of Discrimination Against Women; thirdly, the accession of Australia to the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations; fourthly, the proposed agreement between Australia and New Zealand on child and spousal maintenance; and, lastly, the amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures. I now call the representatives of the Attorney-General's Department and the Department of Foreign Affairs as part of our review of the proposed ratification of the UN Convention on the Safety of UN and Associated Personnel. Just for the record, we will not require anyone to give evidence on oath this morning but these are legal proceedings of the parliament and hence the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I invite one of your number to make an opening statement and then we will have some questions from the committee members.

Mr Holland—Thank you, Mr Chairman. The text of this convention was adopted by the United Nations General Assembly on 9 November 1994. It was an initiative of New Zealand, which was a member of the United Nations Security Council at that time, and Australia took an active part in the development of the convention. The convention is a legal response by the international community to an increased number of attacks and other acts of violence against UN personnel. During 1993 and 1994, more than 300 United Nations and associated personnel were killed during operations in places such as Somalia, Rwanda, Bosnia and Herzegovina. Others suffered serious injury or were detained. Acts against UN personnel continue. Last month the Security Council was advised that 184 UN civilian personnel had been killed since January 1992, including 98 who were murdered, but that only two perpetrators have been tried and convicted.

Australia signed the convention on 22 December 1995 but has yet to ratify it. In accordance with article 27.1, the convention came into effect on 15 January 1999 after 22 states had become parties. There are currently 29 state parties to the convention. The convention applies to categories of personnel who have a connection with certain types of United Nations operations. The two categories of personnel covered by the convention are United Nations personnel and associated personnel. United Nations personnel are divided into two other categories. The first category is those engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation and other officials and experts on mission to the United Nations or its specialised agencies who are present in an official capacity in the area where a United Nations operation is being conducted. The second category is a category of 'associated personnel' which covers certain other persons such as civilian contractors and persons belonging to humanitarian non-government organisations with a special link to the United Nations operation that justifies special treatment. The special link required is that the person is carrying out activities in support of the UN operation's mandate and that the UN gives an express consent to those activities.

Under this convention, the obligations of the convention are briefly as follows. The military and police components of a United Nations operation and their vehicles, vessels and aircraft must bear distinctive identification, while other personnel, vehicles, vessels and aircraft involved in the UN operation are to be appropriately identified, for obvious reasons. The responsibilities of host states are that the United Nations must conclude with the host state as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation. Transit states are to facilitate the unimpeded transit of United Nations and associated personnel to and from the host state.

In terms of the obligations of states parties to this convention and others, there is a requirement that United Nations and associated personnel must not be made the object of attack or of any action that prevents them

from discharging their mandate. States parties are also required to take all appropriate measures to ensure the safety and security of United Nations and associated personnel, their equipment and premises—in particular, states parties must take all appropriate steps to protect such personnel deployed in their territory from the crimes set out in article 9 of the convention. Captured or detained personnel must be released or returned to the United Nations and, except as provided in an applicable status of forces agreement, shall not be subject to interrogation pending their release. Personnel are to be treated in accordance with universally recognised standards of human rights and the principles and spirit of the Geneva conventions.

A key article of this convention, Mr Chairman, is article 9 which sets out the criminal responsibility. Each state party is required to make the acts listed under this particular article a crime under its national law, punishable by appropriate penalties which take into account their grave nature. The convention offences are: the intentional commission of a murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel; a violent attack upon the official premises, the official accommodation or the means of transport of any United Nations or associated personnel likely to endanger his or her personal life or liberty; a threat to commit any such attack with the objective of compelling a physical or juridical person to do, or to refrain from doing, any act; an attempt to commit any such attack; and an act constituting participating as an accomplice in any such attack, or an attempt to commit such an attack, or ordering others to commit such an attack. The above offences are broadly similar to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents.

In terms of the jurisdiction that this convention covers, Australia must establish jurisdiction where a convention crime is committed in Australian territory, on board an Australian registered ship or aircraft, by an Australian national, or by a person who is subsequently in Australia if that person is not extradited to a state party which has established jurisdiction. In addition, the government proposes, in accordance with article 10.2, to establish jurisdiction over a convention crime where it is committed with respect to an Australian national in an attempt to compel Australia to do or not do any act or by a stateless person whose habitual residence is in Australia. This optional jurisdiction will provide greater protection for Australians by allowing Australia to exercise jurisdiction over acts committed overseas by non-nationals where the victim is an Australian.

This convention is one of a number of conventions aimed at combating terrorism and acts of terrorism. Australia has an exceptional record in this area, and indeed at the end of 1998 the G8 urged most countries to become parties to this suite of conventions. Thank you, Mr Chairman.

CHAIR—Are there questions from the floor?

Mr BAIRD—That was very comprehensive, but to what extent did our own military personnel have input to this, the people on the ground? To what extent has that been disseminated to them now the agreement has been reached?

Mr Holland—Consultations were held fairly broadly with departments and also with the RSL, for example. So there has been input at the federal level.

Mr BAIRD—Was there any discussion with the guys who were just recently in Timor, for example, in terms of what they would like to see?

Mr Holland—No, I would say not at this stage.

Mrs ELSON—Yours was a fairly extensive presentation, but there is one bit there about the cost of prosecution or the cost to extradite criminals under that convention. What would you estimate the costs would be to Australia?

Mr Holland—There have not been any exact costings but we would expect that those costs would not be very high. This would be in accordance with the normal budget process we have where we would budget in for extradition proceedings and for such prosecutions. To the best of my knowledge there have been no additional funds sought in order to prosecute such offences.

Senator COONAN—This will not make any difference to our domestic law, will it? All of these crimes would already be on the statute book, wouldn't they?

Mr Holland—Well, most of them are, Senator, to the extent that it involves actions committed within the Australian jurisdiction. In fact, consultations were held with the states and the territories going back to 1995 and an agreement was reached through the Standing Committee of Attorneys-General that the Commonwealth legislation would operate only to the extent that these offences were not already covered in state and territory jurisdictions.

Senator COONAN—So will it make any difference at all to what we have to do? Do we have to legislate at all to keep up?

Mr Holland—The states and territories will have to ensure that the existing offences within their jurisdictions will come within the terms of the convention. In terms of Australia, obviously we would have to make some adjustments to cover those areas that the states do not cover, such as offences on board aircraft and also the extra jurisdiction that we are claiming in this.

Senator COONAN—That is what I was getting at—on the aeroplanes and the ships Australia has that jurisdiction already.

Mr Holland—We have, yes.

Senator COONAN—Does this extend it beyond that? I could not quite follow.

Mr Holland—Not to my knowledge, no. It would not extend it beyond those things that are already identified.

Senator LUDWIG—Can I just clarify a couple of points that I may have missed. If, for argument's sake, an Australian was to commit one of those listed crimes against a UN troop and that UN troop was of a different country of origin than Australia— we could pick any, I guess—would that then give that country of origin the right to extradite that person to stand trial for that offence in their country?

Mr Manning—I might seek to answer that one. Basically, what you are saying is correct. If the country of nationality of the victim of that crime had availed itself of the optional jurisdiction to protect its own nationals it would be entitled to request extradition. However, we would not necessarily be obliged to grant extradition. We would be entitled to refuse extradition, provided we were prepared to try the person here.

Senator LUDWIG—Does the convention make that permissible?

Mr Manning—It is in fact already permissible under Australian extradition law to refuse extradition on the grounds of the Australian nationality of the accused and alternatively to try the person here. The effect of this treaty is that if we refuse we are obliged to try the person—we cannot simply refuse to extradite and not at least give bona fide consideration to the evidence against them.

Senator LUDWIG—Yes, that is the point I was honing in on. I understand the current extradition laws but what I was looking at was the effect of this law on the current extradition laws. Is that the only effect, that in a sense it is in addition to the extradition laws and gives a further qualification to that?

Mr Manning—Yes, otherwise it would be a matter of discretion for Australia whether it chose to proceed in the matter. But we are obliged at least to give bona fide consideration.

Senator LUDWIG—And the convention makes that plain?

Mr Manning—Yes, it uses fairly standard provisions on the obligation to either extradite or prosecute. That is at article 10, paragraph 4.

Senator LUDWIG—You will actually require legislation then to give domestic effect to the convention; when is that likely to hit the decks?

Mr Bowman—The legislation program for the current sittings has it down for introduction, but because of higher priorities with the drafters we do not actually have a draft bill. However, we still hope it would be possible to introduce it in the current sittings.

Senator LUDWIG—So you hope it does not come up before you have a draft bill?

Mr Bowman—Yes. It is on the legislation program for the current sittings.

Senator LUDWIG—Can you give us an undertaking to provide that to the committee as soon as you have a draft put into effect?

Ms Frost—I understand that the chair of this committee has already written to the Attorney-General about having draft bills placed before the committee. A reply has been drafted and is under consideration by the Attorney-General at the moment. I expect that he will be writing to you fairly shortly.

Senator MASON—Regarding the scope of the act, you mentioned, Mr Holland, that the act related to those employed officially by the UN and those who were contractors with the UN with humanitarian non-government organisations. Does that also include a growing group of UN people, that is, UN volunteers? Are they included?

Mr Bowman—I think the short answer is that it probably would, provided the conditions are met that they are part of a UN organisation or they are part of one of the other bodies present supporting the UN operation with the consent of either the Secretary-General or the relevant part of the UN in the definition of 'associated personnel'.

Senator MASON—Yes, I have looked at that.

Mr ADAMS—It states, 'Take appropriate measures to ensure the safety and security of United Nations and associated personnel.'

Mr Bowman—The definition of 'associated personnel' is in the convention and it is quite broad. I think it is covered by those two arms: so long as they are there with the express consent of the UN and they are actually operating to support the UN's mandate.

Senator MASON—I only asked, Mr Bowman, because I was briefly with the UN myself in Cambodia in 1992-93. Most of the people in the human rights component were United Nations volunteers. In fact, this issue raised its ugly head because one of the UN volunteers was killed and the legal protection was not there—indeed, even in terms of the compensation that could be paid to his family; there was very little that could be done. So it is good that the UN is moving on this.

Mr Bowman—Yes, I think the definition of 'associated personnel' has deliberately been written broadly to cover persons who might not be necessarily part of the UN force but are there supporting UN operations, such as refugee workers.

Senator MASON—Is it sufficiently broad to cover people, for example, with the Red Cross and so forth in humanitarian non-government organisations?

Mr Bowman—Again, as long as those two conditions are met—sorry, I will defer to DFAT.

Mr Scott—I was just going to say that at this point we actually do not think that this particular convention covers autonomous humanitarian organisations, for instance, CARE or Medecins Sans Frontieres. Of course, the International Committee of the Red Cross and the national committees are protected under the Geneva conventions on the laws of armed conflict essentially, and also the two additional protocols. Parties to those instruments have certain obligations with regard to respecting and protecting people under red cross symbols, red crescent symbols and so on. But autonomous humanitarian organisations, unless they are acting under contract with the UN as part of a specific UN operation, would not be covered by this particular convention.

Senator MASON—So someone from AFIDA—which is the humanitarian trade union organisation that was in Cambodia—would not be covered?

Mr Scott—If they were there at the request of the UN on contract with the UN to do a particular task there then they would be covered.

Senator MASON—They were not.

Mr Scott—If they were there of their own volition as part of an international response, but not specifically contracted by the UN, then at the moment in our opinion they would not be covered.

Mr ADAMS—What has been the response from the state and territories to this proposal?

Mr Holland—It has been fairly positive. Indeed, the arrangements for the implementation of the convention were worked out through the Standing Committee of Attorneys-General. My understanding is the Attorney will be raising it again at the meeting of the Standing Committee of Attorneys-General at the end of this month.

CHAIR—Thanks kindly for the evidence this morning. There being no further questions, we will move to the next proposed treaty action, the proposed partial withdrawal of Australia's reservation regarding women's employment in combat under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

[10.21 a.m.]

BENTLEY, Ms Karen**, Assistant Secretary, Office of the Status of Women, Department of the Prime Minister and Cabinet**

GATES, Commodore Raydon**, Director-General, Career Management Policy, Department of Defence**

MASON, Mr David**, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade**

SIMM, Ms Gabrielle Anne**, Desk Officer, International Law Section, Legal Branch, Department of Foreign Affairs and Trade**

STERN, Ms Robyn**, Acting Director, International Law Section, Department of Foreign Affairs and Trade**

CHAIR—Can I ask one of you to give us an opening statement and then we will have questions from the floor.

Ms Bentley—Yes, thank you. This amendment to Australia's reservation to the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, brings the reservation in line with current domestic policy. Australia signed CEDAW in 1980 and ratified it in 1983, with two reservations, one of which was on women in combat and combat related duties. Women have been able to serve in all Australian Defence Force units, except direct combat units, since 1992. The purpose of the partial withdrawal of the reservation relating to women serving in combat related duties is essentially housekeeping. It brings it up-to-date and into line with current domestic policy.

The Sex Discrimination Act 1984 was amended to reflect this change in 1995. As a result of defence policy changes, women are now able to serve in almost 90 per cent of all categories of employment in the Australian Defence Force. In the Army, women are eligible for employment in over 80 per cent of positions. Women are excluded only from employment in armour, artillery, combat engineer and infantry units. Women in the RAAF are eligible for employment in all positions—including as aircrew for all aircraft types—except as airfield defence guards. In the Navy, women are excluded only from the clearance diver service and are eligible for employment on all naval vessels.

Mr BAIRD—Excuse me, but when you say what the exemptions are, are you talking about after the ratification of this treaty or before?

Ms Bentley—The exemptions are part of Defence Force policy.

Mr BAIRD—But are you saying that this ratifies—

Ms Bentley—Amending the reservation brings it in line with current domestic policy.

Mr BAIRD—So these exemptions that you are talking about remain so?

Cdre Gates—Correct, they remain as of today.

Ms Bentley—In terms of Australia's international obligations, there will only be minor additional obligations placed on Australia as a result of the partial withdrawal. These relate to Australia's need to report to the CEDAW committee on the measures adopted in respect of women in combat related duties. The partial withdrawal does not require domestic implementation as it has effectively already been implemented and there are no additional costs for Australia. The Office of the Status of Women consulted with states and territories and the community about the proposed change to the reservation. There was broad support for the change and acceptance that the reservation is out of step with current domestic policy.

CHAIR—Terrific. Let's proceed to questions.

Senator TCHEN—Commodore Gates, will the ratification of this convention put more pressure on the Australian Defence Force to open all duties to women?

Cdre Gates—From a defence point of view, no. We will continue to progress policy as we normally do, reflecting societal norms. This is in fact a reservation withdrawing what we are already doing, and that is combat related. I do not believe reflecting how we do business now will bring any pressure on us to be forced to go down the combat line to meet international treaties regardless.

Mr BAIRD—I want to get a bit more of a handle on this in terms of what is not covered under this. It is still direct combat that women are excluded from; is that right?

Cdre Gates—That is correct. The areas now that women are excluded from under defence policy are direct combat. I guess the easiest way to explain that is hand-to-hand; that is about the only thing that we come down to now. That will include your front-line army: your infantry, your artillery, your armour and your

combat engineers. In the Air Force, that would include your airfield defence guards, the ones who actually protect the perimeter of an airfield; they could end up in hand-to-hand combat. In the Navy's case, it is clearance divers, who in their work onto the beaches again have the opportunity to end up in hand-to-hand combat. They are the only ones that are direct combat and that women are excluded from at this time.

Mr BAIRD—Why are they excluded? What is the military's reason for excluding them?

Cdre Gates—The military are in fact working towards developing a policy that will be competency based and that will not exclude women from these positions. At the moment it is reflecting our direction, as we understand it, from society, and also the fact that we are world leaders in this. There are only three other nations in the world that have women in direct combat. We will have in place by the middle of 2001 a competency based policy that would, if the government so chooses, allow women to also be involved in combat duties.

Mr BAIRD—Ms Bentley, do you feel that this reflects where society is at at the moment?

Ms Bentley—Our obligation is to look after CEDAW and our obligation is towards CEDAW. We would not propose to move anything until there was policy in place and then we would—

Mr ADAMS—What is CEDAW?

Ms Bentley—CEDAW is the Convention on the Elimination of All Forms of Discrimination Against Women.

Mrs ELSON—What are the disadvantages of having women in combat duties?

Cdre Gates—The way we are putting our policy together, we in Defence do not see any disadvantages in having women in combat duties. What we are doing is putting into place something that is going to stand the rigours of testing and also appease society as we understand that at the moment. What we are saying is that if women can do the job—and that is why we are starting to bring it in as competency related—they will be allowed to do the job. From a Defence point of view, we are certainly not pushing tokenism —and I do not like to use that word; we are bringing it all back to core and physical competencies. Of course, there are males who cannot be infantrymen either because they just do not have the physical skills or strength required to do that. If all sexes can meet those requirements, we see no disadvantages in that. In fact, from our point of view it opens our recruiting market. It is an advantage for Defence because more people become capable. If we can open our markets so that we get more females into these positions, that is better for us, and especially so in this recruiting climate.

Mrs ELSON—I was speaking to a US military man once and he said the biggest disadvantage of having women on the front-line in combat duty was that they were targets, that it is in our nature that if a female gets hurt half a dozen men go to her assistance and then they get shot. He said it was a big disadvantage to have women on the front-line, mainly for that reason—for the security of the whole operation.

Cdre Gates—There are a lot of myths, misconceptions and opinions in that respect but none that have been tested. We do not believe that is enough reason for us not to have a policy in place so that if the government so chooses we will be ready to go.

Mrs ELSON—Would your services give a directive for that not to happen, that if a woman did get shot she is like every other military person?

Cdre Gates—That is very, very specific. We could not say, 'If a person gets shot you're not to go to their aid,' but at the same time in our training we are saying, 'That is the objective,'—and I am talking real army stuff here—'and that is what we have to do.' In a situation where they were tested under fire like that their training is such that those people would take their objective and then come back and tend to the wounded. Also, always behind there you have your second-line coming up to do exactly that— to look after the wounded. We do not believe that is a significant factor to stop us developing this policy.

Senator COONAN—As I understand it, the test is whether or not the particular personnel, man or woman, can meet the task?

Cdre Gates—Correct, Senator, that is exactly what we are looking for.

Senator COONAN—So if flying aeroplanes or using other equipment just needs technical skills there would be no problem at all, no matter who you had, but there could be some concern if there was a direct contest of physical strength. Is that the problem?

Cdre Gates—That is the concern. Right now that is why women are in 88 per cent of our jobs, because they can fly aircraft, they can serve on my ship—as a personal example, 30 women were part of my crew in HMAS *Adelaide*. There are no restrictions on their getting on with the job. A warship, of course, is exactly that—a ship of war that will go into harm's way—and that is why we are proposing that this reservation be

moved, because women are doing these jobs right now. It is the hand-to-hand combat, the physical strength one, that is our concern at the moment. We are trying to develop policy that will not stop them doing that job if they can meet those requirements.

Senator COONAN—So if a woman could play league football, why not let her play?

Cdre Gates—I don't know if I want to go there, Senator.

Senator LUDWIG—That is a different matter altogether.

CHAIR—Senator Ludwig, do you have any questions?

Senator LUDWIG—I only wish to compliment you on your move to harmonise with CEDAW. I think it is a positive and good move and nice to see.

Senator MASON—Just following on from Mrs Elson's comments, what do the average diggers out in infantry think about potential moves to have women serve in infantry units?

Cdre Gates—The troops on the ground?

Senator MASON—Yes.

Cdre Gates—We have done some focus group work with them and a lot of the things that Mrs Elson has raised come to their mind. They talk about male bonding and being part of the team, yet when we have put the females into the environment the bonding is part of the team and the gender does not matter. I have seen that first-hand on the ships. We would have rest periods on the flight deck of the ship and you would walk down there and the engineers would be sitting here, the signalmen would be sitting here, the cooks would be sitting there, and the women in each part of those groups—and it might be only one or two—would be sitting with their particular teams, not a group of women over here looking at all the men, or all the men looking at all the women. They are very much part of the team.

Senator MASON—Are there many women who are keen to engage in combat roles?

Cdre Gates—That is the question that we cannot answer. Right now the Defence Force reflects that only 12.9 per cent of our Defence Force is female. Despite our best recruiting efforts, that is not increasingly dramatically—I am pleased to say it is increasing, but not dramatically. The Canadian experience was that they opened these positions up and they just did not have people who wanted to do it. We are developing process and policy that allow the right of choice as opposed to how many are going to take it up.

Mr ADAMS—Do you think that your experience on board has shown that there has been a breakdown of stereotyping—the old days of going to a dance and the girls on one side the boys on the other? Do you think that we are breaking that stereotype down?

Cdre Gates—I believe we are, Senator, yes.

Mr ADAMS—I take it that we ratify the convention with our qualification, and we notify the Secretary-General of that, do we? How does that work?

Ms Stern—What we will do is lodge an instrument with the Secretary-General that simply advises him that we are updating, or modifying, the reservation that we lodged in, I think 1983, at the time we ratified the convention.

Mr ADAMS—And I take it there is no difference in pay rates and any of that stuff?

Cdre Gates—No, not at all.

Mr ADAMS—It is all basic standard conditions of employment?

Cdre Gates—Correct.

CHAIR—Many thanks for your contributions—they were very clear and this committee is satisfied. We will move on to discuss the next of the proposed treaty actions. We will deal with the next two treaties together, the proposed Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the proposed agreement between the government of Australia and the government of New Zealand on child and spousal maintenance.

[10.35 a.m.]

BIRD, Ms Sheila Margaret**, Assistant General Manager, Child Support Agency, Department of Family and Community Services**

McGINNESS, Mr John**, Principal Legal Officer, Attorney-General's Department**

CHAIR—Welcome. Could we have a short opening statement from one of you and then we will move to questions.

Mr McGinness—Thank you, Mr Chairman, I have a few brief opening remarks. Both of the treaties we are considering in this part of the meeting this morning relate to international enforcement of child support and spousal maintenance obligations. Australia has had international arrangements in this area dating back to the 1960s when some arrangements were set up by state governments, mostly with other Commonwealth countries. In the 1970s, these arrangements were taken over by the Commonwealth, following the passage of the Family Law Act 1975. Generally speaking, the existing arrangements are non-treaty arrangements where Australia simply reciprocates in the recognition of overseas maintenance orders or takes legal proceedings in Australia to establish a maintenance order for the benefit of an overseas payee.

When the Commonwealth took over these arrangements negotiated by the states it attempted to extend them to some extent and made arrangements with the United States and with some European countries. In 1994, the Joint Select Committee on the Operation of the Family Law Act considered the arrangements as part of its inquiry into the Family Law Act and made recommendations for the extension of Australia's international arrangements in child support enforcement overseas. It also recommended that emphasis be placed on the negotiation of arrangements with certain high migrant source countries with which we do not have existing international child support enforcement arrangements.

Our discussions with European countries, in particular high migrant source countries, indicated that rather than negotiating bilateral arrangements they prefer that Australia accede to the relevant international convention on enforcement of maintenance decisions, which is the Hague convention the committee is considering this morning. The convention has been ratified by 19 countries, mostly European, and many of them are high migrant source countries for Australia. It offers a number of benefits for Australia. The one particular benefit I would mention is that it provides for the recognition and enforcement by those countries of administrative assessments of child support. In the past we have only had arrangements that provided for recognition of court orders for maintenance. As the Australian child support system moves to cover the whole area of child support, increasingly Australia needs to have arrangements with other countries that deal with recognition of administrative assessments for maintenance as well as court orders. That is one benefit which the Hague convention clearly offers: it covers administrative assessments as well as court orders.

The second agreement which has been tabled is an agreement with New Zealand on recognition of enforcement of child support and spousal maintenance liabilities. New Zealand is our biggest jurisdiction in respect of reciprocal recognition of child support orders and we have had a number of difficulties in recent years in those arrangements. There have been conflicts in jurisdiction between the Australian Child Support Agency and the New Zealand Child Support Agency. For example, in some instances both agencies have attempted to issue child support assessments in respect of the same children; in other cases New Zealand has issued child support assessments which have had the effect of overriding pre-existing Australian court orders for maintenance and thereby extinguished quite substantial arrears owed to Australian payees. In view of those jurisdictional problems it was clear that a comprehensive agreement with New Zealand was appropriate that dealt with the question of jurisdiction, as well as the question of recognition and enforcement of maintenance liabilities.

The other aspect of the agreement which motivated its negotiation was some difficulties that Australian payees have had in obtaining cooperation from New Zealand authorities. In some cases we were experiencing problems due to the fact that a variety of agencies in New Zealand were responsible for international enforcement of child support liabilities, ranging from their Child Support Agency to their courts, their Department of Courts, and in some cases their social security department. The agreement which has been tabled includes provisions which require New Zealand to designate one authority to handle all Australian maintenance liabilities which are sent to New Zealand for enforcement. That agency will take responsibility for ensuring that those cases are pursued to a conclusion.

These two agreements were the subject of an issues paper issued by the Attorney-General's Department in November last year. It was circulated widely to all agencies operating in the field of child support and spousal maintenance and to groups which have a policy interest in the subject area. As the NIA for both agreements indicate, there was general agreement with the proposals and very little in the way of comment on the

implementation of the agreements. Our expectation is that these agreements will operate satisfactorily to the benefit of the vast majority of Australian parties who are involved in child support enforcement cases.

Mr BARTLETT—This agreement, presumably, will be of benefit to the payees because it will hasten the process by which they can receive maintenance payments. Has there been any evidence of the non-custodial parents, or the payers, moving between the two countries to avoid their obligations in the past? If so, how extensive has that been?

Ms Bird—I guess it is difficult to know the motives for people moving between Australia and New Zealand. We do know, however, that there are more New Zealand child support payers in Australia than there are Australian child support payers in New Zealand, but we do not have any hard evidence as to the motivation for people to leave the country.

Mr BAIRD—But that is not surprising in that the migration is very much in that area.

Ms Bird—Yes, that is right.

Mr BARTLETT—Do you see any way that this could create difficulties for the payers? One of the concerns that is often expressed in Australia is that the operation of the child support system places fairly heavy burdens on payers. Is there any way this might increase the burden?

Ms Bird—I do not believe so. In our discussions with New Zealand, the New Zealand Child Support Agency will give payers access to telephones, for example, so that they can contact the Australian Child Support Agency at no cost to themselves, and vice versa for New Zealand payers in Australia. Australian payers who are in New Zealand will still have access to all of the administrative mechanisms that are available to Australian payers residing in Australia.

Mr BARTLETT—So seeking redress for cases of overpayment or administrative problems will be taken care of at no extra cost to the payer?

Ms Bird—That is right.

Mr BARTLETT—Given what you said before, that there are more New Zealand payers in Australia than Australian payers in New Zealand—and also the fact that that relativity may well also apply to a number of other countries—is it not likely that will add to the cost to the Australian Child Support Agency of administering the payment process for overseas payers living in Australia?

Ms Bird—In relation to New Zealand specifically, the arrangement is that if there is an imbalance in the number of cases that each country asks the other one to action on their behalf then the country that is asking the other one to collect more cases will make a payment in relation to the collection of those payments. So this agreement will not cost anything in addition to our normal costs in Australia.

Mr BARTLETT—Okay, that is good to know. What about in the treaty with other countries?

Mr McGinness—In respect to the Hague convention, we made inquiries of other countries that were already parties to that convention and they stated that the usual number of cases they receive every year under the convention varies between 50 to 70 cases. Our expectation is that we can handle that extra number of cases with existing resources so we do not see it as having any significant resource implications.

Mr BAIRD—I presume that you take account of exchange rate variations in your calculations and that the same percentages apply in terms of the number of children et cetera. If the individual is earning $NZ100, is that amount of take then converted over to the Australian amount rather than just being taken at face value?

Ms Bird—My recollection here is that we will issue an assessment in Australian dollars for an Australian payer who is in New Zealand. That will then be converted and the exchange rate that is in place at the time it is converted is the one that will be applied. There will not be adjustments later on because of different exchange rates—that is the only adjustment that will be made.

Mrs ELSON—Can you just clarify a point, particularly with the number of cases in my electorate. In the past when the payer has gone to an overseas country the Child Support Agency have told the payee in Australia that it was not worth chasing, that the cost was not worth it. Was that because it was not a court order? Is that where the difficulty was and where this is going to ratify that?

Ms Bird—I would hope that our people were not saying that they should not pursue it because it is not worthwhile.

Mrs ELSON—No, I should not say ‘not worthwhile’. The cost was too great to the Child Support Agency.

Ms Bird—There is not actually a cost to the Child Support Agency.

Mrs ELSON—There isn’t?

Ms Bird—No.

Mrs ELSON—Of pursuing this if it is not a court order?

Ms Bird—Under the existing arrangements, the payee can seek assistance from the Attorney-General's Department to get a court order which the Attorney-General's Department then transfers to the other country for that country to collect on our behalf. However, that only applies to countries that we have agreements with.

Mrs ELSON—Then in other words that problem could still exist? If you do not have an agreement with them, it is just not worth pursuing?

Mr McGinness—Perhaps I could add something there. I think the response that your constituents were being given was that because Australian child support assessments are administrative assessments they cannot be sent overseas for enforcement. Therefore, they have to go off to court and get an entirely new court order, which is an expensive process. In many cases it would not be cost-efficient to do that. With the Hague convention and with the new New Zealand agreement there is a change in that we will be sending administrative assessments overseas for enforcement so that cost of going to court and getting a court order will no longer apply and it will be a great advantage to payees here in Australia in being able to send that through.

Mrs ELSON—It will be too, thank you.

Senator COONAN—If you are a payee in Australia—or a payer; payee is probably a bad example—and there is an administrative assessment made overseas, Australia will just enforce that no matter what the particular position is?

Mr McGinness—The vast majority of liabilities we are receiving from overseas countries will still be court orders. Some countries may have administrative assessments—Scandinavian countries have a child support scheme. In the vast majority of those cases, the overseas authorities do contact the payer in Australia and ask for information about their income, their assets and their liabilities. So with any assessment we receive from overseas we would have expected the overseas authorities to have taken into account the Australian payer's ability to pay.

Senator COONAN—But there is no ability on the part of payees or payers in Australia to challenge any order that is made overseas under this treaty?

Mr McGinness—The understanding is that we would still apply the existing provisions in the Family Law Act which do allow the payer a limited right to go to an Australian court and argue, for example, that since the overseas authority made their decision his circumstances have changed and that another order was appropriate. At all times he has the option of applying to the overseas authorities for them to vary their order, and in many cases that may be more appropriate since they are the ones with information about the payee's needs and requirements for maintaining the child.

Ms Bird—And specifically in relation to New Zealand, the New Zealand payer living in Australia would have full access to the administrative arrangements in New Zealand, so—

Senator COONAN—By phone?

Ms Bird—By phone, yes, or by writing, which is the way that most payers and payees deal with the Child Support Agency if they live in that country as well.

Mr ADAMS—Can I just come into this? So we are actually saying that we can get a court decision overseas on an Australian national to pay X maintenance and that individual has not had access to that court?

Mr McGinness—No, what I am saying is that, so far as I am aware, in all cases the payer would have been invited by the overseas authorities to make submissions about his income, his assets and liabilities, so the overseas authority would have taken that information into account in making its decision.

Mr ADAMS—What if they cannot find them? They still make a decision, just like could happen here under our law, and that person is then liable to meet those obligations.

Mr McGinness—That is correct, and in the reciprocal situation the Child Support Agency or a court here may make a default order where they have not been able to locate the payer overseas. In those cases the court applies much wider grounds for a review of its decision and the agency would do so as well.

Mr ADAMS—What is the number of people we are talking about, including New Zealanders?

Mr McGinness—I can give you figures for Australian payers who are paying money to overseas authorities.

Mr ADAMS—We would have figures for both ways, wouldn't we?

Mr McGinness—Yes. The Attorney-General's Department currently has about 4,000 ongoing cases where overseas orders have been registered in Australia and are being enforced here.

Mr ADAMS—So that is 4,000 Australians paying for their children overseas?

Mr McGinness—Yes.

Mr ADAMS—How many Australians overseas are paying for children here, or how many other nationalities are paying for children here?

Mr McGinness—We do not have precise statistics on that simply because some Australian payees go direct to overseas authorities and deal directly with them to get money to maintain their children. We have sent a hundred cases this year overseas to be registered and enforced by overseas authorities.

Mr ADAMS—I have some difficulties with the concept of them not having access to a court. It is all right for them to write to somebody and say, 'The mother of the child is seeking maintenance, what's your circumstances,' et cetera but then that person has to submit information but has no influence over that court, other than being there or engaging representation. It is a pretty tough call.

Mr McGinness—I think it is inherent in any system for international enforcement of child support that you simply have one party in one country and another party in another.

Mr ADAMS—Is there anyone there representing the Australian national?

Mr McGinness—It varies from country to country. Often it will be an official of the overseas court who takes on the role of presenting the Australian payer's case to the overseas court. That is what happens, for example, here in Australia where an overseas payer wants to make submissions to an Australian court about a maintenance order. The clerk of the court presents that material to the court. As I say, it is just inherent in the system that that is the way it operates.

Senator COONAN—So the Child Support Agency in Australia can make an order, on the application of a payee, that binds somebody in some other country under this scheme; is that right?

Ms Bird—It will be able to, specifically in relation to New Zealand. We will be able to use the formula assessment that is in the legislation, use the income of the payer in New Zealand, and then we would then issue an administrative assessment of child support. The payer in New Zealand would then have the option of objecting to the assessment. They could give us a better estimate of their income or they could apply for the assessment to be changed because there were special circumstances.

Senator COONAN—They can apply in Australia for that?

Ms Bird—Yes.

Senator COONAN—Is it the same with, say, the Scandinavian countries who, as I understand it, also have an administrative scheme?

Mr McGinness—That is correct, yes. Their law would provide for the recognition of administrative assessments made by the Australian Child Support Agency and our law would provide for recognition of their administrative assessments which are sent to us for registration and enforcement here.

Senator COONAN—And ones that we send to them they will enforce too?

Mr McGinness—Yes.

Senator COONAN—Then what does the payer do? He or she objects in the country in which they reside?

Mr McGinness—Usually they would apply to their authorities to have their objection or appeal referred back to Australia for consideration. That is the usual procedure, rather than—

Senator COONAN—So there is no way the payer can initiate a case in the country in which he or she resides, under this scheme it is all at the behest of the payee to initiate some proceedings?

Ms Bird—To avoid the problems that we have at the moment where assessments can issue in two countries for the same children at the same time, the basis of the agreements are that the country in which the payee resides would be the one that was responsible for determining how much child support is payable.

Senator COONAN—I thought that might be the case. We are going to get a lot of payers coming through the doors of our electoral offices, I think; everybody will have them coming in. What they will be saying is that there is no way that they can put their case in an effective manner and there is no way they can initiate proceedings, and that is correct under this agreement.

Ms Bird—Well, an Australian payer living in another country would still be able to apply for an Australian child support assessment.

Senator COONAN—But how can you run your case from overseas? Have you ever tried to do that?

Ms Bird—No, I haven't. However, an Australian child support assessment is based on some very clear figures that go into that assessment regarding the numbers of children and the taxable incomes of both parents.

Senator COONAN—I don't want to persist with this. I think everybody around the table would have had the same sort of experience as I have had. I think the theory is not supported in any way by the facts of the matter, but that is not a matter that you can deal with.

Mrs ELSON—Mr Chairman, can I just ask a question following on from Mr Adams. You did point out that there are 4,000 Australians paying for their children that live in other countries. I think it is very important to this committee to find out how many people overseas are paying for children living in Australia, because I think you said before that if an imbalance was there Australia would be getting money back from the overseas payments. Is that right?

Ms Bird—That was specifically in relation to New Zealand. Our agreement with New Zealand provides for that balance.

Mrs ELSON—How much money is Australia making? I find it a little bit difficult to comprehend. If we are coming to the party and sending our money overseas for children to be supported, we should at least make sure that the children in Australia are being supported by people living overseas.

Mr McGinness—That has always been the policy—

Mrs ELSON—If it is just a moneymaking thing where we are getting paid to do what we are doing but we are not looking after Australian children, that would concern me.

Mr McGinness—That has always been a concern to us, that in simple number terms there were more cases coming into Australia for enforcement than we were sending out.

Mrs ELSON—Why don't we have the figures then? You easily gave us the 4,000 going out but I would like to know how many are coming in.

Mr McGinness—We certainly do have figures for people who go through the Attorney-General's Department and ask us to get their orders registered overseas for enforcement; we can give you those. What we do not have is figures for payees in Australia who go direct to overseas authorities and ask them to enforce the liabilities. We simply have no contact with them because they prefer to deal direct with overseas authorities. I would make the point that the—

Mrs ELSON—I would like to know from the Child Support Agency particularly how much we are collecting for Australian children.

Ms Bird—We do not actually do this work; it is done in the Attorney-General's Department.

Mrs ELSON—Can we get those figures then from the Attorney-General's Department?

Mr McGinness—Yes.

Mr BAIRD—If somebody has a child in New Zealand, for example, do all the same rules apply? If the partner here has an increase in their overtime bonus, whatever it might be, they are paying a percentage of that for the child in New Zealand; is that right?

Ms Bird—Yes.

Mr BAIRD—Don't you think that is somewhat unfair that the mother or father who is living here and supporting them—usually the father—would have those same rules apply, because obviously there is going to be very limited access to a child living in another country? Should there perhaps be some consideration of a cap being provided when the child is physically taken out of the country?

Ms Bird—One of the provisions in the Australian child support legislation is that if the payer does have high costs to have contact with his or her children then they can apply to have that taken into account in determining how much child support is payable. So an Australian payer living in New Zealand could apply to have the child support reduced because, for example, they are regularly paying for the children to visit New Zealand or for themselves to come back to Australia to spend time with the children.

Mr BAIRD—But is that calculated on once every two weeks, once a month? If my children lived around the corner obviously I could see them every other day, or at least once a fortnight.

Ms Bird—It is calculated on what actually occurs. It is not some notional or hypothetical figure, it is on the costs that the payer would actually incur to have contact with his or her children.

Mr BARTLETT—So if I flew to New Zealand every month to see my children, that would be deducted from my child support obligations?

Ms Bird—Not necessarily the full amount. The senior officer would have to look at all the circumstances of the particular case, because, for example, that may then mean that you do not pay anything in child support and depending on the circumstances of the payee and the children that may be inappropriate.

Mrs ELSON—Isn't it part of legislation that it cannot exceed 25 per cent of what you are paying per month?

Ms Bird—No, that is a different measure that deals with how you can actually pay your child support. This actually would reduce the child support liability.

Senator LUDWIG—You were talking about the domestic legislation that will be introduced and passed by the Commonwealth parliament early in 2000. Is that available?

Ms Bird—Yes, I believe it was tabled last week, on 9 March.

Senator LUDWIG—A draft was not provided to the committee first?

Mr McGinness—I do not think we specifically received a request for a copy of that bill. As one of my colleagues mentioned earlier in the hearing, there has been some correspondence between the chairman and the Attorney-General which I think the Attorney-General is on the point of replying to.

Senator LUDWIG—We will work that out as we go along, I suspect, and I will ask that of all future participants to see how we go. How broadly have you consulted with people about this, for example the state agencies, the various groups—those people who would otherwise assist both overseas and Australian people on these sorts of issues? From your perspective, how broadly people are aware of these changes?

Mr McGinness—As the NIA indicated, we circulated it to state and territory law departments—that was through the Standing Committee of Attorneys-General —and they all circulated the paper to legal aid bodies who would be the main source of advice for people affected by these sorts of international arrangements. Also to the courts—

Senator LUDWIG—I saw that, and it all seems to be court focused. I was talking more about people outside that realm, about general community groups and people who look after these sorts of things.

Mr McGinness—The NIA refers to groups interested in child support policy issues. We were actually using a circulation list used by the Family Law Council which includes all the public interest groups who would have an interest in this area.

Senator LUDWIG—Good.

Mr ADAMS—All the public interest groups were sent this to have a look at?

Mr McGinness—Yes.

Senator LUDWIG—One matter that arose during some of the discourse that occurred earlier was the assessment for child support. On the example that you gave before of New Zealand, if it is a percentage, is that determined on a New Zealand salary or is that converted to Australian dollars? The information that was given earlier was that the exchange rate at the time of the assessment is the point that is taken. If that changes substantially is there the ability to reopen or reexamine that issue? You would be aware that for a whole range of reasons exchange rates can vary over a 10 year period quite substantially—up or down—and this could significantly affect the amount. It could go either way, I guess.

Ms Bird—A child support assessment is automatically updated about once a year—at the longest once every 15 months. The assessment itself is never in place longer than 15 months so there would be an automatic updating. However, if something dramatic happened to the exchange rate then there would be that option to say there were special circumstances and that the assessment should be changed.

Mr BARTLETT—Just pursuing the matter we discussed before, Ms Bird, you said that there is provision in the legislation to apply to the Child Support Agency to have the maintenance obligation adjusted for travel costs. How successful are those applications? What is the record of that?

Ms Bird—Off the top of my head I think it is something like half of the applications that are made are successful. A significant number of those that are not successful are because the parent has not actually demonstrated that they have incurred, or will incur, the costs to have contact with the children. I could check that figure and confirm for the committee what the percentage is.

Mr BARTLETT—Could you do that, yes, and particularly the percentage who are successful where travel costs are substantiated. One would hope that would be fairly high.

Mr BAIRD—And is there a cap on it too. What is the maximum that is allowed in any one year? I think that would be of interest to us.

Ms Bird—There is not an automatic cap.

Mr BAIRD—Isn't there?

Ms Bird—What our officers do is look at the circumstances of each case.

Mr BAIRD—But that is hard too, isn't it? You never know where you are because you are at the discretion of individual officers.

Ms Bird—I would need to check whether we specifically have a guideline in relation to this and I can get back to the committee.

Mr BAIRD—We would be interested in that.

Mr BARTLETT—Related to that again, is it the case under the Family Law Act that custodial parents cannot take the children out of the country permanently without the permission of the non-custodial parent, or do I have that wrong?

Mr McGinness—No, that is correct, there are provisions in the Family Law Act.

Mr BARTLETT—There are provisions there. So presumably then the non-custodial parent is protected in terms of access? Does he—generally it is a he—have the power to veto a possible migration overseas where he would not have access very often?

Mr McGinness—If the parents cannot agree on whether the child should be taken out of Australia then it is a matter for the Family Court to make a decision on whether it is in the best interests of the child for the child to live overseas. That is a matter for the court, it is not so much a veto by one parent or the other.

Mr BARTLETT—Are you aware of any cases where that permission has been given on the basis of the best interests of the child and against the wishes of the non-custodial parent?

Mr McGinness—Yes, there certainly are reported cases. The Family Court has set down some principles which it will follow in making those sorts of decisions. If you like, I can get the references to those cases.

Mr BARTLETT—So there could be cases then where the non-custodial parent is in practical terms deprived of access yet still will have child support obligations enforced?

Mr McGinness—That is correct, but, as I say, only if the Family Court decides that is the decision in the best interests of the child.

Mr BARTLETT—I would be interested in some examples if you could provide those.

Senator COONAN—With the Scandinavian countries we have administrative decisions and with Australia we have administrative decisions through the Child Support Agency. Do you know what steps have been taken prior to the agreement being signed to establish the quality of the decision making of those bodies?

Mr McGinness—We have not made any specific inquiries about how they go about making the decisions. The fact is that Australia already has international arrangements with some of these countries —we have been receiving their decisions for over 20 years, registering them in Australian courts and having them enforced. To my knowledge, and I have been administering the area for five or six years, I have never encountered a case where a payer in Australia has suggested that any of the decisions have been improper or influenced by other than appropriate factors.

Senator COONAN—Just let me get this clear: you have never come across a case where a payer in Australia has been dissatisfied with a Child Support Agency decision?

Mr McGinness—I have come across cases where the payer has applied to a court for a review of a decision on the grounds that—

Senator COONAN—That is not the question I asked, Mr McGinness. You said that to your knowledge the Child Support Agency has never made a wrong decision in the eyes of the payer.

Mr McGinness—No, I said an improper decision; I thought that was the point of your question.

Senator COONAN—That is not the question I put to you. I was asking whether you were satisfied with the quality of the decision making. That does not make it improper in the sense of somebody doing a dishonest job, but decision making can also be at fault because the person does not have the ability to make the decision in the way it should be made. I understood that you were saying that has not been taken into account.

Mr McGinness—I am not aware of any case where a payer in Australia has argued that a decision maker overseas did not have the ability to make a proper decision.

Senator COONAN—And what about payers in Australia? Have you ever heard anybody complain about the Child Support Agency?

Mr McGinness—Certainly there have been cases of that, but the point I am making is that where an overseas liability is registered in an Australian court it is quite common for an Australian payer to say that the overseas court has used the wrong figures or it has failed to take into account relevant considerations. That is quite common. But the sort of case you are talking about where they have complained about the competence or the ability of an overseas decision maker, I have never struck a payer in Australia raising that issue.

Senator COONAN—And you have never struck one in Australia where the Australian payer has complained about the competence of the Child Support Agency?

Mr McGinness—I must say that I do not work in that field, I only deal with overseas cases.

CHAIR—We have had a very thorough consideration of these two. Thank you kindly for the evidence you have given. If you could follow up with those questions on notice within a week, we would be very grateful. The final proposed treaty action to be considered today is the proposed amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures.

[11.14 a.m.]

GULBRANSEN, Mr Peter, National Manager, Import/Export Management Branch, Australian Customs Service

KYLE, Ms Sylvia, Assistant Director, International, Australian Customs Service

PITMAN, Ms Sue, National Manager, Planning and International, Australian Customs Service

WEPPNER, Mr Greg, Director, Temporary Imports, Refunds and Brokers Licensing, Australian Customs Service

CHAIR—I call the witnesses from the Australian Customs Service, and anyone else who feels they could contribute by appearing. Could one of you give us an opening statement and then we will have questions from the committee members.

Mr Gulbransen—Thank you, Mr Chairman. The International Convention on the Simplification and Harmonisation of Customs Procedures was adopted in Kyoto in May 1973 and has remained very much unchanged since then, despite many attempts to modernise it. It came into effect in 1974 and Australia acceded to the convention in March 1975. The original convention consisted of a body which contained the general provisions relating to the scope, structure, administration, accession and amendment procedures, and it also had 31 annexes, each of which dealt with a separate customs procedure. To accede to the convention a contracting party had to accede to the body and at least one of the 31 annexes.

The recent review commenced in 1994 and the revised text was accepted by the Council of the World Customs Organization in June 1999. The review was considered necessary because the convention no longer reflected the international trading environment in which Customs operates and did not incorporate many of the modern administrative practices which many customs administrations have implemented over the period since the original convention as adopted. Further, it was seen to have had relatively little success in achieving its principal goal of a high level of simplification and harmonisation of customs procedures. Only 61 of 146 members of the World Customs Organization had become contracting parties and there were more than 1,500 reservations to the various provisions. The reservation right, which enabled a reservation to be lodged against any standard or recommended practice, effectively enabled contracting parties to limit very significantly the extent to which they were bound by any of the provisions.

At the same time, various international organisations, in particular the International Chamber of Commerce, were putting pressure on customs administrations to minimise the impact of customs activities on normal commercial transactions so that commercial enterprises could achieve cost savings through having less red tape to deal with. Australian Customs participated very actively in the review and we attended all of the meetings at the World Customs Organization. We, along with a group of other APEC countries—Canada, Japan and the United States—formed a subgroup which drafted six of the existing annexes and on our own we redrafted one particular annexe which dealt with travellers. In addition, we have actively encouraged other APEC administrations to participate in the review because APEC has its own customs reform agenda.

The revised text that was adopted in June last year will enter into force once 40 of the 61 contracting parties consent to be bound by the protocol of amendment. We hope to achieve the goal of ensuring a higher level of simplification and harmonisation by making many more of the provisions mandatory and binding, but there is still flexibility in that the revised text provides for specific annexes which are optional for acceptance by individual contracting parties. The revised text includes the body, a mandatory general annexe which all contracting parties must accept, and then 10 specific annexes which are optional, and those 10 annexes include a total of 25 chapters.

The body still contains the rules of the conventions, deals with the scope, the rules of accession and so on; there have been relatively few amendments to the body of the convention. The preamble has been amended to make a clearer statement of principles. Other amendments provide for the new mandatory general annexe and a limitation on the right to lodge reservations. As I mentioned earlier, in the original convention reservations could be lodged against any standard or any recommended practice. Under the new convention, reservations may only be lodged against recommended practices and recommended practices only exist in the optional specific annexes.

The general annexe includes the core provisions which are applicable to all customs procedures. It has chapters on matters such as clearance formalities, duties and taxes, customs control, the relationship between Customs and third parties, information, decisions and rulings supplied by Customs, and appeals in regard to customs matters. It contains more than 120 binding standards which include obligations to introduce modern administrative techniques such as the use of risk management, post transaction auditing and the use of information technology. No reservations are permitted against any standard in the general annexe.

The specific annexes effectively replace the annexes of the original convention. Each covers a discrete customs procedure or a group of closely related procedures. Acceptance is totally at the discretion of the contracting parties and that discretion extends to accepting individual chapters of the specific annexes. Once having accepted a specific annexe or a chapter, the contracting party is bound by all of the standards and recommended practices in that annexe or chapter. Reservations are permitted against the recommended practices in the specific annexes, but not against the standards. Once the revised convention enters into force, contracting parties will have three years to bring the legislation into conformity with the new convention, although there are some transitional standards in the general annexe where five years has been provided because they are seen as being more difficult.

Customs has consulted widely in regard to Australia's proposed accession to the revised convention. The Customs National Consultative Committee has been kept informed throughout the review process and members have been encouraged to comment on the final text. This committee includes the Customs Brokers Council of Australia, the Law Council of Australia, the Australian Chamber of Shipping, the Australian Federation of International Forwarders, the International Air Couriers Association of Australia, the Australian Chamber of Commerce, the Australian Air Transport Association, and the Institute of Chartered Accountants. Further consultation has occurred through the industry working group on customs that is participating in the cargo re-engineering project, a major project that Customs is undertaking in regard to its clearance of cargo at the moment.

That working group includes the parties I just mentioned earlier under the Customs National Consultative Committee, but it also includes the Association of Australian Ports and Marine Authorities, the Australian Trucking Association, the Australian Shipping Federation, the Food and Beverage Importers, the Federal Chamber of Automotive Industries, Qantas and the Australian Stock Exchange. At a government level, we provided copies of the final text to a number of government agencies and received comment from the Department of Industry, Science and Resources, the Department of Transport and Regional Services, the Department of Immigration and Multicultural Affairs, the Department of Foreign Affairs and Trade, and from Agriculture, Fisheries and Forestry Australia. All of the comments supported our accession to the revised convention, although we had to give an assurance to Agricultural Fisheries and Forestry that the convention was not going to impede the administration of quarantine controls.

CHAIR—Thank you. Senator Ludwig will start the questions.

Senator LUDWIG—How many world customs organisations are now contracting parties to the 1999 protocol?

Mr Gulbransen—The protocol is open for accession until 30 June. As far as I am aware, about four countries have signed on so far and they signed on when the protocol was initially opened at the June meeting of the council in Brussels last year. Most other countries are going through a fairly long and involved accession process, similar to our own, and we would expect by 30 June that there will be at least the 40 required to have the revised convention enter into force.

Senator LUDWIG—Given that there were only 61 of the 146 at the last one, do you think you might get less this time around? Is that what you are telling me?

Mr Gulbransen—That is always a possibility because the convention does have many more provisions that are binding than the original one did. I would have to say that our feeling is that most of the existing contracting parties will accept the new convention. We would hope that through the publicity campaign being run by the World Customs Organization we will convince many other administrations to also accept the revised convention. As I said, we are certainly participating through APEC and trying to convince members in this region to accept the convention.

Senator LUDWIG—So you saying that even given your best efforts at this point in time you are only likely to get parity with the last number?

Mr Gulbransen—I am certain that the World Customs Organization is hoping for many more than last time.

Senator LUDWIG—Has anyone put any reservations in yet?

Mr Gulbransen—I am not aware of what the other administrations have done in regard to their acceptance. We certainly propose to put some reservations in with our acceptance.

Senator COONAN—Does technology have anything to do with changing this? Mr Adams raised this with me. I think that you can have an arrangement like this because people can get in touch with each other very quickly around the world. Is that a relevant factor at all in this?

Mr Gulbransen—Technology has been one of the major reasons for the revision of the convention. When the original convention was written, international trade operated very much using paper documents; these days much of the activity is done by exchanging data streams via computers. Certainly, since the early seventies the Australian Customs Service has been moving to process most of the goods' declarations and the cargo declarations using electronic applications. So technology was certainly an important consideration.

Mr BARTLETT—Will this in any way affect or particularly diminish Australia's customs practices?

Mr Gulbransen—It should not affect Australia's customs practices significantly at all. There will be very few, if any, amendments to legislation coming directly from the revision of the convention. The only two significant revisions of legislation that I can think of come from a requirement to permit deferment of payment of duty and to allow periodic returns rather than individual transaction by transaction customs entries. Under the cargo management reengineering project that I mentioned earlier, both of those facilities were being incorporated and legislation is in progress now to make the necessary amendments.

Mr BARTLETT—You said it should not significantly affect our practices; will it in any way affect our surveillance practices?

Mr Gulbransen—Certainly not in terms of surveillance, no.

Mr BARTLETT—That is unequivocal, is it?

Mr Gulbransen—Yes. The Kyoto convention essentially deals with commercial transactions dealing with cargo. If you are talking about examinations of cargo, the convention provides that there is nothing within the convention that will stop us from administering laws in regard to prohibitions and restrictions. This convention will clearly not affect in any way such things as our quarantine laws, our laws in regard to drugs and weapons and so on.

Senator TCHEN—Can I first ask you two questions which relate to the questions that Senator Ludwig and Mr Bartlett have already asked. Firstly, I understand this amendment sets out a minimum set of standards for the contracting parties?

Mr Gulbransen—Yes.

Senator TCHEN—Basically that means that there is a floor standard and any contracting party can go further than that?

Mr Gulbransen—That is right.

Senator TCHEN—Can you firstly indicate to me this minimum set of standards? How does it accord with the standard that Australians adhere to at the moment?

Mr Gulbransen—I cannot think of any case where we do not already meet the minimum standards that are set out and there are certainly a number of examples where we would exceed the standards that are there.

Senator TCHEN—By minimum standard you mean minimums in terms of stringency, is that right, or is it in terms of complications?

Mr Gulbransen—I guess we are talking very much about technical customs things and the principles that are being set forth in the convention are in relation to how much data we will require traders to provide to Customs, how many copies of various documents we will ask them to provide to us. On all of those things we certainly meet the standards that the World Customs Organization is setting.

Senator TCHEN—The thrust of my question is that once we sign on for a minimum set of standards—which is fairly close to the standard we have at the moment— should it come to pass that Australian Customs decide that certain standards have to be raised because practice has shown it is not sufficient, having been already a contracting party is it possible for us to raise the standard at a later date?

Mr Gulbransen—Certainly. In fact, article 2 of the convention encourages contracting parties to exceed the standards set out.

Senator TCHEN—I see, thank you. The other question is following on from what Senator Ludwig asked you. This amends the 1973 convention that only 61 out of 146 members signed on, which is just under 42 per cent. You are not sure how many have signed on for this 1999 convention—it could well be below that—so what is the point?

Mr Gulbransen—The point for those of us who wish to sign on is that we have a convention that is now relevant to the trading environment that we operate in and that reflects the administrative practices that we use. I mentioned earlier that Australian Customs for many years has made wide use of information technology. We have been using post-transaction auditing techniques rather than examining every individual import transaction for quite a long time. From the point of view of the more modern customs administrations, the revised convention reflects the reality of what we do.

Senator TCHEN—What we do, but not what other people do. Can I say to you that I regret that the NIA statement—and I should say this to Ms Pitman as well—actually does not tell me anything about how this particular convention will meet Australia's national interests. All you tell us is what is happening. We are practising a certain standard that other countries may not practice, so if our standard is more streamlined it actually only benefits the importers.

Mr Gulbransen—Certainly.

Senator TCHEN—It does not benefit our exporter at all because our exporter has to follow the standards of the importing countries. Without any embarrassment, can I say to you that my interest is leaning more to Australian exporters than importers. Can you tell me then by Australia signing on to this convention how it would benefit our exporters versus our importers?

Mr Gulbransen—To the extent that our trading parties also sign on to the convention it will mean that our exporters will get the same benefits that our importers get because the customs procedures that their products pass through as they go into other countries will be streamlined and reflect the modern trading environment. We would certainly expect the major trading parties throughout the world to sign on as a party to the revised convention—all of the Americans, the Japanese. As far as the other countries who are not currently members, we will be doing whatever we can to encourage them to accept the revised convention, and I know the World Customs Organization has set up a program to publicise the convention and encourage all other members of the World Customs Organization to do it.

As I mentioned in my introduction, one of the significant reasons the convention was reviewed was pressure from industry, and we would expect that pressure to extend to all trading countries throughout the world. Certainly, the industry representatives made no bones about the fact that they were putting pressure on governments where they thought customs procedures were ineffective, were a hindrance to trade, and in some cases where they felt there were corrupt activities.

Senator TCHEN—I sympathise with your use of the word 'expectation'; I would have been more confident if you had been able to use the word 'assurance'. Perhaps just testing on that, can you tell me how many of the 61 member nations who have signed on for the 1973 convention are our major trading partners or if any of our major trading partners are not amongst the 61?

Mr Gulbransen—I would be answering this off the top of my head and if you like I can check.

Senator TCHEN—I am happy for you to take the question on notice.

Mr Gulbransen—The only one that I can think that probably is not is Chinese Taipei, and that is more because Chinese Taipei is not a member of the World Customs Organization. The only other avenue to join the Kyoto convention is through being a member of various United Nations organisations so at the moment Chinese Taipei could not join the convention.

Senator TCHEN—I see. I would like you to take that question on notice because I think it is important to us that not only our existing major partners but also our prospective trading partners should be amongst those who are willing to sign on.

Mr Gulbransen—I cannot answer as to who is willing to sign on but I can certainly provide you with—

Senator TCHEN—Well, by their track records.

Mr Gulbransen—I can provide you with a list of those who are members of the current convention. As I said, we would expect all of those at some stage—maybe not by 30 June, but at some stage—to accept the revised convention.

CHAIR—Thank you all kindly for your contributions today. For anything taken on notice, would you please reply in writing within about a week.

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

That this committee authorises the publication of evidence given before it at the public hearing this day.

Committee adjourned at 11.38 a.m.