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## JOINT COMMITTEE ON TREATIES

**Reference: Treaties tabled on 7 March 2000**

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**JOINT COMMITTEE ON TREATIES**

**Monday, 3 April 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 Cooney, Ludwig, Mason and Tchen and Mr Baird, Mr Bartlett, Mr Byrne, Mr Hardgrave, Mrs De-Anne Kelly and Mr Andrew Thomson

**Terms of reference for the inquiry:**

Review of treaties tabled on 7 March 2000.

## WITNESSES

**Committee met at 10.00 a.m.**

**ATWOOD, Mr John, Principal Legal Officer, Office of International Law, Attorney-General's Department**

**DIETZ, Ms Susan Louise, Director, Nuclear Trade and Security Section, Nuclear Policy Branch, International Security Division, Department of Foreign Affairs and Trade**

**LEASK, Mr Andrew, Assistant Secretary, Australian Safeguards and Non-Proliferation Office**

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

## Agreement for Cooperation between Australia and United States of America concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation

**CHAIR**—I declare open this meeting of the Joint Standing Committee on Treaties. On 7 March there were a number of proposed treaty actions tabled in both houses of parliament. We reviewed five of these treaties at a public hearing on Monday, 13 March, and today we will be looking at the remaining four of the proposed treaty actions: an Agreement for Cooperation between Australia and United States of America concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation; an Agreement between Australia and the Slovak Republic on Trade and Economic Relations; an Agreement between Australia and Denmark on Social Security; and a Double Taxation Agreement between Australia and Romania. We will conclude our hearing this morning by taking some additional evidence on two of the proposed treaties we considered last time around; they were the Agreement between Australia and New Zealand on Child and Spousal Maintenance, and the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

I call representatives from the Department of Foreign Affairs and Trade to give evidence as part of the review of the proposed Agreement for Cooperation between Australia and United States concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation. We will not require evidence on oath this morning, but these are the equivalent of proceedings in the House of Representatives or the Senate, so the giving of any misleading statements is a very serious matter. If one of you would like to make an opening statement, we then will have questions.

**Ms Dietz**—The committee has before it an agreement between the government of Australia and the government of the United States of America, signed in Washington on 28 October 1999, and side letters of the same date. The proposed agreement facilitates the development and export of an innovative laser enrichment technology developed by an Australian company, Silex Systems Pty Ltd. If it proves practical, the technology will be used for the production of low enriched uranium for use by the electricity generation industry. The agreement will add to our current network of 15 bilateral nuclear cooperation agreements.

Australian government policy is that uranium exports and the export of nuclear related technology should be covered by a bilateral safeguards agreement. Such agreements establish conditions which ensure that the export of uranium or nuclear related technology is consistent with Australia's commitment to the non-proliferation of nuclear weapons and Australia's related treaty obligations. The agreements provide for the application of International Atomic Energy Agency safeguards and prior Australian consent for re-export, high enrichment or reprocessing of Australian obligated nuclear material. This is to ensure that Australian uranium and related technology is properly monitored through the nuclear fuel cycle and is prevented from being used for any military or explosive purpose. These provisions are consistent with Australia's obligations under the non-proliferation treaty.

The existing Australia-US agreement concerning peaceful uses of nuclear energy does not apply to transfers of sensitive nuclear technology unless specifically provided for by amendment or by a separate agreement, such as the one being proposed. The agreement now being proposed establishes the procedures through which Silex and a US company, the United States Enrichment Cooperation—USEC—will conduct research, development and commercial utilisation of the Silex technology. The proposed agreement specifies that Silex technology will be used only for peaceful purposes. The use of Silex technology and material produced using the technology for any nuclear explosive purpose or military purpose is specifically excluded. Strict safeguards, verification and physical protection measures are stipulated to ensure the observance of this requirement.

The agreement also ensures that Silex and derived technology are controlled against unauthorised use and cannot be re-transferred to another country without Australia's consent. While the agreement concerns transfers of Australian enrichment technology, the text has been structured to be consistent with our uranium export policies as reflected in our bilateral safeguards agreements. The Australian Safeguards and Non-Proliferation Office is monitoring the project to ensure that Australia's non-proliferation commitments are satisfied and the requirements of the Nuclear Non-Proliferation (Safeguards) Act 1987 are being met.

There are broad scientific and potentially substantial commercial benefits to Australia as a result of the cooperation on this innovative technology. USEC has invested an initial $US7.5 million in the evaluation phase of the project. As specific milestones are reached, further payments totalling $US18 million will be made to Silex. Royalty payments to Silex would ensue if the project were proven viable and proceeded to commercialisation. In conclusion, we are pleased to be associated with this development of cutting edge technology, which is testimony to our advanced state of research and development.

**Mr BYRNE**—Just a quick question with respect to the national interest analysis and the research that will be carried out at Lucas Heights. Could someone detail the community consultation process that occurred with respect to that?

**Ms Dietz**—To the research being conducted at Lucas Heights?

**Mr BYRNE**—Yes.

**Ms Dietz**—Silex is a publicly listed company. It leases a site at the Lucas Heights Research and Development Centre, and it is from there that it conducts its research and development. I am not sure about the public consultation that would be required to rent a site on the facility.

**Senator MASON**—You mentioned in your opening address that, in relation to issues of uranium export and sale, it is government policy to enter into bilateral arrangements with the other nation involved. What other countries are we currently involved with in bilateral treaties in relation to uranium exports?

**Ms Dietz**—There are now 15. We already have one with the United States on peaceful use of nuclear energy. We have one with the UK, Russia, France, Finland, Sweden, Switzerland, Japan, Korea, Euratom, the Philippines and New Zealand since the beginning of this year, and we have three more.

**Mr Leask**—The Euratom treaty obviously covers European nations that are party to the EU. So there are several countries under that umbrella.

**Senator MASON**—Are there any treaties that are similar to this one where you have innovative technology being developed?

**Ms Dietz**—No, this will probably be the first.

**Senator MASON**—It is the first of this sort with cutting edge technology relating to uranium?

**Ms Dietz**—There are safeguards agreements to make sure that any nuclear material that has an Australian flag on it, if you like, is safeguarded and monitored in the appropriate way, whether that is uranium exports, R&D, technology or other material like this. But I think it is probably the first for this specific kind of innovative technology. Would you agree?

**Mr Leask**—That is absolutely right. It is the first of a kind.

**Senator MASON**—You spoke of bilateral arrangements. Are there any multilateral treaties we are party to that relate to non-proliferation?

**Ms Dietz**—Yes. We are a member of the Nuclear Non-Proliferation Treaty; we are a member of the board of governors of the IAEA, the International Atomic Energy Agency; and we have a safeguards agreement with the International Atomic Energy Agency which provides the underpinning for our bilateral safeguards agreements. Then there are all sorts of related agreements that we are party to which cover the transport of material and its physical protection. All of these combine as a network of safeguards and monitoring mechanisms, if you like, to ensure that it is safeguarded against proliferation use.

**Senator LUDWIG**—It is only the technology we are talking about and nothing else; is that right?

**Ms Dietz**—This specific agreement covers the technology and any derived technology. There are also specifications on how we look after material and any facilities that are used in association with the development of the technology.

**Senator LUDWIG**—And that is at Lucas Heights?

**Ms Dietz**—That would be covered by the agreement, yes.

**Mr Leask**—The agreement covers the research and development at Lucas Heights, the transfer of knowledge and technology in a two-way direction and also the R&D sites in the United States. Although it is yet unproven, the agreement ensures that, were the technology to become both technically viable and commercially viable, when it is developed in the United States, their facilities are also covered under this agreement in a general sense insofar as International Atomic Energy Agency safeguards will apply to the plant and to its product. In regard to its product, the agreement ensures that, even if the uranium does not come from Australia, the enriched product will have what we call an Australian flag, which is a mechanism by which we can ensure that the product remains in peaceful uses and is not misused by any other subsequent downstream customer.

**Senator LUDWIG**—Who is responsible for the spent product at the end if it has an Australian flag attached to it, even if it did not come from Australia originally?

**Mr Leask**—Any by-product at the plant in the United States would be the responsibility of the United States government; any by-product in terms of waste from fuel and so on would be the responsibility essentially of the country that used that product.

**Senator LUDWIG**—Briefly, without delving too deeply into commercial-in-confidence matters, can you give us a concrete term to describe what is the separation of isotopes of uranium by laser excitation? I am not a nuclear physicist. Can you give a concrete example of how it will benefit Australia and how it might be used, other than simply a technological transfer of ideas?

**Mr Leask**—First of all, let me address the process itself and then address the benefits. Natural uranium consists of a variety of isotopes. One in very small proportion naturally is uranium 235, which is the one sought after by those who want to use it for fuelling power reactors or research reactors. This process basically will take natural uranium in a gaseous form and pass it through a laser. The concept is that the laser will selectively excite different isotopes of uranium so that one can be separated from the other and, in fact, the one we want can be collected. When you have collected it, perhaps further enriched it and then turned it into an appropriate product, you can use it for fuel in a power reactor. So that is the simplicity of the process.

In regard to the benefits that come to Australia, the first is that innovative technology continues to be conducted here in Australia, so we have both employment and intellectual property going into the company Silex. In addition to the enrichment of uranium, using this technology Silex Ltd is investigating options, which lie outside of this agreement, for the purification of materials for use in chips in the computer industry and also for the enrichment of

carbon in the medical industry. Whilst we are not sure whether those will be successful and whether they subsequently would be developed commercially here in Australia, the benefits to the Australian community potentially are there to be exploited by the Silex company.

**Senator COONEY**—Silex is a private company and it is exporting this to one of its branches in the United States; is that right? Who is getting the export?

**Mr Leask**—Silex is a privately listed company on the Australian Stock Exchange and I think some other stock exchanges as well.

**Senator COONEY**—Who is it exporting to? Who in America is receiving it—not the government, I take it?

**Mr Leask**—The United States Enrichment Corporation is the US company that is in collaboration with Silex.

**Senator COONEY**—And that is a private company?

**Mr Leask**—That is now a private company. It was privatised by the US government about 18 months ago as a spin-off from the Department of Energy.

**Senator COONEY**—This treaty is between the two governments. What are the governments doing in respect of the private agreement between the two companies?

**Mr Leask**—You are quite right that the agreement is between governments, and it is up to governments to ensure that the conditions and terms of the agreement are implemented by private sector entities. In Australia essentially that falls to the Australian Safeguards and Non-Proliferation Office, and in the United States it falls to the Department of Energy and the Nuclear Regulatory Commission.

**Senator COONEY**—So it does not directly affect the agreement between the two private companies. This is really a monitoring role that has been set up?

**Mr Leask**—It is a monitoring role but unfortunately for the companies, in a sense, it does affect them because we impose on them constraints on the transfer of information, how that information is handled and the security clearances for appropriate people.

**Senator COONEY**—Concerning Article 12 on environmental protection, there are no specific environmental requirements or rules set out, are there? It just says that the parties shall consult.

**Mr Leask**—At this stage in Australia we are not aware of any significant environmental issue. I think Article 12 concerning environmental issues is there to ensure that, were the Americans to implement a particular process commercially, there would not be any adverse environmental impact which could subsequently wend its way back to Australia.

**Senator COONEY**—And that would be up to the United States government to monitor or to enforce?

**Mr Leask**—Absolutely.

**Mr BARTLETT**—How confident are you of the absolute security of the safeguards and verification procedures in preventing any of the material finding its way to third countries?

**Mr Leask**—We have a high confidence that the United States will protect this technology, which essentially is commercial technology, for use in commercial processes. The United States Department of Energy currently is going through a very rigorous process and developing what we call a classification guide. The guide will be a classified document which will spell out in detail exactly what is classified in regard to the project and to what level exactly it is classified. So it may take a term; it may take a scientific piece of data; it may take a process. They are developing that in conjunction with us; they are taking the lead. We will implement that absolutely and rigorously in Australia, and we have every confidence that the United States will do exactly the same.

Above and beyond the governmental aspect, if you like, is the commercial aspect. Silex in particular would stand potentially to lose a lot of money on the stock market were the information pertaining to its process to become public. The United States Enrichment Corporation has a virtual monopoly on enrichment in the United States. It is looking at this for a long-term process which, in its eyes, hopefully will replace its ageing gaseous diffusion plants which are due to go out of service around 2005 or maybe a little after that. It certainly would want to keep it under wraps also to make sure of its own commercial markets. So, from a security point of view, we come at it from two angles.

**Mr BAIRD**—I have one question in terms of the upgrade of the nuclear facility at Lucas Heights. If that does not continue, what impact would that have?

**Mr Leask**—By 'upgrade', do you mean the replacement reactor?

**Mr BAIRD**—Yes.

**Mr Leask**—None whatsoever.

**Senator TCHEN**—What would be the consequences and implication if this agreement were not approved? Can you throw some light—just a summary—on what would happen if this agreement were not approved?

**Ms Dietz**—At a certain point, given the sensitive nature of the technology, the research and development would not be able to go ahead because of the collaboration between the US and Australian companies. But also, because this technology is connected with uranium enrichment, the US just would not let it go ahead and would not be able to accept the technology.

**Senator TCHEN**—I suppose there would be substantial commercial losses to Silex?

**Ms Dietz**—Definitely.

**Mr Leask**—It might be worth noting that some 10 years ago, at the fledgling stage of this project, Silex sought hard for Australian investment. It was seen, I think, as a little too risque. So it entered into early collaboration with the United States, and eventually the United States Enrichment Corporation bought the sole rights to exploit this technology commercially. If this agreement does not go ahead, then technology cannot be exchanged and the project effectively will die. This technology, which is the most significant component of Silex's work, will come to a halt.

**Senator TCHEN**—I was looking at those countries listed in annex B. Potentially, there would be further transference to those countries. Does Australia have an agreement with any of these countries?

**Ms Dietz**—Yes, we have agreements with all of them.

**Senator TCHEN**—So, notionally, the technology can be further transferred to these countries, subject to our agreements?

**Ms Dietz**—Yes—

**Mr Leask**—No, that is not strictly true. The technology cannot be transferred to any third party without specific Australian agreement. What annex B covers is the transfer of the enriched product by virtue of this process. We have listed in the agreement those countries—noting that Euratom is all-embracing here—with whom Australia has a bilateral safeguards agreement and to whom the United States may transfer the product without further reference to Australia.

**CHAIR**—Just in basic terms, this technology is very good at separating U235 as an isotope. It is very efficient state-of-the-art technology. That is so, it is not? It is competitive with others, is it?

**Mr Leask**—Let me address two issues. The first relates to the physical attributes of separation. The project, despite the fact that it has been going for some years, is still very much in the early stages of development. What has been proven to date is that, under specific conditions, it is possible, using this process, to separate the U235 atoms in the laboratory using a very small-scale rig. Several things have yet to be proven: one is that we can actually collect that product, separate the product and use it; and the second is that the technology is scalable to a commercial size. I am sorry, but what was the second part of your question?

**CHAIR**—In a sense, what is being proposed is the transfer out of Australia of a very sensitive, dangerous kind of technology. It is useful but, let us be frank, it is quite dangerous. Who is Silex? Who are the directors and chairman of the company? How do we know that it is not run by maniacs? Do you check these people? Do they have clearances? Do they get to inspect Pine Gap?

**Mr Leask**—No, they certainly do not get to Pine Gap ahead of you, Sir. Silex is, first of all, a publicly listed company. We know exactly who is on the board of governors and who works for

them. Three of their staff have negative vet clearances, the managing director and his chief scientific and engineering advisers.

**CHAIR**—What does that mean?

**Mr Leask**—That means they have run what we would call a short background check on the profile of the individual using police records and ASIO. Further to discussions we had recently with the Department of Energy and the Nuclear Regulatory Commission when they sent a delegation to Australia, we have now come to understand that certain people in the company and, indeed, one or two people in my own division, will need to have that security clearance upgraded to a positive vetting clearance, which is much more rigorous and intrusive and looks back over an individual's 10-year personal history. So we will be clearing these people for that. That is not, if you like, so that they can handle the stuff in their brains that they have developed in Australia; it is so that they can collaborate with the Americans and so that the Americans will pass on what they judge to be sensitive information in the domain of enrichment technology.

**CHAIR**—It is interesting to speculate on this. You have people with very sensitive technology in their heads. They have invented it. What can a treaty do to stop that falling into the wrong hands? I suppose, in a sense, very little. But, where you are actually transferring it to a third party, the treaty can govern that?

**Mr Leask**—In terms of the technical detail, which flows in both directions, the implementing arrangement of the treaty will be that it is passed to named people. So it will not go generally to the company. Obviously, a company employee may have access to the rig and to the laboratory. But, in terms of the commercial-in-confidence and particularly sensitive information which would give a third party an advantage or proliferation opportunity, that will be kept at the appropriate classification level to individually named people. As I say, some of those people will have to have their security clearance upgraded. But, as with any secrets, particularly those that exist in people's heads, there is always a risk that they might pass that on.

**CHAIR**—I was thinking of the poor fellow that has been imprisoned or is in custody at Los Alamos who is accused of emailing stuff to Peking. Anyway, that is another matter. Thanks for your evidence this morning. That concludes our inquiry for the time being on that agreement.

**Agreement between Australia and the Slovak Republic on Trade and Economic Cooperation**

[10.27 a.m.]

**COLLETT, Ms Sandra, Acting Director, Central and Southern Europe Section and Nordics Section, Europe Branch, Americas and Europe Division, Department of Foreign Affairs and Trade**

**TANNER, Ms Sue, Assistant Secretary, Europe Branch, Americas and Europe Division, Department of Foreign Affairs and Trade**

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

**CHAIR**—I welcome representatives from the Department of Foreign Affairs and Trade who will give evidence on the Agreement between Australia and the Slovak Republic on Trade and Economic Relations. Would one of you like to make an opening statement and we will then go to questions.

**Ms Tanner**—The proposed agreement on trade and economic cooperation between Australia and the Slovak Republic was signed on 23 April 1999, during the visit to Australia of the Slovak Secretary of State for Economy. When the agreement enters into force, it will replace the agreement currently governing bilateral trade and economic relations; namely, the 1972 Agreement on Trade Relations between Australia and the Czechoslovak Socialist Republic.

The negotiation of a new trade and economic cooperation agreement was first raised in May 1996 by the government of the Slovak Republic, which considered the 1972 agreement to be outdated and inconsistent with their country's newly independent status—granted on 1 January 1993—and transformation to a market economy. In addition to wanting to help position Australian companies to take advantage of the growing trade and commercial opportunities in the Slovak Republic, the Australian government also wished to underline its support for the Slovak Republic's economic and political transition. The agreement closely follows the trade and economic cooperation agreement signed by Australia and the Czech Republic in March 1997. Negotiations for the agreement therefore involved a minimum investment of resources on Australia's behalf.

The main objective of the agreement is to provide a more comprehensive institutional framework for the facilitation and development of trade and commercial relations between Australia and the Slovak Republic. Together with the double taxation agreement, which entered into force on 22 December last year, and the Investment Protection and Promotion Agreement—negotiations for which are almost complete—the agreement will provide an enhanced government-to-government framework supportive of the development of bilateral relations and provide a more reliable basis and greater level of protection for Australian business when pursuing trade and commercial relations with the Slovak Republic. The

agreement is a more contemporary document reflecting changes that have taken place in international trade and commerce since the 1972 agreement was signed.

The agreement requires the parties to facilitate, strengthen and diversify bilateral trade and economic cooperation, including trade in goods and services. This is to be done by various means such as through the conclusion of commercial contracts; economic, industrial and technical cooperation; interchange of commercial and technical representatives and delegations; holding of trade fairs; cooperation in third country markets; and information exchanges. Trade is to be carried out consistent with the obligations under the WTO. Parties are encouraged to have due regard for the protection of intellectual property in their commercial contracts and to take account of commitments arising out of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights. The parties are required to develop a close and constructive dialogue, including through trade missions and meetings as agreed periodically by government and business representatives, and are also obliged to resolve any disputes relating to interpretation or implementation of the agreement by friendly consultations and negotiations.

There are no direct compliance or implementation costs on entry into force. The only costs that might be incurred by the government are those associated with activities such as trade fairs and other promotional activities to the extent that the government, through Commonwealth departments, might be involved in such activities. There is no provision in the agreement for the negotiation of future related legally binding instruments. No new legislation is required to give effect to the obligations under the agreement, nor will there be any changes to the existing roles of the Commonwealth or the states and territories.

State and territory governments were advised of the proposed agreement through the Standing Committee on Treaties process. Comments on the text of the agreement were sought from all states and territories, but only two responded—Western Australia, whose comment was positive, and the ACT, which advised a nil return. After consultation with Austrade, comments were also sought from the private sector; namely, the Australian Chamber of Commerce and Industry; the Australian-Slovak Chamber of Commerce; and Asia Motors, which exports to the Slovak Republic minibuses and automotive products manufactured in Korea. None of these organisations provided any comment. The QBE Insurance Group and the Woolmark Company responded in very positive terms supporting the agreement. The agreement will remain in force for an initial period of five years, after which it will remain in force for six months from the date on which either party receives written notice of the other's intention to terminate.

**Mr BYRNE**—Do other countries sign similar sorts of agreements to the type you are putting forward today?

**Ms Tanner**—Our understanding is that the government of the Slovak Republic, like a number of other central European governments and a number of other countries as well, have a tradition of signing such agreements. They feel comfortable with a framework of agreements such as this. I think it dates from a socialist country past. Yes, they do.

**Mr BYRNE**—Is this an agreement that, say, a country like the US would be signing with a lot of other European countries as well?

**Ms Tanner**—I do not have information as to whether the Slovak Republic would have such an agreement with the US. We can certainly find that out for you, if you wish. All I can advise is that, since this new government has come to power and also since independence in 1993, the government of the Slovak Republic has been looking to sign a number of such agreements with a whole range of countries; it is looking to diversify its sources of trade and investment.

**Mr BYRNE**—Are there quantifiable economic benefits that arise from the signing of these treaties?

**Ms Tanner**—Not that we could list at this stage. All we could say is that the provisions of this agreement and the contacts between Australian commercial companies and their Slovak counterparts might provide opportunities for increased trade and investment in the future. I think it is very difficult to quantify. As you would know, our level of two-way trade is very low, so we are starting from a very low base. But I think the privatisation which is going on in the Slovak Republic presents an opportunity for increased investment, as we have seen with the QBE Insurance Group.

**Mr Scott**—If I could make a general addition to that: particularly countries which are candidates for entry into the OECD or the European Union in this case seek to demonstrate their national economic framework and the acceptability of that framework to other countries through participation in these kinds of agreements, which is why these agreements are generally initiated by either a developing country or a newly emerging industrialising economy with other developed countries, particularly members of the OECD, as part of their entry process to the OECD. In that respect, these trade and economic cooperation agreements and investment protection and promotion agreements in particular form part of this framework which they find necessary to have in proving their case before the OECD when seeking that membership.

**Mr BYRNE**—Does anything within these agreements contravene any of our obligations under the WTO?

**Ms Tanner**—My understanding is not. We are very careful on that.

**Senator MASON**—Mr Byrne mentioned that we had entered into other agreements similar to this in recent times and this committee has reported on those agreements. Are there any major differences between this agreement and others we have recently entered into?

**Ms Tanner**—No, not that I am aware of. We try to keep the agreements fairly standard; we try not to have major differences in the agreements that we negotiate with other countries. We have a standard Australian text which we obviously then negotiate. There will be some changes but, generally, we try to have a standard text.

**Senator LUDWIG**—I have one question, which has two parts. Let us juxtapose two issues—one where you say in the NIA that 'Australian businesses canvassing such options have to date found the going slow' with another statement in relation to your consultation that the Australian-Slovak Chamber of Commerce did not reply. Did you then ring them up and ask why they do not have a view about this? Australian businesses may be finding it slow; maybe they have not answered their phone for a while. Have you looked at that? It is interesting. If it is a

significant issue for trade between countries, it is a wonder that the chamber of commerce does not have an interest. Have you had a look at that issue?

**Ms Tanner**—As I understand it, the Australian-Slovak Chamber of Commerce is very small, with only a few individuals. I appreciate the point in terms of following up. Our experience with a range of these agreements has been that we send out a lot of letters and we have been told, particularly by state organisations, that they prefer not even to give us a nil return. If they are interested, they will reply. They receive so many similar types of letters that they would prefer us not to call them. As I understand it, we did the same on this occasion. Do you have anything to add, Sandra?

**Ms Collett**—No.

**Senator LUDWIG**—Perhaps once it is done, if we approve it, you could send them a copy.

**Ms Tanner**—Yes.

**Senator COONEY**—I am fascinated and always have been by the principle of 'most favoured nation' treatment. This is almost a trivia quiz question because everybody seems to have the most favoured nation treatment. I wonder why we use that expression. I remember reading it in the history books too. What is the status now of most favoured nation treatment? Are they a most favoured nation country? Everybody is most favoured, aren't they? Who is the least favoured?

**Ms Tanner**—I will defer to my colleague.

**Mr Scott**—The phrase 'most favoured nation' means that, if we make an agreement with another state in relation to a trade benefit, particularly under the WTO context, we need to give the same concession that we give that state to every other state. So most favoured nation status is not so much a question of the nation being most favoured above others. In fact, it is almost the opposite: it is the fact that if the state that we have made a special agreement with is part of our multilateral commitment under the WTO, for instance, we are obliged to give every other state that same benefit. This relates to things like tariffs and other trade barriers as such. It simply reinforces the fact that if, for instance, the Slovak Republic gives a benefit to another state, if it is a trade related benefit that would be covered by this agreement and by our WTO obligations, it needs to give that identical benefit to us.

**Senator COONEY**—It is a longstanding term, isn't it? Has nobody thought about finding another term to perhaps describe it better?

**Mr Scott**—It has been codified at least since 1947 and has applied decades before that, so it may have been felt that it would be too confusing to create a new term.

**Senator COONEY**—In the history of the British in China, everybody seemed to get the most favoured nation treatment, and I could never work it out.

**Mr BAIRD**—I want to ask a similar type of question to one I have asked before. When I look at the value of the trade, it is rather minuscule. Is it really worth all the effort?

**Ms Tanner**—I guess the answer is that we are taking a medium- to long-term view. Slovakia has applied for membership of the European Union, and accession negotiations have begun. It is one of a number of countries in central Europe where privatisation is providing new opportunities for Australian companies and there are discrete markets for certain Australian products. While at this point it does not look very promising, I would say that, over the medium to longer term, particularly with Slovakia's future as a member of the European Union, it is important for us to get in now on the ground before Slovakia joins the EU. We can then preserve some benefits in market access that we could negotiate at this present time.

**Mr BAIRD**—But, if we did not sign the agreement at this stage, nothing is likely to happen, is it?

**Ms Tanner**—The point I mentioned earlier about our support for political and economic transition really addresses that question. The Slovak government would likely see that as an indication of lesser support perhaps.

**Mr BAIRD**—So it is really politically and foreign relations driven rather than the economic reality of our trading situation?

**Ms Tanner**—It has a very strong element of that, as Peter Scott mentioned. Slovakia's application to join the OECD this year is also an important element of that. I guess from the Australian perspective, yes, the level of political support is probably stronger than the evidence of our trade and investment at this stage.

**Senator TCHEN**—If I may, I shall defer to Mr Hardgrave.

**Mr HARDGRAVE**—I have one quick line of questioning with regard to consultation. Given that the Department of Foreign Affairs and Trade has now reached a great maturity in this new treaty making process, I wonder whether you could reflect upon the time element of the consultation you undertake. Does it actually help your department to gain some confirmation that your efforts—no matter how small the trade benefit may be in the short term—are nevertheless on the right track and relevant to what society is expecting us as a government organisation to come up with?

**Ms Tanner**—Yes.

**Mr HARDGRAVE**—In other words, is the consultation process you have to undertake worth while?

**Ms Tanner**—In this case, I think the fact that there was so little reply is more an indication of the level of the trade and investment relationship. But the companies that did reply—Woolmark and QBE—were very positive. So for that reason alone, it was certainly worth it. Of course, as a principle, it is a very important principle. The fact that the Australian-Slovak Chamber of Commerce is so small and has so few members does not detract from this process. Certainly, as

a point of principle, we would want to do this. Apart from anything else, it exposes us to other areas of interest in the Australian population. We find out things about our bilateral relations through this process.

**CHAIR**—Thank you for your evidence.

**Agreement between Australia and Denmark on Social Security**

[10.45 a.m.]

**HOLBERT, Mr Bob, Acting Assistant Secretary, International Branch, Department of Family and Community Services**

**SAMMUT, Mr Benny, Acting Director, International Agreements 1, Department of Family and Community Services**

**WHALAN, Mr Jeff, Deputy Secretary, Community and Business Strategy, Department of Family and Community Services**

**WINTER, Ms Catherine, Desk Officer, International Agreements 1, International Branch, Department of Family and Community Services**

**CHAIR**—I welcome representatives of the Department of Family and Community Services who are to give evidence on the Agreement between Australia and Denmark on Social Security. If one of you would like to make an opening statement, we will then ask questions.

**Mr Whalan**—Mr Chairman and committee members, as a deputy secretary in the Department of Family and Community Services I have policy oversight of international issues in the department. The international branch for which my colleague Mr Holbert is currently responsible has carriage of Australia's social security agreement program. The treaty action proposed is that Australia and the Kingdom of Denmark enter into an agreement on social security. As you will note from the national interest analysis, the proposed agreement was signed on 1 July 1999.

I will just give some general background on social security agreements. First, on the benefits that they provide: agreements improve bilateral ties by providing better social protection for people moving between countries and address gaps in social security coverage; they help people to maximise their income and allow people greater choice in where to live or in where to retire; and they can also provide cash inflow benefits for a country and, as a recipient of migrants, we tend to be net beneficiaries of agreements. Our department is engaged in social security agreement discussions with a number of Australian migrant source countries. These discussions are at varying stages of progress.

In terms of this agreement, discussions about the possibility of an agreement between Australia and Denmark commenced in 1990. The agreement was signed on 1 July 1999, after negotiations on the agreement text and administrative matters were concluded. The proposed agreement with Denmark complements Australia's nine other shared responsibility agreements that are with Italy, Canada, Spain, Malta, the Netherlands, Ireland, Portugal, Austria and Cyprus. It differs from older style agreements, called host country agreements, which we have

with New Zealand and the United Kingdom, where the country in which the person permanently resides takes responsibility for social security cover—and I should say which we had with the United Kingdom.

From Australia's perspective, the proposed agreement will cover age pension, disability support pension for the severely disabled and parenting payment for widowed persons. At the Denmark end, it will cover payments made under their Social Pensions Act and their Labour Market Supplementary Pensions Act. Consistent with Australia's other shared responsibility agreements, the proposed agreement with Denmark will help people overcome residence restrictions in the domestic law of both countries in relation to the lodgment of claims: it will help people meet their minimum residence requirements; it will overcome time limitations on portability payments if people live in either country; it will apply a specific income testing regime for Australia; and it will provide avenues for mutual assistance to help in the correct determination of entitlements.

I thought I would give a couple of examples of how this might apply. The first example is a person who comes from Denmark to live permanently in Australia. The person claims Australian age pension on reaching age pension age, after having been an Australian resident for only two years. The residence qualification for age pension in Australia requires 10 years Australian residence. Accordingly, without the agreement, this person would have to wait another eight years before he or she would qualify for an Australian age pension. The agreement will allow the person to add together their period of residence in both Australia and Denmark to meet the 10-year minimum residence requirement. The person would be able to use the agreement to claim any Danish pension to which he or she might be entitled. In this way, both countries have a share in the person's total social security coverage. Similarly, if we had an Australian person going to live in Denmark, the reciprocal would occur.

**Mr BAIRD**—Do you have figures in relation to that split in terms of the cost?

**Mr Whalan**—Yes, and I will come to that shortly. But I can say that it is a net benefit because we are a greater recipient of Danish immigrants to Australia than we are of Australians going to live in Denmark.

**Mr BARTLETT**—Is it a net benefit because the Danish government pays the bulk of the pension rather than the Australian government?

**Mr Whalan**—It is a net benefit from a combination of two things: first, there are the net migration flows; and second, that for those previous Danish citizens in Australia, yes, the Danish government pays them the pension that they would have partially accrued from their time in Denmark. So we get a flow of funds into Australia from, effectively, the social security system in Denmark.

**Mr BARTLETT**—I am sorry to interrupt you at this stage, but can you elaborate on that? What if the person you are referring to had been in Denmark for only one or two years and had then come to Australia?

**Mr Whalan**—Then it is proportional.

**Mr BARTLETT**—So we would be paying the bulk of it?

**Mr Whalan**—Depending on their entitlement, which would be a proportional entitlement out of Denmark, yes, we would pay the bulk, but they would get something out of Denmark.

**Mr BAIRD**—How is it also a net benefit if they were not entitled to anything because they had only been in Australia for two years?

**Mr Whalan**—At the end of 10 years, they would be entitled to something.

**Mr BAIRD**—So this one goes beyond the 10 years?

**Mr Whalan**—Yes, it goes for the rest of their life.

**Mr BAIRD**—So that is a plus.

**Mr Whalan**—The second example is of a person who has spent the first 30 years of their life in Australia who then goes to live and work in Denmark and who has an accident and becomes severely disabled while in Denmark. Without the agreement, he or she would have to return to Australia as a resident in order to lodge a claim for an Australian disability support pension. Under the agreement, the person would be able to lodge that claim from Denmark and be granted the pension while in Denmark. Both those instances occur in the reciprocal example and, as I have mentioned, there is a net benefit to Australia as a result of the net flows between Australia and Denmark.

I would like to make a couple of other comments before opening up to questions. First of all: is the agreement beneficial to Australia? I have mentioned some of this. Yes, it is. The agreement will benefit Australia's population of about 9,000 Danish born residents who are in Australia as well as those former Australian residents now living in Denmark. In Australia it is estimated that around 1,600 Centrelink customers who were born in Denmark may benefit from the agreement. Why? Because currently they are being paid a social security benefit by Australia and they would also be able to access a benefit out of Denmark, thus increasing their income and reducing the benefit they would receive from Australia. It is also estimated that around 230 people may benefit from the agreement by gaining access to the Australian pension. It is estimated that the agreement will generate an annual saving of $200,000 per annum to the Australian government. Will anyone be worse off under the agreement? No, no-one will be disadvantaged by this agreement.

In terms of consultation, the Danish community in Australia was first consulted about the possibility of an agreement in 1991, at which time an information paper was distributed to a number of Danish groups. In December 1999, the text of the proposed agreement and an information paper were sent to various Danish community organisations and to a range of other organisations and state and territory governments. Comments were invited. As noted in the national interest analysis, the consultation process did not bring to light any concerns about the proposed agreement.

In conclusion, it is considered that the proposed agreement with Denmark will complement the existing agreements Australia has with a number of other countries. It is consistent with the approach we have taken in trying to establish shared responsibility agreements on social security which deliver benefits to both the individual and Australia. Subject to the views of the committee and the timely completion of the necessary action in both countries, the Department of Family and Community Services and Centrelink aim to implement the agreement from 20 September this year.

**Mr BYRNE**—Has this mutual agreement been examined in countries like Greece and Turkey, for example?

**Mr Whalan**—Yes.

**Mr Holbert**—The notion of a shared responsibility agreement has been raised in the context of at least Greece quite recently. In that instance, I understand that there are some difficulties regarding the capacity to reach an arrangement which is fully reciprocal—where the government of Greece is able to offer a similar range of provisions under an agreement, as we would expect, in return for what we are able to offer in Australia.

**Mr BYRNE**—Are other countries where we have a relatively high migrant intake, such as Vietnam, also being looked at?

**Mr Holbert**—Our longer term strategic planning in those areas is factored on two major issues, one of which is the age distribution of the migrant population. Whilst over the last decade the Asian countries have become our prime source of both skilled and family immigration, the age bulge is still very much at the lower end of the spectrum. We do not expect a large flow into the upper end of the spectrum. In the 40-year-old-plus group, by far the largest distributions are still our European source migrants. The other issue of difficulty is the need to have an institutional structure within the partner country which enables a mutuality to be established.

**Senator MASON**—If I can butt in on that specific point: a few months ago, we heard evidence about the social security agreement with the United Kingdom and how things had broken down. What is happening with respect to negotiations with the United Kingdom about a reciprocal social security agreement?

**Mr Holbert**—The notion of a shared responsibility agreement is very much what we would like to establish with the United Kingdom. The host country agreement that was in place very much placed the burden on Australia to meet those costs.

**Mr Whalan**—Effectively, we are severing the agreement because the United Kingdom was unwilling to offer Australia the same deal that they offered to most other countries they had an agreement with, which, amongst other things, was that they would index the pension that they paid to UK residents in Australia. So, after at least a decade—I do not know how many years—of negotiating and offering compromises, we got to the point where we said that there was no benefit in continuing this.

I would like to add one comment to Mr Byrne's earlier question: in terms of other migrant countries, particularly in South-East Asia, we have a long-term strategic position of trying to establish agreements with them, but only when they have a mature social security system. A classic case is China. We are doing a lot of work on advising China and providing technical assistance on their social security system. That benefits stability in China and in the longer term, with future migration flows between China and Australia, we see benefits in being able to have agreements like this.

**Mr BYRNE**—Does the government of Denmark channel that payment through our government agencies, or is it a separate payment? Also, where is an appeal process directed to if one has an issue, for example, with the Denmark component?

**Mr Sammut**—One of the articles in the agreement deals directly with appeals. It depends on which tribunal would have authority to hear the appeal from Australia's perspective. For example, an appeal that would go to the Administrative Appeals Tribunal would be out of the scope of the agreement, but an appeal to the Social Security Appeals Tribunal would be dealt with because the agreement defers to the social security laws of the country. The framework for the Administrative Appeals Tribunal is not within the social security law, so an appeal would be lodged in Australia to the SSAT.

**Mr Holbert**—On the first point of whether the funds are combined or channelled through the Australian social security system, there are two separate payments made to the individual: one from Centrelink and one through the government of Denmark. As I said, the agreement defers to the social security legislation in the countries concerned regarding appeal rights. So, clearly, any decision made in Australia would be subject to the full range of appeal provisions that are available within Australia. Similarly, in administrative terms, whilst there are two payments being made, we do a considerable amount to facilitate the person's contact with Denmark by providing the capacity to lodge applications through the Centrelink International Services Office in Hobart.

**Mr BYRNE**—If some of these countries with whom we have these mutual agreements started defaulting on their payments for whatever reason, who would then have the obligation to pick up the shortfall in payments?

**Mr Whalan**—If the country defaulted?

**Mr BYRNE**—For whatever reason, just as a hypothetical case.

**Mr Whalan**—In a hypothetical case, if a country defaulted on its obligation to pay a pension to an Australian citizen, the only obligation that would fall on Australia is that we would adjust their entitlement at the Australian end. Using the previous question and Denmark as an example, Bill Smith, an ex-Danish citizen now in Australia, would receive two payments: one from the Danish government, one from the Australian government. Because there would be some information flow between those two governments, the Australian payment would be adjusted depending on the income he receives from Denmark. If the income from Denmark stopped, then we would push up the Australian payment.

**Mr BAIRD**—Does that mean it alters every time there is an exchange rate variation?

**Mr Sammut**—Yes, there are variations from time to time but not necessarily every time there is an exchange rate variation. We generally review the exchange rates for international payments on a quarterly basis; otherwise it becomes a bit of a nonsense.

**Senator MASON**—Mr Baird's questions beg the next question: how are these shared responsibility agreements working? Are the beneficiaries satisfied?

**Mr Whalan**—They are excellent in the sense that they allow the beneficiaries to maximise their income from both countries. So it is a win-win situation, particularly for net migrant recipient countries like Australia.

**Senator COONEY**—Who has the most generous pension scheme?

**Mr Whalan**—Nordic countries have very generous social security schemes. In a broad sweep of the world, the Nordic countries are as generous as anyone.

**Senator COONEY**—When somebody from Denmark gets a pension from that country and we adjust our pension, do you adjust for changes in the rate of exchange?

**Mr Whalan**—We mentioned earlier that we take account of the rate of exchange once a quarter.

**Senator COONEY**—Are there any complaints about that—and not only with this agreement but across-the-board?

**Mr Sammut**—In terms of adjusting the exchange rate, I understand that it was problematic when we used to adjust the rate less frequently. But, once people got used to having a cycle, I think they settled down because their rates became more predictable.

**Senator COONEY**—This is probably why I am asking the question: I had a constituent who said that your exchange rates were calculated on a basis that did him damage while the government benefited. Have you had any complaints generally about that?

**Mr Sammut**—I do not know the answer to that.

**Mr Whalan**—We can provide you with more advice about that. A comment I would make is that it will absolutely depend on the individual. You might have two individuals living next door to each other. One gets 90 per cent through the Australian system and 10 per cent through the Danish system, using that example—

**Senator COONEY**—This was not a Danish pension but a British one.

**Mr Whalan**—I think that has more to do with indexation from the UK.

**Mr BARTLETT**—As a follow-up to Senator Mason's question, I am a bit puzzled as to how it can be win-win for everyone if the recipients are beneficiaries, if there is no extra cost to the Australian government and presumably the Danish government would not sign up if there were an extra cost to them. Where is the money coming from?

**Mr Whalan**—Most countries in the world have a different social security system than we have. Australia and New Zealand are unique in that our social security systems are paid out of general revenue. Most other countries in the world pay their social security system out of individual accounts that individuals or employers have contributed to throughout their working life. So the sources of many of these payments are often the individual accounts. That is the first comment I would make.

My second comment is that European countries in particular have a different view of this than we may have. Their view is, first, that their citizens are citizens of the world and ought to be able to live in other countries; and, secondly, that they remain their citizens irrespective of where they go. Therefore, they have an obligation to provide them with support and are happy to provide them with support, even though it is a net cost to them for some of the payments—it is a net cost to some overseas countries.

**Mr BARTLETT**—It is a net cost to their social security funds, but it is certainly not a net cost to the Australian government or the Australian taxpayer, as you have said.

**Mr Whalan**—Correct.

**Mr Holbert**—Whilst contributory pensions relate to European countries— which is where the majority of our agreements are—with there being a certain sense of ownership of that pension having been paid in during the course of one's working life, there is nonetheless a move to restrict the portability of those pensions and the ability of people to access them from outside the country of grant. Largely, that is restricted to countries where there is a social security agreement in place. While the social security agreement provides for cross-granting and the ability to accumulate and aggregate periods of time, it also provides for administrative cooperation. More and more often we are seeing European countries that, because of the difficulty of administering a pension in such a remote way, are increasingly restricting the mobility of those pensions to countries where they have a social security agreement and they can get some administrative cooperation to help ensure that their records are current and that payments are being made appropriately.

**Mr BARTLETT**—Where there are different qualifying criteria between the two countries, does an agreement such as this increase the possibility that someone who is not eligible in one country—say, Australia—may then migrate to Denmark and become eligible for a disability pension or the like and thereby somehow indirectly put a greater burden on the Australian government that might not have been there?

**Mr Whalan**—As a general comment, the agreements tend to exclude those elements; they tend to exclude areas where there is not a common approach.

**Mr BARTLETT**—A common qualifying criteria?

**Mr Whalan**—That is correct.

**Mr Holbert**—In this instance, the only area of disability that I think is covered is the sort of severe disability. With the more problematic areas where there may be a need to regularly review and involve rehabilitation with the aim of moving somebody back into the work force, that is not the sort of portability that is covered under this arrangement.

**Mr BAIRD**—Is this likely to generate increased numbers of older Danes coming to Australia? With this very favourable agreement in place, are we not likely to see a whole number of people then applying to come to Australia so that they can then receive double pension arrangements?

**Mr Whalan**—My first comment would be that it is not really double pension arrangements; it is really being able to obtain access to the pension you would have received if you had stayed in one country for all of your life—but in two parts. Our experience is that it has not markedly increased the flow of older people from those countries with whom we have already concluded agreements.

**Mr BAIRD**—So, in your example of the person who has been here two years, they are not likely to get any greater benefit than they would in Denmark and, vice versa, they would not get any more than an Australian would get if they had been applying for the pension normally. Is that right?

**Mr Whalan**—As a generalisation, that is correct. If they had come from Denmark without an agreement, they would have had to have waited for 10 years residency and then they would have got access to the full Australian system, without any contribution from the Danish government. Now, with the agreement, they will get access to something from the Danish government, and that will be taken account of.

**Mr BAIRD**—With the track record of your having signed similar agreements before, have you seen a big lift in the number of people who have come from those countries?

**Mr Whalan**—To my knowledge, not at all.

**Mr Sammut**—I might just clarify one point about how an elderly person might enter Australia from Denmark. With the way the Danish system operates, if you have been a Danish citizen for more than 40 years after the age of 16, you would be able to take your entire Danish pension to the other country. In the example that you gave, this elderly person would be bringing 100 per cent of their Danish pension. With the way our income test will work for somebody who is using the agreement to qualify for an Australian pension, that Danish pension will be directly deducted from their Australian pension. So, in effect, in the example you gave, that person may not get any Australian pension.

**Mr Holbert**—Also, the normal provisions for mobility through migration and the like would still apply in these instances. I would say that, with the first example we gave, it may be possible that what you are looking at is a Danish family coming to join their children who have migrated to Australia; in that case, they may be quite a way on in their working lives. Firstly,

they would have to qualify under our immigration programs through quotas and meet all of the necessary requirements regarding their appropriateness as migrants. Then, as Mr Whalan has pointed out, they would be able to bring a substantial part of their entitlement of whatever pension scheme they had been contributing to in Denmark, which we would dollar for dollar deduct from their Australian pension entitlement.

**Senator TCHEN**—I may be a bit slow here but I want to get it clear in my mind in very simple terms: let us consider this agreement for a Danish citizen migrating to Australia who has not qualified yet for a pension in Denmark but who has paid into the retirement pool. After coming to Australia and having qualified, by whatever means, for an Australian pension, the Danish government will start paying the Australian government for the full pension that this person receives. Is that right?

**Mr Whalan**—You have suggested that they would have to wait to qualify here. Probably the most significant element of the agreement is that their qualifying period would take account of their time in Denmark. So, whereas at the moment a Danish person coming to Australia would have to wait 10 years to qualify for an age pension, if they had spent 10 years of eligible residence in Denmark they would automatically be eligible in Australia.

**Senator TCHEN**—But what I am getting at is that the Danish government will then pay the portion that that person would be entitled to were he to remain in Denmark, and the Australian pension would top up the rest to what he is entitled to in Australia.

**Mr Whalan**—It would take account of that Danish pension and either pay them nothing, because the Danish pension might mean that they would not be eligible for anything in Australia; or, if it were a part-pension from Denmark, they may end up with a part-pension from Australia as well.

**Senator TCHEN**—That is why in this agreement the appropriate section is devoted almost entirely to the description of what would happen in Australia rather than what would happen in Denmark. You assume that the Danish system would be set in stone and that it does not affect you.

**Mr Whalan**—Our estimate is that there are 230 ex-Australians in Denmark who, as a result of this agreement, will be eligible for an Australian social security payment which they would not have previously been eligible for.

**Senator TCHEN**—Under the 10-year rule?

**Mr Whalan**—I am not sure whether there is a 10-year rule in Denmark.

**Senator TCHEN**—No, because they have not been in Australia for 10 years.

**Mr Whalan**—It would be because of the eligibility rules that apply in Denmark.

**Mr Holbert**—If the former Australian were living in Denmark—to be eligible for an age pension under normal circumstances a person has to be both an Australian resident and have 10

years of residence—he or she would have to return to Australia and show intent to be a permanent resident of Australia in order to be granted an age pension, whereas under this agreement they would actually be able to lodge their application from Denmark.

**Senator TCHEN**—I understand that part. I have a question about the Danish pension system and I do not know whether you will feel confident in answering it: you have said that the Danish system depends on the taxpayer paying into a specific pool. If that is so, is a person who has only made minimal payment into the pool still entitled to a pension or is it proportional to what he or she has paid in?

**Mr Whalan**—I said that most countries in the world have arrangements where people make contributions to the pool. Denmark apparently has a mix.

**Mr Sammut**—Yes, there are two systems in Denmark—

**CHAIR**—We do not want to spend half an hour on this.

**Mr Sammut**—No. There are two basic systems: one is the Social Pensions Act and the other one is the labour market act. The labour market act has been around since about 1964 and is a contributory system. But people who started paying their contributions in 1964 possibly will not be able to extract their maximum benefit for some time to come. So they are still operating on a mix of systems in the same way as we have been with our system and the superannuation guarantee.

**Senator TCHEN**—Does citizenship in Denmark have the same sort of grandfathering rules that the United Kingdom has?

**Mr Sammut**—I am not sure about the grandfathering rules, but their rules for the social pension requires a Danish citizen to have been in Denmark for three years over the age of 16. This agreement equates Australian citizens with a Danish citizen for qualification in Denmark.

**Senator TCHEN**—This is what I am getting at: say that the economic circumstances in the European Union really take off, accompanied by a substantial change in the exchange rate, that might encourage some Australians of Danish descent to migrate back to Denmark.

**Mr Sammut**—It may well do, but then we also have our rules about proportional portability so that is not to say we would pay the amount that they are getting in Australia. The amount we would pay outside of Australia would depend on the number of years of their working life they had spent in Australia.

**Senator TCHEN**—So we are not obliged to top up the Danish payout?

**Mr Whalan**—Only for the proportion of their working life during which they were in Australia, which is fair because they contributed to the tax system here.

**Senator TCHEN**—Your department's calculations on page 7 of your submission seem to imply that assessing pension income tax adds an oncost of something like 10 per cent onto the pension. Is that right?

**Mr Whalan**—We will just find that.

**Senator TCHEN**—That is not 'other administrative costs' but just to administer the pension tax.

**Mr Whalan**—Could you repeat that question again, please?

**Senator TCHEN**—There is a table on page 7 of your submission. From reading the fourth paragraph on the page above that table, it seems that the department is expected to save some $300,000 in administrative expenses due to the fact that you no longer have to carry out a pension income tax test on those Danish Australians who would have received some $2 million or $3 million in pensions. So there are on-costs of 10 per cent.

**Mr Whalan**—Here we have the joys of accrual budgeting. Under accrual budgeting, 'administered expenses' are what we used to call 'program expenses'; another way of saying that is that they are the social security outlays. The savings are not in running costs for the department; all the savings in that paragraph are from social security outlays.

**Senator TCHEN**—So there is a proportion from the program?

**Mr Whalan**—Yes.

**Mr HARDGRAVE**—I have just a quick observation: it is almost a case of what a difference a Dane makes. The Department of Family and Community Services should be commended for picking up its act compared with the previous time when it appeared before this committee because the process of consultation, to my mind, seems very extensive. I was just wondering whether you could reflect upon the value of that process of consultation in so far as enhancing your own understanding of what it is you are negotiating, and whether or not you felt that relevancy was achieved compared with what people were saying to you about what you had done. I guess the question is: was it worth while?

**Mr Whalan**—That is a difficult question. Why is it difficult? Because, whilst on the one hand we believe in the normal course of events that consultation is extremely valuable and ought to improve the outcome to a great degree, we have found it difficult to engage the Danish community. We have wondered why. I think part of it is that the Danish community, more than most, have absolutely assimilated into Australia. So, if you look for a Danish club anywhere, you will not find one.

**Mr Holbert**—Or most members will not be Danes.

**Mr Whalan**—So yes, on the one hand we believe that broader consultation is very valuable, although we have actually found the consultation in this area to be less fruitful than most.

**Mr HARDGRAVE**—I wonder whether you could reflect upon this: the agreement was signed by Minister Newman and a Danish counterpart on 1 July, and you sought submissions from the community on 2 December, which is five months later. Is that a reasonable time frame, or was there any significance in that?

**Mr Whalan**—I think that is a reasonable period, given that this has been under way for nine years.

**Mr HARDGRAVE**—So another five months does not make any difference.

**Mr Whalan**—These agreements take a long time to conclude because they are dependent on parliaments at both ends and on extensive negotiation.

**Mr HARDGRAVE**—So you would not have been able to seek any views from people earlier than five months after the signature had been put on the document?

**Mr Holbert**—With your earlier comment about what a difference a Dane makes, this committee process is relatively new to us in terms of our involvement as a department. We have certainly learnt a lot in terms of what we can gain through consultative processes and the like since our first appearance. It is something which increasingly we are building into our planning processes and which was not necessarily in place before. I think in future, now that consultations are being included as a matter of course in our planning, we could possibly move to them on a quicker basis—not necessarily in terms of speeding up the entire process but in terms of being able to speak to people when perhaps the issue is clearer in their minds and to the forefront of their consciousness, as it would be after a signing.

**CHAIR**—Thank you kindly for your evidence this morning.

**Double Taxation Agreement between Australia and Romania**

[11.27 a.m.]

**ALLEN, Mr Ken, Treaties Counsel, International Tax Division, Australian Taxation Office**

**LENNARD, Mr Michael, International Tax Counsel, International Tax Division, Australian Taxation Office**

**PICKERING, Ms Ariane, Acting Assistant Commissioner, International Tax Division, Australian Taxation Office**

**CHAIR**—I welcome the representatives of the Australian Taxation Office who will give evidence on the double taxation agreement between Australia and Romania. Do you have an opening statement?

**Mr Allen**—Yes. This is a comprehensive agreement for the avoidance of double taxation and covers all categories of income flows between Australia and Romania. The agreement was signed in Canberra on 2 February this year, and legislation will be required to give it the force of law in Australia. The agreement will add to Australia's existing bilateral tax treaty network of 38 treaties. Once it is in force the main impact of the agreement will be on Australian enterprises investing in and trading with Romania. Currently, Romania is Australia's largest export market in central Europe.

As with earlier agreements, the two key objectives of the agreement are to eliminate possible barriers to trade and investment caused by the overlapping taxation jurisdictions of the two countries. The agreement provides a reasonable element of legal and fiscal certainty about the taxation rules to apply to cross-border trade and investment. It will also create a legal framework through which the respective tax administrations can exchange information to prevent international fiscal evasion.

The agreement reduces double taxation by providing for the sharing of taxing rights between the two countries, including by limiting taxing rights over various types of income flowing between the countries. For example, the agreement contains a standard tax treaty provision that neither country will tax business profits derived by residents of the other country unless those profits are related to business activities carried on in the other country through a permanent establishment, which is broadly a branch or a fixed base or fixed presence in the other country. The agreement also provides methods for reducing double taxation where both countries have a right to tax under the agreement.

The impact of the agreement will be, as I said earlier, mainly on Australians investing in and trading with Romania. In that respect, the agreement will reduce Romanian taxation generally. Also, on cross-border movement of personnel, it has rules for taxing visiting employees and

professional people. In addition, it has important impacts on the government in relation to assisting the bilateral economic and trading relationship and adding to the existing network of other commercial treaties between the two countries. As I mentioned earlier, it will promote greater cooperation between the taxation authorities.

A broad overview of the agreement: it is substantially similar to Australia's recent tax treaties, except for some variations which do not affect the substance of the agreement, and they are outlined in the national interest analysis. The agreement applies only in relation to income taxes of the respective countries. It contains articles covering the various categories of income and various rules by which double tax will be avoided in relation to those different categories of income. It also establishes procedures for mutual agreement between the tax administrations on issues that may arise and for the exchange of information. In general, the agreement does not impose any greater obligations on residents of Australia than Australia's domestic tax laws would otherwise require.

I will not go into the detail of the agreement except to mention specifically that, in accordance with Australia's current tax treaty policies, there are limits on the tax that the state in which dividends, interest or royalties are sourced may charge on such income flowing to residents of the other state. Those limits are 10 per cent for royalties and interests, which accord with our other recent treaties. A recent development with a number of other treaties is the limit on dividends. Outgoing dividends of the source country have been limited to five per cent for, more or less, franked dividends which are being taxed at the corporate level, provided the dividend recipient is a company that holds directly at least 10 per cent of the capital of the company paying the dividend. A 15 per cent limit applies to all other dividends.

The agreement also includes revised provisions designed to address the issues raised by the Federal Court decision in the Lamesa Holdings case so as to ensure that real property held by a non-resident through a chain of companies—which was the situation in that case—are covered by the agreement. The entry into force article provides that the agreement will have prospective effect in respect of income of the next calendar year following that in which the agreement enters into force. Assuming that legislation is enacted this year, it should enter into force by the end of this year.

I turn to costs. Once in force, the agreement is not expected to result in increased administration or compliance costs, nor is there expected to be significant revenue effects, especially in the case of Australia, given that the balance of trade and investment is heavily in Australia's favour.

I turn to consultation. As the committee would be aware, the ATO has established a Tax Treaties Advisory Panel to review proposed tax treaty actions. As advice on double tax agreement matters is largely provided to industry through specialist tax professional firms, membership of the panel is composed of tax professional specialists; industry representatives; officials from the ATO, the Commonwealth Treasury and the Attorney-General's Department; and the relevant Business Council—and that has been a recent addition.

On 13 February 1998, the tax treaties panel considered the proposed agreement as it was at that time. It agreed to the terms of the agreement, except that some more work was needed in

relation to the Lamesa Holdings case provision. Prior to conclusion of the agreement following that meeting, the ATO reached agreement with the Romanian Ministry of Finance on a proposed revised provision and agreed to address some other issues raised by the panel. The Department of Foreign Affairs and Trade has been involved in the finalisation of the agreement, as with other tax treaties. Information in relation to the proposed agreement has been provided to the states and territories. To date, there has been no request for further information because, as I mentioned, it only affects federal income tax; it does not affect any state or territory taxes. That is a broad overview.

**Mr BYRNE**—Will major Australian exporters be subjected to a new tax in Romania as a consequence of this agreement?

**Mr Allen**—As I mentioned earlier, only if they carry on business activities in Romania and have a permanent establishment or branch in Romania.

**Mr BYRNE**—With the bulk of our exports, as I see it, being coal, iron ore and other ores, would mining companies have a permanent establishment there?

**Mr Allen**—If they are conducting mining activities there, they would normally be attracted.

**Mr BYRNE**—Are you aware whether any of our major exporters are actually conducting mining operations there?

**Mr Allen**—I am not aware at this stage. When the agreement was negotiated, which was between 1992 and 1995, we were aware of some mining activities. The Department of Foreign Affairs and Trade may have more current information.

**Mr Mason**—I personally do not have more information, but I can get that for you on notice.

**Mr BYRNE**—Given that it is obvious that mineral export companies form the bulk of our exports, does this proposed agreement deleteriously affect them with respect to their export income?

**Mr Allen**—It certainly would not. If anything, it would reduce or limit the Romanian taxes that they bear.

**Mr BYRNE**—Notwithstanding what you have just said—that is, even though they may have a permanent establishment in Romania and they may not have been taxed previously—are you saying that they can be?

**Mr Allen**—I am sorry, no. The agreement will not entitle Romania to impose any new taxes other than their existing taxes; it does not impose any extra burden.

**Mr BYRNE**—Have these sorts of divergences from the normal template agreement come about because of the government that you are dealing with?

**Mr Allen**—Yes. There is basically a standard model with Australian treaties and with international treaties generally. However, each treaty is a bilateral negotiation which is negotiated against the background of each country's respective taxation laws and their national interests. That is why there are variations.

**Mr BYRNE**—And I presume that, in those regimes, it is the governments you are dealing with. Is that a fair statement?

**Mr Allen**—Yes, we deal with the other country's taxation authorities or finance ministry.

**Mr BYRNE**—With the dual resident mutual agreement, Australia agreed to add the phrase 'competent authorities shall consult each other'. What are 'competent authorities'?

**Mr Allen**—With each agreement, we need to appoint a competent authority as the point of contact for communications between the respective taxation administrations. In the case of Australia, it is the Commissioner of Taxation or his authorised representative.

**Mr BYRNE**—Has that been added because there has been some difficulty with the other authority in the Romanian government or whomever you are dealing with? I presume it has been added because there has been a problem there.

**Mr Allen**—No, it is a standard provision in all treaties. You need a contact point in relation to exchanges between the tax administrations over any problems that arise or over any matters of interpretation where we need to reach consensus.

**Mr Lennard**—I might add that there is a provision in this agreement, as in other agreements, which allows taxpayers who are concerned about different interpretations to seek the competent authorities to reach a mutual agreement.

**Senator LUDWIG**—How confident are you that the amendment to article 13 overcomes the Lamesa Holdings issue that has arisen? Also, have you sought other advice about that?

**Mr Allen**—Yes, we have. We sought advice from the Attorney-General's Department and from the members of the Treaties Advisory Panel; we took into account their comments. We have also discussed the matter at length with the Romanian authorities. I might mention that we have a comparable provision in a number of other recent treaties and we have discussed that provision with the other countries also.

**Senator LUDWIG**—Could you just take it on notice and demonstrate where it has been changed from A to B, the basis of the change and the reason for the change in terms of Lamesa Holdings? That will just give us a bit of a background into it. It is not important to do it now, but could you do it at some point?

**Mr Allen**—Yes. The standard is an alienation of property article which entitles a country in which real property is situated—

**Senator LUDWIG**—I do not want to interrupt you, but time is of the essence and I do not want to take up the committee's time on this issue. If you could please take that on notice and get back to me. I understand what it is about; I just want to know the differences that have been brought about and the legal underpinning for the argument that you then put by saying the problem will be overcome by the new wording. If you could get back to us at some future time on that, it would be great.

**Mr Allen**—Certainly.

**Senator COONEY**—You have told us about a group that gives you advice on these double taxation agreements. Did you say that the ACTU was or was not a member of that group?

**Mr Allen**—The members are outlined on page 9 of the national interest analysis; no member of the trade unions is included there. These should not affect trade unions because all the treaties are about is affecting each country's taxing rights over income flows.

**Senator COONEY**—It is a tax on income though, isn't it, that you are talking about?

**Mr Allen**—Yes.

**Senator TCHEN**—Your national interest analysis, for which I thank you, provides a very comprehensive description of the agreement and also the process you have gone through. However, I notice that you have not actually given us a great deal of analysis of the costs and benefits to Australia of this agreement. I understand that we already have 38 similar agreements with other countries.

**Mr Allen**—Yes.

**Senator TCHEN**—This might be old hat to you but I, myself, and most of the people I represent are not taxation experts. Could you give us some background or analysis on how you see this treaty benefiting Australia and what potential cost there might be?

**Mr Allen**—In the case of this treaty especially—because the balance of trade and investment between Australia and Romania is heavily in Australia's favour—we expect it to be of benefit to Australian firms investing in Romania because it will operate to limit the Romanian tax generally. It also clarifies the respective taxation rules in both Romania and Australia in relation to those investments. But as to the costs or benefits to revenue, as was given in evidence earlier in relation to the trade and investment agreement with Slovakia, these agreements operate prospectively. The costs and benefits are largely dependent on the effect they have on future trade and investment flows, which are very difficult to estimate in advance.

Also, there is the time over which the treaty will operate. This treaty, as with other treaties, operates indefinitely, but either country may terminate it after five years. There also is the difficulty of obtaining adequate data as to not only existing Australian companies' and other residents' contacts with Romania but also the future. So, in short, it is very difficult to give an estimate of the overall costs and benefits of any particular treaty. I might mention that some work was done on this issue by the OECD in relation to Mexico when it commenced

negotiating tax treaties some five or six years ago. That working party decided that it could not come up with adequate costings and, as a result, the committee work was abandoned.

**Senator TCHEN**—I wonder whether you can cast your thoughts more broadly on this. We already have 38 treaties in place—some of these will be with countries which have a trade deficit with us and others will be with countries which have a trade and investment surplus with us. Surely, treaties like this, if they are sort of template treaties, should be beneficial to us as a nation and perhaps, ideally, to our counterpart as well; they should be beneficial to both in any circumstances. Would you like to comment on that?

**Mr Allen**—I think in general terms—and, following my initial comment, I will ask Mr Lennard to comment further—while Australia's treaties follow the OECD model, they depart from it in that, being a net capital importer, our model places greater emphasis on preserving the source country taxing rights, which is generally to Australia's advantage. When we are negotiating with a capital exporter, their approach is to place emphasis on residence country taxing rights, and it becomes a matter of negotiation in the context of each bilateral negotiation. But Mr Lennard might have further comment on that.

**Mr Lennard**—Yes, and I will be brief. This issue arose last year. We made a submission, dated 9 November, which dealt with the history of attempts to outline costs and benefits of treaties. We concluded, based particularly on OECD data in the early 1990s, that the general feeling of the OECD working party is that these things do benefit the countries involved, particularly through benefitting the trade and investment relationship. One of the difficulties is to determine how much this will actually benefit the trade and investment relationship. That perhaps is particularly important for Romania because the investment relationship we are talking about in Romania is not only in terms of what will happen in Romania but also in terms of Romania being a point for wider markets within central Europe. I think Romania is recognised as being well placed. So I would refer the committee back to that.

I think there was a comment on that—it is in the December report, from memory—asking if there were anything further that could be done. The point I would make—and we have made it before—is that the international view is that what has been done probably is about as much as could be done in terms of the specifics of the benefits. We have recently asked Treasury if there is any more economic analysis that could be done in terms of working out the costs and benefits. Again, that would have to be measured for each particular treaty. But, in a case like this, I would refer the committee back to our submission on the general costs and benefits.

**CHAIR**—If there are any more questions, I would ask that they be put on notice. We now must move on to our next witness. I thank the witnesses for the briefing they have given us.

**Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations**

**Agreement between Australia and New Zealand on Child and Spousal Maintenance**

[11.51 a.m.]

**WILLIAMS, Mr Barry Colin, National President and Spokesman, Lone Fathers Association Australia Inc.**

**CHAIR**—Welcome. We have called you to give additional evidence on one of the treaties we considered at our last public hearing, being the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and an Agreement between Australia and New Zealand on Child and Spousal Maintenance.

**Mr Williams**—As well as being the National President of the Lone Fathers Association, I am a representative of Parents Without Partners and about 13 other groups with which we are associated.

**CHAIR**—You have kindly provided us with a written submission. One or two of our members who are very interested in your perspective on these agreements have to leave soon, so if we could ask you a few questions first and then, if you want to talk to this submission at the end, by all means do so.

**Mr Williams**—Yes.

**Mr BARTLETT**—Thank you for your written submission. I have not had a chance to read it in detail but have just glanced at it. Was your organisation or any organisation such as yours consulted in any way before this treaty proposal was put?

**Mr Williams**—No. We are a bit disappointed that these treaties are out now. I believe that they are not going out for any more public consultation and that they have already been out. I am not aware of any of our groups ever receiving a copy of such a submission.

**Mr BARTLETT**—Could you outline briefly how you would see this treaty impacting negatively on non-custodial parents?

**Mr Williams**—We feel that non-custodial parents are being hounded by one thing only, and that is the mighty dollar. We have reservations about treaties which Australia has made in other areas, especially with the Convention on the Rights of the Child where the rights of the child are not upheld by this country in any shape or form. The parliament of this country has ratified or will ratify the child support convention whilst at the same time allowing the courts, which come under the parliament, to break every aspect of that convention—and, first of all, in denial of access to the custodial parent. Even in the many cases of disappearance overseas, the government does not do enough to bring these parents back. However, it wants to hound the

paying parent to pay money for those children, even though half the time they do not see those children.

**Mr BARTLETT**—Would you have many examples of where members of your organisation have been denied access because the custodial parent has taken the child overseas?

**Mr Williams**—Quite a lot, yes.

**Mr BARTLETT**—Do you see that this sort of treaty might encourage that practice?

**Mr Williams**—We do not know whether it will encourage it or not, but we do believe that people will use the initiative to go over to New Zealand or elsewhere to deny the other parent contact with the children, yes.

**Mr BARTLETT**—Can you see any way in which the benefits of this treaty may ensure that adequate maintenance payments are still fulfilled without causing disadvantage for the non-custodial parent or father?

**Mr Williams**—Yes, we can. Perhaps the court might make the decision and not the Child Support Agency. We have nothing against the Child Support Agency—we have a great deal of respect for it—but we believe that the Child Support Agency's assessments are sometimes very wrong. The reason why people overseas do not meet their obligations a lot of the time is because of that assessment that their wages are lower than they were in Australia. We believe that, once the court goes right through the whole criteria of the whole case and listens to both sides, the court should make that decision and not the CSA. Frankly—I am a great supporter of the CSA and I am on its registry advisory panel—we have a lot of problems with calculations that the CSA do in assessments, especially with review officers.

**Mr BARTLETT**—That is a separate issue to this one though, isn't it: the formula and the calculation of the payments?

**Mr Williams**—It still winds into this one. They make the assessment and they hound people overseas until they pay it. But they do not take in the real information as to why that person cannot pay—not in all cases, but in some cases. Do not get us wrong: we are great believers that people should pay maintenance for their children. We always enforce that. In fact, you cannot join us unless you are financially supporting your children. We are just concerned that Australia has previously made many treaties of which we are aware and then does not uphold its end on those treaties—such international treaties as the rights of the child, which I mentioned in the first instance.

**Senator COONEY**—The amazing thing I suppose is that you were not told. There is no system whereby this news comes to you?

**Mr Williams**—I was only told a week and a half ago when I was asked to appear before this committee, and we did not have a great deal of time.

**Senator COONEY**—But are there any other groups like yours—fathers or mothers who have to pay maintenance—that you know of; and do you know whether they were given notice of this?

**Mr Williams**—As I have said, we are the senior body in Australia in family law, and most big groups liaise with us. We usually speak on these subjects and pass on information. But, no, I have not heard of any others.

**Senator COONEY**—They have told you that they did not hear about this?

**Mr Williams**—No, they have not told me. I have said that I was surprised because I had not heard. We were not told and I am sure that some of the others were not told.

**Senator COONEY**—When you found out a week or so ago, you did not check up?

**Mr Williams**—No, I have not checked up. We usually get these things from the Attorney-General's Department and we always put a submission to them. We have been putting submissions to government on family law policies for many years now. We have also been asked to become the next peak body under Jocelyn Newman and we are working towards that now.

**CHAIR**—So you are regularly consulted and asked to provide submissions. Which other government bodies ask you to do so?

**Mr Williams**—Usually the Attorney-General's Department, and the Office of Family Services under Jocelyn Newman.

**CHAIR**—You are on an advisory panel?

**Mr Williams**—I have been on the National Registry Advisory Panel of the CSA since it was set up. I would say, too, that I was one of the seven consultants who were given the task of setting up the child support scheme under Justice John Fogarty, so I have had a long association with it.

**CHAIR**—In this case, which outfit did not consult you about the treaty?

**Mr Williams**—We have never seen—

**CHAIR**—We are trying to figure this out. In a sense, often in these cases where there is a treaty—and this committee is one thing—it is much more practical if people such as yourselves are consulted directly. We have been told in evidence—and it is a very serious matter when people give evidence before us—that the Attorney-General's Department published an issues paper in November 1999, so it is not that long ago. It then circulated that paper to all sorts of state and territory law societies—the legal profession, so to speak—and 'groups interested in child support policy issues'. If that did not include you, that is a very serious matter.

**Mr Williams**—I am not saying that they did not include us. I am saying that we never got any such thing. I am the person who collects the mail; it comes to my office.

**CHAIR**—We will pursue that. It seems a strange thing that here you are involved in all these other things, yet in this one instance of a treaty which has a serious effect, where the family is split and one parent is in the country and the other is out of the country, somehow or other, strangely enough, they missed you out.

**Mr Williams**—Yes.

**CHAIR**—You discuss a few points in your submission. One is that there is an imbalance: there is a lot of machinery there to enforce payment, but there is nothing there to enforce access. You talk about the rates being about a third too high and that the rates are being levied on gross income and not net income.

**Mr Williams**—True.

**CHAIR**—Also, if they are to be calculated, they ought to be a percentage of the after-tax income with appropriate deductions. When you say 'deductions', what do you mean?

**Mr Williams**—It means these sorts of deductions. For instance, if you are the payer, you virtually have to have the child 109 nights a year before you can have any significant change in the payment. We are saying that that is very wrong. The payee has to have a house, electricity, water and everything like; and the payer has to have the same things when they have the children over. But there is no redress for the payer to bring up that balance. If you have the children for a weekend, you have to fork out for 12 meals and at the same time still pay the other person. This was brought up as a strong recommendation before the parliamentary inquiry into child support, but the parliament has not passed it.

**Senator LUDWIG**—You have mentioned that you were not aware of it and that you had not had an opportunity in the time available to consult with other groups to see whether or not they were aware of it. Perhaps if you could go back and find out amongst your network whether or not anyone else was aware of it and then get back to the secretariat, that would be helpful.

**Mr Williams**—Yes, I will certainly find out. We have 22 branches around Australia; none of them have told me that it went to them. We are in contact with dads and people like that, and I have not heard from them about it. It is very strange. It could have been sent out to the wrong address, I do not know. But, as I have said, this is the first time.

**Senator LUDWIG**—I know that I am asking a lot, but it would be helpful if you could have a look within your network. Maybe you are on email or have some sort of access where you can ask as broadly as you can who in your group may have been aware of it, or not. That would be extremely helpful to us.

**Mr Williams**—Yes. I thought we might have been excluded because, as you are probably aware, about five years ago we had an embassy outside the parliament. The government drew

up new laws stating that there would be no more buildings assembled out there. We were one of those groups of people, but we were peaceful people.

**Senator LUDWIG**—I do recall you being proactive, but that should not impact on your organisation being notified about such things.

**Mr Williams**—As I have said, it could have been sent and it could have gone to the wrong address. But it is highly unlikely because we get everything else from the Attorney-General's Department.

**CHAIR**—Thank you for coming. It is very useful for us to follow up these issues.

**Mr Williams**—Thank you very much.

Resolved (on motion by **Senator Ludwig**):

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

**Committee adjourned at 12.05 p.m.**