
The Parliament of the Commonwealth of Australia

Report 54

Treaties tabled in June and August 2003

Social Security Agreement – Croatia

Pollution by hazardous and noxious substances

Employment of dependants of diplomatic and consular personnel – Belgium

Working holiday arrangements – Belgium

Bougainville Transition Team

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Membership of the Committee

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National interest Analysis and proposed treaty actions presented or deemed to be presented to the Parliament,
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the minister may prescribe.



List of abbreviations

AMSA	Australian Maritime Safety Authority
AusAID	Australian Agency for International Development
BTT	Bougainville Transition Team
DIMA	Department of Immigration and Multicultural and Indigenous Affairs
DFAT	Department of Foreign Affairs and Trade
EU	European Union
FY	Financial year
HNS	Hazardous and noxious substance
IMO	International Maritime Organization
MOU	Memorandum of Understanding
NGO	Non-government organisation
NIA	National Interest Analysis
PMG	Peace Monitoring Group
PNG	Papua New Guinea
RHCA	Reciprocal Health Care Agreement

TMG Truce Monitoring Group

WHM Working Holiday Maker



List of recommendations

Social Security Agreement with Croatia

Recommendation 1

The Committee supports the proposed *Agreement with Croatia on Social Security* and recommends that binding treaty action be taken.

Protocol on pollution incidents by hazardous and noxious substances

Recommendation 2

The Committee supports the *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000* and recommends that binding treaty action be taken.

Agreement with Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel

Recommendation 3

The Committee supports the *Agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel* and recommends that binding treaty action be taken.

Agreement with Belgium on 'working holiday' arrangements

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of the Kingdom of Belgium on 'Working Holiday' Arrangements* and recommends that binding treaty action be taken.

Introduction

Purpose of Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of a series of proposed treaty actions tabled on 17 and 24 June 2003, and 12 August 2003 specifically:

17 June 2003

- *Agreement between Australia and the Republic of Croatia on Social Security, done at Zagreb on 13 May 2003¹*

24 June 2003

- *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000, done at London, 15 March 2000²*

12 August 2003

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

1 See *Senate Journal*, 17 June 2003, p. 1860 and *House of Representatives Votes and Proceedings*, 17 June 2003, p. 962.

2 See *Senate Journal*, 24 June 2003, p. 1937 and *House of Representatives Votes and Proceedings*, 24 June 2003, p. 1008.

- *Agreement between the Government of Australia and the Government of the Kingdom of Belgium on "Working Holiday" Arrangements, done at Canberra on 20 November 2002; and*
- *Protocol, done at Sydney on 30 June 2003, concerning the Bougainville Transition Team made pursuant to the Agreement, done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol, done at Port Moresby on 29 April 1998.*³

Briefing documents

- 1.2 The advice in this report refers to National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of the NIAs are available from the Committee's website at <http://www.aph.gov.au/house/committee/jsct/index.htm> or may be obtained from the Committee Secretariat. These documents were prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty.
- 1.3 Copies of treaty actions and NIAs can also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade (DFAT). The Australian Treaties Library is accessible through the Committee's website or directly at <http://www.austlii.edu.au/au/other/dfat>.

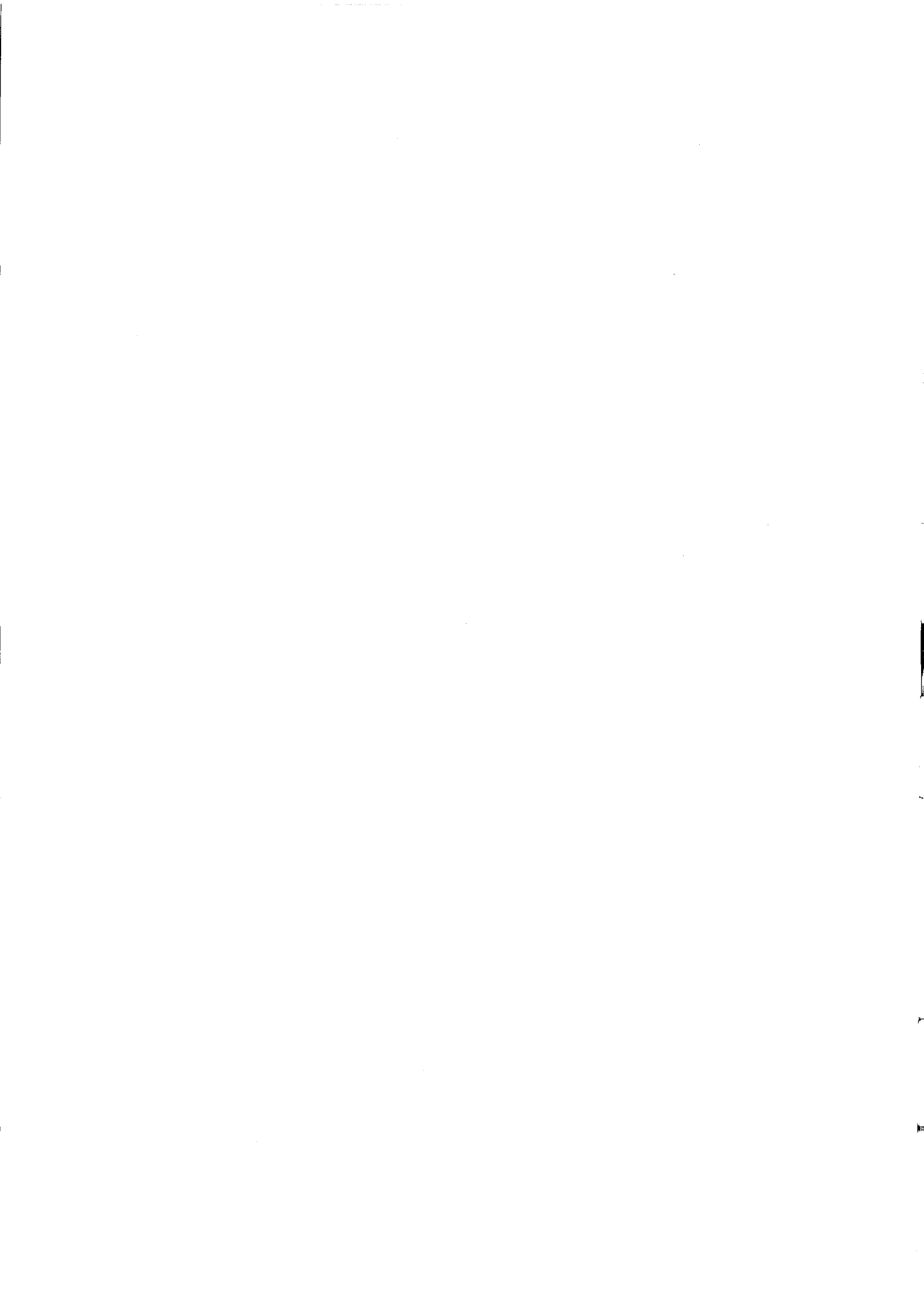
Conduct of the Committee's review

- 1.4 The Committee's review of the treaty actions canvassed in this report was advertised in the national press and on the Committee's website.⁴ In addition, letters inviting comment were sent to all State Premiers and Chief Ministers and to individuals who have expressed an interest in being kept informed of proposed treaty actions such as these. A list of submissions and their authors is at Appendix A.

³ See *Senate Journal*, 12 August 2003, p.2089 and *House of Representatives Votes and Proceedings*, 12 August 2003, p. 1064.

⁴ The Committee's review of the proposed treaty actions was advertised in *The Australian* on 20 August 2003. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee.

- 1.5 The Committee also took evidence at a public hearing held on 18 August 2003. A list of witnesses who gave evidence at the public hearing is at Appendix B. A transcript of evidence from the public hearing can be obtained from the Committee Secretariat or accessed through the Committee's internet site at <http://www.aph.gov.au/house/committee/jsct/index/htm>.



Social Security Agreement with Croatia

Introduction

- 2.1 The *Agreement between Australia and Croatia on Social Security* was tabled in Parliament on 17 June 2003. The Committee, in its previous report, noted that examination of the proposed treaty action was delayed at the request of the Department of Family and Community Services.¹ In Report 53, three other social security agreements were examined, adding to the extensive coverage given by the Committee to previous agreements of this type.
- 2.2 The Committee understands that the Agreement with Croatia is similar in terms to other agreements of this nature. Given the recent examination of three treaties of its kind in the Committee's previous report, observations will be kept to a minimum.

Background

- 2.3 Australia currently has 16 similar agreements with other countries. A list of these countries was provided to the Committee by the Department of Foreign Affairs (DFAT), as an annexure to documents tabled on 17 June 2003.

¹ See *Report 53: Treaties tabled in May and June 2003*, Chapter Three, pp. 15-34.

Features of the Agreement

- 2.4 As with other agreements of this type, this Agreement is designed to help overcome restrictions in Croatian legislation preventing the payment of pensions into Australia. For Australia, the Agreement covers age pensions, disability support pensions for people who are severely disabled, and additional child amounts if the pensioner has dependent children and is outside Australia. For Croatia, the Agreement covers old-age pensions, disability pensions and survivor's pensions.²
- 2.5 The Department of Family and Community Services estimates that over 300 people residing in Australia and Croatia will benefit by being able to claim payments to which they currently do not have access.³

Portability of benefits

- 2.6 The NIA advises that the Agreement provides for enhanced access to certain social security benefits in Australia and Croatia and greater portability of benefits between those countries. 'Portability' essentially allows for the payment of a benefit from one country into another country. The Committee understands that 'this is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared.'⁴

Double coverage provisions

- 2.7 The Committee notes that, like other treaties it has examined, this Agreement contains 'double coverage' provisions. The basic aim of those provisions, according to Mr Nigel Murray of the Department of the Treasury, is:

Where an employee is sent from one country to work temporarily in the other country, rather than having to pay twice under both countries' superannuation systems - as is currently the case - they only have to pay under their current home country's system.⁵

2 NIA, para. 11.

3 NIA, para. 10.

4 NIA, para. 5.

5 Mr Nigel Murray, *Transcript of Evidence*, 18 August 2003, p. 28. A 'home country' is the country from which a person is sent.

Costs

- 2.8 According to the NIA, administered outlays are expected to increase by A\$2.03 million over the forward estimates period to 30 June 2006. The Committee understands that:

The Department of Family and Community Services and Centrelink Departmental costs of A\$4.252 million over the same period represent the cost of implementing this Agreement and the Agreement with Slovenia ... as well as the Agreements with Switzerland and Norway which are under negotiation. This cost includes the development of new computer systems, administrative processes, forms and staff training.⁶

Consultation

- 2.9 The Committee notes that according to the annexure tabled with the treaty, a wide range of organisations was consulted with regard to this treaty. The Committee was somewhat concerned, however, with the inaccuracies contained in information presented by the Department of Family and Community Services, including as to the range, number and other details of the consultations which took place regarding this Agreement⁷.

Recommendation

Recommendation 1

The Committee supports the proposed *Agreement with Croatia on Social Security* and recommends that binding treaty action be taken.

6 NIA, para. 34.

7 See *Transcript of Evidence*, 18 August 2003, pp. 29-30.



Protocol on pollution incidents by hazardous and noxious substances

Introduction

- 3.1 The purpose of the *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000, done at London, 15 March 2000* (the Protocol), is to provide for a global framework for international co-operation and planning in combating major incidents or threats of marine pollution by hazardous and noxious substances other than oil.¹ The Protocol also ensures that Parties have in place measures for dealing with such pollution incidents.
- 3.2 The Protocol is a protocol to, and follows the principles of, the *International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990* (the OPRC Convention), which entered into force internationally and for Australia on 13 May 1995.² The OPRC Convention provides a framework for assistance and planning for incidents involving oil.³
- 3.3 The Protocol to the OPRC Convention extends the co-operation and planning obligations for oil pollution incidents to pollution incidents involving other hazardous and noxious substances (HNS).

1 National Interest Analysis (NIA), para. 4.

2 NIA, para. 2.

3 NIA, para. 5.

Background

- 3.4 Australia implemented many of the provisions of the OPRC Convention through the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances.⁴ The National Plan provides a national integrated Government and industry organisational framework enabling effective response to marine pollution incidents.⁵
- 3.5 Mr Paul Nelson from the Australian Maritime Safety Authority (AMSA) advised the Committee that Australia recognised the need for a contingency plan to deal with chemical spills in 1988, but it was not until 'around 1995-96 that we had a proper national chemical spill contingency plan in place'.⁶ The National Marine Chemical Spill Contingency Plan (CHEMPLAN) forms part of the National Plan, originating before and separate from the Protocol.⁷ CHEMPLAN outlines how the combined resources of Governments and industries may be activated to respond to a threat of HNS pollution.⁸ CHEMPLAN also prescribes procedures and provides information required to implement the chemical spill response provisions of the National Plan and State and Territory contingency plans.⁹
- 3.6 AMSA stated in its submission that Australia recently completed a major revision and updating of CHEMPLAN, and that opportunity was taken to ensure it implemented the key obligations of the Protocol.¹⁰ AMSA manages both the National Plan and CHEMPLAN.¹¹

4 NIA, para. 6.

5 Australian Maritime Safety Authority (AMSA), *Australia's National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances Fact Sheet*, p. 1.

6 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

7 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

8 AMSA, *National Marine Chemical Spill Contingency Plan (CHEMPLAN)*, p. 1.

9 AMSA, *National Marine Chemical Spill Contingency Plan (CHEMPLAN)*, p. 1.

10 AMSA, *Submission 6*, p. 1.

11 For further information on the National Plan and CHEMPLAN see <http://www.amsa.gov.au/me/natplan/natplan1.htm>.

Benefits of the proposed treaty action

- 3.7 The NIA contends that accession to the Protocol would strengthen Australia's existing response arrangements under CHEMPLAN by giving Australia access to international assistance in the event of a major incident once the Protocol enters into force.¹² Mr Nelson explained that:
- This protocol provides important support for our national arrangements and, if you like, turns it into effectively an international contingency plan rather than just a national contingency plan.¹³
- 3.8 The NIA further advises that in acceding to the Protocol Australia would be required to co-operate in the promotion and exchange of research and development programs, provide technical assistance and work towards concluding bilateral and multilateral agreements for preparedness and response to pollution incidents.¹⁴
- 3.9 The Protocol also authorises the International Maritime Organization (IMO) to undertake a range of functions and activities in relation to HNS incidents.¹⁵ Mr Robert Alchin from the Department of Transport and Regional Services identified this as an important reason for Australia to become a Party to the Protocol, because:
- it imposes obligations on the International Maritime Organisation to develop an international approach to chemical spill response. That international approach includes IMO being required to develop international guidelines and provide technical assistance to states.¹⁶
- 3.10 The NIA identifies Australia's accession to the Protocol as important because of a 'reliance on the international maritime industry to underpin our international trade', and that it would enhance the protection of Australia's marine environment from all types of ship sourced pollution.¹⁷

12 NIA, paras 2 and 6.

13 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

14 NIA para. 11.

15 NIA, para. 7.

16 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

17 NIA, para. 8.

Features of the Protocol

- 3.11 The obligations under the Protocol have 'generally already been met by existing Australian legislation and policies'.¹⁸
- 3.12 Mr Alchin mentioned three significant obligations that Australia already implements. First, Parties to the Protocol will be required to establish measures for dealing with HNS pollution incidents, either nationally or in co-operation with other countries. As mentioned in paragraph 3.6, CHEMPLAN already meets this obligation. Secondly, under the Protocol, ships are required to carry a shipboard pollution emergency plan to deal with HNS pollution incidents. This obligation is already implemented, as there is a similar obligation in another IMO convention that Australia is a Party to, namely, the *International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)*, which is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.¹⁹ Lastly, seaports and HNS handling facilities are required to have pollution incident emergency plans in place. These obligations are implemented through various Commonwealth, State and local council regulations and vary across jurisdictions.²⁰ Mr Alchin advised the Committee that:

The national interest analysis does not include a detailed analysis and listing of all applicable rules and regulations relating to this issue. To do so, we thought, would have been a considerable undertaking, and we did not think it was really necessary. But there is, as indicated in the national interest analysis, a comprehensive – and, some might say, overlapping – array of rules and regulations dealing with this issue in both the specific and more general senses.²¹

- 3.13 The NIA states that the Protocol 'does not apply to warships, naval auxiliary or other ships used only on government non-commercial service'.²² However, Parties are obliged to ensure that these vessels act consistently with the Protocol, without interfering with the operations or operational capabilities of these vessels.²³

18 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 21.

19 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

20 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

21 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

22 NIA, para. 9.

23 NIA, para. 9.

Costs

- 3.14 The NIA states that, as Australia's obligations under the Protocol are currently met by existing legislation and policies, there would be no significant costs associated with Australia's accession to the Protocol.²⁴
- 3.15 However, the Queensland Government disputed the claim that there will be no additional costs associated with Australia's accession to the Protocol, and contends that the implementation of the Protocol:
- will involve additional administrative costs associated with State officers' involvement in the joint planning forum, training costs associated with conducting exercises and costs of the purchase and maintenance of response equipment.²⁵
- 3.16 The Queensland Government argued that the Commonwealth is relying on the National Plan and CHEMPLAN to provide the basis for implementing the Protocol, and that:
- While this intergovernmental agreement sets out roles and responsibilities and respective funding obligations of the Commonwealth and State/Territory in regard to the National Plan, the Protocol is expected to add significant new costs for preparing for noxious and hazardous substances other than oil.²⁶
- 3.17 The Queensland Government suggested that a full cost assessment of the implementation of the Protocol be undertaken by the Commonwealth prior to accession.²⁷
- 3.18 Mr Paul Nelson addressed the Committee's concerns regarding the likely costs associated with the treaty action, advising that the only costs incurred to date have been in the area of training maritime, port and AMSA personnel. He noted that as most HNS companies and handling facilities already have the necessary equipment to handle pollution incidents, there are no significant or additional costs.²⁸
- 3.19 According to the NIA, once the Protocol is in force there would be some minor administrative costs for AMSA, resulting from ships'

24 NIA, para. 20, and Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

25 Queensland Government, *Submission*, p. 1.

26 Queensland Government, *Submission*, p. 1.

27 Queensland Government, *Submission*, p. 1.

28 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

emergency plans requiring examination by marine surveyors when conducting shipboard inspections (under the port State control program) to ensure that the ships carry current plans.²⁹

Levy on commercial ships

3.20 The NIA states that a review of arrangements under CHEMPLAN identified the need for additional resources to be allocated to training in chemical spill response techniques.³⁰ Subsequently:

some additional costs have ... been incurred in this area, and have been met under the National Plan funding arrangements, derived from a levy on commercial ships visiting Australian ports.³¹

3.21 The Government of Western Australia states that when the Protocol is in force, there will be possible cost implications for shipping, seaports and HNS handling facilities, which may require an increase in the levy on commercial ships.³² The WA Government believes that this may create an inadequate situation whereby vessels that are carrying oil as fuel or cargo, and no other HNS, will be required to pay a higher levy. The WA Government suggests that consideration be given to the manner in which the existing levy might be split to accommodate vessels carrying HNS in addition to oil and those vessels only carrying oil.³³

Costs for ship operators

3.22 The NIA states that the cost to ship operators of implementing an on-board emergency plan for HNS pollution incidents is expected to be comparable to the current costs of implementing Oil Pollution Emergency Plans, in the range of US\$3-5,000 per vessel, and around US\$500 every time it is updated.³⁴ However, as previously mentioned, this is already implemented under MARPOL 73/78.

29 NIA, para. 21.

30 NIA, para. 20.

31 NIA, para. 20.

32 Government of Western Australia, *Submission*, p. 1.

33 Government of Western Australia, *Submission*, p. 1.

34 NIA, para. 22 and Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

- 3.23 The Committee noted that, when operating within the framework for reimbursing costs of providing assistance to a pollution incident, consideration will be given to the needs of developing countries.³⁵

Insurance

- 3.24 The Committee noted that under the Annex to the Protocol reasonable financial obligations could be placed on Australia in the case of a pollution incident. Recognising that the financing of costs of managing a HNS pollution incident plays a large part in the process, the Committee was interested in the extent to which ships are insured against such pollution incidents and whether the level of insurance is effective.
- 3.25 In addressing the Committee's concerns, Mr Paul Nelson noted that in 1996, the IMO adopted the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea* (HNS Convention) which provides for compensation with a liability regime for incidents involving HNS.³⁶ This Convention, however, is not yet in force internationally as only three Parties out of the required 12 (four of which with no less than 2 million units of gross tonnage) are party to it.³⁷ Mr Nelson advised that until the HNS Convention comes into force Australia relies on a ship's insurance to cover pollution incidents.
- 3.26 Mr Nelson informed the Committee that around April 2001, a requirement for all ships visiting Australian ports to prove that they had protection and indemnity insurance was established.³⁸ He explained that this insurance covers a sizeable amount for the damage ships might cause, whether it is oil pollution, chemical pollution or any other sort of impact they might have.³⁹ Mr Nelson noted that before arrival in an Australian port, ships are required to report to the Customs Service 'on all sorts of issues' and, according to Mr Nelson, one question they are asked is, 'Do you have insurance coverage?'.⁴⁰

35 NIA, para. 23 and Annex to the Protocol.

36 See the International Maritime Organization website at: www.imo.org/home.asp

37 International Maritime Organization, *Summary Status of Conventions as at 30 June 2003*, http://www.imo.org/Conventions/mainframe.asp?topic_id=247

38 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

39 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, pp. 24-5.

40 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 25.

Entry into force

- 3.27 The Protocol will enter into force 12 months after the date on which a minimum of 15 States have either signed or have deposited instruments of ratification, acceptance, approval or accession. Mr Alchin informed the Committee that as of 18 August 2003, six countries were party to the Protocol, (namely Ecuador, Greece, Malta, Netherlands, Sweden and Uruguay), and that the process is:
- proceeding at a satisfactory rate in terms of other IMO conventions which have already entered into force. The wheels tend to move reasonably slowly, but we are satisfied with the progress.⁴¹
- 3.28 The Committee expressed concern that since the inception of the Protocol in 2000 only six out of the required 15 countries had become party to it. Mr Alchin advised the Committee that:
- If we have a look at the history of entering into force of treaties negotiated by the International Maritime Organization we see that they do tend to take some time for member states to put in legislation and pass through the necessary processes.⁴²
- 3.29 The Committee was further concerned about how this would affect Australia. Mr Alchin explained that it primarily impacts on Australia:
- by being able to ensure that we have this international cooperation once the convention enters into force. By Australia becoming a party, we are assisting towards its entering into force. Hopefully we might hasten it along.⁴³
- 3.30 The NIA indicates that recent high profile pollution incidents in European waters have resulted in increased activity globally towards the adoption of the Protocol, and it is expected that the Protocol will enter into force in 2005.⁴⁴ According to Mr Nelson, all member states of the European Union (EU) support the Protocol, and if they came in, 'with the South American and other countries, that would certainly bring it into force.'⁴⁵

41 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

42 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

43 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 23.

44 NIA, para. 3.

45 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

3.31 Mr Nelson identified the European countries and Japan as very large chemical importers and exporters.⁴⁶ He noted that Japan is a party to the OPRC Convention, however, it had not indicated that it would not sign the Protocol.⁴⁷

3.32 The Committee was also interested in the intentions of other nations in the region to sign the Protocol. Mr Nelson advised:

New Zealand is a party to the original convention. I am sure that they will sign this – although I do not have any specific information – because they do have a very similar chemical spill response arrangement to us. I think Australia and New Zealand would probably be the two in our region that would sign soon ... I do not have any information about who else might sign in our region.⁴⁸

Conclusion and recommendation

3.33 The Committee believes that this Protocol would strengthen Australia's existing response arrangements to a HNS pollution incident. In particular, it would benefit CHEMPLAN by giving Australia access to international assistance in the event of a major incident once the Protocol enters into force.

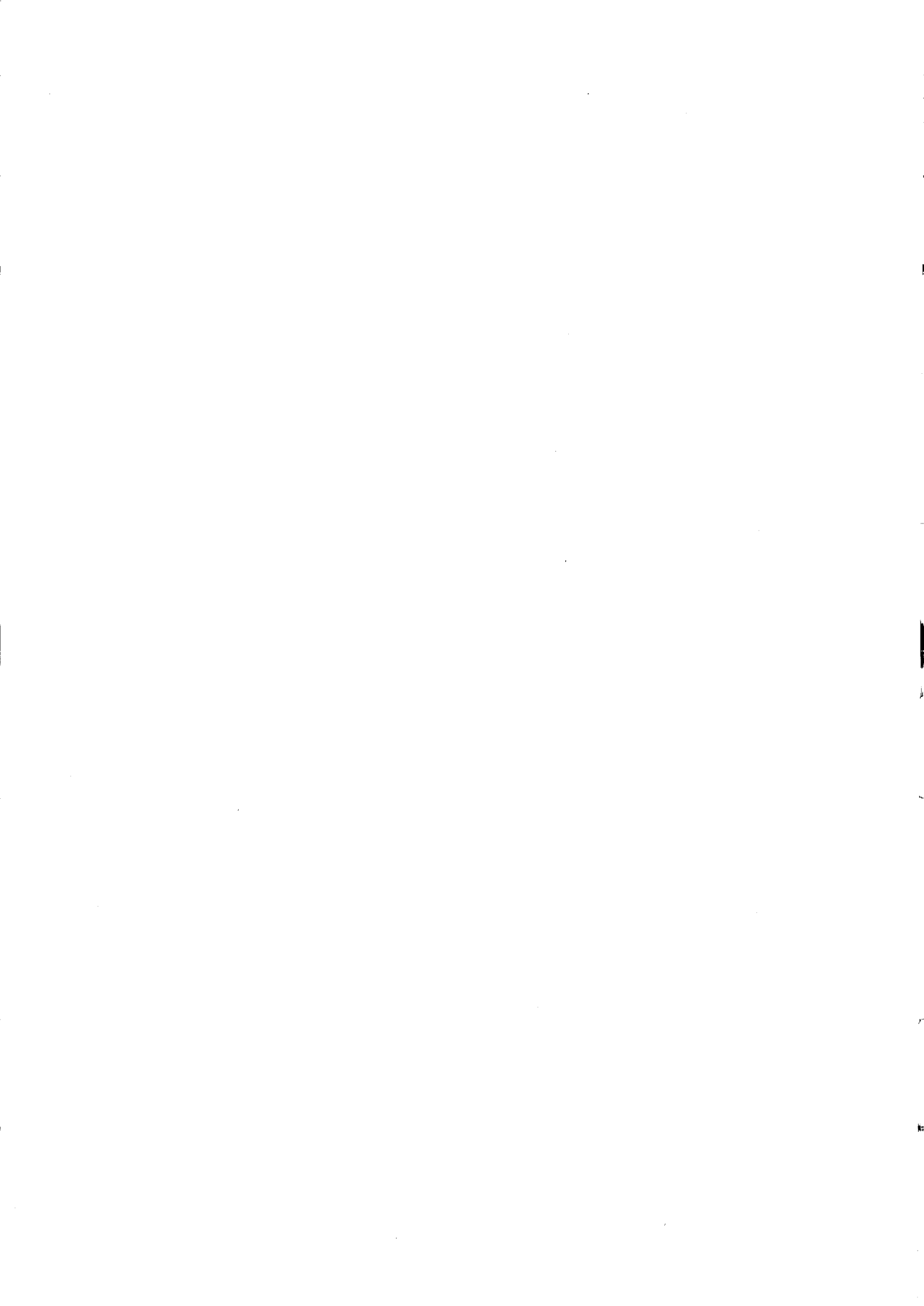
Recommendation 2

The Committee supports the *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000* and recommends that binding treaty action be taken.

46 Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 26.

47 Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 26.

48 Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 26.



Agreement with Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel

Introduction

- 4.1 The purpose of the *Agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel* is to enable the spouse and certain other family members of Australian and Belgian diplomatic and consular officials to undertake paid employment for the duration of the officer's assignment in the other country. The arrangement will apply to dependants of employees at the Australian Embassy in Brussels, the Belgian Embassy in Canberra and the Belgian Consulate- General in Sydney.¹

Background

- 4.2 The NIA states that the lack of opportunity for spouses and family members of Australian diplomatic and consular officials to engage in paid work is a disincentive for officers to serve in particular countries.² The Department of Foreign Affairs and Trade (DFAT)

1 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, pp. 1-2.

2 National Interest Analysis (NIA), para. 8.

suggests that such disincentives should be limited where possible to enable the Australian Government to have the best possible representation overseas, and to assist its employees to balance their work and family responsibilities.³ The Committee was advised that:

Dual-income families are now an accepted part of Australian life and many spouses have established careers. Moreover, the financial commitments facing families today often make it unattractive for a spouse to cease working in order to accompany his or her partner on an overseas posting.⁴

- 4.3 The Committee understands that the existence of an employment agreement can have a significant impact, and was interested to hear that:

It can make quite a difference to the willingness of people to go overseas if they know that their spouse can work in a particular place. Sometimes people will look for assignments in countries where they know a bilateral agreement exists.⁵

- 4.4 The Committee understands that, in order to encourage other states to provide employment opportunities for dependants of Australian officials overseas, Australia offers reciprocal opportunities for overseas officials based here. Australia currently has five Agreements and 21 Arrangements relating to bilateral employment.⁶ The Committee was advised that negotiations have begun for similar agreements or arrangements with another 13 countries.⁷

Treaty or agreement?

- 4.5 The NIA states that it is usual for bilateral employment instruments to be in the form of arrangements or memoranda of understanding, both of which are instruments of less than treaty status. Mr Smith advised that this is generally preferred, but that a 'number of countries, however, including Belgium, require that the arrangement be of treaty status'.⁸ The Committee understands that this is due to legal

3 NIA, para. 8.

4 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

5 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 5.

6 NIA, para. 10.

7 NIA, para. 10.

8 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

requirements in Belgium; that 'they need ratification by their parliament of agreements that cover this sort of subject'.⁹

4.6 The Committee was advised that Australia does not require such arrangements to be of treaty status because existing migration regulations already allow for dependants of diplomatic and consular officials in Australia to undertake paid work.¹⁰

4.7 The Committee was advised that the Agreement with Belgium:
reflected an unusually high level of mutual understanding on key issues and the Belgians moved with great speed to ensure that it was ready for signature during their Crown Prince's visit to Australia last November.¹¹

Elements of the Treaty

4.8 The Committee understands that this Agreement was developed according to the standard text used for similar agreements and that 'the Agreement follows closely that text'.¹² Mr Smith mentioned two points of interest in the concluding remarks of his opening statement to the Committee: the coverage of domestic staff (discussed below at paragraph 4.12) and the ability of the Minister for Foreign Affairs to waive immunity if a dependant was in breach of local laws (discussed at paragraph 4.10).

Professional qualifications

4.9 The NIA states that while spouses and other family members are not restricted in the type of employment they may seek to undertake, they are not exempt from any legal or other requirements relating to professional or other qualifications that the individual candidate must demonstrate:¹³

9 NIA, para. 9, and Mr Alan Fewster, *Transcript of Evidence*, Monday 18 August 2003, p. 3.

10 Mr Sridhar Ayyalaraju, *Transcript of Evidence*, Monday 18 August 2003, p. 3.

11 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

12 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

13 NIA, para. 13.

It would be very unlikely that a dependant would get work in a host country if they did not have the appropriate qualifications according to that country's laws.¹⁴

Impact on diplomatic immunity

- 4.10 The Committee was advised that a Belgian proposal which would, in effect, have removed the prerogative of the Australian Minister for Foreign Affairs to waive immunity should a dependant working under the Agreement 'find themselves in trouble under local laws' was not agreed to.¹⁵

Coverage

- 4.11 The NIA states that the Agreement will apply to the spouses and certain other dependants of a small number of officials in each country.¹⁶ It is estimated that five or six Belgian Embassy staff in Australia may be affected by the Agreement and approximately 12 Australians in Belgium.¹⁷ The Australian Embassy in Belgium also has responsibility for Luxembourg, as well as:

Australia's relationship with the European Union, NATO, the Council of Europe, the European Environment Agency and the World Customs Organization.¹⁸

- 4.12 The Committee understands that the Agreement does not extend to service or domestic staff.¹⁹

Costs and implementation

- 4.13 The Committee was advised that no direct costs are envisaged for the Australian Government and no new legislation is required. The NIA states that 'the visas of spouses and other family members of foreign

14 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 5.

15 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 2.

16 NIA, para. 18.

17 Mr Paul Smith, *Transcript of Evidence*, Monday 18 August 2003, p. 5, and Ms Margaret Adamson, *Transcript of Evidence*, 18 August 2003, p. 4.

18 Ms Margaret Adamson, *Transcript of Evidence*, 18 August 2003, p. 4.

19 Mr Paul Smith, *Transcript of Evidence*, 18 August 2003, p. 2.

officials in Australia allow them to work subject to the permission of the Department of Foreign Affairs and Trade'.²⁰

Consultation

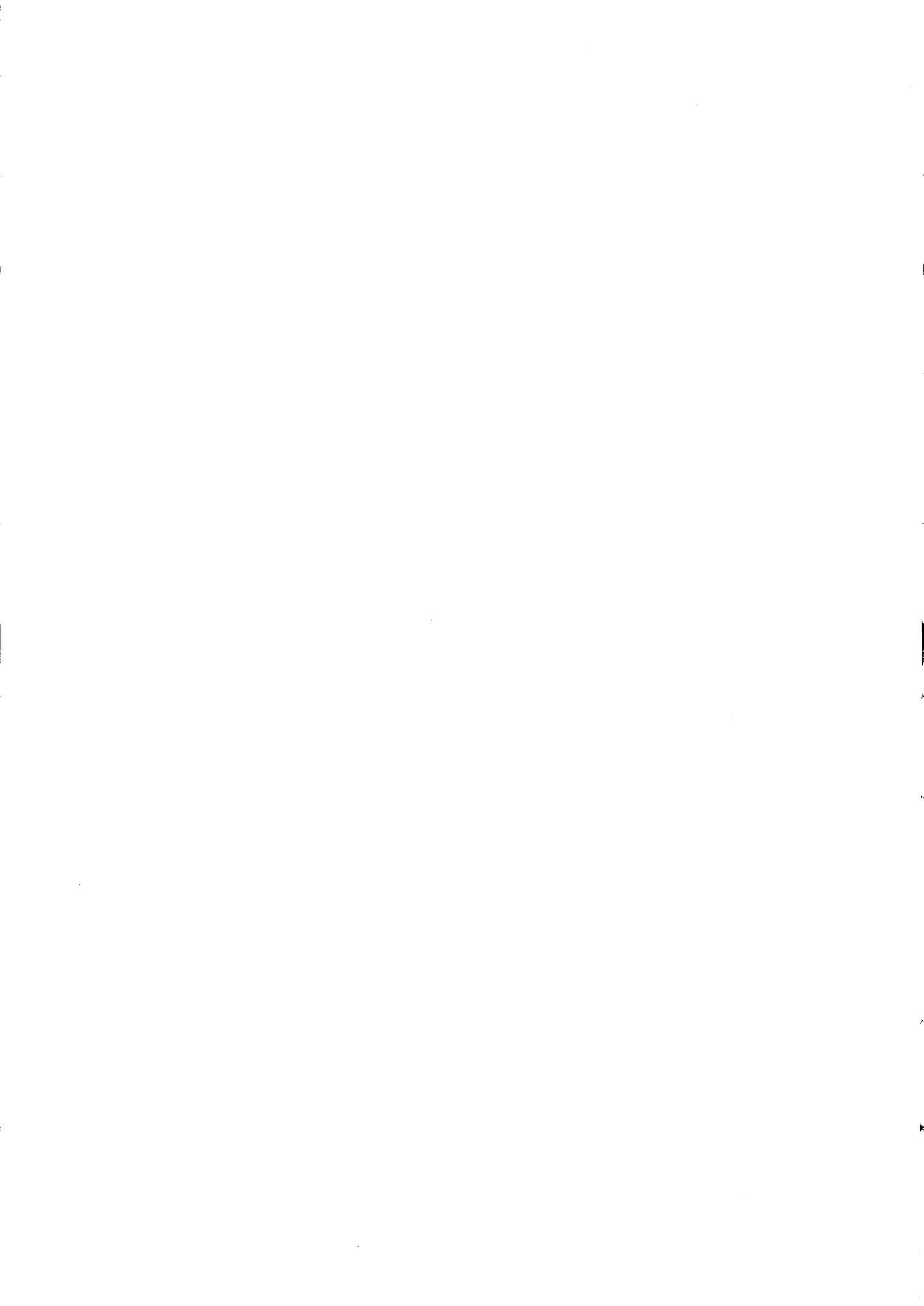
- 4.14 According to the NIA and evidence received at a public hearing on 18 August 2003, States and Territories were advised of the treaty action through the Commonwealth-State Standing Committee on Treaties. The Committee understands that, to date, no requests for further information have been received.
- 4.15 The Committee is satisfied that adequate consultation has been conducted and that no adverse reaction has been received.

Recommendation

Recommendation 3

The Committee supports the *Agreement between Australia and the Kingdom of Belgium on the Gainful Employment of Certain Dependants of Diplomatic and Consular Personnel* and recommends that binding treaty action be taken.

²⁰ NIA, para. 17.



Agreement with Belgium on 'working holiday' arrangements

Introduction

- 5.1 The purpose of the *Agreement between the Government of Australia and the Government of the Kingdom of Belgium on 'Working Holiday' Arrangements* is to allow Australian and Belgian nationals between 18 and 30 years of age to stay in the territory of the other country for up to 12 months and undertake salaried work during that time, according to certain conditions.

Background

- 5.2 The Committee was advised that Australia has Working Holiday Maker (WHM) arrangements with 14 countries and is currently negotiating similar arrangements with another 12 countries.¹ The Committee notes the reference by Mr Phillip Thurbon to the 1997 recommendation of the Joint Standing Committee on Migration² that the Australian Government:

1 National Interest Analysis (NIA), para. 9.

2 Report of the Joint Standing Committee on Migration, *Working Holiday Makers: More Than Tourists*, August 1997 [recommendation 16].

actively pursue new reciprocal working holiday arrangements with other countries, taking into account the nature of Australia's relationship with the country, including current and potential cultural, social, trading and tourism links, the extent to which young Australians will have reciprocal opportunities to benefit from a working holiday in the relevant country, the overstay rate in Australia of visitors from that particular country and the likely impact which an agreement with that country will have on program numbers.³

- 5.3 The Committee understands that, for most countries with which negotiations on similar agreements are underway, it is unlikely that a treaty will be required for implementation. As with the Agreement with Belgium on the employment of diplomatic and consular dependants (see Chapter 4 of this report), the Committee was advised that a treaty arrangement is required by Belgium.⁴

Elements of the Treaty

- 5.4 The Committee was advised that this Treaty is similar to other agreements of its type:

We have a template. The Minister for Immigration has some mandatory benchmarks that we try to establish in each agreement ...⁵

- 5.5 The Committee was advised that this Agreement is aligned to the template, and that negotiations were relatively routine.⁶

Costs and benefits

- 5.6 The Committee understands that no direct costs are envisaged for the Australian Government. The NIA states that working holiday makers spend around \$1.3 billion annually while in Australia.⁷ The Committee was advised that:

3 Mr Phillip Thurbon, *Transcript of Evidence*, 18 August 2003, p. 8.

4 NIA, para. 8.

5 Mr Phillip Thurbon, *Transcript of Evidence*, 18 August 2003, p. 9.

6 Mr Phillip Thurbon, *Transcript of Evidence*, 18 August 2003, p. 9.

7 NIA, para. 10.

A recent study by the Melbourne Institute of Applied Economic and Social Research of the University of Melbourne showed that about 8,000 effective full year jobs are created by the annual intake of 80,000 working holiday makers.⁸

- 5.7 The Committee also understands that most of the money earned by working holiday makers in Australia is returned to the economy, reaching 'a broad cross-section', owing to the propensity of these people to travel widely and visit remote locations.⁹
- 5.8 It is hoped that after the Agreement has been in operation for a few years, there will be around 1,000 Belgian working holiday makers coming to Australia each year.

Coverage and conditions

- 5.9 The Committee notes that working holiday visas can only be granted once, regardless of whether work was undertaken during the period of stay.¹⁰
- 5.10 The Committee notes that Belgian holiday makers may stay in Australia for a maximum period of 12 months and will be able to work for no more than three months with each employer.¹¹ The Committee was advised that:

The rationale is that, with the working holiday maker arrangement, work is to be incidental to the holiday. It is a means to supplement other funds that they already bring with them to Australia.¹²

Medicare and health insurance

- 5.11 The Committee noted that the Treaty made no mention of the extent of working holiday makers' access to Australian services, such as Medicare. The Department advised that access to Medicare is generally not available to overseas visitors or temporary resident visa holders during their stay in Australia, although visitors from

8 NIA, para. 10.

9 Mr Phillip Thurbon, *Transcript of Evidence*, Monday 18 August 2003, p. 8.

10 Mr Phillip Thurbon, *Transcript of Evidence*, Monday 18 August 2003, p. 10.

11 NIA, para. 12.

12 Mr Phillip Thurbon, *Transcript of Evidence*, Monday 18 August 2003, p. 10.

countries with which Australia has a Reciprocal Health Care Agreement (RHCA) have restricted access.¹³

- 5.12 The Committee was advised that Australia is currently negotiating a RHCA with Belgium, but that until the completion of that agreement, Belgian working holiday makers will not be able to access Medicare.

Workers' Compensation

- 5.13 The Department of Immigration, Multicultural and Indigenous Affairs, after checking with the Department of Employment and Workplace Relations, confirmed that:

provided there is a formal employer/employee relationship the holder of a visa which provides work rights is covered by workers' compensation in accordance with relevant state and territory legislation.¹⁴

Implementation

- 5.14 The Committee understands that no new legislation is required to give effect to the Agreement in Australia, as working holiday makers from countries with which Australia has similar agreements are required to apply for a working holiday visa under existing migration regulations.¹⁵
- 5.15 Auxiliary arrangements for implementing the Agreement are set out in letters (which do not have treaty status) which define certain understandings about the operation of the Agreement, including employment, study and training limitations. The NIA states that these letters also provide details of the administrative process relating to the implementation of the Agreement.¹⁶

13 Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), *Submission*, p. 1.

14 DIMIA, *Submission*, p. 2.

15 NIA, para. 17.

16 NIA, para. 25.

Consultation

- 5.16 According to the NIA, States and Territories advised that they had no objection to ratification. The Committee notes with interest that during the consultation process, Queensland suggested incorporation of the Exchange of Letters into the Belgian Working Holiday Maker Agreement, and that:

While changes could not be made to this treaty, DIMIA has now amended its template document for all future negotiations so procedural matters will now be detailed in an annex to the relevant MOU or treaty rather than in a separate Exchange of Letters.¹⁷

- 5.17 The Committee is satisfied that adequate consultations have been conducted and that no adverse response has been received.

Concluding observation and recommendation

- 5.18 The Committee concurs with DIMIA's opinion that:

Australia's program of bilateral arrangements regarding working holiday makers ... enhances the cultural and social development of young people, promotes mutual understanding between Australia and other nations and is an important part of the tourist industry.¹⁸

- 5.19 The Committee notes that this view is also supported by the Queensland Government in its submission, which states in part, that:

Queensland has a thriving 'backpacker' component of its tourism industry. Bilateral agreements that facilitate and streamline arrangements for young people to undertake working holidays in Australia assists the development of this industry.¹⁹

- 5.20 The Committee also supports the view expressed by Mr Thurbon that:

[The Agreement] provides a range of cultural, social and economic benefits for participants and the broader

17 Consultations Annex (Annex 1), tabled with treaty text.

18 NIA, para. 7.

19 Queensland Government, *Submission*, p. 1.

community. Young people from overseas arrangement countries benefit from a working holiday by experiencing the Australian lifestyle and interacting with Australian people in a way that is likely to leave them with a much better understanding and appreciation of Australia than would occur if they travelled here on visitor visas. This contributes to their personal development and can lead to longer-term benefits for the Australian community.²⁰

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Government of the Kingdom of Belgium on 'Working Holiday' Arrangements* and recommends that binding treaty action be taken.

20 Mr Phillip Thurbon, *Transcript of Evidence*, 18 August 2003, pp. 7-8.

Protocol concerning the Bougainville Transition Team

Introduction

- 6.1 The purpose of the *Protocol, done at Sydney on 30 June 2003, concerning the Bougainville Transition Team made pursuant to the Agreement, done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol, done at Port Moresby on 29 April 1998* (the Protocol) is to establish the Bougainville Transition Team (BTT) and provide for the phasing out of the Australian-led Peace Monitoring Group (PMG). The Protocol also provides the mandate and legal framework for the BTT's activities and for the participation of personnel.
- 6.2 The BTT is a small civilian team created to continue the work undertaken by the PMG¹ and its predecessor, the Truce Monitoring Group (TMG)², in promoting, facilitating and instilling confidence in the peace process on Bougainville and in the transition towards

1 The Peace Monitoring Group (PMG) was created under the *Protocol concerning the Peace Monitoring Group made pursuant to the Agreement between Papua New Guinea, Australia, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville, done at Port Moresby on 5 December 1997* (the 1998 Protocol).

2 The Truce Monitoring Group (TMG) was created under the *Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu, concerning the Neutral Truce Monitoring Group for Bougainville, done at Port Moresby on 5 December 1997* (the 1997 Agreement).

autonomous government.³ The mandate of the BTT also requires it to support the United Nations Observer Mission on Bougainville until that body withdraws at the end of 2003.⁴

6.3 The Protocol further amends the 1997 Agreement between Australia, Papua New Guinea (PNG), New Zealand, Fiji and Vanuatu concerning the neutral TMG on Bougainville, as amended by a 1998 Protocol establishing the PMG.⁵

6.4 There are minimal differences between the proposed new Protocol and the 1998 Protocol.⁶ By example, Mr David Lewis from the Department of Foreign Affairs and Trade (DFAT) drew attention to:

The deletion of a clause which called for the establishment and running of the Peace Process Steering Committee, which involved the nations involved and Papua New Guinea—all the signatories to the treaty. That was deleted on the basis that it had not met for a number of years and, if the Papua New Guinea government as the chair decided to call a meeting we would attend, so there was no need to formalise that process.⁷

6.5 Mr Lewis further advised that minor amendments reflect the BTT being a civilian operation, as opposed to the previous military PMG operation.⁸

6.6 According to the NIA, the Protocol provides the same legal protection to the members of the BTT as was provided to the members of the PMG until they withdrew on 23 August 2003.⁹

6.7 The BTT commenced operations on 1 July 2003 and will remain in place at least until the withdrawal of United Nations observers at the end of 2003.¹⁰ The Committee noted a press release from the United Nations Secretary-General, Mr Kofi Annan, which welcomed the establishment of the BTT and the continued provision of logistical and

3 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

4 National Interest Analysis (NIA), para. 15 and Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

5 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 14.

6 Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

7 Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

8 Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

9 NIA, para. 16, and Department of Foreign Affairs and Trade (DFAT), *Submission*, p. 2.

10 NIA, para. 15.

operational support to the United Nations Political Office in Bougainville.¹¹

Bougainville peace process

- 6.8 The NIA outlines that in October 1997 parties to the nine year Bougainville conflict signed a truce agreement at Burnham Military Camp, New Zealand.¹² PNG and other signatories requested that states in the South Pacific region contribute to a neutral TMG for Bougainville. Under the TMG, Australia contributed civilian and military personnel and logistics support.
- 6.9 The *Agreement between Australia, Papua New Guinea, New Zealand, Fiji and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville*, signed in December 1997, established the legal framework for the TMG's activities and participation of personnel in the TMG.
- 6.10 In January 1998 the parties to the conflict signed the *Lincoln Agreement on Peace, Security and Development on Bougainville*. The Lincoln Agreement provided for an extension of the truce until April 1998, when a 'permanent and irrevocable' ceasefire would take effect.¹³ Accordingly, Australia extended its contribution in the TMG until that date.
- 6.11 Following the Lincoln Agreement, the PNG Government invited States participating in the TMG to constitute a new PMG to monitor the ceasefire.¹⁴ On 29 April 1998 a new Protocol was established to ensure that the same legal basis and protections afforded to the TMG were extended to the PMG.¹⁵
- 6.12 The *Bougainville Peace Agreement*, signed in August 2001, is a comprehensive settlement including provisions for autonomy, a referendum on Bougainville's future and a Weapons Disposal Plan.

11 Press Release, *Secretary General Welcomes Dispatch of regional transition team to Bougainville*, United Nations, 16 June 2003.

12 NIA, para. 8.

13 NIA, para. 10.

14 NIA, para. 11.

15 NIA, para. 11.

- 6.13 Despite Article 330(c) of the *Bougainville Peace Agreement* providing for parties of the PMG to withdraw around the middle of, and no later than the end, of 2002, the PNG Government requested that Australia maintain the PMG beyond the end of 2002. Australia agreed to the request.
- 6.14 Mr Gerald Thomson from DFAT informed the Committee that, in February this year, the Australian Government decided to withdraw the Bougainville PMG, with operations scheduled to end on 30 June 2003.¹⁶ Following requests from the PNG Government and Bougainvillean leaders for a continued regional presence on Bougainville beyond the PMG, the 'Australian government decided in late May that it would be prepared to lead a small civilian team' (the BTT) to replace the PMG on Bougainville.¹⁷
- 6.15 Mr Thomson also informed the Committee that since the *Bougainville Peace Agreement* was signed, the PNG Government and Parliament have approved a change to its constitution to allow for autonomy and a referendum on Bougainville.¹⁸ In addition, the United Nations Observer Mission on Bougainville has confirmed that the second stage of the weapons disposal process is complete, with over 1,900 weapons collected, including 314 high-powered, 309 sporting, 1 069 homemade and 244 World War II weapons.¹⁹

Bougainville Transition Team (BTT)

- 6.16 At the time of the hearing, the BTT consisted of 17 unarmed personnel from Australia, New Zealand and Vanuatu.²⁰ DFAT advised the Committee that the BTT is divided into two parts: one section is responsible for policy work, namely carrying out the mandate of the BTT, and the other section is responsible for logistics.
- 6.17 Mr Thomson noted that, of the nine personnel responsible for policy work, four are Australian (two from DFAT and two from the

16 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15 and NIA, para. 14.

17 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15 and NIA, para. 15.

18 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 16.

19 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15 and Mr David Lewis, *Transcript of Evidence*, 18 August 2003, p. 18.

20 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

Australian Agency for International Development [AusAID]), three are from New Zealand, one each from Fiji and Vanuatu.²¹

- 6.18 According to Mr Grant Morrison from AusAID, the logistical section consists of eight personnel managed by an Australian contracting company engaged by AusAID for that purpose. The company, HK Shipping Pty Ltd, has subsequently subcontracted eight specialists in logistical work who are responsible for the overall implementation of the support function, such as:

the identification of necessary equipment; the purchase and transport of that equipment; setting up accommodation facilities; IT capability; transport capability; negotiating with the PMG, which is still in place; the gifting of certain assets; the identification of what else is required; and the oversight of security matters.²²

- 6.19 Further, Mr Morrison noted that the majority of the subcontractors are Australian citizens and the rest are New Zealanders.²³

- 6.20 DFAT advised the Committee of the practical implications of the Protocol:

In practice, the protocol means that members of the Bougainville Transition Team are subject to the exclusive jurisdiction of their respective state in relation to criminal matters. They are allowed to establish premises – which they have done in Arawa and Buka on Bougainville – to wear uniforms and to display flags. They are exempt from local taxation, licensing, import and export duties. They are free to use public utilities, transport, infrastructure and locally employed personnel. It is important to note that members of the Bougainville Transition Team are expected to respect the laws of Papua New Guinea.²⁴

21 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 17.

22 Mr Grant Morrison, *Transcript of Evidence*, 18 August 2003, p. 17.

23 Mr Grant Morrison, *Transcript of Evidence*, 18 August 2003, p. 18.

24 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

Entry into force

- 6.21 The Protocol was signed by Australia, PNG and New Zealand on 30 June 2003, and entered into force for Australia and PNG on 30 June 2003 and for New Zealand on 16 July 2003. The Department advised the Committee that Fiji signed the Protocol on 16 July 2003.²⁵ The Protocol will enter into force for Fiji on the date of notification by that Party.
- 6.22 Mr Thomson advised the Committee that Vanuatu intends to sign the Protocol, but has been delayed due to 'the Solomon Islands situation and their role there'.²⁶

National Interest Exception provision

- 6.23 Generally, after treaties have been signed for Australia they are tabled in both Houses of Parliament for at least 15 days prior to binding treaty action being taken. During this period the Committee normally reviews the proposed treaty action and presents its conclusions and recommendations to the Parliament.
- 6.24 Where it is in Australia's national interest to proceed with an urgent treaty action, however, the 15 or 20 day tabling requirement may be varied or waived. The National Interest Exception provision was invoked in relation to the Protocol concerning the Bougainville Transition Team.
- 6.25 Five days prior to the signing of the Protocol the Minister for Foreign Affairs, the Hon Alexander Downer MP, advised the Committee of the urgent need for the Protocol to be in force to enable Australia to deploy members of the BTT on 30 June 2003. The Protocol was subsequently tabled on 12 August 2003.²⁷
- 6.26 Mr Thomson from DFAT explained that the timing of the decision to establish the BTT, and the short period to finalise and sign the

25 DFAT, *Submission 8*, p. 3.

26 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 17.

27 See *Senate Journal*, 12 August 2003, p. 2089 and *House of Representatives Votes and Proceedings*, 12 August 2003, p. 1064.

Protocol before deployment, militated against following the normal procedures.²⁸ DFAT advised:

We were not in a position to commence detailed negotiations concerning the Bougainville Transition Team, including the protocol, with other signatories to the 1997 agreement as amended, until early June.²⁹

6.27 Further, Mr Thomson noted that as the Government:

wanted to commence deployment of the Bougainville Transition Team on 30 June, the date on which the Peace Monitoring Group was to cease operations, the government felt it necessary for the Protocol to come into force between Australia and Papua New Guinea on or before this date.³⁰

Implementation

6.28 The NIA states that no legislation was required to implement Australia's obligations under the Protocol.

6.29 Article 29.4 of the 1998 Protocol determines that it will expire on the withdrawal of the Group from the Area of Operations.³¹

Consultation

6.30 Annexure 1 of the NIA advises that the Government of PNG and leaders from Bougainville were consulted in the preparation of the Protocol, as were the Attorney-General's Department, DFAT and the Department of Defence.

28 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

29 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

30 Mr Gerald Thomson, *Transcript of Evidence*, 18 August 2003, p. 15.

31 NIA, para. 28.

Table Australia's Financial Commitment to Bougainville (FY 1997-98 to FY 2002-03, with forecasts for 2003-04)

	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	Total	2003-04
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m*
Development Assistance								
Health	0.5	0.6	1.4	2.1	1.8	1.8	8.2	1.8
Education	1.1	1.5	2.8	1.3	1.7	1.5	9.9	2.8
Infrastructure (Roads and wharves)	11.1	10.4	6.7	6.5	8.7	11.7	55.1	13.0
Rural Development	0.0	0.4	1.0	2.1	1.6	3.2	8.3	2.0
Civil society (Non-government organisations, Churches)	2.9	0.6	1.3	3.6	1.9	1.9	12.2	2.1
Peace Process **	4.0	6.7	15.2	8.5	4.3	5.4	44.1	6.0
Civilian Monitors †	1.3	1.9	1.8	1.8	1.4	1.1	9.3	7.0‡
Total	20.9	22.1	30.2	25.9	21.4	26.6	147.1	34.7
Defence Expenditure								
OP BEL ISI – Neutral Truce Monitoring Group	8.2	-	-	-	-	-	8.2	-
OP BEL ISI II – Peace Monitoring Group	-	20.6	23.9	20.0	10.0	13.4	87.9	4.0§
Total	8.2	20.6	23.9	20.0	10.0	13.4	96.1	4.0
Total Commitment	29.1	42.7	54.1	45.9	31.4	40.0	243.2	38.7

Source DFAT, Submission, p. 2.

* Figures in this column are estimates only

** Includes funding for peace and reconciliation meetings; an ex-combatants' Trust Account; legal, constitutional, finance and governance advisers; Radio Bougainville.

† Includes civilian monitors for both the Neutral Truce Monitoring Group (TMG) and the Peace Monitoring Group (PMG).

‡ Estimated costs of the Bougainville Transition Team (BTT) to 31 December 2003.

§ Estimated funding required until the withdrawal of the ADF on 23 August 2003, including funds for strategic lift costs.

- 6.31 According to Annexure 1, due to the urgent need to establish a Protocol covering the BTT, it was not possible to consult within Australia prior to the Protocol's entry into force on 30 June 2003.
- 6.32 The States and Territory Premiers' / Chief Ministers' Departments were notified by the DFAT Legal Branch according to the Commonwealth-State/Territory Standing Committee on Treaties process.³²

Costs

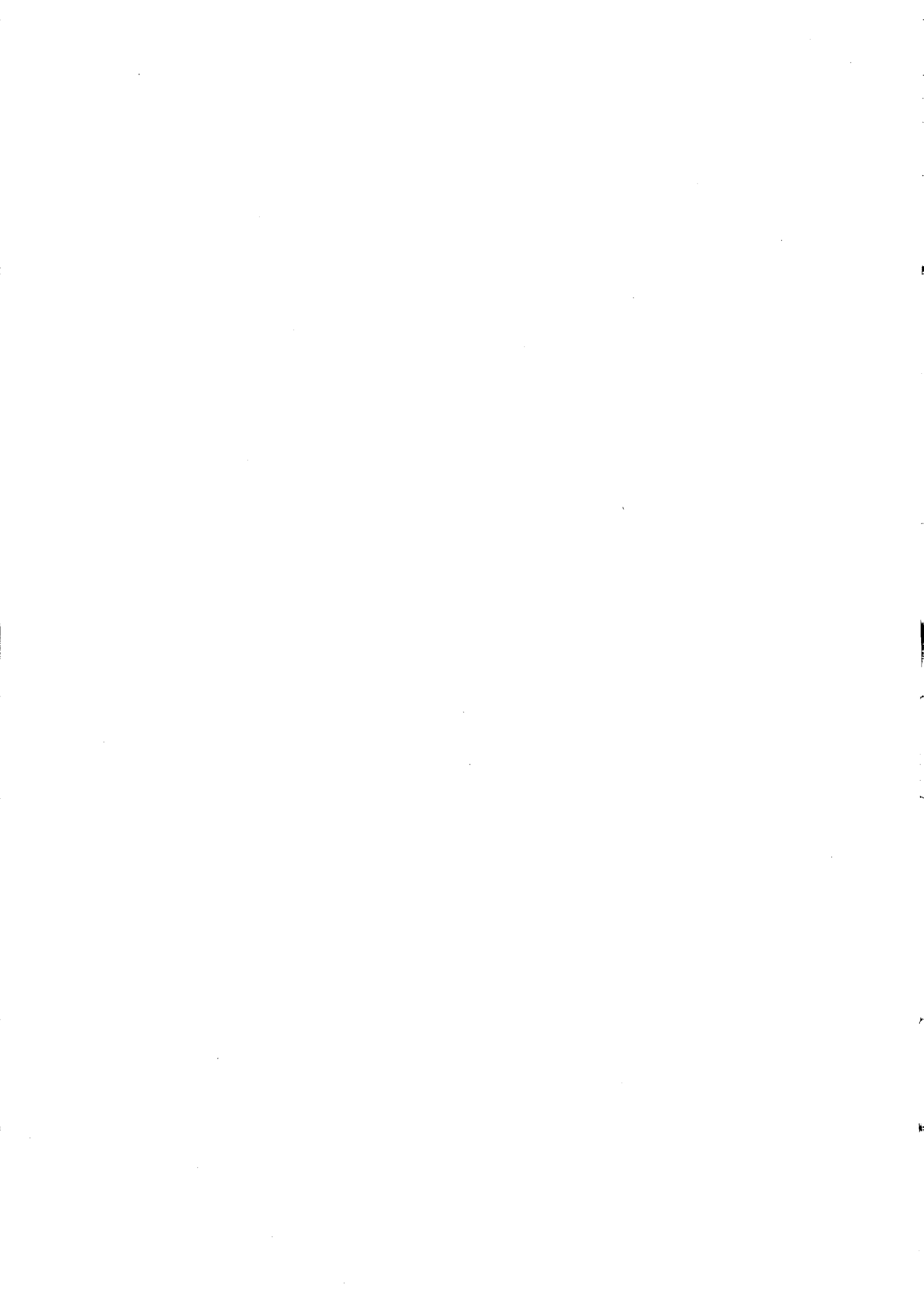
- 6.33 Article 6 of the Agreement establishes that each Participating State shall be responsible for the funding of its own participation in the Group.
- 6.34 DFAT advised that the total cost of Australia's development and military assistance to Bougainville from the financial year 1997-98 until FY 2002-03 was \$243.2 million, and it is estimated that the cost of the BTT till the end of FY 2003-04 will be \$38.7 million. The details of Australia's financial commitment to Bougainville are set out in the table opposite.

Conclusions

- 6.35 The Committee supports the Protocol, which extends the same legal protection to members of the BTT as was previously provided to the members of the PMG and the TMG, while promoting, facilitating and instilling confidence in the peace process on Bougainville and its transition towards autonomy. The Committee also affirms the BTT's role supporting the United Nations Political Office in Bougainville.
- 6.36 The Committee acknowledges the urgent need for the Protocol to be in force on or before 30 June 2003 when the BTT was deployed, prior to the treaty action being tabled in Parliament and to parliamentary consideration of the Protocol.

Ms Julie Bishop MP
Chair

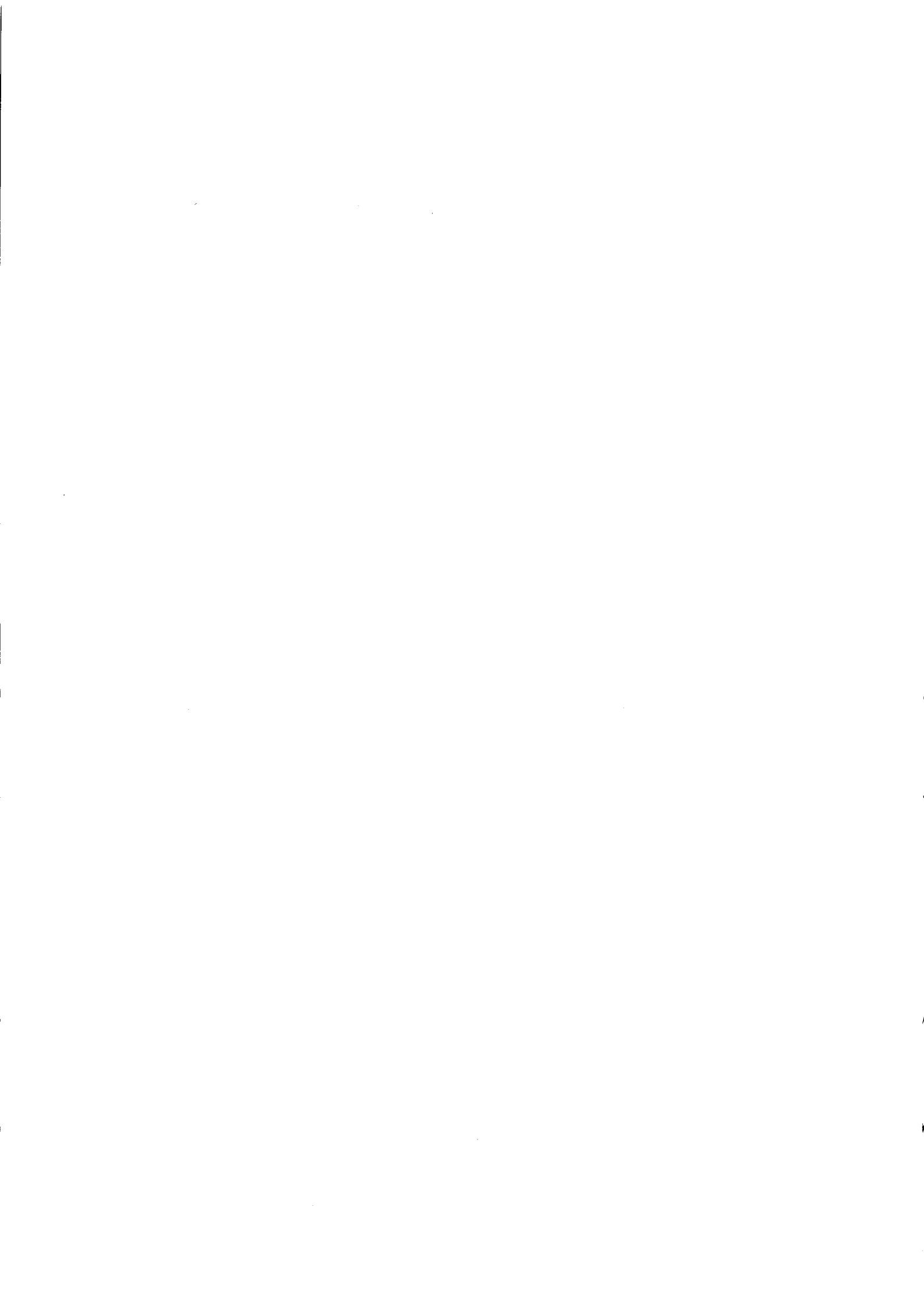
32 Consultations Annex (Annex 1), tabled with treaty text.





Appendix A - Submissions

- 1 Department of Premier and Cabinet Western Australia
- 2 Australian Patriot Movement
- 2.1 Australian Patriot Movement (Supplementary)
- 2.2 Australian Patriot Movement (Supplementary)
- 2.3 Australian Patriot Movement (Supplementary)
- 3 Queensland Government
- 3.1 Queensland Government (Supplementary)
- 4 ACT Government
- 5 Department of Foreign Affairs and Trade
- 6 Australian Maritime Safety Authority
- 7 Department of Immigration and Multicultural and
Indigenous Affairs
- 8 Department of Family and Community Services





Appendix B - Witnesses

Monday, 18 August 2003 – Canberra

Attorney-General's Department

Mr Mark Jennings, Senior Adviser, Office of International Law

AusAID

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

Australian Maritime Safety Authority

Mr Paul Nelson, Manager, Environmental Protection Standards

Department of Family and Community Services

Mr Peter Hutchinson, Director, Agreements Section, International Branch

Mr Kruno Kukoc, Acting Assistant Secretary, International Branch

Department of Foreign Affairs and Trade

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

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

Mr Alan Fewster, Executive Director, Treaties Secretariat, Legal Branch

Mr David Lewis, Executive Office (Bougainville), Papua New Guinea Section

Mr Colin Milner, Director, International Law and Transnational Crime Section, Legal Branch

Mr Paul Smith, Director, Protection Privileges and Immunities Section, Protocol Branch

Mr Gerald Thomson, Director, Papua New Guinea Section

Mr Tony Urbanski, Director, Southern Europe Section, Northern, Southern and Eastern Europe Branch

Department of Immigration and Multicultural and Indigenous Affairs

Ms Christine Pearce, Assistant Director, Tourism and Working Holiday Makers Section, Temporary Entry Branch

Mr Phillip Thurbon, Director, Tourism and Working Holiday Makers Section, Temporary Entry Branch

Department of Transport and Regional Services

Mr Robert Alchin, Policy Officer, Regulatory Group, Transport Planning Branch

Department of the Treasury

Mr Nigel Murray, Manager, Superannuation, Retirement and Savings Division