The Parliament of the Commonwealth of Australia

## **Report 27**

Termination of Social Security Agreement with the United Kingdom and International Plant Protection Convention

Joint Standing Committee on Treaties

December 1999

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## **Membership of the Committee**

Chair	The Hon Andrew Thomson MP	
Deputy Chair	Senator Barney Cooney	
Members	The Hon Dick Adams MP	Senator Vicki Bourne*
	The Hon Bruce Baird MP	Senator Helen Coonan
	Kerry Bartlett MP	Senator Joe Ludwig
	The Hon Janice Crosio MP	Senator Brett Mason
	Kay Elson MP	Senator the Hon Chris Schacht
	Gary Hardgrave MP	Senator Natasha Stott Despoja**
	De-Anne Kelly MP	Senator Tsebin Tchen
	Kim Wilkie MP	

- \* Until October 1999
- \*\* From October 1999

## **Committee Secretariat**

Secretary	Grant Harrison
Inquiry Secretaries	Cheryl Scarlett
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Research Officer	Robert Horne
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### **Recommendations**

Proposed Termination of Social Security Agreement with the United Kingdom

The Committee supports the proposed termination by Australia of the Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland (paragraph 2.107).

The Committee recommends that the Minister for Family and Community Services take appropriate steps to ensure that former residents of the United Kingdom, who migrated to Australia with the expectation that their prior contributory service to the United Kingdom's National Insurance System would be counted as qualifying residence for access to Australian social security benefits, are not disadvantaged by the proposed termination of the Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland (paragraph 2.112).

The Committee recommends that the Minister for Family and Community Services provide it with regular reports on the measures being taken to inform interested people and organisations of the effect of terminating the *Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland* (paragraph 2.115).

The Committee recommends that the Minister for Family and Community Services consider delaying formal notification of the Australian Government's intention to terminate the *Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland* until 13 July 2000 (paragraph 2.120).

#### X

#### **International Plant Protection Convention**

The Committee supports the *New [Second] Revised Text of the International Plant Protection Convention*, and recommends that binding treaty action be taken (paragraph 3.34).

## Introduction

#### **Purpose of the Report**

- 1.1 This Report contains advice to the Parliament on the review by the Joint Standing Committee on Treaties (the Committee) of the following, proposed treaty actions, tabled in both Houses of the Parliament on 11 August 1999:
  - proposed termination of Agreement on Social Security between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland, in Chapter 2;
  - and the proposed *New* [Second] Revised Text of the International Plant Protection Convention.
- 1.2 We always seek to consider and report on each proposed treaty action within 15 sitting days of it being tabled in Parliament. In the case of these two proposed treaty actions tabled on 11 August 1999, the 15 sitting day period expired on 27 September 1999.
- 1.3 We did not report on these two treaty actions within this time frame because various groups had not made submissions and/or wished to be involved in the review process. In particular, the WA Government indicated that it would forward comments on the proposed 1997 International Plant Protection Convention (IPPC). We felt, therefore, that to report in the fullest and most accurate possible way, it would be necessary to delay reporting until these groups were given the opportunity to forward their views.
- 1.4 The relevant Ministers were informed of our decision to extend these reviews.

- 1.5 The WA Government did not in fact forward a submission to the review of IPPC. A number of community/non-government organisations did forward submissions to the review of the proposal to terminate the Social Security Agreement with the United Kingdom. Some of them also gave evidence at a further public hearing.
- 1.6 We reported to the Parliament on the other eight proposed treaty actions tabled on the 11 August 1999 in Report 25: Eight Treaties Tabled on 11 August 1999. That Report was tabled on 27 September 1999.

#### Availability of documents

- 1.7 The advice in this Report refers to, and should be read in conjunction with, the National Interest Analyses (NIAs) prepared for these proposed treaty actions. These analyses were prepared by for each proposed treaty action by the Government agency responsible for the administration of Australia's responsibilities under each treaty. The NIAs were tabled in Parliament as aids to Parliamentarians when considering these proposed treaty actions.
- 1.8 Copies of each of the treaties, and the NIA prepared for each proposed treaty action, can be obtained from the Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT) (www.austlii.edu.au/au/other/dfat/), or from the Committee Secretariat.

#### Conduct of the Committee's review

- 1.9 Our review of each of the proposed treaty actions considered in this Report was advertised in the national press, and on our web site at: <a href="http://www.aph.gov.au/house/committee/jsct/">www.aph.gov.au/house/committee/jsct/</a>. A number of submissions were received in response to the invitation to comment in the advertisement. A list of those submissions is at Appendix B.<sup>1</sup>
- 1.10 For these proposed treaty actions, we gathered evidence at public hearings on 23 and 30 August and 11 October 1999. Appendix C lists the witnesses who gave evidence at those hearings.
- 1.11 A transcript of the evidence taken at the hearings can be obtained from the database maintained on the Internet by the Department of the

<sup>1</sup> This review of these proposed treaty actions was advertised in *The Weekend Australian* on 14/15 August 1999, p. 17.

Parliamentary Reporting Staff at: <u>www.aph.gov.au/hansard/joint/</u> <u>committee/comjoint.htm</u>, or from the Committee Secretariat.

## 2

## **Termination of Social Security Agreement** with the United Kingdom

#### Origins of the review

- 2.1 The Agreement on Social Security between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland (the Agreement), was done at London on 1 October 1990, and amended on 22 April 1992.
- 2.2 The Agreement replaced an earlier agreement that entered into force from 1 April 1958, with amendments on 1 October 1962, 6 March 1975 and 9 February 1987.<sup>1</sup>
- 2.3 The Agreement relates to reciprocal social security benefit arrangements.<sup>2</sup>

#### 'Host country' and 'shared responsibility' agreements

2.4 The current Agreement on social security with the UK is an older style agreement. It is a 'host country' agreement, whereas most of Australia's social security agreements with other countries are 'shared responsibility' agreements.<sup>3</sup>

<sup>1</sup> Exhibit No. 1, p. 7

<sup>2</sup> Unless otherwise specified, material in this section was drawn from the National Interest Analysis (NIA) for the Agreement on Social Security between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland Done at London on 1 October 1990, as amended on 22 April 1992, Notice of Intention to Terminate (NIA for Termination), pp. 1-2

<sup>3</sup> Australia currently is party to nine shared responsibility agreements with other countries: see NIA for Termination, p. 2

- 2.5 Under a host country agreement, the country where a person permanently resides takes responsibility for providing social security cover for that person. The current Agreement with the UK, therefore, does not include provisions for former Australians residing in the UK to claim Australian benefits.<sup>4</sup>
- 2.6 Under a shared responsibility agreement, each country contributes 'its reasonable share of social security coverage for the individual concerned.'<sup>5</sup>

#### Nature of the Agreement

- 2.7 To access specific benefits under both the Australian and United Kingdom (UK) social security systems, certain qualifying criteria must normally first be satisfied. In the case of Australia, ten years' 'Australian qualifying residence' is one of the requirements for eligibility for the Age Pension.
- 2.8 In the UK, access to non-means tested retirement and widowhood pensions under the compulsory National Insurance System, is via monetary contributions. Pension payments are then determined by the period over which a person has made such contributions.
- 2.9 The current Agreement with the UK provides accelerated access to Australian social security benefits for residents of Australia who formerly resided in the UK. It does this by allowing them to count periods of contributions made to the compulsory UK National Insurance System as periods of 'Australian qualifying residence'.
- 2.10 The Agreement also provides accelerated access to non-means tested pensions under the UK National Insurance System by allowing residents of the UK, who formally resided in Australia, to count certain residential periods in Australia as 'periods of contribution' for the purposes of that system.
- 2.11 The current 1990 Agreement, as amended in 1992, does not provide for indexation of benefits in the situation where either country pays pensions to former residents now in the other country. Why indexation was not included in the 1990 Agreement, or in the 1992 amendments, is not altogether clear.
- 2.12 A 1997 Report of the House of Commons' Social Security Committee, Uprating of State Retirement Pensions Payable to People Resident Abroad, noted that in the 1950s indexing of pensions was 'less frequent than they are

<sup>4</sup> NIA for Termination, p. 2

<sup>5</sup> NIA for Termination, p. 2; John McWilliam (Department of Family and Community Services (DFACS)), *Transcript of Evidence*, 11 October 1999, p. TR7

now'. The fact that they 'were not generally payable abroad seems not to have been controversial' at the time. This Report also noted that inflation linked increases had only been paid since 1971 to pensioners living in the UK.<sup>6</sup>

- 2.13 DFACS was unable to explain clearly why indexation was not included in the 1990 Agreement.
- 2.14 In a supplementary submission, DFACS seemed to say that, at the time of negotiations for the 1990 Agreement, the UK refused to include indexation in the re-negotiation. Australia settled therefore for a revision of the 1958 Agreement, which included some improvements, with the hope that the UK would consider negotiating indexation in the future. DFACS noted that, at the time of negotiation of the 1990 Agreement, the UK indicated that it would continue bilateral discussions on indexation in a separate forum.<sup>7</sup>
- 2.15 The amendments made to the Agreement in 1992 were of a minor, technical nature and unrelated to the question of indexation.<sup>8</sup>
- 2.16 From DFACS' submissions, it can be implied that Australia persisted with a less than perfect Agreement. It seems to have been seen as the best hope of keeping the avenues of communication open with the UK on the issue of indexation. In subsequent years, and after many high level representations by Australia to the UK Government, it seems that this hope was misplaced.

#### Indexation

- 2.17 Through its domestic legislation, Australia indexes benefits, such as pensions, it pays to former Australian residents eligible for social security benefits residing overseas, including those in the UK.
- 2.18 Under its domestic legislation, however, the UK, does not index the cost of living to the benefits it pays to those eligible for pension benefits under its compulsory National Insurance System, if they are residing outside the UK in Australia. All such indexation benefits are frozen on the date the person leaves the UK for Australia, or the date of grant of the pension, whichever comes first.<sup>9</sup>
- 2.19 This means that UK pensioners in Australia:

<sup>6</sup> Exhibit No. 5, p. vi

<sup>7</sup> DFACS, Submission No 14, p. 2

<sup>8</sup> DFACS, Submission No 14, p. 2

<sup>9</sup> Peta Murray (DFACS), Transcript of Evidence, 23 August 1999, p. TR15

are required to rely increasingly on Australian income support because the UK's indexation policy means that the value of their UK pensions reduces over time. Over 140,000 UK pension recipients also get Australian pensions, including approximately 2,500 who rely on the Agreement to [get accelerated] access [to] Australian pensions. Supplementation for these pensions, which includes pensions paid under the Agreement, is currently estimated to cost Australia in the vicinity of \$100 million per year.<sup>10</sup>

#### Proposed treaty action

- 2.20 Because the UK refuses to index pensions it pays to people in Australia, this country is effectively subsidising the UK National Insurance System. The UK has acknowledged the inequity of its policy, but has been unwilling to index because of the high costs this would involve.<sup>11</sup>
- 2.21 Australia has for many years tried to persuade the UK to change its position and amend the Agreement to provide for indexation. The UK has refused, and continues to refuse, even though it indexes the pensions of former UK residents living in a number of other countries. As a consequence, the Australian Government has decided to terminate the Agreement with the UK.<sup>12</sup>

#### Likely impact of the proposed termination

#### Termination will not guarantee indexation

2.22 DFACS acknowledged that termination of the Agreement would not automatically result in indexation by the UK. DFACS believed that termination of the Agreement had the potential to act as a catalyst to persuade the UK Government to formulate a new social security agreement with Australia that would include indexation of pensions.<sup>13</sup>

<sup>10</sup> NIA for Termination, p. 2

<sup>11</sup> Graeme Hope (DFACS), Transcript of Evidence, 23 August 1999, p. TR3

<sup>12</sup> Graeme Hope (DFACS), *Transcript of Evidence*, 23 August 1999, p. TR3, NIA for Termination, p. 2

<sup>13</sup> NIA for Termination, p. 3

- 2.23 It also conceded that it was unlikely that the UK would come back to the table very quickly and negotiate a new and fairer agreement, as a result of the proposed termination.<sup>14</sup>
- 2.24 We were also advised that:

The track record today suggests that they [the UK] have refused or declined every blandishment we have offered, including quite compromised positions which, strictly from our point of view, have been quite generous. That has been insufficient to change their position, so we do not necessarily have a clear line on how the United Kingdom officials and government might necessarily react to this [termination] in the context of renegotiating a new agreement. But from our point of view, we think it is the only avenue now left to us to seek to apply leverage.<sup>15</sup>

#### Cost savings to Australia

- 2.25 DFACS was certain that termination would produce some cost savings to Australia by removing accelerated access to social security benefits for former UK residents residing here. Such persons, as required by Australian domestic law, will have to live here for ten years before they can gain access to an Australian pension to top up their non-indexed UK pensions in line with the cost of living.<sup>16</sup>
- 2.26 DFACS originally estimated these cost savings would be about \$17 million over the four years following termination. In the light of revised estimates of the number of people likely to affected by the termination in Australia, DFACS indicated that the savings would be 'much decreased' from that figure.<sup>17</sup>

#### Groups not effected by termination

- 2.27 It should be noted that the Agreement contains provisions, the effect of which is that, if terminated, it will continue to apply to all persons who:
  - at the date of termination, are already receiving benefits under the Agreement; or

<sup>14</sup> John McWilliam (DFACS), Transcript of Evidence, 23 August 1999, p. TR14

<sup>15</sup> Graeme Hope (DFACS), Transcript of Evidence, 23 August 1999, p. TR6

<sup>16</sup> NIA for Termination, p. 3

<sup>17</sup> Exhibit No. 2, p. 1, adding to the comments made in the *Transcript of Evidence*, 23 August 1999, p. TR13; Peta Murray (DFACS), *Transcript of Evidence*, 11 October 1999, p. TR13

 before the date of termination, have lodged claims for, and would be entitled to receive, benefits as a result of the Agreement if it was still in existence.<sup>18</sup>

#### **Termination and Australia**

- 2.28 Termination of the Agreement in the Australian context would therefore only effect:
  - those Australian residents who are new settlers from the UK and satisfy all of the other requirements of the application for benefits but have less than the minimum 'Australian qualifying residence' needed to get access to the Australian benefits system; and
  - former contributors to the UK system now resident in Australia who will reach retirement age after termination takes effect but who have not accrued sufficient Australian residence to qualify for benefits.<sup>19</sup>
- 2.29 DFACS originally estimated that as many as 850 people in Australia may be effected in the first year following termination, and that this figure would diminish every year thereafter. This figure was reached by examining the immigration rates and trends over the last couple of years, and by assessing the number of people currently in Australia who would be turning 65 following termination and who had come from the UK within the last ten years.<sup>20</sup>
- 2.30 DFACS subsequently revised this estimate. This revised estimate, although admittedly 'very rough', predicted that 500 to 600 people would be effected by the termination each year.<sup>21</sup>
- 2.31 For example, if termination took place in October 2000, for the rest of that financial year to June 2001, DFACS estimated that there would be about 213 people already in Australia affected and about 221 people who had newly arrived in Australia. The latter group would be of Aged Pension age when they arrived in Australia. This gives a total of 434 people in the first financial year who would be effected by the termination.<sup>22</sup>

<sup>18</sup> Article 26(2) of the Agreement refers

<sup>19</sup> NIA for Termination, p. 3

<sup>20</sup> NIA for Termination, p. 3; Graeme Hope and Peta Murray (DFACS), *Transcript of Evidence*, 23 August 1999, pp. TR15-16

<sup>21</sup> Peta Murray (DFACS), Transcript of Evidence, 11 October 1999, p. TR12

<sup>22</sup> DFACS, *Submission No 9*, p. 4. See also Appendix E for a table showing the number of people likely to be effected by termination in the following four financial years. The first year is in fact only three-quarters of a financial year.

2.32 DFACS also argued that the effect of termination on this group of about 500 people each year would only be short-term. It noted that data from Centrelink about the people granted pensions under the Agreement over the last five years showed:

that most of these people only come on to the agreement for one, two or three years. The majority already have some qualifying Australian residence and just need that little bit of time to allow them to build up the 10 years. So people do not stay on the agreement for long-term periods.

- 2.33 The NIA noted that, '[t]he options for government income support for these people would be the same as those available to other Australian residents from non-agreement countries'.<sup>23</sup>
- 2.34 In Australia, this would mean that people in financial hardship would still be able to get income support payments without satisfying the normal qualifying period, ie. ten years for a retirement pension. Usually, this would only be available after the two years' waiting period had been served.<sup>24</sup>

#### Termination in the UK

- 2.35 In the UK, termination of the Agreement will effect a certain number of former Australian residents. It will effect former Australian residents who have never made any contribution to the UK National Insurance System, by preventing them from using periods of Australian residence deemed under the Agreement to be contributions to gain access to the non-means tested contributory retirement pension under that System.
- 2.36 It will also effect former Australian residents who have contributed at least the minimum amount of contributions necessary to gain access to a partial UK National Insurance System pension. This usually involves contributing for 11 years. It will do this by preventing them from using periods of Australian residence to increase their contribution history and hence qualify for an enhanced or full retirement pension.<sup>25</sup>
- 2.37 DFACS noted, however, that under Article 26(2), termination of the Agreement will not stop people receiving UK benefits if they are already receiving them. Nor will it stop such benefits going to people who would reach retirement age after termination, but have applied to receive them

<sup>23</sup> NIA for Termination, p. 3

<sup>24</sup> Exhibit No. 1, p. 4

<sup>25</sup> Exhibit No. 1, p. 4; Exhibit No. 2, p. 7

before the Agreement had been terminated and would have qualified if it had still been in operation.

- 2.38 It estimated that, in the UK, about 1900 people will be effected by the termination each year. These figures were an estimate based on the return migration figures, and on UK pensions granted under the Agreement over 'the last couple of years'.<sup>26</sup>
- 2.39 In the UK, as in Australia, means-tested income support payments would still be available for people suffering financial hardship. In the UK, these payments are, unlike the National Insurance System, non-contributory, but require a person to meet an 'habitually resident' test.<sup>27</sup>

#### Information campaign

- 2.40 DFACS advised that, should the Agreement be terminated, an information campaign would be developed to lessen its negative impact. This would provide information on its effects, and would be run in the 12-month-period between giving notice and the date of effect of the termination. It would:
  - build on the information already published on the DFACS web-site;
  - involve the publication of information on Centrelink's web-site;
  - involve the provision of information through the Department of Immigration and Multicultural Affairs (DIMA) and the Department of Foreign Affairs and Trade (DFAT) to potential UK immigrants; and
  - involve liaison with relevant community bodies in Australia.<sup>28</sup>

#### Date of binding treaty action

2.41 In accordance with Article 26(1), termination will occur twelve months after notice of Australia's intention to terminate has been communicated to the UK Government through diplomatic channels. It was intended that this notice would be given as soon as practicable after 27 September 1999.<sup>29</sup>

<sup>26</sup> Mr David Murdoch (DFACS), Transcript of Evidence, 23 August 1999, p. TR8

<sup>27</sup> Exhibit No. 1, p. 4

<sup>28</sup> NIA for Termination, pp. 5-6; Graeme Hope (DFACS), *Transcript of Evidence*, 23 August 1999, p. TR9

<sup>29</sup> NIA for Termination, p. 1

#### Consultation

- 2.42 DFACS stated that, on 12 July 1999, the Australian Government advised the UK Government that it was prepared to terminate the Agreement. The UK Government responded that it did not intend to amend it to include indexation in its obligations.<sup>30</sup>
- 2.43 At our first public hearing, DFACS advised that there was no community consultation during preparation of the NIA for the proposed termination. That Department expected that 'there would not be a great groundswell against' the proposal.<sup>31</sup>

#### Community organisation views, and some responses

2.44 We contacted a number of relevant community organisations to determine the soundness of DFACS' claims about the proposed termination. As a result, a number of organisations provided submissions and were invited to appear at a further public hearing. DFACS also appeared at this hearing and provided a written response to the issues raised by the community organisations.

#### Some positive views

2.45 The Association of Independent Retirees indicated that it had never been consulted about the proposed termination. It was, however, happy with the decision to terminate, stating that:

The Association believes that all agreement[s] of this nature should be fair to both parties and it appears the present Agreement does not meet this criteria.<sup>32</sup>

2.46 The National Seniors Association (NSA) stated that it has had continual discussions with the Government on the matter of indexation of British pensions. It also stated that it supported the termination so long as:

An appropriate education and information campaign...[is]... coordinated by Australia to ensure prospective Australian

<sup>30</sup> NIA for Termination, p. 4

<sup>31</sup> Graeme Hope (DFACS), *Transcript of Evidence*, 23 August 1999, p. TR12. See also David Murdoch (DFACS), *Transcript of Evidence*, 23 August 1999, p. TR11

<sup>32</sup> Association of Independent Retirees, Submission No 1, p. 1

residents, prior to their departure from Britain, are conscious of the effects the Agreement's termination may have upon them.<sup>33</sup>

2.47 The British Australian Pensioner Association (BAPA) welcomed the proposed termination, while acknowledging the hardship that some people might suffer as a result. It stated that:

[i]t is to be hoped that, as a result of the termination, the United Kingdom will be shamed into indexing the pensions of future emigrants.<sup>34</sup>

- 2.48 It believed, though, that following termination it would be wrong for Australia to conclude a new social security agreement with the UK if it did not include indexation for all UK pensions paid to people here. It noted that there were currently some 60,000 British pensioners in Australia who do not have the missing indexation made good by Australian Age Pension supplementation, as their income was too high. These people were missing out on the complete amount of UK pension they had earned.<sup>35</sup>
- 2.49 There were, however, a number of community organisations opposed in whole or at least in part to the proposed termination.

#### COTA's concerns

- 2.50 The Council on the Ageing (Australia) (COTA) felt that the proposed termination did not deal fairly with people who had already migrated to Australia from the UK in the expectation of receiving income support under the Agreement, if it was required. This covered former UK residents who had not yet reached retirement age and who, upon retirement, would not have satisfied the ten years residency requirement for gaining access to an Australian Age Pension. Instead of being able to get accelerated access to an Australian Age Pension to supplement their non-indexed UK pension, they will have to wait a full ten years.<sup>36</sup>
- 2.51 COTA also felt that the proposed termination would disadvantage UK residents who had made arrangements to come to Australia in the period prior to, or just after, the policy announcement to terminate was made by Australia in July 1999:

<sup>33</sup> NSA, Submission No 7, pp. 1-2

<sup>34</sup> BAPA, Submission No 6, p. 2

<sup>35</sup> BAPA, Submission No 6, p. 1; Submission No 13, p. 2

<sup>36</sup> COTA, Submission No 3, p. 1

- people who had set in train steps to migrate here on the assumption that they would be able to gain accelerated income support, if necessary, under the Agreement;
- those whose migration papers were already being processed; and
- people who had sold their house or otherwise arranged their assets in the expectation of migrating to Australia soon.<sup>37</sup>
- 2.52 COTA expressed the view that these categories of people should be added to those excluded from the effect of termination.<sup>38</sup>
- 2.53 It stated that:

older people have the right to plan for their retirement without the threat that the rules and goal posts will be changed at a time in their lives when they have little capacity to change their circumstances or structure of their income support arrangements.<sup>39</sup>

2.54 It also noted that:

While there may be some argument that this group are not people who have contributed substantially to Australia's income support system through taxation payments throughout their working lives, nevertheless they have come here in good faith.<sup>40</sup>

#### ACOSS' key concern

2.55 The key concern for the Australian Council of Social Service (ACOSS) was the effect termination would have on older people in the UK who had planned to join families in Australia in the future. ACOSS argued that older people might be put into vulnerable positions if they came to Australia and had to rely on family support to supplement their nonindexed UK pension until they satisfied the ten year residence requirement for access to an Australian Age Pension. Thus:<sup>41</sup>

<sup>37</sup> COTA, *Submission No 3*, p. 1; and Veronica Sheen (COTA), *Transcript of Evidence*, 11 October 1999, pp. TR3-4, clarifying what was said on this point in the COTA submission.

<sup>38</sup> COTA, *Submission No 3*, p. 1. The National Welfare Rights Network agreed and felt that this group of people should be excluded from the effects of termination. See Jackie Finlay (National Welfare Rights Network), *Transcript of Evidence*, 11 October 1999, p. TR5. Edith Morgan (Australian Pensioners' and Superannuants' Federation), *Transcript of Evidence*, 11 October 1999, p. TR6 and BAPA, *Submission No 13*, p. 2, also seemed to agree.

<sup>39</sup> COTA, Submission No 3, p. 1

<sup>40</sup> Veronica Sheen (COTA), Transcript of Evidence, 11 October 1999, p. TR3

<sup>41</sup> ACOSS, Submission No 2, p 1. See also submissions which raised similar concerns: COTA, Submission No 3, pp. 1-2; Welfare Rights Centre (Sydney), Submission No 4, p. 2; Combined

This requirement causes extreme hardship in many cases as families struggle financially to support their parents. It also leads in some instances to exploitation of the aged parents. Social workers report cases of elderly people being expected to carry out household chores for their children's families, at the same time as being housed in unheated garages and receiving little food. With no income they have no where to go to seek relief from these intolerable situations. Interestingly, workers have not reported any such instances among people who have arrived from the UK because they have an income and are thus not vulnerable to this type of exploitation. However there is no doubt that similar situations will arise once the treaty is terminated and aged people find themselves without income.<sup>42</sup>

#### **DFACS'** response

2.56 In response to concerns expressed by COTA and ACOSS, DFACS stated that:

COTA's view that people already in Australia should continue to have early access to Australian Age Pension without an agreement is premised on an acceptance that the Australian taxpayer should assume responsibility for people from the UK even when people from the other non-agreement countries would not receive such preferential treatment.<sup>43</sup>

- 2.57 DFACS challenged the arguments by COTA and ACOSS that certain people would be placed in financial difficulties and made vulnerable as a result of the proposed termination. It noted that the UK retirement pension would continue to be paid to people in Australia with or without the Agreement.<sup>44</sup>
- 2.58 It stated that the full UK retirement pension was not much different to the Australian Age Pension in value. The UK retirement pension for a single

Pensioners' and Superannuants' Association of NSW (CPSA), *Submission No 5*, p. 3 (endorsed by the Australian Pensioners' and Superannuants' Federation); BAPA, *Submission No 6*, p. 1

<sup>42</sup> ACOSS, *Submission No 2*, p. 1. To back up these claims, ACOSS provided Exhibits No. 3 and No. 4. These were valuable, particularly the case studies at pp. 18-21 of Exhibit No. 3). However neither Exhibit constituted strong evidence of many non-UK migrants being effected negatively.

<sup>43</sup> DFACS, Submission No 9, p. 2

<sup>44</sup> DFACS, Submission No 9, p. 1

person, being about \$8,900, was only \$629 a year less than the Australian Age Pension.<sup>45</sup>

- 2.59 DFACS also noted that an examination of the grants made under the Agreement over the last two years revealed that, on average, new settlers from the UK have a UK pension worth \$5,915 a year and other income worth \$2,446 a year. This means that, without including any Australian pension supplementation, the average income already available to a person who receives a grant under the Agreement is \$8,361 a year.
- 2.60 Any UK immigrants would be subject to sponsorship and Assurances of Support for at least the first two years of their residence in Australia. In any case, 'Special Benefit' could be paid before an immigrant had satisfied the ten year residence requirement, in cases of financial hardship.<sup>46</sup>
- 2.61 Thus, DFACS believed that 'few people should be in financial hardship' as a result of termination:

We are talking about perhaps a very small number of people who might not have been here for the full two years. Most of those people would be expected to have an entitlement from the UK. They would also be expected to have assurance of support. So they are not going to be destitute people; they are going to be people who might be looking for a small adjustment in the payment.<sup>47</sup>

#### 2.62 And again:

When we talk about extreme hardship, we are not going to encounter that amongst this group of people [effected by the termination] because they are insured for social security benefits from the United Kingdom.<sup>48</sup>

#### Sponsorship and Special Benefit

- 2.63 At the same time as acknowledging the existence of sponsorship and Special Benefit, a number of community organisations drew attention to the deficiencies they perceived in both arrangements.
- 2.64 They noted that sponsorship sometimes fails because of financial hardships faced by the sponsor. Even if it does not fail outright, the need for sponsorship had the potential to put an older person in a vulnerable

<sup>45</sup> DFACS, Submission No 9, p. 1

<sup>46</sup> DFACS, Submission No 9, pp. 3-4

<sup>47</sup> DFACS, Submission No 9, p. 4, John McWilliam (DFACS), Transcript of Evidence, 11 October 1999, p. TR8

<sup>48</sup> David Murdoch (DFACS), Transcript of Evidence, 11 October 1999, p. TR10

position. Forced to rely on their sponsor for food and shelter, that person might be manipulated into an unreasonable amount of household or other work.<sup>49</sup>

- 2.65 A number of community organisations drew attention to the fact that Special Benefit:
  - would not generally be available to a person until they had lived in Australia for two years;<sup>50</sup>
  - would only be available in cases of 'extreme financial hardship': available funds of less than \$651.40 for a single person, or \$587.60 for a couple;<sup>51</sup>
  - would only be paid prior to the completion of two years Australian residence if extreme financial hardship was shown, and if the person in question had suffered a substantial change of circumstances beyond their control;<sup>52</sup>
  - would be of limited benefit as 'many older people are often reluctant to reveal their personal situations' which they would need to do in order to receive this benefit;<sup>53</sup> and
  - would not be an adequate replacement for the Australian Age Pension and would be an inappropriate replacement for those people who had come to Australia in the expectation of receiving the Age Pension to supplement their non-indexed UK pension. It is not set at the same level as the Age Pension, and does not attract the same sort of additional benefits.<sup>54</sup>

#### DFACS' response

2.66 DFACS responded to a number of these key concerns raised by community groups about Special Benefit. It argued that the rate of Special Benefit paid is not very different to the rate of Age pension paid under the Agreement. The maximum basic pension rates are \$366.50 a fortnight for a single person and \$305.90 for a member of a couple. The current maximum basic rate of Special Benefit payable to a single person is \$326.70

<sup>49</sup> Exhibit No. 3, pp. 18-21

<sup>50</sup> Welfare Rights Centre (Sydney), Submission No 4, p. 2

<sup>51</sup> Welfare Rights Centre (Sydney), *Submission No 4*, p. 2

<sup>52</sup> Welfare Rights Centre (Sydney), Submission No 4, p. 2

<sup>53</sup> ACOSS, Submission No 2, p. 1

<sup>54</sup> Veronica Sheen (COTA), Transcript of Evidence, 11 October 1999, p. TR3

per fortnight. This increases to \$353.40 a fortnight after nine months. The equivalent for a member of a couple is \$294.70 per fortnight.<sup>55</sup>

- 2.67 DFACS noted that Special Benefit recipients automatically qualify for a Health Care Card and are eligible to receive a Pensioner Concession Card if they are over 60 and have received Special Benefit for more than nine consecutive months.<sup>56</sup>
- 2.68 Finally, DFACS noted that the maximum available funds a person can have if they want to be eligible for Special Benefit is \$5000, presuming they also satisfy the assets test for gaining Special Benefit. This contradicts the figures of \$651.40 for a single person, or \$587.60 for a couple, given by the Welfare Rights Centre (Sydney) in its submission.<sup>57</sup>

#### Timing of proposed termination

- 2.69 Welfare bodies also raised concerns that the proposed termination would come into effect too quickly because only twelve months' notice would be given. They said this could mean that older people, in the intervening period, might immigrate to Australia unaware that the Agreement would not apply to them.
- 2.70 The National Welfare Rights Network stated that it had already experienced situations where people had suffered because the Government had failed to provide adequate warning about a change to the social security system. It cited the two-year waiting period for benefits for the newly arrived, introduced a few years ago. This waiting period for Special Benefit came into affect virtually straight away after the Bill affecting the changes had been passed by Parliament. It noted that the period of time allowed for notification of these changes had not been sufficient, and had led to unnecessary confusion and hardship.<sup>58</sup>
- 2.71 In its submission, the Welfare Rights Centre (Sydney), proposed that the termination 'take effect two years from the date of notice of intention to terminate'. This, it said:

would provide a longer, and probably more realistic period for negotiation of a new [replacement] Agreement. It would also allow for the termination to be properly conveyed to the community, and for the development of information products by

57 DFACS, Submission No 14, p. 5

<sup>55</sup> DFACS, Submission No 14, p. 5

<sup>56</sup> DFACS, Submission No 14, p. 5

<sup>58</sup> Jackie Finlay (National Welfare Rights Network), *Transcript of Evidence*, 11 October 1999, p. TR4

the UK authorities and the Australian Department of Immigration and Multicultural Affairs...<sup>59</sup>

- 2.72 DFACS noted that the Agreement itself stipulated the termination period to be one year after notice of termination was given to the UK. This period could not be changed unilaterally by Australia. It was also stated that it was possible to delay notice of termination by 12 months, which would allow more time for people to be made aware of the change.<sup>60</sup>
- 2.73 BAPA indicated its opposition to prolonging the period before which termination would take effect. It stated that:

Termination is a strong, decisive step intended to force a change in British policy; an extension in the phase-in would be interpreted as a lack of resolve.<sup>61</sup>

#### Effect on retirement plans

2.74 Another group whose retirement plans could be effected was British pensioners working in Australia, close to or over pension eligibility age but with insufficient residence to qualify for an Australian retirement pension independently of the Agreement. Termination might lead them to retire now to qualify for a pension under current arrangements. The CPSA commented that:

[g]iven the [Government's] desire to keep older people continuing to work productively and pay taxes for as long as they wish, and the recent introduction of the Pension Bonus Scheme, (where a tax free lump sum is paid for each year while working after pension eligibility age), it would be illogical to pursue a policy proposal which had the impact of encouraging older workers to exit from the labour market.<sup>62</sup>

#### The social welfare policy shift

2.75 A final concern raised by welfare organisations about the proposed termination is the part it plays in the overall current government policy change. As ACOSS put it:

<sup>59</sup> Welfare Rights Centre (Sydney), *Submission No 4*, pp. 1-2. Welfare Rights Centre (SA) endorsed this submission: see *Submission No 10*, p. 1

<sup>60</sup> DFACS, Submission No 9, p. 3, John McWilliam (DFACS), Transcript of Evidence, 11 October 1999, p. TR8

<sup>61</sup> BAPA, Submission No 13, p. 2

<sup>62</sup> CPSA, *Submission No 5*, p. 2, endorsed by the Australian Pensioners' and Superannuants Federation

[f]or some years, Australia had a system of income security which provided a safety net for all residents. Unfortunately that safety net now has gaping holes with increasing waiting periods for many payments. Migrants have been particularly targeted. First, with the two year waiting period for most payments, and now with the termination of this treaty.<sup>63</sup>

2.76 The Brotherhood of St Laurence took the view that the hardship that would result to people in Australia as a result of termination was not really due to the termination *per se*. It believed that it resulted from the structure of the general Australian social security system itself. It made life difficult for immigrants, requiring them generally to serve a waiting period before they could gain access to certain social security payments, ie. Special Benefits and Age pension. If this policy were reversed, it believed, the Agreement could be terminated without hardship.<sup>64</sup>

#### The proposed information campaign

- 2.77 Community organisations expressed views on the information campaign proposed by the Government, should the Agreement be terminated.
- 2.78 The CPSA noted that some information had already been provided to older people about the proposed termination through *Age Pension News*, which had a circulation of around two million older people.<sup>65</sup>
- 2.79 It also indicated that it was pleased to hear that DFACS and other Government bodies had been working and would continue to work in informing the public about the impact of the proposed termination. However, it believed that the publication of relevant information on DFACS and Centrelink websites would be of little benefit, as such information sources were not readily available or used by older people. They cited 1998 Australian Bureau of Statistics figures that indicated that 'only 6.5 per cent of older people had access to the Internet, falling to 3.1 per cent for those over 70'.<sup>66</sup>
- 2.80 The CPSA believed that a major effort would be needed to ensure that people do not come to Australia under the illusion that they will

<sup>63</sup> ACOSS, Submission No 2, p. 1

<sup>64</sup> Brotherhood of St Laurence, *Submission No 8*, p. 1

<sup>65</sup> CPSA, Submission No 5, p. 3, endorsed by the Australian Pensioners' and Superannuants Federation

<sup>66</sup> CPSA, *Submission No 5*, p. 3, endorsed by the Australian Pensioners' and Superannuants' Federation

automatically qualify for income support. It stated that there needed to be 'an extensive and ongoing information campaign, not only overseas, but also here'.<sup>67</sup>

2.81 The NSA felt that such a campaign should be coordinated by the Australian Government, involving the seniors' organisations in both countries, to maximise the political exposure of this issue within Australia and the United Kingdom. ACOSS argued that information about the termination needed to be provided actually on the application form for migration to Australia. The National Welfare Rights Network agreed, noting that:

it is not sufficient to have information on a web site and it is not sufficient to have it in an additional booklet. It needs to be on the application form that you fill in and that you talk to an immigration officer about. So they will go through it and you will say, 'What does that mean?' and there will be a plain English explanation of what that means, rather than a written document which can be quite confusing to people, especially older people.<sup>68</sup>

- 2.82 While not promising to place information about the termination on application forms, DFACS pledged, in conjunction with DIMA, to 'ensure that prospective migrants are given full information as part of the migration process'.<sup>69</sup>
- 2.83 In its response to concerns raised by the community organisations, DFACS stated that:

In conjunction with the Department of Family and Community Services, the Department of Immigration and Multicultural Affairs (DIMA) has already sent an information sheet and a question and answer sheet to its London and Manchester posts for distribution to current and prospective applicants for migration.

The London post will enclose this information in the new migration packs to be distributed from this month [September].

All staff at the posts have been briefed and are answering enquires where necessary.

<sup>67</sup> CPSA, *Submission No 5*, pp. 2-3, endorsed by the Australian Pensioners' and Superannuants Federation

<sup>68</sup> NSA, Submission No 7, p. 2; Graeme Evans (ACOSS), Transcript of Evidence, 11 October 1999, p. TR18; Jackie Finlay (National Welfare Rights Network), Transcript of Evidence, 11 October 1999, p. TR 21

<sup>69</sup> DFACS, Submission No 9, p. 3

All other overseas posts and DIMA regional offices in Australia have been provided with the information sheets as well.

Both sheets have been placed on DIMA's website.<sup>70</sup>

- 2.84 DFACS supported comments made by the CPSA about the dispersal of information in Australia and the UK. It also noted the NSA's suggestion for a coordinated approach by the Australian Government to maximise political exposure for this issue.<sup>71</sup>
- 2.85 This raised the issue of whether enough efforts were being put in place to provide information about the proposed termination to people currently working in Australia who may wish later to move back to the UK. For example, there might be a number of people about 40 years of age with young families, who might only have been here a few years. They might be considering retiring in England, but this might be in another 20 years' time.
- 2.86 DFACS indicated that it had not yet taken any measures to inform Australian residents who might be thinking of moving back to the UK about these changes:

I suppose, as part of the general publicity on the termination of the agreement, that group will become aware that any rights they may have acquired under the UK system as a result of residence in Australia will no longer be available after the agreement is terminated.<sup>72</sup>

2.87 The National Welfare Rights Network indicated that it was not satisfied, stating that:

These people have not been targeted for any information. They are not going to realise until they go over there that their period in Australia is not going to count [towards a UK contributory pension].<sup>73</sup>

<sup>70</sup> DFACS, *Submission No 9*, p. 2

<sup>71</sup> DFACS, Submission No 9, pp.3, 6

<sup>72</sup> David Murdoch (DFACS), Transcript of Evidence, 11 October 1999, p. TR11

<sup>73</sup> Jackie Finlay (National Welfare Rights Network), *Transcript of Evidence*, 11 October 1999, p. TR21

#### Other evidence presented

- 2.88 In addition to matters discussed elsewhere in this Chapter, we took evidence on the following points.
- 2.89 Australian Governments have made repeated efforts over the last decade to resolve this issue. Since 1986, there have been 22 separate high-level attempts by Australia: successive Prime Ministers, Ministers for Foreign Affairs, Ministers for Trade and other ministers have all raised the indexation issue with the UK. On each occasion, Australia's representations have been denied and there was a refusal by the UK to address the issue. There was even a joint approach made by Australia and Canada in December 1986 which was also rejected by the UK.<sup>74</sup>
- 2.90 Pensioner groups have also attempted to resolve this issue. For example, they have written to successive Ministers with responsibility for pensions about the unfairness of current arrangements. Policies were adopted at a national pensioners' conference which criticised the UK Government's handling of this issue, and endorsed the efforts of the Australian Government to rectify an unfair and discriminatory situation.<sup>75</sup>
- 2.91 The UK Government's acknowledgment of the 'inequity of its policy' and its argument that the 'cost of indexation cannot be justified'. In 1997, a House of Commons' Committee conducted an inquiry on the nonindexation of UK pensions paid to people in certain other countries. Its Report recommended that there should be a free vote in the Commons on the question of whether the UK should/should not index such pensions. It noted that the cost to the UK of extending annual pension upratings without geographical limits would be £225 million. This equated to 0.28 per cent of the UK's social security budget for 1996.<sup>76</sup>
- 2.92 In recent years, 'the number of UK migrants in Australia within ten years of pension age has reduced significantly and the number obtaining benefits under the Agreement has also fallen considerably'. For example, in the 1987/88 financial year, 1,328 people within ten years of Age Pension age migrated to Australia. In the 1997/98 financial year, this figure

<sup>74</sup> David Murdoch (DFACS), *Transcript of Evidence*, 11 October 1999, p. TR8; Graeme Hope (DFACS), *Transcript of Evidence*, 23 August 1999, p. TR3. See also Appendix F for a list of significant approaches made by Australia to the UK from 1986 to 1999 on the indexation issue; John McWilliam (DFACS), *Transcript of Evidence*, 11 October 1999, p. TR7;

<sup>75</sup> CPSA, *Submission No 5*, p 1, endorsed by the Australian Pensioners' and Superannuants Federation

<sup>76</sup> Graeme Hope (DFACS), *Transcript of Evidence*, 11 October 1999, pp. TR3, 19; Exhibit No. 5, p. xii. See paragraph 2.13

dropped to 427 migrants. This amounted to a decrease of 68 per cent. Moreover, in the last three years, there had been a 62 per cent decrease in the number of people receiving payments under the Agreement.<sup>77</sup>

- 2.93 Evidence was taken on the following points:
  - Canada and New Zealand are in a similar position to Australia: for example, there are 134 000 UK pensioners living in Canada and successive Canadian Governments have sought to negotiate full indexation with the UK Government. To date, this has not been successful.<sup>78</sup>
  - More British pensioners live in Australia than in any country in the world. The cost of indexing the pensions of all 190,000 British National Insurance System pensioners living in Australia would cost the UK an additional £120 million a year.<sup>79</sup>
  - The UK Government has pension indexation arrangements with 'many other countries, including the United States of America, the Philippines and the countries of the European Union'.<sup>80</sup>
  - A Brunel University study in 1993 found that the UK was the only Organization for Economic Cooperation and Development (OECD) country that discriminated between pensioners in different overseas countries.<sup>81</sup>
- 2.94 Evidence was also taken on the age and residence profile of the 1900 former Australian residents living in the UK and receiving a UK pension, and the impact of the proposed treaty action on the UK pension entitlements of those former Australian residents seeking to settle in the UK after termination of the Agreement.<sup>82</sup>

<sup>77</sup> DFACS, Submission No 9, pp. 2-3

<sup>78</sup> Graeme Hope (DFACS), *Transcript of Evidence*, 23 August 1999, pp. TR3, 5; and John McWilliam (DFACS), *Transcript of Evidence*, 23 August 1999, p. TR9

<sup>79</sup> Exhibit No 5, p. xv

<sup>80</sup> Graeme Hope (DFACS), *Transcript of Evidence*, 23 August 1999, p. TR3. See also Appendix G which shows some of the countries where the UK does/does not index and the number of UK pensioners in each of those countries. It is interesting to note that the Commons' 1996 Report noted that 'It is impossible to discern any pattern behind the selection of countries with whom bilateral agreements have been made providing for uprating'. See Exhibit No. 5, p. xviii. This conclusion, however, is at odds with our view which is that there is such a pattern involving Commonwealth countries and countries with many British expatriates.

<sup>81</sup> Exhibit No. 5, p. xvii - xviii

<sup>82</sup> David Murdoch (DFACS), Transcript of Evidence, 23 August 1999, pp. TR7-8. The Department:

<sup>(</sup>a) noted that all people in receipt of UK payments at the time of termination would have their entitlements preserved; and

#### **Conclusions and recommendations**

#### Consultation

- 2.95 Our review has highlighted a disturbing lack of community consultation about this proposed treaty action. It seems that DFACS did not consult with any of the key community welfare organisations, either in the period before the proposed termination was announced or in the period between the announcement and the presentation of the NIA to the Parliament.
- 2.96 It is clearly inadequate that the Department, at our first hearing, was able to provide no more than its 'best guess' of the attitude of community organisations towards the proposed termination. While there may have been an understandable desire to avoid undermining the impact of the Minister's announcement, it is not acceptable that consultation, the cornerstone of the reformed treaty making process, was sacrificed to that end.
- 2.97 The importance of community consultation was highlighted by the fact that many of the organisations we contacted made comments which challenged the assumptions made by DFACS, and raised issues which warranted careful consideration.
- 2.98 This was the first occasion that DFACS had been involved in the reformed treaty making process. Its officials were most cooperative and helpful in all their dealings with us, and we expect that it will be better prepared when they next present a case for a proposed treaty action to the Parliament.

#### Terminating the Agreement

- 2.99 There is no doubt that the continuing refusal of the UK Government to meet its indexation obligations has resulted in an unfair burden being placed on Australian taxpayers. The burden has increased markedly over the last ten years, and will increase even further unless action is taken.
- 2.100 The UK Government has acknowledged the inequity of its policy but, despite extensive lobbying by successive Australian Governments, the UK Government has shown no signs of being prepared to change its policy.

<sup>(</sup>b) provided more information on the effect of termination on former Australian residents settling in the United Kingdom after termination. See Exhibit No. 1, pp. 5-6

- 2.101 The only options left available to the Australian Government are to continue to accept the UK Government's burden, or to terminate the Agreement. In principle, termination is the better option.
- 2.102 Some community organisations claimed that termination of the Agreement would cause financial hardship for former UK residents now living in Australia. While we acknowledge that termination might have some financial impact for some people, on the whole we consider that those claims have been overstated.
- 2.103 If the Agreement is terminated, former UK residents will be entitled to access to Australian social security benefits in the same circumstances and on the same conditions as migrants from other countries. Moreover, Australia's migration scheme provides that migrants must obtain sponsorship arrangements or Assurances of Support for the first two years of their residence in Australia.
- 2.104 Significantly, the proposed termination also preserves the entitlements of all Australian and UK residents currently receiving benefits under the Agreement.
- 2.105 We acknowledge that there is scope for further measures to be taken to reduce the impact of termination on former UK residents who have migrated to Australia with the expectation of benefiting from the terms of the Agreement.
- 2.106 As a matter of principle, we believe that it is neither fair nor reasonable for Australian taxpayers to continue to meet a cost that should rightly be met by the UK Government.

#### **Recommendation 1**

2.107 The Committee supports the proposed termination by Australia of the Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland.

#### Reducing the impact of termination

2.108 While the entitlements of former Australian and UK residents currently receiving benefits under the Agreement will be preserved, there is one category of people who may legitimately claim to be unfairly disadvantaged by the proposed termination. These are people who have

already migrated to Australia from the UK with the expectation of receiving accelerated access to Australian social security pensions, but who have not yet reached a sufficient age to qualify for such a pension.

- 2.109 For these people, termination of the Agreement will mean that their prior periods of contribution to the UK pension scheme will no longer be counted as periods of Australian qualifying residence.
- 2.110 To avoid disadvantaging these people, the Government should consider extending the preservation arrangements to include not just current beneficiaries under the Agreement but also any other former UK residents who migrated to Australia before, on, or immediately after, the date of the Minister's announcement of the proposed termination.
- 2.111 On figures supplied by DFACS, it is estimated that the cost of doing this would amount to about \$20 million.<sup>83</sup>

#### **Recommendation 2**

- 2.112 The Committee recommends that the Minister for Family and Community Services take appropriate steps to ensure that former residents of the United Kingdom, who migrated to Australia with the expectation that their prior contributory service to the Uunited Kingdom's National Insurance System would be counted as qualifying residence for access to Australian social security benefits, are not disadvantaged by the proposed termination of the Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland.
- 2.113 If the Agreement is to be terminated, it is important that prospective migrants are fully informed of the consequences of the termination. This will require an extensive public information campaign in both countries that will need to focus on providing information and advice to:
  - people receiving pensions under the existing arrangements, to reassure them that their entitlements will be unchanged; and
  - people seeking to migrate from one country to the other, to let them know of the impact of termination.

<sup>83</sup> DFACS, Submission No 14, p. 3

2.114 DFACS has already taken positive steps in this direction, including the provision of information kits to DIMA officials in the United Kingdom. Given the importance of this campaign, we should be provided with regular updates on the success of the publicity measures put in place. The first report should be provided to us six months after the tabling of this Report, and then at six monthly intervals until the Agreement is terminated.

#### **Recommendation 3**

- 2.115 The Committee recommends that the Minister for Family and Community Services provide it with regular reports on the measures being taken to inform interested people and organisations of the effect of terminating the Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland.
- 2.116 The effectiveness of the information campaign would be enhanced considerably, and the chance of migrants being disadvantaged consequently reduced, if a longer period were allowed between the announcement of termination and actual termination. To this end, the Government should consider delaying formal notification of termination until 13 July 2000, that is 12 months after the Minister announced the Government's intention to terminate on 13 July 1999.<sup>84</sup>
- 2.117 This would mean that the Agreement would not be terminated until 13 July 2001, two years after the Minister's announcement. It would also mean that termination would be delayed about 12 months from the date originally given.
- 2.118 If termination were delayed in this way, the Government could be confident that not only had it acted to protect the interests of Australian taxpayers, but that it had done so without unfairly disadvantaging people who had chosen to migrate to Australia.
- 2.119 We accept that a consequence of such a delay would be that, based on figures from DFACS, an extra 500 to 600 UK migrants could benefit from

<sup>84</sup> Exhibit No. 1, p. 1

accelerated access to an Australian Age Pension under the Agreement. This would cost the Australian taxpayer between \$3 and \$4 million.<sup>85</sup>

#### **Recommendation 4**

2.120 The Committee recommends that the Minister for Family and Community Services consider delaying formal notification of the Australian Government's intention to terminate the Agreement on Social Security between Australia and the United Kingdom of Great Britain and Northern Ireland until 13 July 2000.

<sup>85</sup> DFACS suggested 'as soon as practicable after 27 September 1999' as the time for issuing the notice of intention to terminate. Termination would thus take effect at the end of September 2000: see NIA for Termination, pp. 1, 3; DFACS, *Submission No* 9, p. 4, *Submission No* 14, p. 3

### 3

#### **International Plant Protection Convention**

#### Background

- 3.1 The International Plant Protection Convention (IPPC) operates under the auspices of the United Nations' Food and Agriculture Organisation (FAO) and first came into force in 1952. Australia was an original member of this Convention.<sup>1</sup>
- 3.2 The IPPC's purpose is
  - to promote common and effective action to prevent the spread of pests of plants and plant products;
  - to promote measures for the control of pests; and
  - to oblige contracting parties to adopt the legislative, technical and administrative measures specified in the IPPC and its supplementary regional agreements.
- 3.3 In 1995, the contracting parties agreed that it was necessary to amend the previous text of the IPPC. The process of revising the text produced the *New [Second] Revised Text of the IPPC* (the 1997 IPPC) which is the treaty action under review.
- 3.4 The decision to amend the previous text was taken because of a perceived need:
  - to bring the text into line with the World Trade Organisation's (WTO) 1994 Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement); and

<sup>1</sup> Material in this section is drawn from the National Interest Analysis for the *New [Second] Revised Text of the International Plant Protection Convention* (the NIA for Plant Protection), pp. 1-2

- to formalise mechanisms and processes for the development and implementation of International Standards for Phytosanitary Measures.
- 3.5 Australia has a strong interest in the development and maintenance of effective international plant quarantine regimes. Such regimes help protect our plants and plant products from imported diseases, and help ensure that our exports are not blocked by unjustified quarantine requirements acting as trade barriers.
- 3.6 Australia thus took a lead in developing the 1997 IPPC to ensure that the new text did not diminish a Party's ability to restrict the import of plants or plant products on scientifically justified grounds aligned to relevant international standards.

#### The SPS Agreement

3.7 The SPS Agreement is one of several agreements forming the 1994 Marrakesh Agreement which established the WTO. The NIA stated that, essentially, it regulates the use of domestic measures applied to protect human and animal (sanitary) or plant (phtosanitary) life or health to ensure that these measures are based on scientific principles and are not used as disguised restrictions on trade. It states that the IPPC is the recognised international forum for setting phytosanitary standards.<sup>2</sup>

#### Proposed treaty action

- 3.8 In broad terms, the 1997 IPPC clarifies existing obligations and formalises the linkages between the IPPC and the WTO's SPS Agreement. This Agreement does not, however, provide any formal procedures for developing these standards.<sup>3</sup>
- 3.9 The 1997 IPPC rectifies this omission by:
  - establishing a new Commission on Phytosanitary Measures to fulfil the objectives of the IPPC;
  - promoting the role of Regional Plant Protection Organisations in the development of international standards for phytosanitary measures; and

<sup>2</sup> NIA for Plant Protection, p. 2

<sup>3</sup> Dr William Roberts (Agriculture, Fisheries and Forestry-Australia (AFFA)) *Transcript of Evidence*, 30 August 1999, p. TR59

- explicitly setting out the role of the IPPC Secretariat in disseminating information about international standards and related information.
- 3.10 The Commission's charter will be to review of the state of global plant protection and the need for action to control the introduction and spread of pests, as well as providing the necessary institutional framework for the development and adoption of international standards. The new structure is designed to deal more quickly and effectively with matters of international phytosanitary concern than is presently the case.
- 3.11 One of the main advantages of the 1997 IPPC is that it will help ensure greater consistency in the application of phytosanitary requirements and promote the use of international standards. As a consequence, it is anticipated that it will result in greater harmonisation of plant quarantine activities relating to international trade.<sup>4</sup>

#### Obligations imposed by the treaty

- 3.12 FAO has advised member countries that the 1997 IPPC does not impose any new financial or legal obligations on contracting parties. It has provided for the cost of the new Commission on Phytosanitary Measures from within its existing budget.
- 3.13 Australia, with many other contracting parties, already acts consistently with the obligations that are clarified in the 1997 IPPC. The Australian Quarantine and Inspection Service (AQIS) already conducts transparent science based pest risk analysis for plant and plant product imports, a key element of the 1997 IPPC. AQIS also:
  - actively participates in the international phytosanitary policies and standards cooperates; and
  - provides officer training and other capacity building assistance to developing countries.<sup>5</sup>

#### Implementation

3.14 The NIA noted that the *Quarantine Amendment Bill 1998* was still before the Parliament. This Bill seeks to amend the *Quarantine Act 1908* to clarify Australia's approach to quarantine issues, consistent with international obligations, and those that will arise from the 1997 IPPC. New regulations

<sup>4</sup> NIA for Plant Protection, p. 4

<sup>5</sup> NIA for Plant Protection, p. 5

would repeal inconsistent material and ensure compliance with its obligations. $^{6}$ 

#### Date for binding treaty action

3.15 The 1997 IPPC will enter into force thirty days after formal acceptance by two-thirds of the contracting parties. The NIA stated that Australia's instrument of acceptance would be lodged with the Director-General of FAO as soon as practicable after 27 September 1999.<sup>7</sup>

#### Consultation

- 3.16 This proposed treaty action was notified to the States and Territories through the SCOT process. In addition, as part of AFFA's consultation process, with key industry and community groups, they were consulted in November 1996 on these proposed amendments to the IPPC. The NIA stated that all responses received supported the approach proposed. Some quite specific comments were received from these Governments.<sup>8</sup>
- 3.17 As part of our review, we sought comments from all State and Territory Premiers and Chief Ministers. Despite an initial indication from the Western Australian Government that comments would be provided, we did not receive comments from any of the State and Territory Governments.

#### Withdrawal

3.18 Any Party may, at any time, give notice of denunciation of the Convention by notification addressed to the Director-General of FAO, who will inform other Parties. Denunciation would take effect one year from the date of receipt of that notification by the Director-General, FAO.<sup>9</sup>

8 NIA for Plan Protection, pp. 11-12 (passim)

<sup>6</sup> NIA for Plant Protection, p. 11

<sup>7</sup> NIA for Plant Protection, p. 1

<sup>9</sup> NIA for Plan Protection, p. 13

#### Other evidence presented

#### Plant protection issues

- 3.19 AFFA noted that it was difficult to specify threats against Australia because almost every pest and disease present in the world has the capacity to effect this country in some way because of its plant diversity.<sup>10</sup>
- 3.20 Cooperation is therefore required from Australia's trading partners. Since the SPS Agreement was established, lists of pests and diseases have been provided so that a risk analysis could be carried out and both the countries involved know what actions are required.
- 3.21 There are already a number of measures in place to prevent plant pests and diseases from entering Australia. For example, for international cargo vessels that may carry pests, there is a need for clearance by the relevant national plant protection authority. AQIS emphasised that:

When commodities come into Australia, if the ship itself has the potential for bringing pests in, we would require that the ship be cleared and cleaned before the commodity is loaded onto the ship.<sup>11</sup>

- 3.22 AFFA noted that exotic pests and outbreaks of disease were rarely associated with entry via mainstream commercial trade, and were more likely to come in through natural or illegal entry.<sup>12</sup>
- 3.23 The problem of pests being carried into Australia in cargo ships carrying non-agricultural products such as second hand farm machinery or steel was also raised. AFFA stated that, where farm machinery is declared and the machine can be fully inspected and easily cleaned, it is allowed into Australia after inspection. If the machine cannot be fully inspected or fully cleaned, it is not allowed into this country.<sup>13</sup>
- 3.24 Australia has been undertaking science based risk analysis according to the IPPC standards 'for quite a long time'. Its practices are consistent with the Convention and the SPS Agreement. It is also in this country's interests to ensure that, as far as possible, there is a consistent use of such practices

<sup>10</sup> Dr William Roberts (AFFA), *Transcript of Evidence*, 30 August 1999, p. TR59

<sup>11</sup> Dr Robert Ikin (AQIS), Transcript of Evidence, 30 August 1999, p. TR60

<sup>12</sup> Dr William Roberts (AFFA) Transcript of Evidence, 30 August 1999, p. TR61

<sup>13</sup> Dr William Roberts (AFFA), *Transcript of Evidence*, 30 August 1999, p. TR63

by other countries through the adoption of the principles of this Convention.  $^{1\! 4}$ 

- 3.25 It was pointed out that under its provisions, science based risk analysis would allow increased regionalisation of trade. Thus, if a State can show that it is free of disease or can detect and treat it, it would be allowed to trade products that might not otherwise gain entry to Australia. AFFA believed that there was a great deal to be gained by including quarantine issues in the overall framework of trade.<sup>15</sup>
- 3.26 AFFA also noted that, while one nation may establish conditions for trade in a particular product, another country does not have to accept those standards. These address how risk analysis should be undertaken, but each country has the right to make its decision provided the risk analysis process has been followed against the standard.<sup>16</sup>

#### Unjustified trade barriers

- 3.27 It was put to us that there had been examples in the past where countries had used local quarantine standards as trade barriers. The new Agreement was designed to overcome this practice by requiring that trade in plants and plant products be regulated on the standard setting practices described in the Convention. Most notably, it required that parties conduct transparent and science based pest risk analyses for plant and plant product imports.
- 3.28 The 1997 IPPC did not, however, override the capacity of contracting parties to restrict the entry of plants and plant products on scientifically justified grounds aligned to the relevant international standards.<sup>17</sup>

#### Membership of the IPPC, FAO and WTO

3.29 There are considerable differences in the membership of the IPPC, FAO and WTO. The 1997 IPPC attempted to align membership of the standards setting body to contracting parties of the IPPC. AFFA noted that, where countries were not parties to the IPPC, Australia would seek to negotiate bilateral treaties applying the same principles as are in the Convention.<sup>18</sup>

<sup>14</sup> Dr William Roberts (AFFA), Transcript of Evidence, 30 August 1999, p. TR66

<sup>15</sup> Dr William Roberts (AFFA), Transcript of Evidence, 30 August 1999, pp. TR65-66

<sup>16</sup> Dr William Roberts (AFFA), Transcript of Evidence, 30 August 1999, p. TR66

<sup>17</sup> Dr William Roberts (AFFA), *Transcript of Evidence*, 30 August 1999, p. TR59

<sup>18</sup> Dr Robert Ikin (AQIS), Transcript of Evidence, 30 August 1999, p. TR63

#### **Dispute settlement**

3.30 Dispute settlement mechanisms in the proposed Agreement provide that a panel of experts can be appointed to assist in the settlement of disputes arising from the Convention. These procedures have not been called upon to date.<sup>19</sup>

#### **Conclusion and recommendation**

- 3.31 The proposed amendments to the IPPC represent an appropriate enhancement of the original text. They will:
  - maintain momentum toward international cooperation in the development of international plant protection and pest prevention standards;
  - help ensure the development of greater international consistency in the application of plant quarantine measures; and
  - promote harmonisation in trade related quarantine measures, thereby minimising the use of quarantine measures as trade barriers.
- 3.32 Each of these measures is consistent with Australia's national interest. Moreover, they do not represent the imposition of any additional obligations on the Australian community. Australia's plant quarantine policies and practices, as managed by AQIS, are already fully compliant with the terms of the proposed IPPC. Thus, it will not weaken Australia's existing quarantine standards.
- 3.33 As well as helping to improve international quarantine standards and removing non-tariff trade barriers, the 1997 IPPC would allow Australia to restrict, on scientifically justified grounds aligned to the international standards, the entry of potentially damaging plants and plant products.

<sup>19</sup> Dr William Roberts (AFFA) Transcript of Evidence, 30 August 1999, p. TR64

#### **Recommendation 5**

3.34 The Committee supports the New [Second] Revised Text of the International Plant Protection Convention, and recommends that binding treaty action be taken.

#### ANDREW THOMSON MP

Committee Chairman

23 November 1999

# A

### Appendix A - Extract from Resolution of Appointment

The Joint Standing Committee on Treaties was reconstituted in the 39th Parliament on 9 December 1998.

The Committee's Resolution of Appointment allows it to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses 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.

## B

#### **Appendix B - Submissions**

#### Proposed termination of Social Security Agreement with the UK

Submission No	Organisation
1	Association of Independent Retirees
2	Australian Council of Social Service
3	Council on the Ageing
4	Welfare Rights Centre (Sydney)
5	Combined Pensioners' and Superannuants' Association of NSW
6	British Australian Pensioner Association
7	National Seniors Association
8	Brotherhood of St Laurence
9	Department of Family and Community Services
10	Welfare Rights Centre (SA)
11	Australian Council of Social Service
12	British Australian Pensioner Association
13	British Australian Pensioner Association
14	Department of Family and Community Services
15	National Welfare Rights Network

## С

#### **Appendix C - Witnesses at Public Hearings**

Monday, 23 August 1999, Canberra

#### **Department of Foreign Affairs and Trade**

David Mason, Executive Director, Treaties Secretariat, International Organisations and Legal Division

#### Proposed termination of Social Security Agreement with the UK

#### **Department of Foreign Affairs and Trade**

Peter Gregg, Director, West Europe Section, Americas and Europe Division

#### **Department of Family and Community Services**

Graeme Hope, Executive Director, Corporate Facilities and Services

John McWilliam, Assistant Secretary, International Branch

David Murdoch, Director, Agreements, International Branch

Peta Murray, Assistant Director, Agreements, International Branch

Monday, 30 August 1999, Canberra

#### Department of Foreign Affairs and Trade

David Mason, Executive Director, Treaties Secretariat, International Organisations and Legal Division

#### **Attorney-General's Department**

Mark Zanker, Assistant Secretary, International Trade and Environment Law Branch

#### **International Plant Protection Convention**

#### Australian Quarantine and Inspection Service

Dr Robert Ikin, Acting Assistant Director, Plant Quarantine Policy Branch

Paul Trushell, Policy Officer, Multilateral Team, Plant Quarantine Policy Branch

#### Department of Agriculture, Fisheries and Forestry

Dr William Roberts, Chief Plant Protection Officer

#### Monday, 11 October 1999, Canberra

#### **Department of Foreign Affairs and Trade**

Adrian White, Acting Executive Director, Treaties Secretariat, International Organisations and Legal Division

#### Proposed termination of Social Security Agreement with the UK

#### **Department of Family and Community Services**

Graeme Hope, Executive Director, Corporate Facilities and Services John McWilliam, Assistant Secretary, International Branch David Murdoch, Director, Agreements, International Branch Peta Murray, Assistant Director, Agreements, International Branch Amanda Ozolins, Policy Officer, International Branch **Australian Council of Social Service** Graeme Evans, Policy Resource Coordinator (International) **National Welfare Rights Network** Jackie Finlay, Liaison Officer **Council on the Ageing** Veronica Sheen, National Policy Officer

#### Australian Pensioners' and Superannuants' Federation

Edith Morgan, President

## D

#### **Appendix D - Exhibits**

Proposed Termination of Social Security Agreement with the UK

Exhibit No

- 1. Senator the Hon Jocelyn Newman, Minister for Family and Community Services, *Media Release, 13 July 1999*
- 2. Letter from John McWilliam, Assistant Secretary, International Branch, Department of Family and Community Services
- Paper: 'Waiting to Settle the impact of the Social Security two year newly arrived resident's waiting period on new migrants and our community', prepared by Welfare Rights Centre, Sydney, January 1998
- 4. Fact Sheet 5: 'New Residents in Poverty: The impact of the two-year waiting period for social security in SA', prepared by South Australian Anti-Poverty Working Group, September 1999

and

Paper: 'Prophets Among us: New residents show how social security law is creating poverty', prepared by Isolde Kauffman, Network for Safety-net Payments for New Residents, September 1999

5. The House of Commons' Social Security Committee Third Report: Uprating of State Retirement Pensions Payable to People Resident Abroad, 29 January 1997 (extract)

# E

#### Appendix E - The number of people likely to be affected by termination in Australia

Finanacial Year*	New Arrivals – age pension age and over	Settlers with less than ten years residence turning age pension age	Total
October 2000 to June 2001	221	213	434
July 2001 to June 2002	294	282	576
July 2002 to June 2003	294	250	544
July 2003 to June 2004	294	233	527

\*Based on 1997/98 data.

Source: Department of Family and Community Services, Submission No 9, Attachment A, p. 5

# F

#### Appendix F - Significant approaches made by Australia, 1986 to 1999

Approach by	Approach to	Date
Minister for Social Security, Mr Howe (+ Canadian Minister Epp)	Secretary of State for Social Security, Mr Fowler	December 1986
Minister for Social Security, Mr Howe	Secretary of State for Social Security, Mr Scott	January 1988 July 1988
Prime Minister Hawke	Prime Minister Thatcher	August 1988
Minister for Social Security, Senator Richardson	Secretary of State for Social Security, Mr Newton	October 1990
Minister for Social Security, Dr Blewett	Secretary of State for Social Security, Mr Lilley	December 1992
Minister for Social Security, Mr Baldwin	Secretary of State for Social Security, Mr Lilley	September 1993
Prime Minister Keating	Prime Minister Major	September 1993
Prime Minister Keating	Prime Minister Major	June 1994
Minister for Foreign Affairs, Senator Evans	Foreign Secretary, Mr Hurd	January 1995
Secretary of Department of Social Security, Mr Blunn	Permanent Head of UK DSS, Sir Michael Partridge	May 1995
Minister for Foreign Affairs, Mr Downer	Foreign Secretary Rifkind	September 1996
Minister for Social Security, Senator Newman	Secretary of State for Social Security, Mr Lilley	November 1996
Prime Minister Howard	Prime Minister Blair	June 1997
Minister for Trade and Deputy Prime Minister Fischer	Deputy Prime Minister Prescott	May 1997 November 1997
Minister for Social Security, Senator Newman	Secretary of State for Social Security, Ms Harman	May 1997 October 1997 (by correspondence)
Minister for Foreign Affairs, Mr Downer	Foreign Secretary Cook	January 1998

Secretary of Department of Social Security, Dr Rosalky	Permanent Head of UK DSS, Dame Ann Bowtell	June 1998
Minister for Social Security, Senator Newman	Secretary of State for Social Security, Mr Darling	August 1998 (by correspondence)
DFACS officers	High Commissioner Allan	September 1998
Minister for Foreign Affairs, Mr Downer	Foreign and Commonwealth Office Minister Fatchett	January 1999
Minister for Family and Community Services, Senator Newman	Minister for Social Security, Mr Timms	July 1999
Minister for Family and Community Services, Senator Newman	Head of Policy Unit, 10 Downing St, Mr Miliband	August 1999

Source: Department of Family and Community Services, Submission No 14, p. 3

### G

### Appendix G - Indexation of pensions by the UK

Countries where the UK does index pensions	No. of UK pensioners
European Economic Area (not including UK)	186, 000
Switzerland, Turkey, former Yugoslavia	4,000
Certain Commonwealth countries and UK dependencies	45, 000
USA, Philippines, Israel	98, 000
Total	333, 000

Countries where the UK does not index pensions	No. of UK pensioners
Australia	190, 000
Canada	130, 000
New Zealand	33, 000
South Africa and Zimbabwe	39,000
Other Commonwealth Countries	31, 000
Rest of World	10, 000
Total	433, 000

Source: Exhibit No. 5, p. vii. Numbers are rounded to the nearest thousand and include recipients of widows' benefits.