

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

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CONTENTS

COMMITTEE MEMBERS	vii
EXTRACT FROM RESOLUTION OF APPOINTMENT	ix
RECOMMENDATIONS	xi
 CHAPTER 1 CONDUCT OF THE INQUIRIES	 1
Treaties tabled on 1 April 1998	1
Treaties tabled on 12 May 1998	2
Treaty tabled on 13 May 1998	3
Treaties tabled on 26 May 1998	3
 CHAPTER 2 THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION	 5
Introduction	5
Background	6
Implementation	7
Adoption process	8
Federal responsibilities	8
Commonwealth Central Authority	9
State and Territory Central Authorities	10
Accredited organisations	10
Current and new intercountry adoption agreements	14
Costs	15
Consultation	16
Withdrawal	17
Declarations	17
The Committee's views	17
 CHAPTER 3 DENUNCIATION OF ILO CONVENTION NO. 9	 19
Background	19
Provisions of the Convention	19

Reasons for denunciation	20
The Shipping Reform Group report	20
Reasons for decline	21
The Seafarers' Engagement System	21
Safety	22
Implementation	23
Obligations	24
Costs	24
Consultation	25
Withdrawal	26
Recruitment and Placement of Seafarers Convention	26
The Committee's views	27
 CHAPTER 4 COMPREHENSIVE NUCLEAR TEST-BAN TREATY	 29
Development of the Treaty	29
Basic obligations	32
Structure of the Treaty	32
Verification	33
International Monitoring System	33
Consultation and clarification	34
On-site inspections	36
Privileges and immunities	36
Confidence-building measures	36
Amendments to the Treaty	37
Reservations	37
Withdrawal or denunciation	37
Entry into force	37
Costs	38
Consultation	38
Australian implementation	39
The Committee's views	40
 CHAPTER 5 TWO ENVIRONMENTAL AGREEMENTS	 43
The Montreal Protocol on Ozone Depleting Substances	43
Extension to methyl bromide	43
New export restrictions	44
Licencing system	44
Obligations	44
Costs	44

Future protocols	45
Implementation	45
Consultation	45
Withdrawal/denunciation	45
Committee view	46
Amendment to the Basel Convention	46
The amendments	46
The Agreement and its purpose	46
Obligations	47
Costs	48
Future protocols	48
Implementation	48
Consultation	49
Withdrawal	49
Committee view	49
CHAPTER 6 FOUR BILATERAL TREATIES	51
Films Co-Production Agreement with Ireland	51
The Agreement and its purpose	51
Previous consideration	51
Obligations	52
Costs	52
Future protocols and implementation	53
Consultation	53
Withdrawal	53
Committee view	53
Amendment to the Agreement between Australia and New Zealand on Social Security	54
Social security agreements	54
Purpose and obligations	54
Proposed action	54
Reasons	54
Costs	55
Implementation	55
Consultation	55
Committee view	55
Investment Protection and Promotion Agreement with Pakistan	56
The Agreement and its purpose	56
Previous consideration	56
Obligations	56
Costs	57

Future protocols and implementation	57
Consultation	57
Withdrawal	57
Relationship with the draft Multilateral Agreement on Investment	57
The Committee's views	58
Headquarters Agreement with the Commission for the Conservation of Southern Bluefin Tuna	59
The Agreement and its purpose	59
Previous inquiries	59
Government response	59
Obligations	60
Costs	60
Entry into force	61
Implementation	61
Consultation	61
Withdrawal/denunciation	61
Committee view	62
CHAPTER 7 OTHER TREATIES TABLED	63
Anti-personnel mines	63
Mutual Recognition Agreement with the European Union	64
Fifth Protocol to the General Agreement on Trade in Services	66
Comments on the treaty process in submissions	66
DISSENTING REPORT - DENUNCIATION OF ILO CONVENTION NO. 9	69
APPENDIX 1 WITNESSES AT PUBLIC HEARINGS	81
APPENDIX 2 SUBMISSIONS RECEIVED	89
APPENDIX 3 EXHIBITS	93

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² Replaced Senator K Carr (ALP, VIC) from 4 December 1996.

³ Replaced Senator K Denman (ALP, TAS) from 12 December 1996.

⁴ Replaced Senator B J Neal (ALP, NSW) from 5 March 1998.

⁵ Replaced Mr A C Smith (LP, QLD) from 27 May 1998.

⁶ Replaced Mr C W Tuckey MP (LP, WA) from 24 September 1997.

⁷ Replaced the Hon W E Truss MP (NP, QLD) from 23 October 1997.

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EXTRACT FROM RESOLUTION OF APPOINTMENT

The Joint Standing Committee on Treaties was formed in the 38th Parliament on 30 May 1996. 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.

RECOMMENDATIONS

The Hague Convention on Intercountry Adoption

The Joint Standing Committee on Treaties recommends that:

the Commonwealth, in consultation with the State and Territory Governments, and with all relevant groups, define the separate roles of the accredited bodies and the parent support groups as part of the implementation process (paragraph 2.65).

the Commonwealth coordinate a process with State and Territory Governments and all relevant organisations to ensure that all current intercountry adoption agreements comply with the requirements of the Convention prior to the expiry of the three year transitional period (paragraph 2.67).

the Attorney General's Department act to improve the consultation process regarding the implementation of this agreement so that it is timely and includes all interested parties (paragraph 2.69).

Denunciation of ILO Convention No. 9

The Joint Standing Committee on Treaties notes the information it has received, and recommends that:

ILO Convention No. 9 be denounced (paragraph 3.45).

proper consideration be given to the adoption of ILO Convention No. 179 with the aim of ratification by the time ILO Convention No. 9 is denounced (paragraph 3.46).

Comprehensive Nuclear Test-Ban Treaty

The Joint Standing Committee on Treaties recommends that:

once the *Comprehensive Nuclear Test-Ban Treaty Bill 1998* is enacted, the Presiding Officers write jointly to the President of the United States' Senate to acquaint that Chamber with the views of the Australian Parliament, as expressed in the Act, and urge them to take all steps to facilitate and expedite ratification of the *Comprehensive Nuclear Test-Ban Treaty* by the United States of America (paragraph 4.59).

Investment Protection and Promotion Agreement with Pakistan

The Joint Standing Committee on Treaties recommends that:

ratification of the *Agreement between Australia and the Islamic Republic of Pakistan on the Promotion and Protection of Investments* not take place at least until the Australian Government announces publicly the resumption of Ministerial and senior official contacts with Pakistan (paragraph 6.44).

CHAPTER 1

CONDUCT OF THE INQUIRIES

Treaties tabled on 1 April 1998

1.1 On 1 April 1998, the following documents, including National Interest Analyses (NIAs), were tabled in both Houses of the Parliament:

- *Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption*, done at the Hague on 29 May 1993.
- Proposed denunciation of the *Convention for Establishing Facilities for Finding Employment for Seafarers*, done at Genoa on 10 July 1920 (International Labour Organisation (ILO) Convention No. 9, Placing of Seamen, 1920).

1.2 The '15 sitting day' period for these treaties expired on Wednesday 3 June 1998 in the House of Representatives, and on Wednesday 24 June 1998 in the Senate.

1.3 Submissions and comments on these treaties were called for in an advertisement in *The Weekend Australian* of 11-12 April 1998, and a number of requests were received for copies of the NIAs and the texts.

1.4 A public hearing was held in Canberra on 1 June 1998, at which evidence was taken on both treaties from relevant Commonwealth departments and agencies, and from representatives of a number of non-government organisations (NGOs). Those witnesses who gave evidence are listed in Appendix 1.

1.5 In the newspaper advertisement, submissions were called for by 8 May 1998, and those which were received are listed in Appendix 2. Additional material received in connection with our inquiry is listed in Appendix 3.

1.6 The Hague Convention on Intercountry Adoption is considered in Chapter 2 and the denunciation of ILO Convention No. 9 is considered in Chapter 3.

Treaties tabled on 12 May 1998

1.7 On 12 May 1998, the following documents, together with the NIAs were tabled in both Houses of the Parliament:

- Fifth Protocol, done at Geneva on 12 December 1997, to the *General Agreement on Trade in Services*, of 15 April 1994.
- Amendment, done at Montreal on 17 September 1997, to the *Montreal Protocol on Substances that Deplete the Ozone Layer*, of 16 September 1987.
- Amendment and adoption of Annexes, done at Kuching, Malaysia, on 27 February 1998, to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* of 22 March 1989.
- Exchange of Notes constituting an Agreement to further amend the *Agreement between the Government of Australia and the Government of New Zealand on Social Security*, of 19 July 1994.
- *Agreement between Australia and the Islamic Republic of Pakistan on the Promotion and Protection of Investments*, done at Islamabad on 7 February 1998.
- *Films Co-Production Agreement between the Government of Australia and the Government of Ireland*, done at Dublin on 4 February 1998.
- *Headquarters Agreement between the Government of Australia and the Commission for the Conservation of Southern Bluefin Tuna*, done at Canberra on 20 January 1998.

1.8 The '15 sitting day' period for these treaties expired on Thursday 25 June 1998 in the House of Representatives, and on Thursday 2 July 1998 in the Senate.

1.9 Submissions and comments on these treaties were called for in an advertisement in *The Weekend Australian* of 16-17 May 1998, and a number of requests were received for copies of the NIAs and the texts.

1.10 A public hearing was held in Canberra on 25 May 1998, at which evidence was taken on all treaties from relevant Commonwealth departments and agencies, and from representatives of a number of NGOs. Those witnesses who gave evidence are listed in Appendix 1.

1.11 In the newspaper advertisement, submissions were called for by 12 June 1998, and those which were received are listed in Appendix 2. Additional material received in connection with our inquiry is listed in Appendix 3.

1.12 All of these treaties are considered in Chapters 5 and 6, other than the Fifth Protocol to the *General Agreement on Trade in Services* which is referred to in Chapter 7.

Treaty tabled on 13 May 1998

1.13 On 13 May 1998, the following document together with the NIA was tabled in both Houses of the Parliament:

- *Comprehensive Nuclear Test-Ban Treaty*, done at New York on 10 September 1996.

1.14 The '15 sitting day' period for this treaty expired on Monday 29 June 1998 in the House of Representatives, and expires on Thursday 2 July 1998 in the Senate.

1.15 Submissions and comments on this treaty were called for in an advertisement in *The Weekend Australian* of 16-17 May 1998, and a number of requests were received for copies of the NIAs and the texts.

1.16 Public hearings were held in Canberra on 25 May 1998 and 2 June 1998, at which evidence was taken on the treaty from the relevant Commonwealth departments and agencies. Those witnesses who gave evidence are listed in Appendix 1.

1.17 In the newspaper advertisement, submissions were called for by 12 June 1998, and those which were received are listed in Appendix 2. Additional material received in connection with our inquiry is listed in Appendix 3.

1.18 This treaty is considered in Chapter 4.

Treaties tabled on 26 May 1998

1.19 On 26 May 1998, the following documents, including NIAs were tabled in both Houses of the Parliament:

- *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction*, done at Oslo on 18 September 1997
- *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings, between Australia and the European Community*.

1.20 A revised NIA for the latter Agreement with the European Union was tabled in Parliament on 3 June 1998. This Agreement has not been signed by either party.

1.21 The '15 sitting day' period for these treaties expired on Thursday 2 July 1998 in the House of Representatives, and expires on Thursday 13 August 1998 in the Senate.

1.22 Submissions and comments on these treaties were called for in an advertisement in *The Weekend Australian* of 30-31 May 1998, and a number of requests were received for copies of the NIAs and the texts.

1.23 A public hearing was held in Canberra on 22 June 1998, at which evidence was taken on both treaties from relevant Commonwealth departments and agencies. Those witnesses who gave evidence are listed in Appendix 1.

1.24 Preliminary comments on these two agreements appear in Chapter 7.

CHAPTER 2

THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

Introduction

2.1 The Hague Convention on Intercountry Adoption is intended to facilitate uniform standards for the process of intercountry adoption. The Convention does this by setting a basic level of procedure for both the donating and the receiving country in an intercountry adoption.

2.2 Committee consideration of the Hague Convention on Intercountry Adoption was complicated by the sensitivity of the issue, the contention relating to its implementation, the fact that the State and Territory Governments are responsible for its implementation, and the significant involvement of a number of non-government organisations (NGOs).

2.3 The majority of submissions and all witnesses supported the ratification of the Convention because uniform standards were seen as both beneficial and necessary. However, there was significant opposition to the proposed implementation process from one of the interested parties: the parent support groups, and some of these groups opposed the signing of the Convention.¹

2.4 The parent support groups' concerns relate to: the guidelines for accreditation of bodies to undertake intercountry adoption; the consultation process; the status of current and future intercountry adoption agreements; and the Commonwealth's decision not to use its external affairs powers to introduce national legislation. These groups argued that this combination of factors will result in the breakdown of intercountry adoptions in Australia if the Convention is implemented in its current form.

2.5 In reaching its conclusion in relation to the ratification of this Convention, the Committee has balanced the views of the parent support groups and their supporters with the views of the other interested parties, which are for the most part positive.

¹ For example, see Grace Child Placements, Submissions, p. 177.

Background

2.6 The *Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption* arises out of a decision taken by the 16th session of The Hague in 1988 to undertake negotiations to develop a Convention to deal with the lack of uniform standards in what is a growing practice.²

2.7 The Convention advocates the proposition that, in relation to intercountry adoption, the rights of the children involved are paramount.³

2.8 Adoption, and especially intercountry adoption, is considered by most participants to be a solution of last resort that is complicated and occasionally results in unsatisfactory outcomes. This was a point emphasised by many organisations that made submissions to the Committee⁴ and is summarised by the Victorian Government, which stated in its submission:

In national and international adoptions, moving a child from its birth family to another family has profound life long implications for the child, the birth family and the adoptive family...The losses for a child adopted from overseas are significant and an international adoption should always be a last resort.⁵

2.9 As a result, the Convention argues that the rights of the child are best served by children remaining with their family and culture of origin to the greatest extent possible.⁶

2.10 The Convention was negotiated firstly because of the rise in the number of intercountry adoptions, and secondly because of the ad hoc development of the intercountry adoption process. In response to these developments, the Convention protects the rights of the child by defining internationally agreed minimum standards for the processing of intercountry adoption arrangements.⁷

2.11 Currently, Australian State and Territory Governments negotiate agreements of their own with other countries. Negotiating agreements has been centrally coordinated since 1986.⁸ The vast majority of children enter Australia

² Transcript, 1 June 1998, p. 8.

³ The Convention, at Schedule one of the Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations, p. 17.

⁴ For example see: International Social Service Australia, Submissions, p. 88; Barnardos Australia, Exhibit 1, p. 2; National Children's and Youth Law Centre, Exhibit 2, p. 2; and NSW Government, Submissions, p. 156.

⁵ Victorian Government, Submissions, pp. 139-140.

⁶ Preamble to the Convention, at Schedule one of the Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations, p. 17.

⁷ Transcript, 1 June 1998, p. 9.

⁸ NSW Government, Submissions, p. 161.

through these government to government agreements.⁹ In addition, a number of NGOs have formal or informal arrangements with some countries. There are in excess of 300 intercountry adoptions annually in Australia through these agreements.¹⁰

2.12 By establishing uniform standards and predictability of procedures between countries, the Commonwealth Government is hoping the Convention will significantly assist parents in Australia who wish to adopt children from other countries.¹¹

Implementation

2.13 The National Interest Analysis (NIA) and the Convention were tabled in Parliament on 1 April 1998, and binding action will not take place until the Committee's report has been tabled. There are currently 19 parties to the Convention.

2.14 In Australia, the Convention will be implemented by additions to the Family Law regulations and a Commonwealth-State agreement.¹²

2.15 The Convention requires signatory states to create Central Authorities to implement the Convention. In federal countries, it is possible for states to become Central Authorities.¹³ In Australia there will be both Commonwealth and State and Territory Central Authorities.

2.16 The Convention also allows for the accreditation of non-government providers of adoption services, which will allow NGOs to undertake the adoption process on behalf of the Central Authorities.¹⁴ Australian Governments have developed uniform guidelines on the accreditation of these NGOs as part of the Commonwealth-State agreement.

⁹ NSW Government, Submissions, p. 161.

¹⁰ Maria and Andrew Katelaris, Submissions, p. 167.

¹¹ Transcript, 1 June 1998, p. 10.

¹² At the time of writing, the Regulations was in a revised draft form. The Commonwealth State agreement was at schedule one of the original Draft Regulations, but was omitted from the revised draft. The Committee understands the agreement has not changed. With the exception of the Commonwealth State agreement, all references refer to the Revised Draft.

¹³ Article 6 (2) of the Convention, at Schedule one of the Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations, p. 20.

¹⁴ Article 22 of the Convention, at Schedule one of the Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations, p. 25.

Adoption process

2.17 Under the Convention, the adoption process is underscored by an understanding that children should only be adopted internationally if all opportunities for them to lead a normal life in their country of origin have been exhausted.¹⁵ It is the role of the Central Authority of the donating country to ascertain that this is the case.

2.18 Before the child can be adopted internationally the persons, institutions or authorities whose consent is necessary for the adoption to proceed need to be counselled regarding the effects of the adoption, including the fact that the relationship between the child and any of their birth family will be legally severed. Those providing consent need to do so freely. If the child is mature, they have to be counselled and informed of the effects of the adoption, and they also have to freely give their consent. Consideration has to be given to the child's wishes.¹⁶

2.19 Adoption will only go ahead under the Convention if a Central Authority of the receiving country has determined that the prospective parents are eligible and suited to adopt, they have been counselled, and that the child is eligible to enter the country.¹⁷

Federal responsibilities

2.20 One of the issues of contention in relation to this Convention is the Commonwealth's decision not to assume greater responsibility for intercountry adoptions. Two submissions advocated that a federal approach would improve the process of intercountry adoption.¹⁸

2.21 On a related issue, the Australian Intercountry Adoption Network criticised the Commonwealth for abrogating its responsibilities by allowing the States and Territories to undertake the consultative process for the Convention.¹⁹

2.22 Notwithstanding the concerns relating to consultation, which will be dealt with below, the Commonwealth argued that the exercise of its external affairs power in relation to intercountry adoption would not be appropriate. Family

¹⁵ Transcript, 1 June 1998, p. 16. See also Exhibit 1, p. 1.

¹⁶ Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, p. 19.

¹⁷ Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, p. 20.

¹⁸ Neville Turner et al, Submissions, p. 41; Adoptive Families Association of the ACT, Submissions, p. 221.

¹⁹ Australian Intercountry Adoption Network, Submissions, p. 194.

law in Australia is largely a State and Territory responsibility.²⁰ In addition, the States and Territories already have the required experience and qualified staff to provide intercountry adoption services. As a result, The Commonwealth, State and Territory Governments agreed that the States and Territories should retain the responsibility for the intercountry adoption process under the Convention.²¹

2.23 Commonwealth use of its external affairs powers to comply with the obligations of the Convention would likely result in both increased cost to the Commonwealth and a breakdown in the intercountry adoption process during the transition to Commonwealth control. The Committee is of the view that because of the expertise and infrastructure already present in the State and Territory departments, day to day control of intercountry adoption should remain the responsibility of the States and Territories.

Commonwealth Central Authority

2.24 The key concern of the parent support groups was the criteria for the accreditation of bodies to undertake intercountry adoptions. In order to best illuminate and resolve the concerns of the parent support groups, the division of roles between Commonwealth, State and Territory Governments, accredited bodies and the parent support groups needs to be clarified.

2.25 The Draft Family Law (Hague Convention on Intercountry Adoption) Regulations define the functions of the Commonwealth Central Authority as:

- cooperating with Central Authorities outside Australia on matters relating to the administration and implementation of the Convention;
- consulting with State and Territory Central Authorities to get information on whether Australia is meeting its obligations under the Convention;
- drafting federal legislation to ensure Australia meets its commitments under the Convention if the legislation in the States and Territories does not meet the criteria of the Convention;
- take appropriate measures to ensure compliance with the Convention in the event of a breach in consultation with the State and Territory Central Authorities; and

²⁰ Transcript, 1 June 1998, p. 13.

²¹ Transcript, 1 June 1998, p. 10.

- consulting with State and Territory Central Authorities on matters relating to intercountry adoption.²²

State and Territory Central Authorities

2.26 With the exception of the above matters, the States and Territories will be responsible for the intercountry adoption process.

2.27 The Victorian State Government identified the following activities as being the responsibility of the State and Territory Central Authorities:

- providing information to prospective adoptive parents;
- educating prospective adoptive parents to the requirements of the Convention;
- assessing the suitability of prospective adoptive parents;
- preparing a file on the prospective adoptive parents for overseas authorities; and
- supervising the placement of the child after receiving an allocation of a child.²³

Accredited organisations

2.28 The Convention states that accredited bodies are to be directed and staffed:

By persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.²⁴

2.29 Under the Commonwealth-State agreement, in order to be eligible for accreditation, a body:

- must be an incorporated non-profit organisation;
- cannot be a party to an agreement for the establishment of adoption arrangements with overseas countries;

²² Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, p. 4.

²³ Victorian Government, Submissions, p. 140.

²⁴ Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulation 1998, p. 22.

- must employ a principal officer with a social science qualification and experience in adoption in order to supervise the adoption arrangements undertaken by the body;
- must employ professional staff with appropriate qualifications; and
- must have accommodation suitable for the conduct of assessment, interviews, training and support of adoption arrangements that does not form part of or is not adjacent to accommodation that is used by an organisation that represents adoptive parents.²⁵

2.30 The Commonwealth-State agreement sets out specific functions for accredited bodies that are similar to, if not the same as those of the State and Territory Central Authorities, including providing information to prospective adoptive parents, assessing the suitability of prospective adoptive parents, and overseeing the placement of children. The accredited organisation must also preserve all documentation in relation to adoptions.²⁶

2.31 These guidelines have been developed on the basis that they replicate the guidelines required for organisations to undertake local adoptions:

As part of the considerations given to the administrative arrangements to support the Convention all States and Territories recognise the need to ensure standards for the accreditation of bodies to undertake intercountry adoption arrangements were consistent with the requirements that were required of agencies providing adoption or substitute care services to Australian born children.²⁷

2.32 In other words, the guidelines governing all organisations providing adoptions services in Australia are proposed to be the same. A concern was expressed that the requirement to counsel the relinquishing family or authorities might not be easily complied with.²⁸

2.33 The parent support groups had two concerns with regard to the accreditation requirements. The first was that they understood that, upon ratification of the Convention, in order to carry out the functions they currently perform, they would have to be accredited. The second was that the requirements for accreditation would effectively prevent the parent support-groups from obtaining accreditation. If this is the case, parent support groups

²⁵ Draft Family Law (Hague Convention on Intercountry Adoption) Regulation 1998, pp. 26-27.

²⁶ Draft Family Law (Hague Convention on Intercountry Adoption) Regulation 1998, pp. 28-29.

²⁷ NSW Government, Submissions, p. 160. See also Victorian Government, Submissions, p. 174.

²⁸ Adoptions International of Western Australia, Submissions, p. 113.

claim they would cease to operate, and intercountry adoption would most likely stop.²⁹

2.34 The concerns of the parent support groups stem from the fact that most of the groups are voluntary organisations which do not have full time staff and whose principal officers do not have social science qualifications. While a number of the groups are working towards achieving the relevant requirements, most would not be able to fulfil the accreditation criteria relating to accommodation, the employment of professional staff and avoiding any involvement in the negotiation of new intercountry adoption agreements.³⁰ Parent support groups suggested that the criteria for accreditation be relaxed to allow at least the more established of their number to comply.³¹

2.35 On the other hand, a number of NGOs strongly supported the proposed new guidelines, including Barnardos Australia,³² Australian's Aiding Children Adoption Agency,³³ the Catholic Family Welfare Bureau³⁴ and International Social Service Australia, who stated:

The current Commonwealth State Government agreement provides for accreditation criteria for intercountry adoption that rightly identify the need for qualified staff, operating in a professional manner.³⁵

2.36 In addition, the current draft regulations were supported by academics from the University of New South Wales³⁶ and La Trobe University.³⁷

2.37 An analysis of the Commonwealth-State agreement indicates that the intended role of the accredited organisations is to carry out the responsibilities of the State Central Authority in relation to intercountry adoptions:

States and internal Territories may enter into arrangements with a body for the accreditation of that body *to provide State or Territory intercountry adoption services*. (emphasis added)³⁸

²⁹ Transcript, 1 June 1998, p. 25; Australian Families For Children, Submissions, p. 69.

³⁰ For example, see Sue Davy, Submissions; p. 29, Neville Turner et al, Submissions, p. 45; and the National Council for Adoption, Submissions, p. 19.

³¹ Transcript, 1 June 1998, p. 28.

³² Barnardos Australia, Exhibit one, pp. 2-3.

³³ Northern Territory Government, Submissions, p. 153.

³⁴ Catholic Family Welfare Bureau, Submissions, p. 21.

³⁵ International Social Service Australia, Submissions, p. 107.

³⁶ Transcript, 1 June 1998, p. 40.

³⁷ Cliff Picton and Rosemary Calder, Submissions, p. 107.

³⁸ Draft Family Law (Hague Convention on Intercountry Adoption) Regulations 1997, p. 26.

2.38 The primary intended role of the accredited organisation is, therefore, to provide the professional independent assessment of the prospective parents and professional independent monitoring of the adoption process. Parent support groups, in evidence³⁹ and submissions⁴⁰ strongly indicated that they had little interest in assessing applicants or children.

2.39 Instead, parent support groups themselves defined their role as:

- supporting Australian families during and after adoption of children from other countries;
- advancing the welfare of the orphaned or abandoned children outside Australia;
- disseminating information to prospective adoptive families regarding the availability of children;
- providing financial and material assistance to orphanages and families outside Australia;
- facilitating continued social contact between children adopted into Australia with their own cultures;
- facilitating social contact between prospective and adoptive parents in Australia for support; and
- supporting and encouraging proper intercountry adoption practices.⁴¹

2.40 By all accounts, parent support groups provide an essential service in the intercountry adoption process. According to the New South Wales Government:

It is Parents Support Groups that provide a valuable support role in providing information about the overseas country, opportunities for social interaction, fund raising, access to overseas services ... and practical assistance in travel and overseas accommodation arrangements. It is acknowledged that the activities of the Parents Support Groups extend beyond the services that could be absorbed by the Department.⁴²

2.41 The State and Territory Governments saw no reason why the parent support groups would cease to operate after the Convention has been ratified:

³⁹ See exchange in Transcript, p. 27.

⁴⁰ Australians Caring For Children, Submissions, p. 170.

⁴¹ Australians Caring For Children, Submissions, p. 169; Australian African Children's Aid and Support Association, Submissions, p. 51; and Adoptions International of Western Australia, Submissions, p. 111.

⁴² NSW Government, Submissions, p. 159. See also Cathleen Sherry, Submissions, p. 3.

It is not envisaged that the role of the parent support groups would alter under the Convention arrangements unless a group was seeking to become an accredited body.⁴³

2.42 It seems probable that there is a misunderstanding amongst some interested parties to this inquiry as to the distinction between an accredited body and a parent support groups. The Committee considers that the current activities of the parent support groups will continue unencumbered as the accreditation process is not intended, and nor will it apply to, the current activities of the parent support groups.

2.43 In order to overcome the misunderstanding amongst the interested parties, the Committee considers that the Central Authorities should draw a definitive distinction between the roles of the accredited bodies and the parent support groups for each jurisdiction, or preferably on a national basis.

Current and new intercountry adoption agreements

2.44 Another area of concern for parent support groups was the status of current agreements for intercountry adoption with non-Convention countries, and the process for developing new agreements with non-Convention countries.⁴⁴

2.45 The Commonwealth-State agreement makes it clear that an existing bilateral agreement with a non-Convention country will have to be renegotiated after three years to ensure compliance with the Convention.⁴⁵ Any new agreement with a non-Convention country will also have to comply with the Convention.⁴⁶

2.46 The Australian Intercountry Adoption Network argued that at ratification, only three countries with which Australia has an agreement will comply with the requirements of the Convention: Sri Lanka, the Philippines and Romania.⁴⁷

2.47 Australian States and Territories currently administer over ten intercountry programs. These programs are administered by different States and Territories, and in some States, a number involve NGOs. In all cases, the professional assessment aspects of the adoption process are carried out by the

⁴³ Victorian Government, Submissions, p. 174. See also NSW Government, Submissions, p. 159.

⁴⁴ Transcript, 1 June 1998, p. 24.

⁴⁵ Draft Family Law (Hague Convention on Intercountry Adoption) Regulations 1997, p. 22.

⁴⁶ Draft Family Law (Hague Convention on Intercountry Adoption) Regulations 1997, p. 23.

⁴⁷ Australian Intercountry Adoption Network, Submissions, p. 193.

State and Territory Government departments. None of these programs will expire after ratification unless they have not been renegotiated and the three year time limit for compliance with the Convention falls due.⁴⁸

2.48 The Committee does, however, have some concerns about the potential disruption to intercountry adoptions if necessary changes to the programs have not been made by the time these programs are required to comply with the Convention.

2.49 The Committee considers that the Commonwealth should coordinate a process with the States and Territories to ensure that all current programs comply with the Convention before the expiry of the three year transitional period.

2.50 The Committee understands that there are a number of informal and formal arrangements for intercountry adoption between NGOs and some countries. The Committee feels that the parent support groups have concerns about the future of these arrangements, and feel that Commonwealth, State and Territory Governments should make a considered effort to formalise these arrangements through government to government agreement while working cooperatively with the relevant parent support groups.

2.51 The Committee recognises the significant role the parent support groups have played in establishing new agreements for intercountry adoption. The Committee hopes that the State and Territory Governments' commitment that parent support groups will continue to play their current role, extends to recognising the parent support groups' role in establishing new intercountry agreements.

Costs

2.52 The National Interest Analysis stated:

State and Territory Governments' adoption authorities may incur some costs in processing adoption cases under the Convention. State and Territory Governments will determine how those costs are met. No other significant costs are expected to result from Australia's ratification of the Convention.

2.53 Concern was expressed that there may be additional costs for the adoptive families if accredited agencies are required to meet the criteria for processing

⁴⁸ NSW Government, Submissions, p. 162.

adoptions.⁴⁹ For example, these services are currently provided by the Victorian Government at less than cost.⁵⁰

Consultation

2.54 The Committee assessment of the consultative process adopted in relation to the Convention has been complicated by the important role played by the States and Territories in the consultative process:

Throughout the negotiations between the Commonwealth and the States and Territories, the States and Territories took the position that public consultation on adoption matters in Australia is the responsibility of the States and Territories, rather than the Commonwealth.

2.55 A large number of parent support groups claimed that consultation was not effectively undertaken.⁵¹

2.56 While a number of the concerns about consultation relate to the parent support groups' views on accreditation, the consultation process does appear to have been inconsistent and haphazard. For example, the revised draft regulations were only made available by the Attorney General's Department to interested parties three days before this Committee's hearing into the Convention on 1 June 1998.⁵² This is another example of the need for greater coordination in relation to consultation between Commonwealth and State and Territory Authorities and all interested parties.

2.57 The Committee feels that the Attorney General's Department should ensure that further consultation regarding the implementation of this agreement is timely and includes all interested parties. Given the small number of interested parties, the Committee does not believe the consultation process was adequate or that relevant information could not have been forwarded to all interested parties in a timely manner.

Withdrawal

⁴⁹ Sue Davy, Submissions, p. 182.

⁵⁰ Victorian Government, Submissions, p. 173.

⁵¹ See Transcript, 1 June 1998, p. 25; National Council for Adoption, Submissions, p. 19; Australia for Children Society, Submissions, p. 23; Australian African Children's Aid Support Association, Submissions, p. 52; Australian Families For Children, Submissions, p. 68; and Adoptions International Western Australia, Submissions, p. 111.

⁵² Transcript, 1 June 1998, p. 25.

2.58 Under Article 47 of the Convention, any party to the Convention may denounce it by notification in writing addressed to the depository. Denunciation takes effect after 12 months.⁵³

Declarations

2.59 Each signatory to the Convention is required to make a declaration as to the appointment of Central Authorities. Apart from declarations in relation to Central Authorities, no general trend in declarations is evident.⁵⁴ The Committee does not see any need for Australia to make declarations in relation to other matters.

The Committee's views

2.60 The Committee notes the significant role the parent support groups who support the children and their families. We consider this work essential for the well being of many of these children and note that most of this work is performed by volunteers. Many of these groups have personal contacts overseas, many have members who speak the language of the relinquishing countries and who are prepared to work for long hours for the benefit of these children.

2.61 The Committee also believes there is a legitimate role for a professional body such as the State or Territory Government departments or an accredited agency, to assess suitability and ensure acceptable standards are maintained. This would also ensure that suitable records were maintained, and confidential material on the child and the adoptive family can be handled appropriately. We see these roles as complementary to those of the parent support groups.

2.62 The Committee is of the view that a Convention on the sensitive matter of intercountry adoption is timely and apposite. The Committee feels that the parent support groups' concerns can be easily rectified without significant changes to the proposed arrangements. The majority of the concerns expressed were related to the content of the Commonwealth-State agreement and the regulations and not with the Convention itself. The Committee therefore considers ratification of the Convention appropriate.

2.63 As a result of this inquiry, the Committee would like to make the following recommendations.

⁵³ Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations, p. 33.

⁵⁴ Revised Draft Family Law (Hague Convention on Intercountry Adoption) Regulations, p. 31.

2.64 The Committee considers that the activities of the parent support groups will not be encumbered by the accreditation process. However, the Committee feels some action is necessary to overcome their anxiety as to their role in the post ratification environment.

2.65 The Joint Standing Committee on Treaties recommends that:

the Commonwealth, in consultation with the State and Territory Governments, and with all relevant groups, define the separate roles of the accredited bodies and the parent support groups as part of the implementation process.

2.66 Commonwealth, State and Territory Governments, and interested parties should work to ensure that all current intercountry adoption agreements comply with the Hague Convention before the three year transitional period expires.

2.67 The Joint Standing Committee on Treaties recommends that:

the Commonwealth coordinate a process with State and Territory Governments and all relevant organisations to ensure that all current intercountry adoption agreements comply with the requirements of the Convention prior to the expiry of the three year transitional period.

2.68 Given the small number of interested parties, the consultative process needs to be significantly improved. Given the limited number of interested groups, it should be possible to include all of them more fully in the development of the process.

2.69 The Joint Standing Committee on Treaties recommends that:

the Attorney General's Department act to improve the consultation process regarding the implementation of this agreement so that it is timely and includes all interested parties.

2.70 The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the *Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption*.

CHAPTER 3

DENUNCIATION OF ILO CONVENTION NO. 9

Background

3.1 When the International Labour Organisation (ILO) was created in 1919 its primary motive was improvement in the conditions of workers. The Preamble to the ILO's Constitution also recognises the political and economic benefits that flow from improved labour standards. The ILO, through International Labour Conferences, agreed upon and adopted many conventions with the aim of improving working conditions.

3.2 In 1920 the ILO produced its 9th agreement, the *Convention for Establishing Facilities for Finding Employment for Seafarers*. The role of the Convention is to ensure that no commercial advantage is to be gained for finding employment for seafarers. The Convention stipulates that an adequate system of employment be established and maintained to realise this outcome.

3.3 The Maritime Union of Australia (MUA) expressed the view that the Convention 'provided seafarers with dignity and equality of employment opportunities'.¹ In the past, seafarers might have been asked to pay a bribe in order to secure employment on a ship, practices which continue in countries with little regulation or countries where such regulations are not observed. In the worst cases, seafarers from developing countries may have to work for months before they are actually earning money for themselves.²

Provisions of the Convention

3.4 Article 2 of the Convention establishes that the business of finding employment for seafarers not be carried out for pecuniary gain. The same Article directs that the domestic laws of each country shall prohibit and provide punishment for violations of this requirement.

3.5 Article 4 of the Convention requires that parties to the Convention shall organise and maintain public employment offices to find employment for seafarers without charge. The system is to be organised by representatives of

¹ Submission No. 1, p. 1.

² *ibid.*

shipowners and seafarers, and administered by a central authority. Article 4 also allows for exceptions to these requirements, provided that they are coordinated on a national basis.

3.6 Article 5 of the Convention requires the establishment of a committee to advise on administration of the employment offices as outlined above. The committee is to be comprised of equal numbers of representatives of seafarers and shipowners.

Reasons for denunciation

3.7 On 18 December 1997, the Minister for Workplace Relations and Small Business announced the Government's intention to end the Seafarers' Engagement System (SES). The SES implements Australia's obligations under ILO Convention No. 9. The Government ceased administration of the SES on 1 March 1998. The Minister's decision to denounce ILO Convention No. 9 formed part of a wider range of measures that were suggested in the report of the Shipping Reform Group (SRG).

The Shipping Reform Group report

3.8 The report of the SRG, entitled *A Framework for Reform of Australian Shipping* was released in March 1997. The group was established by the Minister for Transport and Regional Development on 13 August 1996 and was to report to the Minister, according to the following terms of reference: to increase the competitiveness of Australian Shipping through the introduction, if appropriate, of a second register-type structure; and for the windback and removal of cabotage restrictions.³

3.9 The group was chaired by Mr Julian Manser, the Chief Executive of Perkins Shipping Pty Ltd, and membership of the group was restricted to representatives of industry.

3.10 The report of the SRG was in response to the decline of the Australian merchant trading fleet. Between June 1986 and June 1996 for example, the number of ships in the Australian fleet has declined from 100 to 67, with a resulting decrease from 3.8 million to 3.2 million in deadweight tonnage.⁴

³ Department of Transport and Regional Development, 1997, *A Framework for Reform of Australian Shipping*, p. 11.

⁴ *ibid*, p. 56.

During a similar period from 1985/86 to 1995/96, crew numbers dropped from an average of 30.9 to 18 per ship, with a resulting decrease in crewing costs from an average of \$3.12 million to \$2.51 million per ship.⁵

Reasons for decline

3.11 The decline in the Australian fleet can be attributed to competition from ships of other nations, especially where those ships fly 'flags of convenience' or have established 'second registers' for their shipping. Countries who operate ships under flags of convenience do so because of lower taxation, labour and safety standards. Second registers are similar to flags of convenience, in that standards, especially taxation and labour standards, are not as rigorous as the first register of that nation.

3.12 Australia does not currently have a second register of shipping, a fact which makes it difficult to compete against countries that do. One of the main reform proposals of the SRG report was the introduction of a second register of shipping for Australia. Ships would be able to hire foreign labour if Australian crews failed to deliver cost savings according to the SRG reform proposals, or on ships that spend more than 75 per cent of their time on international voyages.

3.13 Another factor for the decline in shipping is the use of other modes of transport, especially for internal freight. As the SRG report states, shipping's share of the domestic freight market in Australia dropped from 47 per cent in 1980 to 31 per cent in 1993.⁶

The Seafarers' Engagement System

3.14 As part of a package of reform measures, the SRG report recommended significant labour market reform. The key component of this reform is the introduction of company employment, which would replace the SES. The report stated that 'The move to company employment will render the Seafarers' Engagement System irrelevant and the Engagement System should be terminated after company employment becomes widespread.'⁷ Negotiations between employer and employee organisations continue and are expected to be finalised by 30 June 1998.

⁵ *ibid*, p. 15.

⁶ *ibid*, p. 14.

⁷ *ibid*, p. 26.

3.15 The SES was established in 1964, and gave effect to Australia's obligations under ILO Convention No. 9. The system operated by seafarers being placed on a register and then assigned to available ships based on the order of registration. This system ensured that seafarers would be given work on an orderly basis, but also ensured that no ship would go to sea without a full complement. The SES applied to both permanent and relief employment on Australian ships.

3.16 The SES, until its closure on 1 March 1998, was administered by the Australian Maritime Safety Authority (AMSA). In addition, the AMSA was charged with issuing and renewing certificates of marine qualification and to provide adequate arrangements to prevent unfit or unsuitable seafarers from being employed on Australian ships.⁸

3.17 While the SES was administered by the AMSA, the system was actually funded by Australian Maritime Industry Limited on a cost recovery basis. By industry funding the SES in this way, Australia has ensured that it can meet its obligations under ILO Convention No. 9, as no seafarer will be charged for placement on a ship.

Safety

3.18 In addition to labour reform, safety issues have also been raised as a rationale for the abolition of the SES. The National Interest Analysis (NIA) cites an 'independent' consultancy commissioned by the Department of Transport and Regional Development in 1997 to research and advise on maritime and stevedoring health and safety issues. At the public hearing on 1 June 1998, the MUA disputed this claim.

3.19 The Australian Mines and Metals Association (AMMA) has argued that the SES is a barrier to improvements in maritime safety, especially in relation to the offshore oil and gas industry. The AMMA suggested that a lack of specialisation in operational health and safety (OH&S) specific to each ship will necessarily increase accidents, and in a similar way short-term voyages will mean that new seafarers will not be fully inducted into OH&S procedures on new ships. The AMMA also claimed that the SES might discourage the adoption of an 'enterprise approach' to safety on each ship.

3.20 The consultancy, however, also raised doubts about the empirical basis of these claims. Offshore oil and gas supply vessels generally work on short term

⁸ Australian Maritime Safety Authority, 1996/97, *Annual Review*, p. 94.

contracts, and on completion seafarers are returned to the SES roster. The high turnover will necessarily lead to a greater use of the SES system, which the AMMA appears to have attributed to the higher rate of accidents in the offshore oil and gas industry. As the consultancy states:

For instance, it seems reasonable to conclude that operations undertaken in the offshore supply sector are inherently more hazardous than in other areas of maritime industry. Offshore operations involve increased hazards because of operations associated with the discharge of cargoes at sea, which are inherently more hazardous than the procedures involved with onshore docking.⁹

3.21 The Committee does not believe that the claim by the AMMA and repeated in the NIA can be satisfactorily substantiated. The consultancy concludes its assessment of the impact of the SES on safety by suggesting that 'Further research is needed to provide definitive answers to why the OH&S performance of this sector is comparatively poor.'¹⁰ Simply because accident rates are higher in a sector that relies more heavily on the SES, there may not be a causal relationship between the two.

Implementation

3.22 Australia's obligations under ILO Convention No. 9 are realised under Section 32 of the Commonwealth *Navigation Act 1912*. Section 32 prohibits any person from demanding or receiving, directly or indirectly, any financial benefit for providing or promising to provide, employment for any person on a ship. The NIA states that the Government will consider the future of Section 32 of the Act in assessing the general impact of shipping reform on legislation regulating the shipping industry. While Section 32 of the Act remains in place, it will still be an offence to receive payment for finding employment for a seafarer.

3.23 Current industrial awards also implement Australia's obligations under ILO Convention No. 9. Schedule X of the *Maritime Industry Seagoing Award 1983* details the operation of the SES. It is anticipated that the Award cease to have effect from 1 July 1998, when the existing arrangements are replaced by new arrangements negotiated between shipowners and the union. These changes are expected to replace the industry-wide register of employees with a system of company employment.

⁹ Easson, M et al, 1997, *Consultancy for Research and Advice on Maritime and Stevedoring Occupational Health and Safety Issues*, p. 44.

¹⁰ *ibid*, p. 45.

3.24 Article 16 of the Convention provides the mechanism for its denunciation. Implementation of the proposed denunciation can be achieved by registration of intention to withdraw with the Director-General of the ILO. Denunciation of the Convention will then take effect one year after registration of the proposed denunciation by the ILO.

Obligations

3.25 As outlined above, Australia will still have obligations under the Convention for one year after registration of its denunciation has been transmitted to the ILO. As the AMSA has already withdrawn from administering the SES, Australia is in contravention of ILO Convention No. 9, without there being alternative arrangements set in place. Specifically, Article 4 of the Convention requires that parties to the Convention maintain employment offices to find employment for seafarers without charge.

3.26 The proposed denunciation does not place any additional obligations on Australia.

Costs

3.27 As the AMSA operated the SES on a cost recovery basis, there will be no additional revenue from the closure of the SES. There will, however, be some additional costs to the Commonwealth from denunciation of ILO Convention No. 9. Concurrent with the employment functions that the Marine Crews Section of the AMSA administered were a number of other functions for which no fees were charged. These additional functions were paid for by Australian Maritime Industry Limited.¹¹ This additional cost has not been estimated by the NIA.

3.28 The cost of administering the SES has been falling since it began operating on a cost recovery basis. As the AMSA annual report for 1996-97 shows, costs for the administration of the SES fell from \$1.9 million in 1988-89 to \$1 million in 1996-97. This is a reflection of lower numbers of seafarer placements and, in particular, savings made in recruitment service delivery by the Marine Crews Section of the AMSA.¹²

¹¹ Australian Maritime Safety Authority, 1996/97, *Annual Review*, p. 94.

¹² *ibid*, p. 95.

Consultation

3.29 Under Article 5.1(e) of ILO Convention No. 144 Tripartite Consultation (International Labour Standards), governments are obliged to consult the most representative employer and employee organisations when considering the denunciation of ILO conventions. In the case of ILO Convention No. 9, the Government considered these bodies to be the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU).

3.30 On 23 February 1998 the Minister for Workplace Relations and Small Business wrote to these organisations to inform them of the Government's decision to denounce ILO Convention No. 9. A copy of this letter was sent to the Australian Shipowners Association (ASA), the AMMA, and the MUA. The letter requested comments by 27 February 1998.

3.31 The ACCI responded to the Minister's letter on 27 February 1998, stating that it had no objection to the course of action proposed.

3.32 The ACTU also responded on 27 February 1998, requesting a further four weeks to consult its affiliates. The ACTU wrote again on 25 March 1998 advising that it gives strong support to conventions ratified by Australia and did not support denunciation of ILO Convention No. 9.

3.33 On 20 March 1998 the MUA responded to the Minister's letter opposing denunciation of ILO Convention No. 9. The MUA's letter pointed out that Australia was required to apply ILO Convention No. 9 until such time as its denunciation takes effect, though the Minister had withdrawn the AMSA from administration of the SES before this time. The MUA also protested the method of consultation, and claimed that there was no discussion between the Department and the MUA, only advice that the Government shall withdraw from its obligation as of 1 March 1998.

3.34 Compared with other treaties that the Committee has reviewed, consultations were clearly inadequate. During the public hearing on 1 June 1998, concerns were raised about the nature of the consultation that took place.

3.35 The Department of Workplace Relations and Small Business indicated that the Minister had not responded to the letter from the MUA of 29 March 1998, though the letter from the ACTU of 25 March 1998 was responded to by the Minister on 11 May 1998.

3.36 There was a process of discussions between the Government and industry parties, including the MUA on the issues raised in the SRG report, including

labour reform. On 23 October 1997, the Minister announced during a speech to the National Shipping Industry Conference that the Government was considering denouncing ILO Convention No. 9. On 18 December 1997, the Minister announced that the Government would withdraw from the administration of the SES by 1 March 1998, and would commence the process to denounce ILO Convention No. 9. It is not clear from any information that was provided to the Committee that there was an active process of consultation about the Government's decision to denounce ILO Convention No. 9 with all interested parties. The concerns raised by the ACTU and the MUA during consultation were not sufficiently addressed.

3.37 Advice from the Department of Foreign Affairs and Trade indicates that the proposed denunciation of ILO Convention No. 9 was not referred to the Commonwealth-State Standing Committee on Treaties (SCOT). Representatives of the Department of Workplace Relations and Small Business responded that denunciation of the Convention was for Commonwealth action, and therefore did not involve the States and Territories.

Withdrawal

3.38 The decision to denounce ILO Convention No. 9 can be reversed at any time between the registration of denunciation and one year after that registration.

Recruitment and Placement of Seafarers Convention

3.39 The 26th Session of the Joint Maritime Commission of the ILO recommended in 1991 that ILO Convention No. 9 be revised. In 1996 ILO Convention No. 179 on the Recruitment and Placement on Seafarers was established, which provided for the removal of the prohibition on fee-charging employment agencies and the provision for the regulation of such agencies.

3.40 The Government is considering its position in relation to the ratification of ILO Convention No. 179. The Government has said it is unlikely to make a decision about its ratification until the SRG process has been finalised.

3.41 The MUA's submission and evidence supports the ratification of ILO Convention No. 179, especially if ILO Convention No. 9 is to be denounced. It asserts that the new Convention provides global minimum standards of practice involved in the deployment of seafarers by providing guidelines for the regulation for recruitment and placement of seafarers.

The Committee's views

3.42 As ILO Convention No. 9 was drafted at the beginning of the 1920s, the changes that have occurred within the industry since then may well mean that it is no longer appropriate to a modern shipping industry, a fact which the ILO itself has recognised by the adoption of ILO Convention No. 179.

3.43 The process of consultation, from the formation of the SRG to the decision to denounce ILO Convention No. 9 has been imperfect. The decision to withdraw the AMSA from the administration of the SES without first finalising the change to company employment or ensuring that other provisions were put in place means that Australia is now in breach of its international obligations. More specifically, Australia remains in breach of Article 4 of ILO Convention No. 9, and has no way of ensuring that Article 2 is complied with. This situation will continue until the denunciation takes effect, one year after its registration with the ILO.

3.44 As stated above, the Government has not decided to ratify the updated Convention on the Recruitment of Seafarers, ILO Convention No. 179. The Government's ratification of ILO Convention No. 179 should be considered as part of the process of reform to accompany the SRG reforms recommended in 1997. This represents a workable compromise to the denunciation of ILO Convention No. 9 and the introduction of further reforms by the introduction of company employment.

3.45 The Joint Standing Committee on Treaties notes the information it has received, and recommends that ILO Convention No. 9 be denounced.

3.46 The Joint Standing Committee on Treaties also recommends that:

proper consideration be given to the adoption of ILO Convention No. 179 with the aim of ratification by the time ILO Convention No. 9 is denounced.

CHAPTER 4

COMPREHENSIVE NUCLEAR TEST-BAN TREATY

4.1 The Comprehensive Nuclear Test-Ban Treaty (CTBT) marks an historic milestone in the efforts to reduce the nuclear threat and build a safer world. The CTBT's adoption by the United Nations and its opening for signature represents the culmination of decades of effort by supporters of such a treaty, including more than two-and-a-half years of intense negotiations at the Conference on Disarmament (CD) in Geneva.

4.2 Australia was instrumental in the achievement of the CTBT.

4.3 By banning all nuclear explosions, the CTBT aims to:

- constrain the development and qualitative improvement of nuclear weapons;
- end the development of advanced new types of nuclear weapons;
- contribute to the prevention of nuclear proliferation and the process of nuclear disarmament; and thereby,
- strengthen international peace and security.

Development of the Treaty

4.4 Efforts to ban nuclear testing date well before the CD negotiations. In 1954 Prime Minister Nehru of India proposed a 'standstill agreement' on nuclear testing. Two years later the Soviet Premier, Bulganin, called for a permanent halt to nuclear testing and, in 1958, the United States, the Soviet Union and the United Kingdom imposed a one year moratorium on the testing of nuclear weapons.¹

4.5 In October 1963 a Limited Test-Ban Treaty (also known as the Partial Test-Ban Treaty) entered into force, banning all nuclear testing in the atmosphere, outer space and under water. Five years later the nuclear Non-Proliferation Treaty (NPT) was signed, obliging the contracting parties to neither make nor acquire nuclear weapons and to pursue negotiations for

¹ Bills Digest, No. 190 1997-98, *Comprehensive Nuclear Test-Ban Treaty Bill 1998*, Parliamentary Library.

nuclear disarmament and arms control.² The NPT remains the cornerstone of nuclear security arrangements. Australia is a party to the NPT, along with 184 other countries, including the five declared nuclear weapons states (China, France, Russia, the United Kingdom and the United States of America).

4.6 In March 1977, President Carter announced that he intended to pursue a comprehensive test-ban treaty and negotiations continued on and off for many years.

4.7 In March 1993, the United States commenced an inter-agency Presidential Review of US policy on Nuclear Testing and a Comprehensive Test-Ban Treaty. The Review was completed by July 1993, with President Clinton subsequently stating his intention to extend the United States' nuclear testing moratorium and his desire to negotiate a CTBT.

4.8 By late 1993, the CD decided to give its Ad Hoc Committee (AHC) on a Nuclear Test-Ban a mandate to begin negotiations on a CTBT. The Chairman of the AHC was also authorised in January 1994 to proceed with inter-sessional consultations on the specifics of the CTBT mandate and other issues. Negotiations concluded in August 1996.

4.9 On 5 October 1993, China conducted the first nuclear test since President Clinton's appeal for a global moratorium on nuclear testing. These tests resulted in the CD reconvening in Geneva on 25 January 1994 to direct the AHC to negotiate intensively for a universal and multilateral CTBT. Further impetus was given to this process when, in June 1995, France announced it would resume nuclear testing in September of that year. France stated that it would conduct eight tests, and then be ready to sign a CTBT by mid-1996. The tests conducted by France, however, were completed on 29 January 1996.

4.10 On 11 and 13 May 1998, India conducted a series of nuclear tests. Two weeks later, Pakistan followed with its own series of nuclear tests. Both countries were met with international condemnation and economic sanctions on the part of some countries such as the United States of America. Australia condemned both countries and announced the immediate implementation of a range of measures including the recall for consultations of our High Commissioners, the suspension of defence relations, the suspension of non humanitarian aid and the suspension of Ministerial and senior official visits.

4.11 Australia made a high-profile, substantive contribution throughout the negotiations of the CTBT text in the CD from 1994, with significant input from

² *ibid.*

Australian technical experts to the development of the verification regime. In February 1996, Australia submitted a 102 page draft CTBT to the CD and called on negotiators to reach an agreement by June. By May 1996, the Chairman of the AHC tabled a draft 'Chairman's text' of the Treaty stating that this was the best way forward to meet the internationally agreed deadline. This event was overshadowed on 29 July, however, when China conducted a nuclear test and declared that it would be prepared to start a moratorium on nuclear testing effective from 30 July 1996.

4.12 By August 1996, the Chairman of the AHC concluded that continuing negotiations on the draft Treaty would not likely yield further results. The AHC reported to the CD that no consensus could be reached either on adopting the text of the CTBT in order to transmit it to the United Nations General Assembly (UNGA) for endorsement. This was because of the continuing objections to the Treaty from India.³

4.13 In an attempt to resolve this stalemate, the Minister for Foreign Affairs, Mr Downer, announced on 23 August 1996 that Australia would take the unprecedented step of drafting a resolution to present the draft of the CTBT direct to UNGA, and its opening for signature at the earliest possible date. On 10 September, the General Assembly reconvened and voted overwhelmingly to adopt the CTBT and to open the Treaty for signature. A total of 158 countries voted for the resolution, including the five nuclear weapon states, and only three against (India, Libya and Bhutan). There were five abstentions (Mauritius, Lebanon, Syria, Tanzania and Cuba). The resolution attracted 127 co-sponsors from all regions of the world. Significantly, there was no attempt at procedural disruption or amendment to the resolution.

4.14 The Minister for Foreign Affairs, Mr Downer, immediately signed the Treaty on behalf of Australia. Australia is one of the 44 countries whose ratification is now necessary before the CTBT can enter into force.

4.15 So far some 149 countries have signed the CTBT, including the five nuclear weapons states. Israel has also signed separately.⁴

³ Transcript, 25 May 1998, p. 2.

⁴ Transcript, 25 May 1998, p. 3.

Basic obligations

4.16 The fundamental obligations on State Parties are embodied in Article I of the CTBT, which states that:

Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.

Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.

Structure of the Treaty

4.17 The Treaty itself includes a Protocol in three parts: Part I detailing the International Monitoring System (IMS); Part II sets out procedures for on-site inspections; and Part III gives further details on confidence building measures. There are also two Annexes to the Protocol which also form an integral part of the Treaty: Annex 1 detailing the location of various Treaty monitoring assets associated with the IMS; and Annex 2 detailing the parameters for screening events.

4.18 Article II of the Treaty establishes the Comprehensive Nuclear Test-Ban Treaty Organisation (CTBTO), located in Vienna, to achieve the object and purpose of the Treaty and to ensure the implementation of its provisions, including verification and compliance, and to provide a forum for consultation and cooperation among State Parties. The CTBTO will consist of the Conference of the State Parties, the Executive Council and the Technical Secretariat.

4.19 The Conference of State Parties will be the principal organ of the CTBT and will meet annually to oversee the Treaty's implementation and the activities of the Executive Council and the Technical Secretariat, and to review compliance. The Executive Council, the executive body of the Organisation, will supervise the activities of the Technical Secretariat. It will comprise 51 State Parties representing six geographical regions. Australia is in the South East Asia, Pacific and Far East geographic grouping and will have an opportunity to serve regularly on the Council. The Technical Secretariat will carry out verification and other functions, supervise and coordinate the operation of the IMS and operate the International Data Centre at Vienna.

4.20 Article III deals with national implementation measures and requires Parties to prohibit persons and corporations anywhere on its territory or in any place under its jurisdiction or control from undertaking any activity prohibited under the CTBT. Furthermore, Australia is obliged to prohibit Australian nationals from undertaking such activity 'anywhere'.

4.21 Article III also requires Australia to designate or set up a National Authority to manage national implementation of the CTBT and the establishment of IMS facilities here. The Australian Comprehensive Test-Ban Office will be established within the Australian Safeguards Office.

Verification

4.22 Article IV and the Protocol provide for establishment of a verification regime consisting of:

- the International Monitoring System;
- the International Data Centre;
- consultation and clarification;
- on-site inspections; and
- confidence-building measures.

4.23 The verification regime is designed to detect with reliability any non-compliance or breach of the Treaty. State Parties undertake to cooperate with the CTBTO to facilitate the verification of compliance by establishing the necessary facilities to participate in these verification measures and establishing the necessary communications; providing data obtained from national IMS stations; participating in a consultation and clarification process; permitting the conduct of on-site inspections; and participating in confidence-building measures.

International Monitoring System

4.24 The IMS is a global monitoring system comprising over 300 stations and laboratories. The purpose of the IMS is to assist in the detection and identification of nuclear explosions prohibited under Article I. The IMS will consist of: 50 primary and 120 auxiliary seismological stations to detect seismic activity; 80 radionuclide stations, to capture radioactive particles released

during a nuclear explosion; 16 laboratories to support the radionuclide stations; 11 hydroacoustic and 60 infrasound stations to pick up the sound of a nuclear explosion under water or in the atmosphere respectively.⁵

4.25 Australia will play an important role in the CTBT's verification regime and will host 21 monitoring facilities, the third highest after the United States of America and Russia. These sites are illustrated in Map 1.

4.26 It is argued that Australian industry stands to benefit from the commercial opportunities provided by the establishment and upgrading of IMS stations both in Australia and worldwide.

4.27 Since 1984, Australia has operated a National Data Centre at the Australian Geological Survey Organisation (AGSO) which has played a key role in the detection, location and identification of nuclear weapon explosions, including the final series carried out by France and China. The quality and experience of the National Data Centre has put Australia at the leading edge of nuclear explosion identification capabilities. In this respect we offer the verification regime a reliable independent assessment capability. This will be particularly useful in assessing data where doubt or ambiguity about compliance exists.

4.28 Whilst the IMS come under the authority of the Technical Secretariat, all IMS facilities are owned and operated by the states hosting or otherwise taking responsibility for them. The obligations of State Parties with respect to the monitoring system are set out in Part I of the Protocol.

Consultation and clarification

4.29 The verification regime encourages consultation and clarification of matters by State Parties as a means of resolving any particular concern about possible non-compliance with the Treaty, before requesting an on-site inspection.

⁵ Seismic, hydroacoustic and infrasound technologies detect and measure seismic, pressure and very low-frequency sound waves in the ground, water and atmosphere respectively. Radionuclides technology detects and measures radioactive particles and gases in the atmosphere.

MAP TO BE INSERTED HERE

On-site inspections

4.30 Article IV outlines the procedures for requesting and on-site inspection.

4.31 State Parties have the right to request an on-site inspection in accordance with the provisions of Article IV of the CTBT and Part II of the Protocol. The sole purpose of an inspection shall be to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out in violation of Article I.

4.32 State Parties must permit inspectors to carry out on-site inspections in their territory or in places under their jurisdiction or control. Inspections may include visual observations, overflights, measurement of radioactivity, environmental sampling and analysis, passive seismological monitoring, resonance seismometry, magnetic and gravitational field mapping and drilling to obtain radioactive samples. Inspectors have the right to collect and remove samples and to retain all portions of all samples collected when the samples are analysed.

4.33 The CTBTO is required to conduct its verification activities in the 'least intrusive manner possible' and take every precaution to protect the confidentiality of data that does not pertain to the provisions of the CTBT. Each State Party has the right to take measures to protect sensitive installations and to prevent disclosure of confidential information and data not related to the Treaty.

Privileges and immunities

4.34 The Protocol sets out the legal capacity and a range of privileges and immunities for the CTBTO and its officers, advisers and inspectors necessary for the exercise of the functions set out under the CTBT, including during verification activities.

Confidence-building measures

4.35 State Parties undertake to cooperate with the CTBTO to implement confidence building measures as set out in Part III of the Protocol. To reduce the likelihood that verification data may be misinterpreted, each State Party shall, on a voluntary basis, notify the Technical Secretariat of any chemical explosion using 300 tonnes or more of TNT-equivalent blasting material on its territory

Amendments to the Treaty

4.36 Under Article VII, any State Party may propose an amendment to the Treaty, the Protocol, or the Annexes to the Protocol at any time after the CTBT's entry into force. Any proposed amendment requires the approval of a majority of State Parties at an Amendment Conference with no party casting a negative vote. An amendment does not come into force until it is ratified by all of the Parties casting a positive vote at the Amendment Conference. Amendments of a technical and administrative nature may be made via a simplified process, on the recommendation of the Executive Council to State Parties.

4.37 A conference to review the operation and effectiveness of the CTBT (Article VIII) will be held ten years after its entry into force, taking into account any scientific and technological developments. Further review conferences may be held every 10 years thereafter, or less, if the conference so decides. At the request of any State Party, the Review Conference may consider the possibility of permitting the conduct of underground nuclear explosions for peaceful purposes. The National Interest Analysis (NIA) notes, however, that this would be extremely unlikely to occur.

Reservations

4.38 The Articles and Annexes to the Treaty are not subject to reservations. The provisions of the Protocol and Annexes to the Protocol are not subject to reservations that are incompatible with the object and purpose of the Treaty.

Withdrawal or denunciation

4.39 Article IX states that each State Party shall have the right to withdraw from the CTBT if it decides that extraordinary events related to the subject matter of the Treaty have jeopardised its supreme interests. Notice of withdrawal is to be given six months in advance to all other State Parties, the Executive Council, the Depository and the United Nations Security Council and shall include a statement of the jeopardising extraordinary event or events underlying the decision.

Entry into force

4.40 The CTBT will enter into force 180 days after all of the 44 states listed in Annex 2 to the Treaty have deposited their instruments of ratification but in no

case earlier than two years after its opening for signature. The list is drawn from states which formally participated in the 1996 negotiating session of the CD and which possess nuclear power and/or research reactors. Australia is one of the states whose ratification is required before entry into force. It also includes China, Russia and the United States, the three nuclear weapons states who have not ratified the Treaty to date (France and the United Kingdom ratified the Treaty on 6 April 1998).

4.41 Entry into force is highly doubtful at this stage because both India and Pakistan are also required to ratify the Treaty before this can occur.⁶

4.42 If the Treaty has not entered into force within three years, there will be a Conference of State Parties to consider and decide by consensus what measures consistent with international law might be undertaken to accelerate the ratification process. This process will be repeated at subsequent anniversaries of the opening for signature of the Treaty until its entry into force.

Costs

4.43 State Parties to the CTBT are charged for the cost of operating the CTBTO in accordance with the UN scale of assessments, adjusted to reflect the number of Parties. Prior to entry into force, a Preparatory Commission to the CTBTO will carry out the necessary preparations for the effective implementation of the Treaty. Australia's assessed contribution for calendar years 1996 and 1997 was A\$0.540 million, and for 1998 the assessed contribution is A\$1.345 million. Out-year assessments will be influenced by members' decisions on the rate of capital investment in building the Treaty's global verification regime and its eventual running-costs, but are estimated at A\$1.56 million per year.

4.44 The cost of operating a National Authority within the Australian Safeguards Office is an estimated \$0.190m per year.

Consultation

4.45 In November 1997 the Prime Minister wrote to Premiers and Chief Ministers informing them of the Commonwealth's intention to become a State Party to the CTBT and seeking their cooperation in formalising procedures for access to the IMS sites and the provision of data from IMS facilities as required

⁶ Transcript, 25 May 1998, p. 4.

under the Treaty. We are informed that a dialogue has been established by the Commonwealth with the States and Territories on CTBT implementation issues.

4.46 The Department of Foreign Affairs and Trade (DFAT) convened a CTBT Panel of Experts throughout the Treaty's negotiation and implementation to contribute to policy formulation. The Panel consisted of the following key organisations, but was supplemented from time to time with other members, including industry: Australian Geological Survey Organisation, Defence Science and Technology Organisation, Australian Radiation Laboratory, Australian National University, Defence Intelligence Organisation, Department of Defence, Australian Safeguards Office, Office of National Assessments, Australian Nuclear Science and Technology Organisation.

4.47 Throughout the negotiations, DFAT kept the mining industry apprised of possible implications of the CTBT for mining industry operations. The NIA indicates that the Australian Mining Industry Council has endorsed the Australian Government approach to the question of monitoring and exchange of information concerning large chemical explosions, and has expressed its willingness to assist in developing an information-gathering network in accordance with the Treaty provision for voluntary reporting of mining explosions to the CTBTO.

4.48 Academic groups, including the ANU Peace Research Centre, and interested non-government organisations have been kept informed of progress in the negotiations, the CTBT's adoption and its implementation, through the National Consultative Committee on Peace and Disarmament. This body is convened by the Minister for Foreign Affairs and includes representatives of peace, disarmament and other community organisations, including the Australian Red Cross, the UN Association of Australia and the Returned Services League. The Consultative Committee has indicated its satisfaction with the outcome and has urged that Australia continue its leading role in encouraging international support for the CTBT.

Australian implementation

4.49 Some provisions of existing Commonwealth legislation, including the *South Pacific Nuclear Free Zone Treaty Act 1986* and the *Nuclear Non-Proliferation (Safeguards) Act 1987* establish regimes which are consistent with the obligations contained in the CTBT. However, the implementation of a range of important obligations under the Treaty requires the enactment of new legislation.

4.50 On 8 April 1998, the Minister for Foreign Affairs introduced into the House of Representatives the *Comprehensive Nuclear Test-Ban Treaty Bill*

1998 to give effect to Australia's commitments under the Treaty and as the legislative basis for national implementation. The Treaty is attached to the Bill as a schedule.

4.51 In Part 2 of the Bill, Section 8 makes it an offence for a person to cause a nuclear weapon test explosion or other nuclear explosion, with the penalty being life imprisonment. Section 9 extends the operation of the offence provisions to include Australian citizens causing nuclear weapons explosions outside Australia.

4.52 Part 3 of the Bill deals with the arrangements to apply should an on-site inspection be sought in Australia. It also puts in place mechanisms for Australia to deal with requests for clarification by other State Parties. Part 4 of the Bill provides for the establishment and operation of monitoring facilities on Australian territory, including authorisation to gain access to these facilities. Part 5 of the Bill provides for the establishment of the Australian Comprehensive Test-Ban Office, the national authority to manage treaty implementation in Australia. The Director of the Office is required to lodge an annual report with the Minister who must table it in Parliament.

The Committee's views

4.53 Australia's commitment to international peace and security and effective arms control is well known and we can be proud of the role we played in the achievement of the CTBT. Australia should continue to play a prominent role in the Preparatory Commission and the CD to encourage the necessary ratifications, particularly by the remaining declared nuclear states and threshold states, so that the treaty can enter into force as soon as possible.

4.54 Even without entry into force, the CTBT provides a significant benchmark against nuclear weapons testing. This is reflected in the international opprobrium to the objectionable tests carried out by both India and Pakistan.

4.55 We are considering Australia's proposed ratification of the Treaty before the domestic legislation is in place to allow us to take binding action. We have not had the opportunity in this very brief inquiry to examine in detail the provisions of the enabling legislation which is currently before Parliament. The bill has been debated in the House of Representatives and received unanimous support. Nonetheless, we consider it to be in Australia's national interest to ratify the Treaty as soon as this legislation is in place.

4.56 If the Treaty is unable to enter into force because of the absence of required ratifications by the time the conference of signatories is due to be held in September 1999, we would support moves to modify the treaty to bring it into force at some time after that date. Under such circumstances, it may be desirable for the Treaty to be strengthened to isolate recalcitrant states.

4.57 We applaud President Clinton's support for the United States' accession to the Treaty and urge the US Congress to support ratification once it is submitted to the United States' Senate.

4.58 The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the *Comprehensive Nuclear Test-Ban Treaty* as proposed.

4.59 The Joint Standing Committee on Treaties recommends that:

once the *Comprehensive Nuclear Test-Ban Treaty Bill 1998* is enacted, the Presiding Officers write jointly to the President of the United States' Senate to acquaint that Chamber with the views of the Australian Parliament, as expressed in the Act, and urge them to take all steps to facilitate and expedite ratification of the *Comprehensive Nuclear Test-Ban Treaty* by the United States of America.

CHAPTER 5

TWO ENVIRONMENTAL AGREEMENTS

The Montreal Protocol on Ozone Depleting Substances

5.1 *The Montreal Protocol on Substances that Deplete the Ozone Layer* of 1987 was signed in order to take substantial action to reduce the production of ozone depleting substances (ODS). Since it was concluded on 16 September 1987, 165 countries have ratified the Protocol, reflecting the global commitment to tackle the problem. Australia has been a party to the Montreal Protocol since 19 May 1989.

5.2 This amendment, done at Montreal on 17 September 1997, requires parties who accede to it to:

- extend to methyl bromide the existing Article 4 trade measures which apply to chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform;
- restrict the export of used, recycled and reclaimed controlled substances where a party is unable to meet its Protocol obligations in relation to production of virgin quantities of the same substance; and
- establish and implement a system for licencing trade in controlled substances.

Extension to methyl bromide

5.3 The most recent amendment to the Protocol will extend restrictions to methyl bromide, a powerful ODS. Methyl bromide is used to fumigate soil and to treat commodities prior to import, export or during storage. In the Amendment to the Protocol it is to be phased out in developed countries by 2005 rather than 2010 as originally planned, and by 2015 for developing countries.

5.4 Under Article 4 of the Montreal Protocol, ODS are available for trade only amongst those nations that are party to the Protocol. As the Protocol stands, methyl bromide and hydrochlorofluorocarbons (HCFCs) are not included in the list of substances that are restricted for trade under Article 4. The 1997 Amendment will add methyl bromide to the list of ODS, and

therefore prohibit trade in methyl bromide to countries that have not ratified the Protocol.

New export restrictions

5.5 The Amendment proposes to insert a new Article 4A into the Protocol, which would restrict the trade in non-virgin ODS. If a party is unable to cease domestic production of a substance as required under the Protocol, then it will be prohibited from exporting any used, recycled or reclaimed amount of that substance. This Amendment is to redress the situation by which some countries export ODS and label them as used, recycled or reclaimed, while producing new quantities of the same ODS for domestic purposes.

Licencing system

5.6 The 1997 amendments also require parties to establish a licencing system to restrict the use of ODS by 1 January 2000, or within three months of the date of the Amendment's entry into force. Australia already has a licencing system for ODS as implemented under the *Ozone Protection Act 1989*.

Obligations

5.7 Australia's domestic legislation under the *Ozone Protection Act 1989* already restricts trade in methyl bromide to those countries that are party to the Montreal Protocol. To ensure consistency in language between the Protocol and the Act, Part IV of the Act will require minor legislative amendments.

5.8 Australia does not produce any ODS, and will therefore not be affected by restrictions on the export of recycled or used material under the new Article 4A to the Protocol. There are consequently no legislative amendments necessary to comply with this Amendment to the Protocol.

5.9 As Australia already has established a licencing system for the import, export or manufacture of ODS, no further changes to domestic legislation are necessary to meet this Amendment to the Protocol.

Costs

5.10 As much of the administrative infrastructure is already in place, Australia would not require any new arrangements to comply with obligations under the Amendment.

Future protocols

5.11 There are no provisions in the Amendment to negotiate future instruments. Article 11 of the Protocol does provide for regular meetings to assess control measures under the Protocol. There may be, for example, future adjustments to phase out timetables for ODS if scientific evidence indicates this is required.

Implementation

5.12 Australia's obligations under the Protocol are implemented by the *Ozone Protection Act 1989*, which may require slight amendment to ensure consistency of terminology with the Protocol. No State or Territory Government action is required.

Consultation

5.13 The agency charged with ozone protection, Environment Australia, stated that it has consulted widely with government and non-government organisations. Government organisations were developed in consultation with the Ozone Interdepartmental Committee which is comprised of various Federal departments and agencies. Non-government organisations were consulted through the Australian and New Zealand Environment and Conservation Council, which represents many industry and environment groups.

5.14 States and Territories were invited to nominate representatives to the Australian delegation to the Ninth Meeting of Parties held on 15-17 September 1997.

Withdrawal/denunciation

5.15 Article 19 of the Montreal Protocol provides for withdrawal from the Protocol no earlier than four years after assuming obligations under Article 2A. Australia met these obligations in 1989, and therefore could give notice to

withdraw at any time. Article 19 also determines that states will no longer be party to the Protocol one year after depositing its instrument of withdrawal. Australia has no plans to withdraw from the Montreal Protocol.

Committee view

5.16 The Joint Standing Committee on Treaties notes the information it has received, and supports the proposed Amendment to the *Montreal Protocol on Substances that Deplete the Ozone Layer* as proposed.

Amendment to the Basel Convention

The amendments

5.17 Australia acceded to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the Basel Convention), on 22 March 1989. Australia has been a party to the Basel Convention since its entry into force in 1992.

5.18 This Agreement provides for entry into force on 27 August 1998 of the amendment to Annex I and additional Annexes VIII and IX (the amendments) to the 1989 Basel Convention which were adopted at the Fourth Meeting of the Conference of the Parties (COP 4) in February 1998.

5.19 Under Article 18 of the Convention, the amendments automatically come into force six months after notification by the Depositary of their adoption, except for any Party who before then, has advised the Depositary that it does not wish to accept the adopted changes.

5.20 It is proposed that Australia will not lodge any objection to the amendments to the Basel Convention which will come into force on 27 August 1998.

The Agreement and its purpose

5.21 The Convention is the response of the international community to the problems caused by the annual world-wide production of 400 million tonnes of wastes which are hazardous to people or the environment because they are toxic, poisonous, explosive, corrosive, flammable, eco-toxic, or infectious. This

global environmental treaty strictly regulates the transboundary movements of hazardous wastes and provides obligations to its Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. The main principles of the Basel Convention are:

- transboundary movements of hazardous wastes should be reduced to a minimum consistent with their environmentally sound management;
- hazardous wastes should be treated and disposed of as close as possible to their source of generation; and
- hazardous waste generation should be reduced and minimised at source.

5.22 In order to achieve these principles, the Convention aims through its Secretariat to control the transboundary movement of hazardous wastes, monitor and prevent illegal traffic, provide assistance for the environmentally sound management of hazardous wastes, promote cooperation between Parties in this field, and develop Technical Guidelines for the management of hazardous wastes.

5.23 These amendments will provide greater certainty to Australian industry and to the Commonwealth Government in determining what wastes are subject to the Convention. The changes will not result in any increase or decrease in the scope of the Convention, but will clarify its existing scope.

5.24 The amendments incorporate new, more detailed lists of wastes that are explicitly subject to (Annex VIII) or not subject to (Annex IX) the Convention. The new Annexes are reflected by amendment to Annex I.

5.25 The Convention is implemented in Australia through the Commonwealth's *Hazardous Waste (Regulation of Exports and Imports) Act 1989*

5.26 Evidence given to the Committee indicates that:

the Convention in its amended form now provides far more immediate and internationally recognised guidance on what wastes are subject to the Convention. In the majority of cases, industry, the community and the Commonwealth will be able to identify much more quickly and easily which wastes are either subject to the Convention or outside it.¹

¹ Transcript, 25 May 1998, p. 25.

Obligations

5.27 Under the amendments to the Convention under consideration, no additional obligations would be placed on Australia. Existing obligations primarily require the Australian Government to ensure that exports of hazardous wastes from Australia do not take place without the previous consent of the receiving countries, and that any imported or exported hazardous wastes are managed in an environmentally sound manner.

Costs

5.28 The amendments will not affect Australia's current level of annual financial contribution to the Secretariat of the Basel Convention. The amendments will not affect the prices charged to industry for applications for permits to import or export hazardous waste in accordance with the Convention in fact they may result in a cost saving for the Commonwealth in terms of assessing whether or not particular wastes are subject to the Convention.

5.29 As the new Annexes will neither extend nor diminish the number of imports or exports of wastes requiring regulation under the Convention, there will be no significant impact on Australian trade in wastes with other countries. There may be reduced compliance costs for industry from the additional clarity provided by the Annexes to the Convention involving less need to consult with Environment Australia.²

Future protocols

5.30 The Conference of the Parties to the Convention is required under Article 15 to keep under continuous review the effective implementation of the Convention including amendments to the Convention and its Annexes, and the adoption of protocols as required.

Implementation

5.31 The Schedule to the Commonwealth's *Hazardous Waste (Regulation of Exports and Imports) Act 1989* will be amended by regulations made pursuant to Section 62 of the Act, to incorporate both the Amendment to Annex I and the newly adopted Annexes VIII and IX. This will enable the new Annexes to be

² *ibid*, p. 26.

referred to when identifying hazardous waste for the purposes of the Act. The amendments to the Convention will be given effect in the meantime by the regulations and evidentiary certificates.

Consultation

5.32 On matters related to the Convention and implementation of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, the Commonwealth undertakes consultation with State and Territory governments as well as with hazardous waste stakeholder groups through the Hazardous Waste Act Policy Reference Group (PRG), which is convened approximately three to four times each year by Environment Australia.

5.33 Environment Australia consulted with the PRG on the proposal to adopt the new lists of wastes in new Annexes. The National Interest Analysis states that support was received from industry and environment groups for the adoption of the new annexes and that the State and Territory Government representatives on the PRG did not raise any concerns about the proposal.

Withdrawal

5.34 Article 18 of the Convention states that any Party not wishing to be subject to new Annexes, or to amendments to existing annexes, must notify the Convention Depositary, the Secretary-General of the United Nations, in writing within six months of the changes. However, the Article does not provide for a party to withdraw from the specific amendments after that time.

5.35 Article 27, however, provides that a Party may withdraw from the Convention at any time after three years from the date on which the Convention entered into force for it. Withdrawal would be effective one year after notification.

Committee view

5.36 The Committee considers that the inclusion of these new annexes should benefit both industries in Australia and Australian monitoring authorities by streamlining the assessment process through the provision of a clearer definition of those waste materials which are subject to the Basel Convention.

5.37 The Joint Standing Committee on Treaties notes the information it has received and supports Australia's adoption of the amendments to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* as proposed.

CHAPTER 6

FOUR BILATERAL TREATIES

Films Co-Production Agreement with Ireland

The Agreement and its purpose

6.1 The purpose of the Agreement is to foster cultural and technical cooperation and exchange by facilitating international film co-productions with Ireland. It represents an opportunity to allow film producers of both countries to create films where none might otherwise exist by allowing any eligible production to be considered a national production of each country, and therefore the production becomes eligible for the benefits each country awards national productions.

6.2 A primary aim of this Agreement is to ensure that an overall balance is achieved in the employment of both Parties' nationals in a range of positions in co-productions. It is expected that such Agreements will open new markets for Australian films and promote a creative and technical interchange between personnel. The potential exists to increase the output of high quality productions from both countries through sharing equity investment, creative and technical expertise.

6.3 The National Interest Analysis (NIA) sets out the financial benefits for co-productions as eligibility to apply for finance from the Australian Film Commission (AFC) and the Australian Film Finance Corporation Ltd. Tax concessions are also available under Divisions 10 and 10B of the Australian *Income Tax Assessment Act 1936*. In Ireland, an official co-production is considered an Irish production for the purposes of official financial support.

6.4 The Agreement will be administered by the AFC, as part of the Films Co-Production Program.

Previous consideration

6.5 Australia already has film co-production agreements of treaty status with the UK, Canada, Italy, Israel and memoranda of understanding with France and

New Zealand.¹ We reported in detail on the Films Co-Production Agreement with Italy in our 4th report² and with Israel in our *Eleventh Report*.³ The Agreement with Ireland replicates the terms of those two agreements.

Obligations

6.6 Each country is obliged to provide producers from the other Party, or producers from other countries working with producers from the other Party, with all the benefits which are or may be accorded to national films.

6.7 Within their laws, each country is obliged to facilitate temporary admission, free of duties and taxes of cinematographic equipment for the co-production and to permit the other Party's citizens, or citizens of any third co-producer, to enter and remain to make or exploit a co-production.

6.8 The Agreement establishes a Mixed Commission of equal numbers from Australia and Ireland. It will meet initially 18 months after the Agreement is in force, and thereafter within six months of a request by either party, to supervise and review its operation. It will meet when officers of the two competent authorities are available, taking advantage of visits for other purposes.

6.9 The Commission is required to verify an overall balance has been achieved in, fund transfers, financial contributions and the employment of creative, craft and technical personnel.

6.10 An Annex, forming part of the Agreement, specifies the conditions for approval of co-productions. The Australian Film Corporation has produced a set of *International Co-Production Program Guidelines* which lay down the conditions imposed on co-production partners.

Costs

6.11 Costs of complying with the Agreement will be in attending meetings of the Mixed Commission, and these will be met by the AFC.

¹ Transcript, 25 May 1998, p. 34.

² See *Treaties Tabled on 15 & 29 October 1996: 4th Report*, pp. 6-8.

³ See *Eleventh Report*, pp. 56-59.

Future protocols and implementation

6.12 No provision is made for legally binding protocols, and no new legislative measures are required to implement the obligations under this Agreement.

6.13 The *Income Tax Assessment Act 1936* allows for tax concessions, and the *Migration Act 1958* and regulations for entry to and residence in Australia.

6.14 There will be no changes to existing Commonwealth, State or Territory roles as a result of this Agreement.

Consultation

6.15 The NIA indicates that the AFC's Industry Panel, made up of representatives of peak industry bodies, was consulted 'at all stages' of negotiations to ensure the Agreement was in line with current industry practice, and would provide potential benefits to the Australian industry.

6.16 The States and Territories were informed of the Agreement through the Commonwealth-State Standing Committee on Treaties (SCOT) process.

Withdrawal

6.17 This Agreement remains in force initially for three years from its entry into force, and shall be renewed and remain in force for successive three-yearly periods unless written notice to terminate is given at least six months before the end of any three year period.

Committee view

6.18 **The Joint Standing Committee on Treaties notes the information it has received and supports ratification of the *Films Co-Production Agreement between the Government of Australia and the Government of Ireland* as proposed.**

Amendment to the Agreement between Australia and New Zealand on Social Security

Social security agreements

6.19 Bilateral social security agreements provide for access, on a reciprocal basis, to certain social security payments for people who move permanently between the two countries concerned. These agreements generally allow people to receive pensions resulting from contributions made to foreign pension funds and allow earlier access to Australian pensions. In the Australia/New Zealand context, where both countries operate a residence-based pension system, prior residence in one country is counted as qualifying residence in the other country.

6.20 This is the first social security agreement to be tabled since revised treaty-making procedures were introduced in 1996.

Purpose and obligations

6.21 The Amendment is to a bilateral agreement between Australia and New Zealand, designed to coordinate the operation of the respective social security systems and to enhance equitable access to social security benefits provided for under the laws of both countries. In effect, the Agreement provides access to social security payments for nationals from one country who permanently settle in the other country.

Proposed action

6.22 The proposed action will delete Article 15 from the Agreement, which sets out the terms under which waiting periods for unemployment benefits apply to migrants between each country. By deleting these provisions, the waiting period for unemployment benefits will revert to the period as set by the domestic laws of each country. In the case of Australia, this period is 104 weeks, while in New Zealand the period is 12 months.

Reasons

6.23 The proposed action will bring the waiting period for New Zealand nationals who apply for unemployment benefits into line with migrants from

other countries. The waiting periods for newly arrived migrants are set out in the *Social Security Legislation Amendment (Newly Arrived Residents Waiting Periods and Other Measures) Act 1996*.

Costs

6.24 The net effect of the amendment will be beneficial to the Commonwealth. The proposed changes will not affect existing recipients of unemployment benefits in either country, therefore savings will not be realised immediately. The Department of Social Security estimates that the proposed amendment will result in minor savings in the first year of operation; in the second year, savings of \$9 million are expected; and savings of \$14-15 million a year are expected thereafter.

6.25 Information provided by the Department of Social Security indicates that there are currently some 17000 New Zealand born residents claiming unemployment benefits in Australia and some 1200 Australian born residents claiming such benefits in New Zealand.

Implementation

6.26 The proposed changes will be achieved by legislation amending the *Social Security Act 1991*, to insert the exchange of Notes into Schedule 4 of the Act. Amending legislation is expected to be introduced in the 1998 spring sitting of Parliament. Final treaty action will be taken when the amendments are passed.

Consultation

6.27 As social security is the responsibility of the Commonwealth, and the proposed changes reflect the situation as it applies to all other migrants, the Amendment does not require State and Territory agreement to be implemented. The States and Territories were, however, advised through the SCOT process that the 1994 Agreement was under review.

Committee view

6.28 **The Joint Standing Committee on Treaties notes the information it has received, and supports the proposed withdrawal of Article 15 from the**

Agreement between the Government of Australia and the Government of New Zealand on Social Security as proposed.

Investment Protection and Promotion Agreement with Pakistan

The Agreement and its purpose

6.29 The Agreement is intended to encourage and facilitate bilateral investment by citizens, permanent residents and companies of Australia and Pakistan. The NIA notes that Australian companies are increasingly taking advantage of the benefits of Pakistan's economic reforms, including making use of attractive investment incentives offered by the Government. In 1997 Australian investment in Pakistan reached an estimated A\$310 million. There are also several significant investment opportunities in the mining, oil and gas sectors which could raise Australian investment to over several billion dollars in the next few years.

Previous consideration

6.30 The Committee reported on the Investment Protection and Promotion Agreements (IPPA) with Chile and Peru in our 4th report.⁴

Obligations

6.31 The IPPA closely follows Australia's 'model' text for the negotiation of this type of Agreement and provides important protection for Australian companies or investors by providing for prompt, adequate and effective compensation to be paid if an investment is expropriated. The Agreement also provides for the repatriation of profits or capital from investments.

6.32 The NIA notes that the only substantive difference between the text of the proposed Agreement and the Australian Model is that the words 'currency exchange rate movements' have been deleted from Article 7(2) at Pakistan's request. This means that such movements are not specifically referred to as a factor that is taken into account in determining the market value for the purposes of compensation in the case of expropriation.

⁴ See *Treaties Tabled on 15 & 29 October 1996: 4th Report*, pp. 12-15.

Costs

6.33 There are no direct costs arising from this agreement except where a dispute may be notified, in which case the cost of arbitration is borne by the contracting parties.

Future protocols and implementation

6.34 The model Agreement on which this IPPA is based complies with existing Australian legislation. The IPPA will be implemented within the framework of each country's existing laws and policies relating to investment.

6.35 Previously we have endorsed the negotiation of double taxation agreements to facilitate trade and investment particularly where these are supported by bilateral arrangements. We note that a double taxation agreement with Pakistan is under negotiation.

Consultation

6.36 A number of major Australian companies were consulted about the IPPA with Pakistan including BHP, ANZ, Clough Engineering and Pasminco. The States and Territories were also advised of the proposed IPPA with Pakistan through the SCOT Schedule of treaty action presently under consideration. No negative comments have been received from either the States and Territories or the other parties consulted.

Withdrawal

6.37 The IPPA with Pakistan will be in force for an initial period of 15 years and after that shall remain in force indefinitely unless one of the Parties gives one year's written notice of termination. The IPPA does not contain express provisions dealing with withdrawal or denunciation within the initial 15 year period covered by the Agreement.

Relationship with the draft Multilateral Agreement on Investment

6.38 Australia is currently participating in negotiations at the OECD for a Multilateral Agreement on Investment (MAI). This matter is under investigation by the Committee and was the subject of our 14th Report to

Parliament. Pakistan is not an OECD member and is not participating in these negotiations.

6.39 The Committee raised with departments the similarities between the obligations set down in this type of agreement and the those under the proposed MAI. In broad terms, both agreements are designed to provide investment guarantees, but the scope of the draft MAI is considerably broader than the bilateral investment arrangements of this type currently entered into by Australia.⁵ We intend to pursue this issue in the context of our more detailed investigation of the draft MAI.

The Committee's views

6.40 The Committee considers this type of bilateral agreement to be advantageous to Australia. Although we accept that this type of treaty does not create an international standard like the draft MAI, it has the potential to provide a guarantee for certain types of investments and is of advantage to the investors and investments of both parties.

6.41 The IPPA with Pakistan provides for entry into force thirty days after the Parties have notified each other that their domestic requirements for this Agreement have been satisfied. This action is expected after 25 June 1998. The Department of Foreign Affairs and Trade is keen to see the Agreement enter into force shortly thereafter, though acknowledges that 'presentationally' it may be advisable to wait a few weeks.⁶

6.42 This Agreement needs to be seen in the context of Australia's overall relations with Pakistan. Pakistan's recent nuclear weapons tests have added a considerable irritant to the bilateral relationship. The protest measures taken by Australia in response to these tests is referred to in Chapter 4 on the *Comprehensive Nuclear Test-Ban Treaty*. We note the cessation of high level contacts between both countries announced by the Minister for Foreign Affairs.

6.43 Although not wishing to single out Pakistan above India we are unable to support immediate ratification of this investment agreement at this time. To do so would undermine the credibility of Australia's protests to Pakistan over its nuclear tests and would sent the wrong signal to Pakistan about the consequences for its bilateral relationships and international standing. We note

⁵ Transcript, 25 May 1998, pp 41-43.

⁶ Transcript, 2 June 1998, p. 51.

that no evidence of adverse affects on Australian companies was presented to us.

6.44 The Joint Standing Committee on Treaties recommends that:

ratification of the *Agreement between Australia and the Islamic Republic of Pakistan on the Promotion and Protection of Investments* not take place at least until the Australian Government announces publicly the resumption of Ministerial and senior official contacts with Pakistan.

Headquarters Agreement with the Commission for the Conservation of Southern Bluefin Tuna

The Agreement and its purpose

6.45 The purpose of the this Agreement is to provide the basis for the establishment of the Commission for the Conservation of Southern Bluefin Tuna in Canberra. This location was considered appropriate given Australia's role and the proximity to the fishing waters.

Previous inquiries

6.46 In our 3rd report of November 1996, *Two International Agreements on Tuna*, the Committee considered the *Subsidiary Agreement between the Government of Australia and the Government of Japan concerning Long-line Tuna Fishing 1996* and the *Agreement for the Establishment of the Indian Ocean Tuna Commission*.

6.47 In our *Eighth Report* of June 1997, the Committee considered the *Subsidiary Agreement between the Government of Australia and the Government of Japan Concerning Japanese Tuna Long-line Fishing*.

6.48 In our 9th report of August 1997, the Committee considered amendments to the *Convention on the Conservation of Migratory Species of Wild Animals*.

Government response

6.49 In March 1998 the Government tabled its response to the Committee's 3rd report. The Committee is disappointed at the length of the delay in the tabling of this response, given that the Government was largely supportive of

the Committee's recommendations. The next Subsidiary Agreement is due to be tabled shortly, contingent on accord between the Government of Australia and the Government of Japan on catch quotas for southern bluefin tuna. The Committee reiterates its comment of the *Eighth Report*, and will pay special attention to the 1998 Subsidiary Agreement to assess the extent to which the recommendations of its 3rd report, *Two International Agreements on Tuna*, have been incorporated.

Obligations

6.50 The Headquarters Agreement will grant the Commission the legal status and the capacity to contract, to own property and to sue and be sued. It will grant those privileges and immunities necessary for the Commission to carry out its official functions, but excludes immunity for matters such as motor vehicle offences, and other matters as appropriate. The Agreement will extend the most privileges to the Executive Secretary of the Commission, and fewer privileges to other staff and representatives of members attending conferences convened by the Commission. These privileges and immunities will not extend to Australian citizens or permanent residents of Australia.

6.51 The agreement also requires the Commission be exempt from some taxes and duties, as outlined below.

Costs

6.52 The only costs associated with the Headquarters Agreement will be from the revenue foregone by the granting of privileges to the Commission. The Commission is exempt from direct taxes, from local government rates, from customs and excise duties on goods imported or exported for official use, and from sales tax on goods purchased for official use. Due to the small size of the Commission, these costs are expected to be low.

6.53 These costs are expected to be outweighed by the employment that the Commission will generate, both directly and indirectly. The Commission employs two professional officers and one locally engaged staff member, and also employs Australia-based interpreters on a casual basis. Indirectly, the benefits to the local economy are also substantial. Foreign government and industry representatives visit Australia regularly on Commission business. In 1997-98, for example, there were five such visits of varying size to Australia, with each visitor spending considerable amounts on accommodation, travel and food. The location of the Commission's Headquarters in Australia will also

mean that Australian officials need to travel abroad less frequently on Commission business.

Entry into force

6.54 Article 27(1) of the Headquarters Agreement signed on 20 January 1998 provides that both parties shall notify each other in writing of the completion of their respective internal procedures required for entry into force. The Australian Government proposes to deliver notification to the Commission after 25 June 1998.

Implementation

6.55 The proposed Headquarters Agreement has been implemented by regulations enacted under Section 13 of the *International Organisations (Privileges and Immunities) Act 1963*. These are contained in the *Commission for the Conservation of Southern Bluefin Tuna (Privileges and Immunities) Regulations (Statutory Rules 1996 No. 40, as amended by Statutory Rules 1997 No. 352)*.

Consultation

6.56 The decision to place the Headquarters in Canberra was taken after consultation with the Chief Minister of the Australian Capital Territory and the Department of Primary Industries and Energy. The Australian tuna fishing industry fully supports the placement of the Commission's headquarters in Canberra.

6.57 The Japanese Government was supportive of the Commission's placement in Australia, and recognised that as the fishery is in the southern hemisphere, Australia is an appropriate location.

Withdrawal/denunciation

6.58 Article 27(2) of the Headquarters Agreement provides that it may be terminated by a joint decision of both the Government of Australia and the Commission. The same article also provides for the termination of the agreement in the case of the headquarters being transferred from Australia. The date of termination of the agreement will be confirmed by an exchange of notes between the Government of Australia and the Commission.

Committee view

6.59 There is significant prestige attached to Australia hosting the headquarters of an international organisation such as the Commission for the Conservation of Southern Bluefin Tuna.

6.60 **The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the *Headquarters Agreement between the Government of Australia and the Commission for the Conservation of Southern Bluefin Tuna* as proposed.**

CHAPTER 7

OTHER TREATIES TABLED

Anti-personnel mines

7.1 The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction*, known as the 'Ottawa Convention' and done at Oslo on 18 September 1997, was tabled in both Houses of the Parliament on 26 May 1998. The '15 sitting day' period for this treaty expires on Thursday 2 July 1998 in the House of Representatives, and on Thursday 13 August 1998 in the Senate. The National Interest Analysis (NIA) indicates the Government's intention to take binding treaty action after this latter date. We have advertised this Treaty, calling for submissions, and convened one public hearing with Commonwealth Departments on Monday 22 June 1998. A list of witnesses for the hearing appears in Appendix 1.

7.2 In our 5th Report, *Restrictions on the use of Blinding Laser Weapons and Landmines*, we dealt with the issue of anti-personnel landmines in some detail in the context of our scrutiny of the proposed ratification of Protocol II to the *Inhumane Weapons Convention*. In that report we recommended that Australia destroy its stockpile of anti-personnel landmines, except for a small number to be retained for training purposes to ensure that the Australian Defence Force retains its skills.

7.3 We also recommended that Australia make an active contribution to the then scheduled 'Ottawa' process which, ultimately, resulted in the negotiation and signature of this new Convention.

7.4 We intend to take further evidence on the Convention from non-government organisations and to report to the Parliament in more detail at a later date.

7.5 Legislation will be required to implement the Convention's provisions, and it is not clear when this will be enacted. Although the '15 sitting day' period will have expired by the time we have our additional hearings, we do not wish to delay ratification of this important agreement and have no objections to binding action being taken by the Government before we report again.

Mutual Recognition Agreement with the European Union

7.6 The *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings, between Australia and the European Community* (MRA) was tabled in both Houses of the Parliament with an NIA on 26 May 1998 before signature by either party. An amended NIA was later tabled on 3 June 1998 because of a number of key omissions and inadequacies in the first document and a Regulation Impact Statement is to be tabled also. The '15 sitting day' period for this treaty expires on Thursday 2 July 1998 in the House of Representatives, and on Thursday 13 August 1998 in the Senate. We have advertised this treaty, calling for submissions, and convened one public hearing with Commonwealth Departments on Monday 22 June 1998. A list of witnesses for the hearing appears in Appendix 1.

7.7 The MRA on Conformity Assessment, Certificates and Markings is designed to facilitate trade by allowing conformity assessment (testing and certification) of products traded between Australia and Europe to be undertaken in the exporting country, rather than have it carried out at destination. From Australia's perspective, businesses can have their products certified as being compliant with regulatory requirements in the European Community (EC) more quickly and cheaply because, under the MRA, rather than having to seek assessment through EC bodies, this may be undertaken by Australian Conformity Assessment bodies. This can occur at the same time approvals are sought for domestic purposes, thus avoiding duplication of the process for export purposes.

7.8 The agreement covers the following regulated sectors: simple pressure equipment, machinery, low voltage electrical equipment and medical devices, telecommunications terminal equipment, electromagnetic compatibility, automotive products and Good Manufacturing Practice for pharmaceuticals.

7.9 Consideration of this treaty has been complicated for a number of reasons. Because of the commercial implications, the Department of Industry Science and Tourism (DIST) is, understandably, interested in having the Agreement enter into force as soon as is practicable. The Committee notes that, very occasionally, urgent binding treaty action may need to be taken for particular treaties and we do not wish to cause any disadvantage to Australian business by unnecessarily delaying the ratification of particular instruments. Indeed, in the case of this Agreement, we have already received one submission from a company which claims to be disadvantaged commercially because the Agreement had not entered into force by 14 June 1998.

7.10 It is still unclear when entry into force for the MRA is to occur. For this reason the Agreement was tabled before signature which took place on 24 June 1998. Our understanding is that, provided all the domestic procedures are in place, the earliest entry into force may occur is 1 August 1998, which is before the expiration of the 15 sitting day period for parliamentary scrutiny.

7.11 In addition, formal endorsement of the MRA was not obtained from Queensland before the recent state election was called and is still outstanding. We understand that consideration is being given by the Commonwealth to proceeding with binding action before it receives the formal agreement of the Queensland Government.

7.12 Although DIST provided a prompt response to the matters taken on notice, it is apparent that a number of matters need to be examined in detail further. For example, one submission criticised Article 4 of the MRA for precluding the assessment of products not originating in the Parties' territories. This poses particular difficulties for certain companies because many Australian products are assembled from parts originating elsewhere.¹ The information received from DIST notes that Australian negotiators have been opposed to the inclusion of this article since the commencement of formal negotiations in 1994. Whilst acknowledging the concerns expressed in the submission from EMCSI, DIST states that its 'understanding of the EU rules' would allow certain products to be classed as originating in Australia.² We do not consider such an equivocal statement by the Department to be satisfactory.

7.13 We need to explore this matter further in view of the following statement by DIST in its response to questions taken on notice:

We share the concerns expressed by EMCSI about the inequity of the current situation and will be seeking to have Article 4 removed from the MRA. In this regard, neither the US nor Canadian agreements with the EU contain an origin provision.³

7.14 Sponsoring departments should be aware of the requirement for parliamentary scrutiny of proposed treaty actions and that the Committee's timetable will not be driven by the failure of departments to take this into account. Although we are amenable to reasonable proposals to facilitate parliamentary scrutiny of treaties, this will not be at the expense of ignoring key issues. Departments should also understand that the Committee does not have

¹ EMSCI submission, pp. 1-2.

² Department of Industry, Science and Tourism submission, pp. 1-2.

³ *ibid*, p. 2.

the delegated power, on behalf of the Parliament, to either waive the requirement for treaties to be tabled for at least 15 sitting days before binding action may be taken or to reduce this period. Furthermore, it needs to be pointed out that the 15 sitting day period applies to both Houses of Parliament.

7.15 With the unresolved issues and the incomplete evidence, we are unable to conclude our consideration at this time of the *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings, between Australia and the European Community*.

Fifth Protocol to the General Agreement on Trade in Services

7.16 To date we have received a number of submissions concerning the Fifth Protocol to the *General Agreement on Trade in Services* (otherwise known as the Financial Services Agreement). The issues raised in submissions mirror many of the issues under consideration by the Committee in our current inquiry into the draft OECD Multilateral Agreement on Investment (MAI). Indeed, the Financial Services Agreement has been raised in several submissions to that inquiry. We intend to take more evidence on the MAI in the coming months. In view of the overlap of issues in the instruments, we have written to the Minister for Foreign Affairs and Trade advising that we need to take further evidence on the Financial Services Agreement and that we will report in more detail in the near future. We have asked, therefore, that binding treaty action not be taken until after we report. We note that the completion of binding treaty action is not required until 30 January 1999.

Comments on the treaty process in submissions

7.17 A number of submissions on the Financial Services Agreement oppose ratification outright on the grounds that Australian sovereignty is diminished by our entering into international obligations. We note this view, which has been put to the Committee in other inquiries, but do not find that it assists us in evaluating particular treaty actions if it is merely asserted in general terms.

7.18 Of more concern to us, however, appear to be misunderstandings about the reforms to the treaty making process announced by the Minister for Foreign Affairs, the Hon Alexander Downer MP, on 2 May 1996 which, inter alia, established the Joint Standing Committee on Treaties as the primary mechanism for parliamentary scrutiny of proposed treaty actions. Several submissions incorrectly construe the reforms and this Committee's role as designed to

promote secrecy and to exclude the public from the treaty making process when, clearly, the opposite is the case.

7.19 The Government's commendable reforms enhance the transparency of treaty making and allow a level of public input which previously did not exist. Treaties are now tabled with a National Interest Analysis in both Houses of Parliament for at least 15 sitting days and the Committee makes a point of advertising treaties as soon as this occurs to inform the general public and invite submissions. We have developed the practice of requiring all sponsoring Commonwealth departments and agencies to then appear at a public hearing so we can more properly scrutinise the proposed treaty action and National Interest Analysis. If there is broader interest, we also invite non-government organisations and interested individuals to provide evidence at public hearings. Where necessary we will conduct a larger inquiry and take as much evidence as needed to review a particular treaty.

7.20 The Committee's timeframe for inviting submissions may appear to be short, but we are keen to report to the Parliament within the 15 sitting day period. Since the Committee's establishment in June 1996, we have scrutinised some 112 proposed treaty actions in addition to conducting inquiries into the UN Convention on Desertification, the UN Convention on the Rights of the Child and the draft OECD Multilateral Agreement on Investment. In this period, in excess of 1750 organisations and individuals have made their views known to the Committee either in submissions or at public hearings. The extent of public contribution to the work of the Joint Standing Committee on Treaties is a measure of how open to public scrutiny the treaty making process has become.

W L Taylor MP
Chairman

DISSENTING REPORT

DENUNCIATION OF ILO CONVENTION NO. 9

Reasons provided for Australia to take the proposed treaty action

1.1 The rationale for the proposed treaty action involving the denunciation of ILO Convention No. 9 provided in the National Interest Analysis (NIA) is a recommendation of the Shipping Reform Group (SRG) for a move to company based employment of all seafarers.

1.2 While employers and the Maritime Union of Australia (MUA), which represents employees engaged in the shipping industry, are agreed on the need for reform of the industry,¹ there has been strong criticism voiced by the MUA regarding the Government's lack of consultation in respect to the denunciation of ILO Convention No. 9.²

1.3 An examination of the report of the SRG dispels any suggestion that the need for urgency should have overridden an appropriate consultation process. The SRG recommended that:

'the move to company employment will render the Seafarers' Engagement System irrelevant and the Engagement System should be terminated *after company employment becomes widespread*' (emphasis added).³

1.4 In short, there is nothing in the report of the SRG which requires denunciation with undue haste.

Need for consultation

1.5 The essential rationale for the establishment of the Treaties Committee was to provide a mechanism for consultation prior to the Executive undertaking treaty action. In announcing the establishment of the Treaties Committee and its role in the treaty-making process, the Hon Alexander Downer MP, Minister for Foreign Affairs said that the purpose of the reforms was to:

¹ Submission of the MUA 27 May, 1998 p. 3.

² Letter from MUA to the Hon Peter Reith MP, 20 March 1998.

³ Report of the Shipping Reform Group 'A framework for reform of Australian Shipping, 1997'

'...ensure that every Australian individual and interest group with a concern about treaty issues has the opportunity to make that concern known. Consultation will be the key word...'⁴

1.6 As the Chairman of the Committee, Mr Bill Taylor MP, the Member for Groom said on tabling the *Tenth Report* of the Treaties Committee:

'My committee agrees with the Minister but takes a strong view that consultation is not simply a word but a meaningful process'.⁵

1.7 We note that the majority report has also been critical of the inadequate consultation which occurred in respect to the proposed treaty action to denounce ILO Convention No. 9.⁶

1.8 The Treaties Committee has on a number of occasions unanimously stressed the need for meaningful consultation prior to any treaty action being undertaken.⁷

Inadequacy of consultation

1.9 According to the NIA, the Government announced its decision to denounce ILO Convention No. 9 on 18 December 1997. It was not, however, until 23 February 1998 that the Minister for Workplace Relations and Small Business wrote to the Assistant Secretary of the Australian Council of Trade Unions (ACTU) advising of 'the Government's intention to progress Australia's denunciation' of ILO Convention No. 9. The letter itself did not seek the views of the ACTU nor any other Industrial Organisation of Employees Registered under the provisions of the *Workplace Relations Act 1996*. Rather, the terms of the letter quite clearly presented the decision to denounce the treaty as a fait accompli.

1.10 The decision to write to the ACTU was based upon the Government's construction of its obligation under ILO Convention No. 144 *Tripartite Consultation (International Labor Standards) Convention 1976*. By undated

⁴ House of Representatives Hansard, 2 May 1996 p. 231.

⁵ House of Representatives, Hansard, 20 October 1997 p. 9183, see also other tabling speeches of the Chairman, House of Representatives Hansard 11 December 1996 p. 8325 and the Chairman's speech on the Administrative Decisions (Effect of International Instruments Bill) 1997, House of Representatives Hansard, 25 June 1997 p. 6244.

⁶ Paragraph 3.34 of the Majority Report.

⁷ See for instance paragraphs 2.14, 2.38 and 3.23 in the *Tenth Report*; paragraphs 2.51 and 2.53 in the *Eleventh Report*; paragraphs 2.57, 2.60 and 2.61 in the *Thirteenth Report*; paragraph 1.22 in the 14th Report.

letter forwarded to the Chairman of the Joint Standing Committees on Treaties by way of facsimile on 9 June 1998, the General Manager of the Workplace Services Group of the Department of Workplace Relations and Small Business expressed the opinion that 'under ILO Convention 144....consultation is conducted with the "most representative organisations of employers and workers"'. While industrial organisations of employees are affiliated to the ACTU, the workers who are affected by the denunciation of ILO Convention No. 9 are actually members of the MUA. In those circumstances, quite clearly, it was appropriate and necessary for the Minister to have written directly to the MUA pursuant to Australia's obligations under ILO Convention No. 144 with a view to initiating meaningful consultations.

1.11 It is noted that while the Minister forwarded a copy of his letter to the Assistant Secretary of the ACTU dated 23 February 1998 to the MUA, it appears to have been done as a tokenistic gesture. Further the Minister did not respond to correspondence from the MUA to the Minister dated 20 March 1998. In that letter the MUA expressed its concerns with denunciation of ILO Convention No. 9 without the Government providing fiscal support for the industry as recommended in the SRG report. The MUA also stressed the need for broader consultation regarding the proposed reforms involving all parties to the industry including, ship owners and the Government.

1.12 In summary on the issue of consultation, this Committee has repeatedly expressed in the strongest possible language the need for meaningful consultation. The method of communication adopted by the Minister for Workplace Relations and Small Business was totally inadequate and did not constitute appropriate consultation. Having made a decision to denounce the treaty on 18 December 1997, the Minister waited until 23 February 1998 before notifying the Assistant Secretary of the ACTU. Such notification, as occurred, was notification of a *fait accompli* and not the opportunity for meaningful input as part of a consultative process. While a copy of the letter dated 23 February 1998 was forwarded to the MUA it appears to have been done by way of a tokenistic gesture. Moreover, the Minister's failure to respond to the letter from the MUA dated 20 March 1998 cannot sensibly be regarded as consultation as contemplated by ILO Convention No. 144. As discussed, ILO Convention No. 144 requires consultation with the actual organisation representing the 'workers' engaged in the relevant industry which organisation is the MUA.

Safety

1.13 The Majority Report has discussed relevant safety issues raised in the NIA in paragraphs 3.18 through to paragraph 3.21. We note and agree with the

Majority Report that the NIA in respect to this matter was unsatisfactory. In particular, the NIA, provided at best, a simplistic and one sided analysis of the issue of safety.

1.14 Prima facie, one would assume that an engagement system organised and maintained by representatives of ship owners and employees engaged in the industry, under the administration of the Australian Maritime Safety Authority would be an aspect of the Seafarers' Engagement System (SES) which would enhance rather than detract from safety.

1.15 It should be noted, that while the past practice has been for seafarers to be engaged on ships from the industry pool those engagements have usually been for lengthy periods.⁸

1.16 On the other hand, in instances where the SES has resulted in engagements of shorter duration it would also be reasonable to assume that there was less opportunity for seafarers so engaged to acquire skills relevant to the operations of the particular ship on which they were engaged.⁹

1.17 The failure of the NIA to reflect upon and analyse the competing arguments in a balanced and more detailed fashion resulted in a failure to identify the relevant safety issue. That relevant safety issue does not appear to be the inadequacy of skill and experience of those who participated in the SES but rather, those instances where there tended to be short term engagements. These instances appear to be more prevalent in the offshore petroleum industry.¹⁰

1.18 The inadequacy of the NIA in this respect is significant in that it would be regrettable and, indeed, quite alarming if those involved in the industry believed that employment agencies without industry experience are properly equipped to select persons with the special skills and qualities necessary to become seafarers.

⁸ Evidence of Mr Papaconstuntinos, 1 June 1998, p. 61.

⁹ This was the substantial thrust of the submission by the Australian Mines and Metals Association discussed in paragraph 3.19 of the Majority Report.

¹⁰ See report 'The Regulation of Health & Safety in the Australian Offshore Petroleum Industry' Dr Tony Barrell, April-May 1996.

The Significance of ILO Convention No. 179

1.19 The immediate preceding discussion regarding the safety issues associated with the abandonment of the SES has direct relevance to the need for ratification of ILO Convention No. 179 – the *Recruitment and Placement of Seafarers Convention 1996*.

1.20 Having identified that the relevant concern of the Australian Mines and Metal Association in respect to safety was the limited duration of engagements for seafarers engaged in the offshore oil platform industry it nonetheless remains necessary to focus upon the method of engaging properly qualified and physically able seafarers.

1.21 The following provisions of ILO Convention 179 are directly relevant to the safety issue:

- Article 2 paragraph 2(a); which requires that a system of licensing or certification or other form of regulation be adopted for private recruitment and placement services involved in the shipping industry. The article also requires that representative organisations of ship owners and seafarers be involved in the establishment and maintenance of that regulatory system;
- Article 4 paragraph 2; requires that member states ensure that a competent authority closely supervises all recruitment and placement services;
- Article 4 paragraph 2(c); requires that the management and staff of the recruitment and placement services for seafarers 'should be adequately trained persons having relevant knowledge of the maritime industry'.
- Article 4 paragraph 1; requires that all recruitment and placement services maintain a register of all seafarers recruited or placed through them and that the register is to be available for inspection by the competent authority.

1.22 ILO Convention No. 179 is, therefore, directly relevant to the establishment of a proper system for the engagement and placement of seafarers. Article 7 specifically states that 'This Convention revises the Placing of Seamen Convention, 1920 (ILO Convention No. 9)'. Nothing has been presented to the Committee which establishes where ILO Convention No. 179 is flawed or inadequate or would otherwise impede the move to company based

employment. Again, common sense suggests that the engagement of 'adequately trained persons having relevant knowledge of the maritime industry' in the recruiting and placement of seafarers is not only desirable but an imperative from the point of view of the safety of all those who participate in the industry.

1.23 In short, there is no evidence that the MUA or any other organisation has been unreasonably obstructive of reforms of the shipping industry including the reform recommended in the report by the SRG relating to company based employment. Indeed, a recent report in the Financial Review¹¹ suggests that the employee and employer representatives engaged in the industry have reached agreement on the need for and method of reform and that the only party which has failed to deliver their side of the equation as recommended by the SRG is the Government of Australia.

1.24 An objective and balanced analysis of the shipping reform process would suggest that consultation between employee and employer representatives can and has been productive. It is regrettable that the Government's actions particularly in respect to the denunciation of ILO Convention No. 9 have not reflected a similar level of consultation.

1.25 In particular, the most significant error which has occurred as a result of that lack of consultation before deciding to denounce ILO Convention No. 9 has been the apparent failure of the Government to realise the significance of ILO Convention 179. As discussed ILO Convention 179 is directly relevant to the establishment of a properly regulated and supervised system for the engagement of seafarers and must be regarded as an imperative to safety in this industry.

1.26 We agree with the conclusions of the Majority Report that ILO Convention No. 179 should be in place at the time ILO Convention No. 9 is denounced. However, we regard the coincidence of those events as being of such critical importance that the Government should reverse its decision to denounce ILO Convention No. 9 until it can be certain that the ratification of ILO Convention No. 179 occurs prior to or coincidentally with the denunciation of ILO Convention No. 9.

Concerns about a second register of shipping for Australia

¹¹ 'MUA agrees but demand ship industry bailout' AFR of 9 June 1998.

1.27 We view with great concern recommendations of the SRG to establish a second register of shipping in Australia. We note that the Government has acted with haste to progress the report of the SRG by denouncing ILO Convention No. 9 but, at the same time, has failed to provide a comprehensive and detailed response to the report of the SRG in particular relating to the proposal to establish a second register of shipping for Australia.

1.28 As noted in the Majority Report 'second registers are similar to flags of convenience, in that standards, especially taxation and labour standards, are not as rigorous as the first register of that nation'.¹²

1.29 We view with concern the Government's failure to implement the key recommendations made in the 'Ships of Shame' report and the sequel report in 1996 and we are of the opinion that the establishment of a second register of shipping for Australia would fly directly in the face of the major recommendations of those reports. We note, for instance, that the safe and efficient operating of Australian shipping is not merely in the interests of those involved in the industry but it is of vital interest to Australians generally in that any maritime accident has the potential for catastrophic environmental consequences for Australia's shores and waters.

1.30 We are of the opinion that the Government should unequivocally and unambiguously rule out the possibility of foreign crews being employed on Australian ships.

Significance of international standards

1.31 The mere fact that any nation can contemplate the establishment of a second register of shipping demonstrates the need for appropriate international standards. Clearly the very nature of the industry is that without appropriate safeguards it is possible for shipping owners to engage cheaper and less qualified foreign labour.

1.32 In commenting on the need to develop international standards President Clinton has recently stated:

'...We must recognise that in the new economy, the way we conduct trade affects the lives and livelihoods, the health and the safety of families around the world.

¹² Paragraph 3.11 of the Majority Report.

We must build a trading system for the 21st Century that honours our values as it expands opportunities. We must do more to make sure that this new economy lifts living standards around the world and that spirited economic competition among nations never becomes a race to the bottom in environmental protections, consumer protections and labour standards. We should level up, not level down. Without such a strategy, we cannot build the necessary public support for the global economy. Working people will only assume the risks of a free international market if they have the confidence that this system will work for them'.¹³

1.33 President Clinton's statement has direct and profound relevance to the shipping industry and industry generally.

The significance of the ILO for Australia

1.34 President Clinton's speech to the World Trade Organisation emphasises the challenge for industrially developed nations to ensure that those less developed nations lift their labour standards rather than allowing international competition to cause a downwards spiralling reduction in those standards. The ILO has been crucial in development and protection of international labour standards.

1.35 For 80 years Australia has been a member of the ILO. The ILO was created by Part XXII of the Treaty of Versailles, which established the peace settlement at the end of World War I. Australia was one of the 29 signatories to the Treaty and a founding member of the ILO.¹⁴

1.36 The founding principles of the organisation included the declaration that 'universal and lasting peace can be established only if it is based on social justice'.¹⁵

¹³ President Bill Clinton 'World Trade Organisation speech on new global trade talks' Geneva, Switzerland, 18 May 1998.

¹⁴ For an excellent discussion of the history of Australia's involvement in the International Labour Organisation see Ronald C McCallum 'International Standards in Industrial Relations and their Application in Australia' (1995) 2 TJR 163.

¹⁵ The preamble to the organisation includes the statement that:

'The regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection for the interests of workers when employed in countries other than for their own, recognition of the principles of equal remuneration for work of equal value, recognition of the principles of freedom of association, the organisation of vocational and technical education and other measures'. (see a useful discussion in of the principles in 'ILO Conventions in Australia 1994' Department of Industrial Relations Canberra December 1994 at p. 11-12.

1.37 In 1944 the International Labour Conference held in Philadelphia also adopted a declaration which is now appended to the Constitution of the ILO and that declaration includes an acknowledgment that 'poverty anywhere constitutes a danger to prosperity everywhere'.

1.38 There is a common misconception that the ILO is an international umbrella organisation for organised labour. That is not the case. Since its inception the ILO has been and remains a tripartite body including representatives of governments, employers and workers.¹⁶

1.39 Despite the Howard Government's assertion that it is 'not going to have Australia's industrial relations law for Australians written in Geneva'¹⁷ the *Workplace Relations Act 1996* nonetheless makes use of the external affairs power of the Australian Constitution and specifically, continues to rely upon a number of the ILO Conventions referred to in the 1993 Amendments to the *Industrial Relations Act 1988*.

1.40 It is interesting to note, for instance, that despite repeated attacks on the former Labor Government for its ratification of ILO Convention No. 158,¹⁸ the *Workplace Relations Act 1996* also relies on that Convention. Indeed, Section 170CA(1)(e) of the Act provides that it is a Principal Object of Division 3 of the Act relating to termination of employment 'to assist in giving effect to the Termination of Employment Convention'.¹⁹

1.41 In responding to a Question without Notice on 2 May 1996 the Hon Peter Reith MP, Minister for Workplace Relations criticised 'the former Government's absolute obsession with things from the ILO' but indicated that Australia would nonetheless maintain its membership of the ILO.²⁰ The Howard Government has, however, reduced Australia's involvement with the ILO, withdrawing a Special Labour Adviser which was an appointment initially made by the

¹⁶ A useful discussion of the structures of the ILO is also contained in 'ILO Conventions in Australia 1994'.

¹⁷ House of Representatives Debates, 10 February 1997, p. 476.

¹⁸ See in particular comments of the Hon Peter Reith MP in his capacity as opposition spokesman for Industrial Relations and now Minister for Industrial Relations and Small Business in the House of Representatives Parliamentary Debates 31 May 1995 at p. 728, 30 August 1995 at p. 822. Indeed, on 10 February 1997 in answer to a Question without Notice, the Hon Peter Reith MP, Minister for Industrial Relations specifically stated that the new Government had scrapped the former Government's scheme relating to unfair dismissals and stated 'we also scrapped its reliance on Convention 158 because it was an unmitigated disaster for so many Australians'.

¹⁹ 'Termination of Employment Convention' is defined in Section 4 of the Act as meaning the Termination of Employment Convention 1982, it being noted that the Convention is set out in Schedule 10 to the Act. That convention is ILO Convention No. 158.

²⁰ House of Representatives debates 2 May 1996 p. 277.

Whitlam Government and has remained in existence for the past 26 years. Further, the Government has reduced the size of Australia's annual delegation to the ILO from 16 to 3.²¹

1.42 More recently and significantly, Minister Reith dismissed a Report by the ILO Committee of Experts concerning Australia's implementation of the *Right to Organise and Collective Bargaining Convention 1949* (ILO Convention No. 98), as 'being simply incorrect and gratuitous'.²²

1.43 It is fanciful to assume that Australia will be able to maintain its current labour standards, which are imperative to our standard of living, unless those standards of our regional trading competitors are significantly enhanced. History demonstrates the significant role of the ILO in raising international living standards. It is therefore a national imperative for Australia to support the standards established by the ILO and the legitimacy of its supervisory role in attempting to ensure that nation states (particularly in our immediate region) implement those standards.

Conclusion

1.44 The current Federal Government's failure to appreciate the importance of Australia complying with international labour standards is particularly short sighted.

1.45 The Federal Government has acted with undue and unnecessary haste in its decision to denounce ILO Convention No. 9. No consultation occurred prior to the Government's decision to denounce the treaty. Such consultation as has occurred since that decision was made has been totally inadequate and in the case of the MUA, which represents workers in the relevant industry, has been non existent. All parties involved in the maritime industry have expressly acknowledged the need for on going reform and the consultation and the cooperation that has occurred between employer and employee representatives is in stark contrast to the lack of consultation on the part of the Government.

1.46 The treaty making process is a significant process particularly in the vitally important area of international labour standards. This committee has repeatedly emphasised the need for meaningful consultation which has,

²¹ *ibid.*

²² See report in 'Australian Industrial Law News' Newsletter 3/1998, CCH, 25 March 1998.

regrettably, not occurred on the part of the Government in respect to its decision to denounce ILO Convention No. 9.

1.47 Having made the decision to denounce ILO Convention No. 9, however, it is now imperative that the Government acts swiftly to ratify ILO Convention No. 179.

Mr Robert McClelland MP
Deputy Chairman
Member for Barton

The Hon Dick Adams MP
Member for Lyons

Senator Barney Cooney
Labor Senator for Victoria

Mr Laurie Ferguson MP
Member for Reid

Senator Shayne Murphy
Labor Senator for Tasmania

Senator the Hon Margaret Reynolds
Labor Senator for Queensland

APPENDIX 1

WITNESSES AT PUBLIC HEARINGS

Monday, 25 May 1998, Canberra

Comprehensive Nuclear Test Ban Treaty

Department of Foreign Affairs and Trade

Ms Andrea Faulkner, CTBT Desk Officer, Conventional and Nuclear Disarmament Section, Arms Control and Disarmament Branch

Ms Anne Moores, A/g Assistant Secretary, Arms Control and Disarmament Branch

Mrs Deborah Stokes, First Assistant Secretary, International Security Division

Australian Geological Survey Organisation

Dr David Jepsen, Senior Research Scientist, Nuclear Monitoring Section

Attorney-General's Department

Mr Bill Campbell, First Assistant Secretary, Office of International Law

Ms Franca Musolino, A/g Assistant Secretary, Office of International Law

Department of Foreign Affairs and Trade

Mr Jeffrey Hart, Executive Director, Treaties Secretariat

Fifth Protocol to the General Agreement on Trade in Services (Financial Services)

Department of Foreign Affairs and Trade

Ms Jean Dunn, Assistant Secretary, Services and Intellectual Property Branch, Trade Negotiations Division

Mr Ian MacIntosh, Desk Officer, Services Trade Unit, Services and Intellectual Property Branch, Trade Negotiations Division

Mrs Helen Mahalingham, Executive Officer, Agriculture Branch

Department of the Treasury

Mr Olaf Schuermann, Assistant Director Banking and Finance Branch

Mr Paul Tilley, Assistant Secretary, Banking and Finance Branch, Financial Institutions Division

Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer

Environment Australia

Ms Joanne Di Sano, First Assistant Secretary, Environment Protection Group

Ms Annie Ilett, Director, Ozone Protection Section, Environment Protection Group

Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

Environment Australia

Mr Martin Byrne, Senior Policy Officer, Hazardous Wastes Section, Chemicals and the Environment Branch

Mr Mark Hyman, Assistant Secretary, Chemicals and the Environment Branch, Environment Protection Group

Amendment to the Agreement with New Zealand on Social Security

Department of Social Security

Mr Peter Hutchinson, A/g Director, Policy, Services & Treaties, International Programs Branch

Film Co-Production Agreement with Ireland

Department of Communications and the Arts

Ms Megan Morris, Assistant Secretary, Film Branch, Film, Public Broadcasting & Intellectual Property Division

Ms Caroline Verge, Legal Manager, Film Development

Investment Protection and Promotion Agreement with Pakistan

Department of Foreign Affairs and Trade

Mr Graeme Lade, Director South Asian & Regional Issues Section

Mr Mark Scully, Desk Officer, Legal Branch

Monday, 1 June 1998, Canberra

Headquarters Agreement with the Commission for the Conservation of Southern Bluefin Tuna

Department of Primary Industries and Energy

Mr Jonathon Barrington, Assistant Director, International Relations, Fisheries and Aquaculture Branch

Dr Kevin Bray, Director, International Relations, Fisheries and Aquaculture Branch

Ms Mary Harwood, Assistant Secretary, Fisheries and Aquaculture Branch

Mr Anthony Pigounis, Senior Policy Officer, International Relations, Fisheries and Aquaculture Branch

Department of Foreign Affairs and Trade

Mr Gregory Polson, Director, Sea Law and Ocean Policy Group, Legal Branch

Mr Jeffrey Hart, Executive Director, Treaties Secretariat

Mr Andrew Serdy, Legal Officer, Sea Law and Ocean Policy Group, Legal Branch

Australian Fisheries Management Authority

Mr Matt Gleeson, Senior Operations Officer, Compliance Section

Mr Frank Meere, General Manager Fisheries

Mr Peter Neave, Senior Management Officer, Tuna and Billfish Section

Attorney-General's Department

Dr Rosalie Balkin, Assistant Secretary, Public International Law Branch, Office of International Law

Environment Australia

Mr Barry Baker, Assistant Director, Wildlife Management Section

Denunciation of International Labour Organisation Convention ILO No. 9

Attorney-General's Department

Dr Rosalie Balkin, Assistant Secretary, Public International Law Branch, Office of International Law

Department of Work Relations and Small Business

Ms Jean Ffrench, Director, International Relations Unit, Standards Policy Branch

Ms Dianne Hawgood, Group Manager, Workplace Services Group

Maritime Union of Australia

Mr Anthony Papaconstuntinos, Deputy National Secretary

Hague Convention on Intercountry Adoption

Attorney-General's Department

Dr Rosalie Balkin, Assistant Secretary, Public International Law Branch, Office of International Law

Mr John McGinness, Principal Legal Counsel, International Civil Law Division

Mr Richard Morgan, Assistant Secretary, Family Law Branch

Department of Foreign Affairs and Trade

Mr Jeffrey Hart, Executive Director, Treaties Secretariat

Adoptive Families Association of the Australian Capital Territory

Ms Prudence Karmel, Member of the Executive Committee

Ms Julia Rollings, President

Ms Anne Walls, Vice-President

Australian Intercountry Adoption Network & Australian Families for Children

Mrs Ricky Brisson, National Coordinator and Adoption Coordinator respectively

Interested Individuals

Ms Jane Hickey

Ms Cathleen Sherry

Mr Neville Turner

Tuesday, 2 June 1998, Canberra

Comprehensive Nuclear Test-Ban Treaty

Department of Foreign Affairs and Trade

Mr Ken Berry, Assistant Secretary, Arms Control and Disarmament Branch

Ms Andrea Faulkner, CTBT Desk Officer, Conventional and Nuclear Disarmament Section, Arms Control and Disarmament Branch

Mr John Griffin, Director, Conventional and Nuclear Disarmament Section

Mr Jeffrey Hart, Executive Director, Treaties Secretariat

Mr Bryce Hutchesson, Director, India and Ocean Section

Mr Graeme Lade, Director South Asian & Regional Issues Section

Australian Geological Survey Organisation

Dr Spilio Spiliopoulos, Research Scientist

Monday, 22 June 1998, Canberra

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

Department of Foreign Affairs and Trade

Mr John Griffin, Director, Conventional and Nuclear Disarmament Section

Ms Kathy Klugman, Landmines Desk Officer, Arms Control and Disarmament Branch

Ms Deborah Stokes, First Assistant Secretary, International Security Division

AusAID

Ms Ali Gillies, Assistant Director General, Africa and Humanitarian Relief Branch

Department of Defence

Lieutenant Colonel Glenn Fenton, Staff Officer, CATDC

Lieutenant Colonel Phillip Gibbons, Acting Director Preparedness, Army

Ms Adrienne Jackson, Director General, Major Powers and Global Security, International Policy Division

Lieutenant Colonel Michael Kelly, Staff Officer, Directorate of Operations and International Law

Attorney-General's Department

Dr Rosalie Balkin, Assistant Secretary, Public International Law Branch, Office of International Law

Agreement on Mutual Recognition in Relation to Conformity, Assessment, Certificates and Markings, between Australia and the European Community

Department of Industry Science and Tourism

Mr Drew Andison, Manager, Standards and Conformance Policy, Business Environment Branch, Industry Policy Division

Mrs Vicki Brown, General Manager, Business Environment Branch, Industry Policy Division

Department of Foreign Affairs and Trade

Dr Damaso Marengo, Desk Officer, European Union Section

Austrade

Mr Greg Lemmon, Manager, Europe Office

Attorney-General's Department

Dr Rosalie Balkin, Assistant Secretary, Public International Law Branch, Office of International Law

APPENDIX 2

SUBMISSIONS RECEIVED

Agreement on Mutual Recognition in Relation to Conformity, Assessment, Certificates and Markings, between Australia and the European Community

1. Nulite Systems International
2. ElectroMagnetic Compatibility and Systems Integration Pty Ltd (EMSCI)
3. Department of Industry, Science and Tourism (DIST)

Amendment to the Agreement with New Zealand on Social Security

1. Department of Social Security

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

1. TASDEC Global Learning Centre
2. International Christian Peace Movement
3. Mr Bruce Gray
4. Amnesty International Australia
5. World Vision Australia
6. Medical Association for the Prevention of War

Comprehensive Nuclear Test-Ban Treaty

1. Department of Foreign Affairs and Trade

Denunciation of International Labour Organisation Convention ILO No. 9

1. Maritime Union of Australia
2. Department of Work Relations and Small Business

Fifth Protocol to the General Agreement on Trade in Services (Financial Services)

1. Mr Richard Sanders
2. Mr Gordon Grant
3. Georgist Education Association Inc
4. Mr Peter Howard
5. Mr W A Edwards
6. W L Grant
7. P J Keogh
8. Mr John Gates
9. W & M G Connolly
10. N A Cowan
11. M J H Morris
12. Mrs V Rick
13. Mr John McRobert
14. F G Bowdler
15. Economic Reform Australia

Hague Convention on Intercountry Adoption

1. Ms Cathleen Sherry
2. National Council for Adoption Inc
3. Catholic Family Welfare Bureau

4. Australia for Children Society
5. Ms Sue Davy
- 5a.
6. Adoption Jigsaw Tasmania Inc
7. Mr Murray Baird, Mr Neville Turner, Professor Peter Boss, Ms Wendy Marshall and Ms Jane Hickey
8. Australian African Children's Aid and Support Association (Qld) Inc
9. Australian Families for Children
- 9a.
10. International Social Service Australia
11. Australian Intercountry Adoption Network
- 11a.
- 11b.
- 11c.
12. Mr Cliff Picton and Ms Rosemary Calder
13. Adoptions International of Western Australia Inc
14. Adoptive Families Association of the ACT Inc
- 14a.
15. Australia Society for Intercountry Aid for Children (NSW) Inc
16. Victorian Government
17. Australian Capital Territory Government
18. Tasmanian Government
19. Government of Western Australia
20. Northern Territory Government
21. Dr Paul Kirton
22. New South Wales Government
- 22a.
23. Mrs Maria and Dr Andrew Katelaris
24. Australians Caring for Children Inc
25. Australian Society for Intercountry Aid (Children) Victoria Inc
26. Department of Human Services (Vic)

27. Grace Child Placement Inc
28. South Australian Government

APPENDIX 3

EXHIBITS

Denunciation of International Labour Organisation Convention ILO No. 9

1. Michael Easson, Paul McCann & Paul Ronfeldt, *Consultancy for Research and Advice on Maritime and Stevedoring Occupational Health and Safety Issues*, Commonwealth Department of Transport and Regional Development Consultancy Commission No. 97/0733, October 1997
2. Dr Tony Barrell, *The Regulation of Health and Safety in the Australian Offshore Petroleum Industry*, Department of Primary Industry and Energy, April-May 1996
3. Miscellaneous correspondence forwarded by the Maritime Union of Australia

Film Co-Production Agreement with Ireland

1. Australian Film Commission, *International Co-Production Program Guidelines*, May 1988

Hague Convention on Intercountry Adoption

1. New South Wales Committee on Adoption and Permanent Care Inc, *Draft Position Paper on Intercountry Adoption*, December 1997
2. National Children's and Youth Law Centre, *Submission to The Coordinator Hague Convention Consultation*, 24 April 1998
3. Country Women's Association of Western Australia (Inc), *Submission to Western Australian Department of Family and Children's Services*, 17 September 1997
4. Grace Child Place Inc, Submission to the South Australian Government in response to issues relating to the : *Draft Family Law regulations (Hague Convention on Intercountry Adoption) Schedule 1 Regulations 3.9 and 12*