

CHAPTER 9

FURTHER ACTION REQUIRED IN RELATION TO THE CONVENTION

Australia's position

Interpretations of the Convention

9.1 The people who made submissions to the Committee about the Convention gave a wide range of interpretations to its terms and made various predictions about its outcome for the community. A number of examples are as follows and are presented in no specific order.

9.2 International instruments were described as a series of motherhood statements which may lack definition and specificity.¹ International conventions are negotiated, often over a long period of time until a consensus emerges.² Conventions do not perfectly suit any country but that is their nature.³ An investigation of the *Travaux Preparatoires* for the *Convention on the Rights of the Child* reveals that every article was discussed and debated at length, considering each proposal and counter proposal from various States Parties.

9.3 The general principles embodied in international instruments have neither one understanding nor one valid method of achieving recognition although there may be agreement on the minimum content of the right.⁴ The Human Rights Commissioner saw these documents as great achievements in the extent to which they reach agreement when there is so much that divides humanity.⁵

9.4 Human rights conventions need to be broad to encompass a vast range of aspects in different countries. It was suggested that they need to be weakly couched to be accepted by fiercely independent States Parties, therefore the Convention contains little in the way of enforcement and they

1 Santamaria, Transcript of Evidence, 9 July 1997, p. 894

2 Assadi, Transcript of Evidence, 28 April 1997, p. 107

3 *ibid*

4 Dolgopoulou (1993) 'The Convention on the Rights of the Child as Part of International System for the Protection of Human Rights', in Harvey J Dolgopoulou and Castell-McGregor S (Eds) *Implementing the UN Convention on the Rights of the Child in Australia*, Children's Interests Bureau South Australia, p. 69

5 Sidoti, Transcript of Evidence, 5 August 1997, p. 1178

allow governments to tailor that to their particular needs and their level of willingness. The opaque, vague language enables States Parties a 'margin of appreciation' to translate conventions into domestic law.⁶

9.5 The Convention is to be interpreted in the context of the United Nations Charter, the *Universal Declaration of Human Rights 1948*, the *Declaration of the Rights of the Child 1959*, and the *International Covenant on Civil and Political Rights 1966*. Ms Evatt believed that most of the rights outlined are contained in other instruments such as *International Covenant on Civil and Political Rights 1966*, *Covenant on Economic, Social and Cultural Rights 1966* and the *Convention on the Elimination of all Forms of Discrimination against Women 1979*, so a lot of the standards apply to the whole community.⁷

9.6 Some groups expressed concern, however, that the Convention is a major departure from the original *Declaration on the Rights of the Child 1959* which they argued placed greater emphasis on the family as the basic and natural unit of society so therefore the Convention is an inferior document.⁸

9.7 Mr Kaye explained that there are difficulties of vagueness in our domestic law in relation to terms such as law of negligence, of 'a reasonable person' and the principle of the best interests of the child present the same problems, but provides some flexibility and the opportunity to apply it specific circumstances.⁹

9.8 Professor Triggs commented that there are different approaches to interpreting international treaties but the overall intention must be considered.¹⁰ She added that there was greater scope in interpretation within the spirit of an international treaty, whereas in domestic law there are precise rules about language and a line by line stricter approach.¹¹ It was suggested that Conventions should be used as inspiration for a genuine framework rather than interpreted as black and white; as a document for

6 Charlesworth, Transcript of Evidence, 29 April 1997, p. 177

7 Evatt, Transcript of Evidence, 9 May 1997, p. 401

8 Santamaria, Transcript of Evidence, 9 July 1997, p. 894; Nile, Transcript of Evidence, 5 August 1997, p. 1217

9 Kaye, Transcript of Evidence, 4 August 1997, pp. 1085-6

10 Triggs, Transcript of Evidence, 10 July 1997, p. 1020

11 *ibid*

dialogue which needs to be interpreted within the Australian context.¹² Defence for Children International reinforced the view that Australia's interpretation and the extent to which the Convention was implemented was for Australians to decide.¹³

9.9 Others argued that this broadness was a particular failing of human rights treaties because the level of abstraction needed to encompass an international spectrum of situations can lead to vague articles. It was suggested that interpreting many of the articles becomes a minefield because it is couched in such vague language.¹⁴

9.10 Mr Francis believed that much of the Convention is ambiguous and the meaning of many sections need to be clarified.¹⁵ It was suggested that the articles are badly worded and ambiguous and therefore open to different interpretations, which may override the legitimate rights of parents and destroy the autonomy of the family.¹⁶ The Nambucca Valley Christian Community School commented that while the articles are capable of reasonable interpretations, there are no guarantees that they will be interpreted in a reasonable way.¹⁷

9.11 It was submitted that the broadness of terms within the Convention allows for a deliberate or accidental misreading of the articles to form the basis of an unjust or unfair law. Judge Jackson added that if you approach any document in an antagonistic and literal way and take sentences and phrases out of context, then it can be made to mean almost anything.¹⁸

9.12 Notwithstanding the Convention was negotiated over a decade, it was suggested that greater international discussion of the Convention may have helped diminish the perceived faults within the text of the Convention.¹⁹ Professor Hafen suggested that:

12 Redman, Transcript of Evidence, 4 July 1997, p. 735; Ford, Transcript of Evidence, 9 July 1997, p. 848; Alford, Transcript of Evidence, 1 May 1997, p. 232

13 Bessell, Transcript of Evidence, 28 April 1997, p. 88

14 Francis, Submission No. 3, p. S 10

15 Francis, Transcript of Evidence, 10 July 1997, p. 1046

16 Niven, Submission No. 4, p. S 13; Smyth, Transcript of Evidence, 4 August 1997, p. 1098

17 Nambucca Valley Christian Community School, Submission No. 197, p. S 1353

18 Jackson, Transcript of Evidence, 3 July 1997, p. 590

19 For a discussion of the actual process see Detrick S (ed) *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Preparatoires"*, Martinus Nijhoff Publishers, Dordrecht, 1992.

... the international community has become so uncritical in the area of human rights that some of the least popular and least substantial ideas will be adopted in uncritical forums, far removed from public scrutiny, far removed from academic scrutiny and practical scrutiny. They are brought back home and unveiled as international norms. That is what happened in this case.²⁰

9.13 Mr Burdekin submitted that the Convention has many defects because many governments were not interested and did not take it seriously.²¹ He added that the NGOs concerned with children's rights and protection of children focused the instrument on children rather than relating it to families, the role of parents and the protection of families.²²

9.14 It was argued that for Australia to derogate from the Convention after we and most of the world have ratified it is an appalling suggestion.²³

Need for the Convention

9.15 It has been suggested that there was never any thorough or comprehensive study undertaken to establish whether there was a need for such a need existed.²⁴ While agreeing that some parts of the Convention are worthwhile, Reverend Nile expressed the view that Australian law already embodied the worthy principles.²⁵

9.16 Mr Niven also questioned the need for a Convention in Australia and commented that responsible governments are concerned for children and Australia is competent to legislate and care for our children without this Convention and what was needed was a move to strengthen families and support families in the raising of their children than perhaps giving rights to children that can be misinterpreted.²⁶

9.17 Mr Moran stated that there were 25 000 social workers in Western Australia and expressed his concern at the extent of their power to intervene in families and the tardiness of complaints procedures against social

20 Hafen, Transcript of Evidence, 9 May 1997, p. 346

21 Burdekin, Transcript of Evidence, 5 August 1997, p. 1287

22 *ibid*, pp. 1287-8

23 Turner, Transcript of Evidence, 14 August 1997, p. 1425

24 Le Blanc, L J, *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights*, University of Nebraska Press, Lincoln, 1995, p. 23

25 Nile, Transcript of Evidence, 5 August 1997, p. 1212

26 Niven, Transcript of Evidence, 1 May 1997, p. 278

worker.²⁷ He believed that the Convention is not about enhancing the lives of Australian children, who are already well served by Australian legislation, it is about social worker power.²⁸

9.18 There were a number of submissions that objected to conventions in general. It was suggested that the countries which respect human rights do so irrespective of the existence of conventions and there are those that ratify conventions without changing their practices.²⁹ Mr Francis also argued that many governments sign conventions but selectively enforce the rights conferred that suit the government.³⁰

9.19 While some also argued that a privileged country such as Australia did not need the Convention, Save the Children Australia believed that the gaps between Australia and the developing world are closing and that Australia has street children, drug abuse, working children and the sexual exploitation of children although this may not be to the same extent as in developing countries.³¹ Child and Youth Health South Australia made the comment that although Australia does not have the problems of Rwanda or Zaire, there are different problems such as the immunisation rate which is lower than Zambia, Tanzania and Libya.³² The Convention provides a set of benchmarks which the international community consider to be the standards.³³

International acceptance

9.20 The fact that 191 States Parties have ratified the Convention is evidence of the international acceptance of this treaty. However, it should be noted that notwithstanding a number of countries have placed reservations and declarations on their ratification. It was submitted that if a country like Australia is not a party to the Convention that this would send a message to countries confronted with major problems.³⁴

27 Moran, Submission No. 397, p. S 2221

28 *ibid*

29 The Australian Family Association (Adelaide), Submission No. 45, p. S 254

30 Francis C (1990) 'The Legal Consequences of the UN the United Nations Convention on the Rights of the Child', *The Australian Family* 11(4):23 - 30, p. 25

31 Rose, Transcript of Evidence, 10 July 1997, p. 989

32 Castell-McGregor, Transcript of Evidence, 4 July 1997, p. 694

33 Rose, Transcript of Evidence, 10 July 1997, p. 989

34 Assadi, Transcript of Evidence, 28 April 1997, p. 108

9.21 Ms Mason commented that:

... the convention has produced positive reverberations throughout the world. It has allowed many countries to take an opportunity to look at their national laws and to see where there are lacunae - where they are not fulfilling the needs and wishes of people. It has afforded the opportunity to put in place, especially in relation to children, mechanisms for their protection. It has allowed countries to look at their system of education and see where it might be deficient or where more could be done for children. It has looked - and this is a very significant area - at the question of juvenile justice and exactly how the due process of law requirement is being dealt with in any particular country.³⁵

9.22 Professor Kolosov added that:

... it also has had an impact on the cooperation within the framework of international organisations. Organisations such as ILO, WHO, UNESCO, UNHCR, the Red Cross, many non-governmental organisations, regional organisations, OSCE and the Council of Europe, after the adoption of the convention are paying more and more attention to collecting the statistical data relating to children's rights and dissertations on children. They are thinking how to better finance the economic, social and cultural needs of children. So it has had a very positive impact on the international community through the activities of very many UN specialised agencies and regional international organisations, no doubt.³⁶

9.23 The Youth Action and Policy Association believed that regardless of whether other countries have signed the Convention, Australia needs to be able to say internationally that we have a commitment.³⁷ The Youth Affairs Council of South Australia commented that it is important to recognise Australia as part of a global community and that international consistency is a benefit.³⁸ In relation to issues such as the sexual exploitation of children and the participation of child soldiers, Department of Foreign Affairs and Trade commented that the Convention was used:

... as the platform for provision of technical assistance and training programs to countries where these practices are widespread. It also forms the basis for the development of regional cooperation initiatives such as exchange of expertise in drafting new legislation, and assistance and cooperation in law enforcement efforts. Areas where mutual membership of the Convention have facilitated such cooperation in the Asia/Pacific

35 Mason, Transcript of Evidence, 3 September 1997, p. 1538

36 Kolosov, Transcript of Evidence, 3 September 1997, p. 1538

37 Morey, Transcript of Evidence, 9 May 1997, p. 368

38 Handshin, Transcript of Evidence, 4 July 1997, p. 713

region include law enforcement cooperation in relation to child sex tourism and efforts to combat the transborder trafficking of children for use in prostitution.³⁹

9.24 The Department of Foreign Affairs and Trade also commented that internationally the Convention has acted as a catalyst for change and provided a framework for addressing the needs of children particularly in the Asian region.⁴⁰ The strong commitment of other countries in our region provides a common standard and serves as an agreed international legal framework and point of reference to develop cooperative and complementary processes.⁴¹ It was suggested that if Australia withdrew from the Convention, we would be out of step with the other countries in our region and set a negative example for those governments which are not convinced of the usefulness of international human rights standards.⁴² Further, Australia's commitment to the Convention an important basis for encouraging countries in the region to comply with other human rights treaties.⁴³

9.25 The other point was that Australia was instrumental in developing the Convention and it was suggested that we would look 'a little odd' if we disregard the principles of the Convention.⁴⁴ The National Children's and Youth Law Centre commented that:

Were Australia to withdraw from CROC, it will be perceived around the world that Australia no longer wishes to adhere to international standards. It would send the message that we find protection of children too hard, the delivery of essential services to children too difficult, and the provision of basic rights to children too confronting.⁴⁵

9.26 The Regional Office of the United Nations High Commissioner for Refugees commented that Australia's track record 'speaks volumes' so it is important to have democratic countries like Australia associated with these international agreements to exert some global influence.⁴⁶

39 Department of Foreign Affairs and Trade, Submission No. 134, p. S 738

40 *ibid*, p. S 737

41 *ibid*, p. S 738

42 Caritas Australia, Submission No. 167, p. S 1112

43 Australia Red Cross, Submission No. 142, p. S 932

44 Macdonald, Transcript of Evidence, 4 July 1997, p. 713

45 National Children's and Youth Law Centre, Submission No. 321, p. S 1775

46 Assadi, Transcript of Evidence, 28 April 1997, p. 107

9.27 Professor Triggs added that while it may be uncertain as to how vulnerable Australia is to allegations by other countries in relation to the failure to meet our obligations under the Convention, we should not allow this to occur on a moral or legal level.⁴⁷

Support for the Convention

9.28 Many organisations and individuals supported the Convention on the basis that it:⁴⁸

- places a positive obligation on the government to provide resources to support families;⁴⁹
- balances children's rights against not interfering with the rights of others and includes respect for parents;⁵⁰
- presents a set of decency principles which most people would want;⁵¹
- provides a common understanding of the value of children and young people and our responsibilities to them;⁵²
- brings together the concept of people having certain rights simply by virtue of their being human and that children are not simply chattels of their parents;⁵³
- brings together the concept of economic, social and cultural rights with civil and political rights;⁵⁴
- provides the opportunity to include young people in the development of legislation, laws, policies which will affect them;⁵⁵

47 Triggs, Transcript of Evidence, 10 July 1997, p. 1016

48 These are listed in random order and not necessarily in order of priority.

49 Jones, Transcript of Evidence, 5 August 1997, p. 1202

50 Purnell, Transcript of Evidence, 29 April 1997, p. 114

51 Staniforth, Transcript of Evidence, 29 April 1997, p. 133; Walton, Transcript of Evidence, 3 July 1997, p. 655

52 Les, Transcript of Evidence, 4 July 1997, p. 682

53 International Law Teachers, The University of Melbourne, Submission No. 188, p. S 1289

54 Frankovits, Transcript of Evidence, 9 May 1997, p. 360

- provides a framework and opportunity to examine and rework legislation and policy that impacts on children's lives and enhances the wellbeing of our young;⁵⁶ and
- provides international benchmarks which are relevant across cultural borders.⁵⁷

9.29 Community Services Australia considered the Convention had a very important persuasive function and provided a focus for debate.⁵⁸ The Queensland Paediatric Nurses Association commented that the Convention provided an opportunity to put children's issues on the map and added strength for the argument that children are an equal part of the community in debates over resource allocations.⁵⁹

9.30 The Convention recognises and reinforces rights which had been acknowledged in other United Nations instruments such as the *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*.⁶⁰ It was submitted that the Convention does not create special rights, it just clarified the fact that many of the existing human rights also apply to children.⁶¹

9.31 These fundamental principles should not be subsumed by arguments about the rights of parents or the over-intrusive State.⁶² The Commission argued that the Convention supported families and empowered their role as primary carers.⁶³ The Commission referred to its usefulness as a framework upon which governments can build their own social policies and family support services.⁶⁴ Barnardos Australia commented that it is very difficult to advocate on behalf of children without a benchmark in relation

55 Youth Action and Policy Association (NSW) Inc, Submission No. 130, p. S 721

56 Reid, Transcript of Evidence, 6 August 1997, pp. 1394-5

57 Community Services Australia, Submission No. 154, S 1023

58 Gurr, Transcript of Evidence, 9 May 1997, p. 361

59 Nixon, Transcript of Evidence, 6 August 1997, p. 1335

60 Wight, Transcript of Evidence, 1 May 1997, p. 244

61 Community Services Australia, Submission No. 154, p. S 2024; Dolgopol, Transcript of Evidence, 4 July 1997, p. 662

62 O'Connor, Transcript of Evidence, 29 April 1997, p. 180

63 *ibid*, pp. 181-2

64 *ibid*, p. 185

to assistance to parents in their child-rearing responsibilities, and the development of institutions, facilities and services for the care of children.⁶⁵

9.32 Youth Affairs Council of South Australia believed that the recognition of the rights of children would demonstrate that children are valued as citizens and much can be gained from a recognition of children as the holders of human rights.⁶⁶ Ms Krohn was of the view that the Convention is a moral and jurisprudential authority that can be welcomed in a society where moral, cultural and religious diversity is a feature and it is a document supporting the primacy of the family.⁶⁷

Retaining the status quo

9.33 The Committee believes that the status quo will not achieve the desired recognition of children's rights in the Australian context unless the Government undertakes a number of significant changes, including clarifying a number of aspects of the Convention for the community.

Retaining the Convention but adding declarations⁶⁸

9.34 The Committee believes that the Convention does not and should not limit the rights of parents except in exceptional situations where there is abuse or neglect, or place conditions on the relationship between parents and their children, rather it places responsibilities on the Government to support children and their families. This, however, needs to be made clear to the community by the Government.

9.35 One approach that received considerable support during the Inquiry was for the Government to make a number of declaratory statements that would make clear to the community, the Government's interpretation of the Convention and the role of the family as the fundamental unit of Australia's society.⁶⁹ The addition of declarations in relation to specific articles would

65 Tregeagle, Transcript of Evidence, 16 June 1997, p. 523

66 Handshin, Transcript of Evidence, 4 July 1997, pp. 709-10

67 Krohn, Transcript of Evidence, 9 July 1997, p. 831

68 Reservations are a means whereby states purport to exclude or modify the legal effect of one or more provisions of a treaty. Declarations are merely indications of the view of the State has on a provision, rather than a means to alter the legal effect of the treaty; see also Charlesworth, Supplementary Submission No. 92a, pp. S 2565-6

69 For example, Antrum, Transcript of Evidence, 5 August 1997, p. 1141

enable the issues to be clarified in the Australian context and still uphold the spirit of the Convention.

9.36 The National Council of Women of Tasmania submitted that that the various interpretations of the articles of the Convention has led to confusion for Australia parents, interpreters of the law, social workers, guidance officers, police, etc.⁷⁰ The Council also argued Australia's position should be made clear and unambiguous for the benefit of the child, the family and the community.⁷¹

9.37 As Professor Triggs added, Australia used declarations in relation to the *International Covenant on Civil and Political Rights*.⁷² The Committee also notes that the United Kingdom of Great Britain and Northern Ireland ratified the Convention on 16 December 1991 but added further declarations on 7 September 1994.⁷³ In developing the declarations, consideration would need to be given to the interpretation by particular groups and to ensure that the intersections between the groups are articulated in the declarations.⁷⁴

9.38 BoysTown Link Up argued, however, that legislation was required as declaratory statements of the nature described would merely appease those concerned about the adverse affect on parental rights.⁷⁵

9.39 The Committee believes that the main purpose in adding declarations is to reassure parents and carers. We believe that these concerns need to be addressed, and that this option has some benefit over denunciation because Australian policies are running broadly parallel to the principles espoused in the Convention. Mrs Grant believed that Australia needs to strengthen the Convention rather than destroy it and this could be done by clarifying these anomalies, particularly Articles 12 to 16, overcoming problems in interpretation and developing clear guidelines.⁷⁶

9.40 The Committee supports the view that it would be beneficial for the Government to clarify its position by making declaratory statements in relation to the principles of the Convention which appropriately recognised

70 The National Council of Women of Tasmania, Submission No. 52, pp. S 279, 281

71 *ibid*, p. S 284

72 Triggs, Transcript of Evidence, 10 July 1997, p. 1017

73 *The Convention on the Rights of the Child* http://www.un.org/depts/treaty/final/ts2/newfiles/part_boo/iv_boo/iv_11.html

74 Jones, Transcript of Evidence, 5 August 1997, p. 1200

75 BoysTown Link Up, Supplementary Submission No. 136a, pp. S 3442-3

76 Grant, Transcript of Evidence, 4 August 1997, p. 1129

parental rights. We believe that this approach may negate the criticisms of the treaty and would reinforce the balance between the best interests of the child and the appropriate interests of the parents.⁷⁷

Denunciation⁷⁸

Opposition to the Convention

9.41 The majority of submissions recommended denunciation of the Convention. While many people accepted the bulk of the Convention which addresses the protection rights of children, as being beneficial, many were concerned about particular articles.⁷⁹

9.42 The Convention was criticised on the basis that:

- Articles 1-16 were concerned with the wants of children rather than the needs;⁸⁰
- the Convention is a mechanism to destroy families and give states authority over parents and children;⁸¹
- the Convention grants children's rights over parent's rights, parents being unable to punish children, unable to restrict what they see or read, unable to restrict their associations or to influence their religious views, and that competent authorities are able to remove children from their parents;⁸²
- there were sovereignty issues;⁸³

77 Triggs, Transcript of Evidence, 10 July 1997, p. 1017

78 Denunciation refers to the withdrawal from an international treaty and is permitted under Article 52 of the *Convention on the Rights of the Child* and becomes effective one year after notification to the Secretary-General.

79 Hafen, Transcript of Evidence, 9 May 1997, p. 343; Francis, Submission No. 3, p. S 7; Francis, Transcript of Evidence, 10 July 1997, p. 1000; The Australian Family Association Western Australia Division, Submission No. 39, p. S 218; Smyth, Transcript of Evidence, 4 August 1997, p. 1106

80 Leslie, Supplementary Submission No. 22a, p. S 3716

81 Kilpatrick, Submission No. 618, p. S 3153; Nickson, Submission No. 635, p. S 3196

82 Niven, Transcript of Evidence, 1 May 1997, pp. 277-8

83 *ibid* p. 278; Nickson, Submission No. 635, p. S 3196

- the United Nations is not so much concerned with the protection of children as the rights of children;⁸⁴
- the Convention is biased towards the rights of children as against the duties and responsibilities of parents in rearing their children in a caring atmosphere;⁸⁵
- some believed the Convention falls short on children's responsibilities;⁸⁶ and
- the Convention was raised by a communist country known for the oppression of its people.⁸⁷ (The Committee notes, however, that Poland has inserted a reservation strengthening the rights of parents).

9.43 Professor Hafen argued that the Convention was adopted by the international community, uncritically, without their realising that it incorporated the concept of the autonomous child.⁸⁸ The Peirson Adolescent Support Service described the Convention as a 'menacing document' which interferes with parents' rights to care for, raise and educate their children, consistently with their own beliefs.⁸⁹

9.44 Mr Francis expressed his concern that the Convention tended to transfer the power to control children from their parents to an all powerful state.⁹⁰ He added that the Government did not have a mandate from the Australian people to sign the Convention, nor the Constitutional power to legislate on the provisions contained in various articles.⁹¹

9.45 Some believed that the Convention undermined Australia's Christian heritage, that the adoption of the legal principles endorsed by atheistic and totalitarian regimes as a basis for Australian law was unwise and that the Convention was unbalanced because children's rights cannot be adequately

84 Robins, Submission No. 637, p. S 3202

85 Sullivan, Submission No. 634, p. S 3194

86 Paterson, Submission No. 642, p. S 3219

87 McRae, Submission No. 617, p. S 3144

88 Hafen, Transcript of Evidence, 9 May 1997, p. 343

89 Peirson Adolescent Support Service, Submission No. 128, p. S 706

90 Francis C (1990) 'The Legal Consequences of the UN the United Nations Convention on the Rights of the Child', *The Australian Family* 11(4):23 - 30, p. 25

91 Francis, Submission No. 3, p. S 7

declared in isolation from the balanced treatment of parent's rights in relation to their children.⁹²

9.46 The Australian Family Association (ACT Branch) objected to Australia signing the Convention on the grounds that children's rights were not distinct from those of other members of society and the focus should be on support for families and not children in isolation.⁹³

9.47 It was also alleged that some of the children's lawyers, involved in drafting the Convention, would have recognised the potential to provide a valuable source of income in State-aided litigation by children in actions against their parents.⁹⁴ The Committee does not consider that Australia's negotiating delegation, comprised of public servants, would have been in the business of further burdening Australian courts.

9.48 The Committee is also particularly concerned about the misinformation being circulated by some individuals and groups and the impact that this misinformation may have on Australian families. One such letter was that circulated by S Harvey of Manunda which contained the following misrepresentations of the Convention:

Do you want state intervention to review your parental consent when your child disagrees with ground rules laid down in the home?

Would you agree with a teacher informing your son/daughter that he/she should consider adopting a homosexual lifestyle?

Is it acceptable to you if your child joins some fringe religious sect or Satanic cult?

Is it OK if your child says "No" to any chores allocated to him/her in the family home because he/she has been told it is their "human right"?

If you suspect your child is taking drugs would you agree to stay out of his/her room because the child and the law say he/she has a right to privacy.

9.49 A number of the submissions to this Inquiry were parents who became concerned after receiving this or similar letters. The majority of submissions objecting to Australia's ratification of the Convention were in relation to Articles 12-16.

92 Sullivan, Submission No. 634, p. S 3193

93 The Australian Family Association (ACT Branch), Submission No. 113, p. S 551

94 Francis, Submission No. 3, p. S 10

9.50 Another matter raised by those opposing the Convention was that the United States has not ratified the Convention.⁹⁵ The official position of the United States Government is that if the Convention is ratified it would immediately become law in that country.⁹⁶ The system in Australia, is that to incorporate a treaty in law, requires the introduction of legislation. Therefore the Committee believes that the two countries cannot be compared in this manner.

9.51 Mr Kaye explained that in a significant number of civil law countries, ratification of the Convention was sufficient to impose binding legal obligations, and that most of those States Parties have not found it too much of a problem.⁹⁷

9.52 The National Children's and Youth Law Centre commented that the Convention is regularly referred to by administrative and legal decision makers notwithstanding the United States failure to ratify the Convention.⁹⁸ It was submitted that President Clinton supported the ratification of the Convention notwithstanding the opposition by some Senators.⁹⁹ Ms Evatt commented that in order to ratify the Convention there would need to secure a two thirds majority in the Senate in an atmosphere which is anti-multilateralism and the activities of the United Nations.¹⁰⁰

9.53 The United States Administration described the Convention as a statement of 'principles and ideals' which would not give children the right to sue parents or supersede state laws dealing with the punishment of minors.¹⁰¹ The United States is looking at ways it can accommodate the Convention within its Congressional structure.¹⁰²

Domestic impact of denunciation

95 Francis, Submission No. 3, p. S 8

96 Dolgopol, Transcript of Evidence, 4 July 1997, p. 672

97 Kaye, Transcript of Evidence, 4 August 1997, p. 1093

98 National Children's and Youth Law Centre, Submission No. 321, p. S 1775

99 Francis, Submission No. 3, p. S 8

100 Evatt, Supplementary Submission No. 5b, p. S 3706

101 Hafen B and Hafen J (1996) 'Abandoning Children to their Autonomy: The United Nations Convention on the Rights of the Child', *Harvard International Law Journal* 37(2), p. 488

102 Lamb, Transcript of Evidence, 28 April 1997, p. 7

9.54 The Endeavour Forum believed that denunciation would be tremendous publicity stating that Australia is committed to the well being of the child but we do this with a sensible and practical approach.¹⁰³

9.55 The view was also given by some not supporting the Convention, that denunciation would not achieve a great deal because many of the changes have already been implemented.¹⁰⁴ Mr Nile believed that the sentiments contained in the Convention have already been conveyed through our education system, media and television programs.¹⁰⁵ The Coalition for Defence of Human Life believed that even if Australia did denounce the Convention the High Court and other courts could still draw on it as a source for international law.¹⁰⁶ Mr Egan stated that:

... convention is one of the things that is in the background and that is adding added legitimacy to the youth advocacy people, to the child's rights movement, to the Law Reform Commission reports that have come out and to the Human Rights and Equal Opportunity Commission reports. All of these cite the convention as endorsing and strengthening their case for a model based on the autonomy of the child. By stepping back from the convention, by denouncing that, the Australian government is making a very clear statement on that principle.¹⁰⁷

9.56 Judge Jackson added that even if Australia did denounce the Convention, that that would not kill the purposes for which the Convention is used in Australia, as organisations would still regard it as an international standard.¹⁰⁸ He added that a lot of it represents best practice anyway and the principles would be used with or without a United Nations convention.¹⁰⁹

9.57 Child and Youth Health of South Australia were concerned that if Australia denounced the Convention, the legitimacy of the voice may be lost or weakened to some extent.¹¹⁰ It was suggested, however, that denunciation could be accompanied with a charter on family rights and

103 Francis, Transcript of Evidence, 10 July 1997, p. 1009

104 Crockford, Transcript of Evidence, 4 August 1997, p. 1119

105 Nile, Transcript of Evidence, 5 August 1997, p. 1215

106 Egan, Transcript of Evidence, 3 July 1997, p. 645

107 *ibid*, p. 646

108 Jackson, Transcript of Evidence, 3 July 1997, p. 593

109 *ibid*

110 Les, Transcript of Evidence, 4 July 1997, p. 688

responsibilities in which the rights and responsibilities of both children and parents are safeguarded.¹¹¹

International impact of denunciation

9.58 Australia has often revealed itself to be sensitive to international pressure and criticism, especially in the area of international obligations.¹¹² On 21 November 1989, the then Minister for Foreign Affairs and Trade, Senator Gareth Evans, announced Australia's strong support for the Convention which he stated was evidenced by Australia's co-sponsorship of the United Nations General Assembly Resolution which introduced it.¹¹³

9.59 The Attorney-General's Department also stated that Australia's compliance reinforced Australia's reputation as a 'good international citizen' and was beneficial to our international relations in a wide range of areas such as trade.¹¹⁴

9.60 In relation to Australia's human rights foreign policy, on 30 July 1996, Mr Downer stated that:

... the Australian Government's policies on human rights are based on the Universal Declaration of Human Rights and subsequent international human rights instruments which enshrine the principles of universality and indivisibility of human rights.

Australian policy, therefore, does not presume to hold other nations to standards that we do not apply to ourselves.

... the Government believes that attention and consideration should be given to the promotion, protection and implementation of all human rights, whether they be civil, political, economic, social or cultural ... The Government seeks to make a difference on human rights, rather than merely to posture. Australia will employ a variety of approaches to human rights issues so that it achieves the best possible results for its efforts.¹¹⁵

111 Whitely, Transcript of Evidence, 3 July 1997, p. 630

112 Lombard, G 'The trouble with treaties' *The Canberra Times*, 16 October 1996, p. 13

113 Evans, Hon G Minister for Foreign Affairs and Trade, *News Release* No. M199, 21 November 1989, United Nations Convention on the Rights of the Child

114 Attorney-General's Department, Supplementary Submission No. 133a, p. S 3375

115 Downer, Hon A, Minister for Foreign Affairs, 'Human rights in Australian foreign policy: address', 30 July 1996, Press Release, pp 3-4

9.61 Australia has also attempted to take a leading international role in championing human rights in the past, and continues to do so. The Australian diplomat in Geneva visited the government missions prior to each session of the working group to discuss Australia's position.¹¹⁶ It was argued, therefore, that it would be seen as extremely hypocritical if Australia were to alter our acceptance of such a key human rights document, and such a widely agreed one as the Convention.

The Convention also enables countries such as Australia to negotiate with other countries to improve their efforts with respect to the protection of children and the promotion of their interests. It is not possible to negotiate effectively with another sovereign country on the basis of your countries law and practice. To attempt to do so is to suggest that your country is superior to another country. This attitude is highly offensive to many if not all nations of the world. The existence of international instruments in the field of human rights allows such dialogue to take place in the context of internationally recognised norms, and thus allows the discussion to focus on issues of substance rather than issues of international politics.¹¹⁷

9.62 Mr Kaye believed that compliance with international law has a much underrated impact and that allegations by other nations of non-compliance has a significant impact and the displeasure of the international community in relation to a treaty like the Convention can be most effective.¹¹⁸

9.63 In relation to Australia not having the problems of other countries, Defence for Children International commented that:

... the children in Australia who are at risk because of exploitation, abuse, inadequate services or deprivation of their rights are as seriously affected individually as are children overseas. The numbers may be different, the proportion in the community may be different, but we are talking here about a convention on the rights of 'the child', not the rights of 'children'. It is important to keep that distinction in mind. We are talking about each individual child as being the object of this convention. Australian children whose rights are not being adequately met are as seriously affected as an individual child whose rights are not being met in another country, an undeveloped country, a poor country.¹¹⁹

116 Dolgopol, Submission No. 726, p. S 3606

117 *ibid*, p. S 3609

118 Kaye, Transcript of Evidence, 4 August 1997, p. 1095

119 Bayes, Transcript of Evidence, 28 April 1997, p. 87

Denunciation and reratification with reservations

9.64 Reservations are used by the international community to explain differing views on issues within a treaty which they believe are not in the national interests, or realities within their borders. A number of submissions suggested that Australia should add reservations, however, reservations are made at the time of ratification and can no longer be added.

9.65 Professor Hafen expressed the view that much of the Convention is worth while and needed, but suggested that Australia deratify and reratify the Convention with reservations in relation to the child autonomy aspects.¹²⁰ He urged the Government to reaffirm Australia's commitment to the protection and nurturing aspects of the Convention and to reject the child autonomy concepts.¹²¹

9.66 Notwithstanding the broadness of the Convention, a number of States Parties have made substantial reservations. Sixty-seven member States have attached reservations or declarations to their acceptance of this treaty.¹²² Twenty seven of the articles have had reservations placed on them with Articles 14 and 21 each have 13 States Parties attaching reservations.¹²³ Twenty six articles have declarations attached with up to seven countries attaching declarations to a particular article.¹²⁴

9.67 Reservations are not uncommon on human rights conventions.¹²⁵ A number of countries have also made general reservations and declarations. It was argued that reservations which protect the inalienable rights of parents entirely changed the legal effects of these articles.¹²⁶ These cover issues such as inconsistencies with the Islamic Shariah law, compatibility with practice, values, constitutions and existing legislation, and the limits of resources available.¹²⁷ Some reservations, however, expressed concern that the Convention permitted children to participate in war at the age of 15 and supported a minimum age of 18 years. Nonetheless, the view was expressed

120 Hafen, Transcript of Evidence, 17 April 1998, p. 1569

121 Hafen, Submission No. 666, p. S 3460

122 *The Convention on the Rights of the Child* http://www.un.org/depts/treaty/final/ts2/newfiles/part_boo/iv_boo/iv_11.html

123 *ibid*

124 *ibid*

125 McCorquodale, Transcript of Evidence, 29 April 1997, p. 172

126 Francis, Submission No. 3, p. S 8

127 *The Convention on the Rights of the Child* http://www.un.org/depts/treaty/final/ts2/newfiles/part_boo/iv_boo/iv_11.html

that the use of reservations should not mean that some children were denied the rights contained in the Convention.¹²⁸

9.68 The Deputy Chairman of the United Nations Committee on the Rights of the Child did not believe that the reservations by the Holy See and Poland undermined the Convention.¹²⁹

a statement, such as that by the Holy See, to the effect that the treaty party interprets CROC in a way which safeguards the primary and inalienable rights of parents. On one view, such a reservation breaches the objects and purpose of CROC which is specifically aimed at giving priority to the rights of children. However, it is also clear that CROC gives considerable weight to parent's rights, and society's views as reflected in notions of public order and national security, particularly with respect to education, religion and freedom of association. The Holy See's reservations, therefore can be read as simply reiterating CROC's emphasis that the rights of children in some areas are subject to parental and adult rights.¹³⁰

9.69 Australian Catholic Social Welfare Commission commented that:

At no stage did the Holy See make any reservations about the statement in the preamble of the Convention that recognises the 'inherent dignity and the equal and inalienable rights of all members of the human family which is the foundation of freedom, justice and peace in the world'. This would suggest that the Holy See recognises children's rights as inalienable, that is, not able to be given or taken away, and certainly not 'just ordinary'.¹³¹

... regard to the term inalienable which the Holy See placed in front of 'parents rights' as a recognition of the importance of placing the rights of children in the context of their family. By doing this the State party can then promote and support family life whilst maintaining the rights of every child in line with their inherent human dignity.¹³²

9.70 The Holy See's report to the United Nations Committee on the Rights of the Child reasserted the Catholic Church's belief that:

... children's rights cannot be seen outside the context of the family, the first and most vital unit of society. Protection of children's rights cannot

128 Community Services Australia, Submission No. 154, p. S 1023

129 Kolosov, Transcript of Evidence, 3 September 1997, p. 1540

130 Charlesworth and McCorquodale, Supplementary Submission No. 92a, p. S 2568

131 Australian Catholic Social Welfare Commission, Supplementary Submission No. 124a, p. S 1589

132 *ibid*, p. S 1591

become fully effective unless the family and its rights are fully respected by the legal systems of States and the international community.¹³³

Thus the Vatican's reservation with regard to the inalienable rights of parents emphasises the social context of rights and the fundamental importance of families as the basic unit in society. Human rights are not absolute, they must be referenced back to society or the common good. Children's rights should similarly be referenced back to the family.¹³⁴

9.71 It was suggested that little can be achieved by polarising children's and parent's rights as they must coexist and should be complementary, not conflicting.¹³⁵

9.72 A number of submissions expressed concern that Poland initiated the process while it was a communist state.¹³⁶ The Committee notes, however, that while Poland initiated the push for the Convention, it has also placed a reservation which upholds the rights of parents.

9.73 The Australian Government at the time of ratification believed that Article 5 was sufficient to protect parent's rights:

Rather than family and parental responsibilities being undermined because of Australian work in the formulation of the convention under article 5, countries are required to ensure that parents are able to discharge their responsibilities, rights and duties to direct and guide their children in the exercise of the various rights formulated in the Convention.¹³⁷

9.74 The Liberal Party in Opposition sought reservations on Articles 12, 13, 14, 15, 16 and 28¹³⁸ in the light of community concerns about the concept of parental control and parental rights over their children.¹³⁹ Of particular concern were the rights of parents in relation to the child's education physical, social and moral development.¹⁴⁰ Senator Hill commented that earlier United Nations documents such as the *Universal*

133 *ibid*, p. S 1590

134 *ibid*

135 *ibid*

136 For example, Call to Australia, Submission No. 179, p. S 1203

137 Tate M, Minister for Justice and Consumer Affairs, Questions Without Notice, United Nations Convention on the Rights of the Child, *Senate Hansard*, 18 December 1990, p. 5863

138 Letter dated 16 April 1991 to Tonti-Filippini from The Hon A Peacock, Shadow Minister for Foreign Affairs cited in Tonti-Filippini, Fleming, Fisher, Krohn and Coghlan, Submission No. 187, p. 17

139 Peacock, *House of Representatives Hansard*, 21 February 1991, p. 1078

140 Hill R, Adjournment United Nations Convention on the Rights of the Child, *Senate Hansard*, 7 November 1990, p. 3675

Declaration of Human Rights, the *Declaration on the Rights of the Child*, the *Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, embodied the concepts of parent's rights and responsibilities with respect to children's education and upbringing.¹⁴¹

9.75 After the ratification, Senator Hill expressed the Coalition's disappointment at the failure to make reservations in relation to respect the rights and responsibilities of parents.¹⁴²

The Minister, Senator Tate, told the Senate on November 7 that he expected that Australia - like the Vatican - would make reservations about the need for the Convention to properly recognise the preeminent role of the family. The Convention's articles fail to accord parents the right and duty to provide guidance to children on the information they receive in their formative years and the association they keep.¹⁴³

9.76 In September 1993, the then Shadow Attorney-General, Mr Daryl Williams QC MP, said that the Convention, 'rightly or wrongly', was seen as a threat to the viability of the family as the principal unit in society and a threat to the rights of parents.¹⁴⁴ He observed that as the Convention now stands children may be able to divorce their parents or sue their parents for spanking them, or legally prevent their parents from entering their bedroom.¹⁴⁵

9.77 Australia does have a reservation in relation to the detention of juveniles in prisons with adults (Article 37(c)) and this was discussed in more detail in Chapter 8. In relation to the possibility of Australia adding reservations without denouncing the Convention, it was submitted that:

There is some, very limited, state practice in which a state has stayed a party to a treaty and added a reservation provided that there were no objections made to this procedure by other parties.¹⁴⁶ These very few examples have not been in relation to human rights treaties and, in

141 *ibid*

142 Hill R, National Committee on Violence, Government's Response, *Senate Hansard*, 20 December 1990, p. 6151

143 *ibid*

144 'Sue Worry over Child Laws' *Herald Sun*, 26 September 1993, p. 14

145 *ibid*

146 Greig D (1995) 'Reservations; Equity as a Balancing Factor?' 16 *Australian Year Book International Law* 21:21-172, p. 29

contrast to what could be expected from parties to CROC, no objections were made to the procedure.¹⁴⁷

9.78 It could be argued that there is a great difference in making reservations to a multilateral trade agreement compared to human rights treaties. The latter is intended to reinforce the universality of human rights norms.¹⁴⁸

In regard to human rights treaties, such as CROC, there are some variations on the above general rules, at least in relation to the issue of invalid reservations. While it is unclear generally as to the legal effect of an absence of objections by other states to an invalid reservation, there is little impetus for a state to object to such a reservation in a human rights treaty. This is primarily because of the lack of the element of reciprocity of human rights obligations between States ... the states can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other states, but towards all individuals within their jurisdictions ... the HRC [United Nations Human Rights Committee] notes that the general rules on reservations given above are inadequate in relation to human rights treaties because "states have often not seen any legal interest in or need to object to reservations".¹⁴⁹

Lodging objections to reservations by other States Parties

9.79 The reservations and declarations by other countries fall into two main categories: those conflicting with Islamic law and those based on conflict with domestic legislation, including constitutions, or both.¹⁵⁰

Perhaps the most important function of making objections to reservations is a symbolic one: a public statement that one state party to the treaty concerned considers another's reservations to breach the object and purpose of the treaty. This can contribute to international pressure on the reserving state to rethink and modify, or withdraw, the reservations.¹⁵¹

147 Charlesworth and McCorquodale, Supplementary Submission No. 92a, p. S 2566

148 see Schabas, W 'Reservations to the Convention on the Rights of the Child', *Human Rights Quarterly*, 18, 1996

149 Charlesworth and McCorquodale, Supplementary Submission No. 92a, p. S 2566

150 Human Rights Council of Australia Inc, Submission No. 284, p. S 1698

151 Charlesworth and McCorquodale, Supplementary Submission No. 92a, p. S 2569

9.80 Of the 68 countries that have added reservations and or declarations, objections have been made to these in relation to 21 member states.¹⁵² Reservations that violate the object or purpose of the treaty, at international law, are considered invalid.¹⁵³

9.81 It was suggested that Australia should have been more active in lodging objection to reservations by other member states in relation to human rights treaties.¹⁵⁴ It was also suggested that the Government should use its diplomatic channels to encourage those states with reservations to withdraw those which you feel are appropriate.¹⁵⁵ Professor Charlesworth believed that reservations eat away at a human rights regime and countries such as Australia which have reputations as good international citizens should be more proactive in objecting to reservations when appropriate.¹⁵⁶

9.82 The Human Rights Council of Australia also suggested that Australia could request information from the relevant authorities to determine the extent to which Shariah law conflicts with the Convention in some countries.¹⁵⁷ They acknowledge the sensitivity of this approach and that Australia has no special relationship with some of these countries¹⁵⁸

9.83 The Committee notes that Tunisia has a declaration in relation to incompatibility with their Constitution, but that Tunisia was provided as an example of practice which exceeded the principles of the Convention. Accordingly, the Committee does not believe that it would be appropriate to lodge objections without a detailed knowledge of the policies and practices of each country that has a reservation. The Committee also notes that some other countries have signed the Convention without reservation and still have practices which contravene the Convention. The Committee believes that Australia could leave itself open to international criticism because there are still breaches of the Convention in this country.

9.84 Other possibilities include seeking an Advisory Opinion of the International Court of Justice on the validity of certain reservations,

152 *The Convention on the Rights of the Child* http://www.un.org/depts/treaty/final/ts2/newfiles/part_boo/iv_boo/iv_11.html

153 Charlesworth, Transcript of Evidence, 29 April 1997, p. 174

154 *ibid*

155 Frankovits, Transcript of Evidence, 9 May 1997, p. 354

156 Charlesworth, Transcript of Evidence, 29 April 1997, p. 174

157 Human Rights Council of Australia Inc, Submission No. 284, p. S 1699

158 *ibid*

amending the Convention to prohibit specific forms of reservations, or to pursue a course which would enable the United Nations Committee on the Rights of the Child to have the power to determine the validity of reservations.¹⁵⁹

9.85 The Committee believes that it may be more appropriate for Australia to set an example by withdrawing its own reservation and using any diplomatic opportunities that are available to encourage other countries to do the same.

Amending the Convention

9.86 Amendments are also allowed under Article 50 of the Convention. These can be initiated by any State Party to the Convention and a conference of states is called if one-third of the parties agree. If a two-third majority support the amendment it becomes binding on those states who accepted it.¹⁶⁰ This is a difficult process, and requires a large measure of support in the international community.

9.87 An amendment has been proposed to increase the number of United Nations Committee on the Rights of the Child members from 10 to 18.¹⁶¹ It was suggested that any industrialised country whose government opposed the Convention or sought amendments, would be an international laughing stock and that there would be trade implications.¹⁶²

Australia's international role

9.88 This Inquiry has focused on the domestic ramifications of ratifying the *Convention on the Rights of the Child*. The Committee is very aware that by becoming a member State, however, there are significant obligations on Australia to assist children throughout the world. The Convention is framed in a way which allows States Parties to be concerned with the rights of children in other countries. There are a number of opportunities for Australia to be proactive in the international arena.

159 Charlesworth and McCorquodale, Supplementary Submission No. 92a, p. S 2569a

160 Article 50

161 Department of Foreign Affairs and Trade, Submission No. 134, p. S 738

162 Lombard, G 'The trouble with treaties', *The Canberra Times*, 16 October 1996, p. 13

Humanitarian Aid

9.89 Ms Mason stated that:

The convention requires Australia and all the countries that are in a better position, for lack of a better word, to assist countries by way of international cooperation in the upliftment of standards so that they themselves can reach those basic minimum standards that are required by the convention. You are expected to use your resources to that end.¹⁶³

9.90 Ms Mason also made the comment that:

Article 4 of the convention obligates Australia to use its resources to the maximum extent possible, even in relation to international cooperation. That is an obligation that Australia has agreed to. As my colleague says, in making an interpretation of the extent of your maximum resources - even in the area of international cooperation - you can make that determination as to whether, if you discover, for argument's sake, that there is a particular retailer who is selling goods that are being made by children in the Asian subcontinent, you are going to black - list that particular merchant or retailer and lobby or do something about it. It is left to Australia in that area. If the committee is apprised of any such situation occurring and that in Australia you are getting those goods, we would draw it to your attention and make the suggestion or recommendation that you look into the situation.¹⁶⁴

9.91 Australia is providing a decreasing proportion of its Gross National Product for overseas aid.¹⁶⁵ World Vision Australia submitted that less than 10 per cent of all international aid went to child focused schemes.¹⁶⁶ The Committee notes that it is difficult to estimate the proportion of Australian Aid that is directed specifically at children because other programs may have a direct or indirect effect, such as the community development programs.¹⁶⁷ Australian Reproductive Health Alliance stated that:

in the 1996/7 budget overseas aid was cut by 10% which was 4 times the average of 2.5% cut across the budget. Our overseas aid budget fell to 0.29% of GNP which is our lowest level ever and is well below the OECD average of 0.41% of GNP and the UN target of 0.7% of GNP.¹⁶⁸

163 Mason, Transcript of Evidence, 3 September 1997, p. 1537

164 *ibid*

165 Walker, Transcript of Evidence, 9 July 1997, p. 934

166 World Vision Australia, Submission No. 135, p. S 805

167 Crighton, Transcript of Evidence, 10 July 1997, p. 953

168 Australian Reproductive Health Alliance, Submission No. 121, p. S 607

9.92 World Vision Australia believed that Australia is moving away from its obligations and that Australia could do more to alleviate child poverty domestically as well as internationally.¹⁶⁹ The Catholic Women's League (Archdiocese of Canberra and Goulburn) believed Australia should provide more overseas aid to lift the living standard of children in less privileged countries than Australia.¹⁷⁰

9.93 The Australian Council of Overseas Aid commented that:

The conditionality of aid is an important ethical question for Australia but, in general, we should view human rights as being indivisible. That means that civil and political rights, economic and social cultural rights, are all equal. Often there is a call for withdrawal of aid when civil and political human rights are abused. But that withdrawal in itself would affect economic and social human rights. So you have to take each case on its merits, but in general you would have to say that we should not be withdrawing aid from countries that violate human rights in the case of rights of the child. Perhaps there are other diplomatic means of making our concern known.¹⁷¹

9.94 In the concluding observations on Australia the United Nations Committee on the Rights of the Child encouraged:

the State Party to allocate funds in its international cooperation programmes and schemes for children. The Committee also encourages the State party to use the principles and provisions of the Convention as a framework for the programme of international development assistance.¹⁷²

Noting the long-standing efforts made by the State Party in the field of international cooperation, the Committee would like to encourage the State Party to achieve the 0.7 per cent target for international assistance to developing countries.¹⁷³

9.95 Plan International Australia expressed the view that:

Since the enactment of the Child Sex Tourism Act 1994, given that its clear moral and legal intent is to apply the same high standards of moral conduct to the behaviour of Australians overseas as those which are appropriate at home, it is clear that the reading of the term *appropriate* in

169 Walker, Transcript of Evidence, 9 July 1997, pp. 934-5

170 Balnaves, Transcript of Evidence, 29 April 1997, p. 201

171 Purcell, Transcript of Evidence, 10 July 1997, pp. 996-7

172 United Nations Committee on the Rights of the Child, *Concluding observations Australia* (CRC/C/SR/403-405), 24-25 September 1997, p. 4

173 *ibid*, p. 1

article 4 of CROC provides the Commonwealth with the opportunity to apply similar proscription or regulation, or at least an adequate program of education vis the behaviour of Australians overseas, with respect to the environmental and labour rights of children in countries other than Australia.¹⁷⁴

Child labour

9.96 Save the Children Fund Australia commented that:

In January 1996, Save the Children called on Australian firms to sign ethical sourcing agreements, whereby they agree not to deal with suppliers who exploit children. At the time only two Australian firms signed the agreement - Ken Done and Target ... Globally, an estimated 73 million children are forced to work for their survival. As a major importer of overseas merchandise and produce, Australia has an obligation to ensure that it is not supporting child bonded labour.¹⁷⁵

9.97 Myer-Grace Bros returns a percentage of the proceeds from the sale of rugs to help children who were formerly exploited in child labour making rugs to get into school.¹⁷⁶ Target Australia has entered into an agreement with the unions here about their manufacturers.¹⁷⁷

9.98 Senator The Hon Bob McMullen, then Minister for Trade commented that child labour is fundamentally a result of poverty which should be addressed and trade sanctions may make this situation worse.¹⁷⁸

9.99 The Joint Standing Committee on Foreign Affairs, Defence and Trade recommended that the Australian Government examine the possibility of enacting legislation to prohibit the engagement of Australians or Australian companies in exploitative child labour in other countries and the import into Australia of goods made by exploitative child labour.¹⁷⁹ The Joint Standing Committee on Treaties supports this recommendation.

174 Plan International Australia, Submission No. 150, p. S 992

175 Save the Children Fund Australia, Submission No. 80, p. S 393

176 Gow, Transcript of Evidence, 9 July 1997, p. 932

177 *ibid*, p. 933

178 McMullen, Questions Without Notice, Child Labour, *Senate Hansard*, 20 September 1994, p. 969

179 Joint Standing Committee on Foreign Affairs, Defence and Trade (1995) *Improving but ...: Australia's regional dialogue on human rights* The Parliament of the Commonwealth of Australia, p. 107

Environmental impacts



Children should have a clean environment

Ally McDade, 10 years, Raquel Redmond Art for Children, Brisbane



Children living in a clean environment/ Children living under bridges

Analiese Moore, 8 years, Raquel Redmond Art for Children, Brisbane

9.100 Plan International Australia believed that the Government needs to legislate and educate Australian companies operating overseas of the sorts of environmental impacts they may have on children.¹⁸⁰ Plan International Australia commented that:

The environmental rights of children under CROC are established under articles 24, 26, 27 and 31, insofar as the environment - natural or built -

180 Crighton, Transcript of Evidence, 10 July 1997, p. 950

within which a child lives, plays, and upon which he/she depends for their and their families livelihood, health and wellbeing is or may be affected by the activities of others.¹⁸¹

The Committee's views

9.101 Barnen suggested that for a progressive country, ratifying a human rights convention is simply a first step. It 'legitimises a more deep-going discussion' within the community.¹⁸² The Committee does not believe that Australia has effectively implemented the *Convention on the Rights of the Child*. There is a need to inform the community of the principles in the Convention and to improve the existing legislative and administrative arrangements. Of particular concern are examples in the juvenile justice system where the Convention is being contravened. There are a number of steps Australia needs to take and these have been presented throughout this Report.

9.102 The Committee is concerned at the extent to which Australia parents believe that the Convention is anti-family. Therefore, we recommend that as a matter of priority, the Government develop a set of declarations stating the Government's support for the family unit. As this approach will strengthen the principles incorporated in the Convention, it should be welcomed by both those who believe that the Convention is pro-family and those who are concerned that it is not profamily.

9.103 The Committee supports the view that it would be beneficial for the Government to clarify its position by making declaratory statements in relation to the principles of the Convention and which appropriately recognised parental rights. We believe that this approach may negate the criticisms of the treaty and would reinforce the balance between the best interests of the child and the appropriate interests of the parents.¹⁸³

9.104 The Committee believes that to denounce the Convention with the view of reratifying it with reservations would do significant harm to Australia's international reputation. We believe that the resources involved in taking this step could be better used to assist Australia's disadvantaged children and families. Accordingly we believe that making declarations

181 Plan International Australia, Submission No. 150, p. S 992

182 *NGO Work for the Implementation of the Rights of the Child*, Radda Barnen, Stockholm, 1994, p. 4

183 Triggs, Transcript of Evidence, 10 July 1997, p. 1017

outlining the Government's support for the family unit is the most appropriate option.

Recommendation 49

The Joint Standing Committee on Treaties recommends that the Government lodge declarations in relation to the controversial Articles of the *Convention on the Rights of the Child* to ensure appropriate recognition of the rights and responsibilities of parents in raising their children.

**W L Taylor, MP
Chairman**