COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

MELBOURNE

Wednesday, 9 July 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Mr Tony Smith
Senator Neal	Mr Truss
Senator O'Chee	Mr Tuckey

For inquiry and report on -

1. the domestic ramifications of Australia having ratified the Convention;

2. Federal and State progress in complying with the Convention;

3. the difficulties and concerns arising from implementation in its current form;

4. possible inconsistencies between domestic jurisdictions and the need for agreed national standards;

5. the need for a mechanism to promote, monitor and report publicly on compliance and to implement public consultation processes;

6. the adequacy of the administrative, legislative and legal infrastructure in addressing the needs of children;

7. the adequacy of programs and services of special importance to children; and

8. any further action required in relation to the Convention.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

MELBOURNE

Wednesday, 9 July 1997

Present

Mr Taylor (Chairman)

Senator Bourne
Senator Cooney
Mr Tony Smith

The committee met at 8.42 a.m.

Mr Taylor took the chair.

NOLAN, Ms Frances Anne, Detention Worker, Australian Red Cross, 171 City Road, Southbank, Victoria

WALSH, Ms Kathleen Ann, Coordinator, Tracing and Refugee Services, Australian Red Cross Victoria, 171 City Road, Southbank, Victoria

CHAIRMAN—I formally declare open this hearing. For the benefit of the large audience, we have received about 400 written submissions to date. We have had over 1,200 inquiries about these hearings into the UN Convention on the Rights of the Child. We are having a wide range of issues raised with us. The perceptions of 1988-89—before this convention was actually ratified—still obtain in a lot of quarters, and a wide range of views, some fairly emotional and emotive ones, persist.

We have already taken evidence in Canberra, Brisbane, Sydney, Perth and Adelaide. Today and tomorrow we will be taking evidence in Melbourne. We hope to continue to receive submissions for the next three months, after which we need to make some recommendations to the parliament.

Resolved (on motion by Mr Tony Smith):

That the committee authorises the publication of submissions Nos 135, 142, 152, 183, 185, 201, 212 and 215.

Would you now like to make an opening statement?

Ms Walsh—In our written submission to this committee, the mission of Red Cross is outlined, as is a very brief history and structure of the Red Cross in Australia. Today we are representing the Australian Red Cross, where our submission came from, but we will be drawing on our knowledge, skills and experiences in working for the Victorian division to answer any questions that you may have.

The submission from the Red Cross comments on the rights of children in three areas of Red Cross's work: international humanitarian law, the asylum seekers assistance scheme and immigration detention. Our particular area of interest and expertise is in detention, and we are appearing today to answer any questions you may have in relation to this aspect of our submission. Whilst unable to comment on either the international humanitarian law or the asylum seekers programs, we would be happy to take any questions you may have on notice.

Three divisions of Red Cross in Australia provide services to people detained in immigration detention facilities. The divisions in Victoria, New South Wales and Western Australia deal with facilities in Melbourne, Sydney and Perth and in a much reduced way, with limited capacity, at Port Hedland processing centre. In those detention facilities we

provide the Red Cross message and tracing services as well as a range of other support services to individuals and families. Our submission draws on the experience of providing these services.

As our submission highlights, Red Cross is concerned that the rights of children are not being totally met in detention facilities—neither in terms of the physical environment for children nor in terms of the support services being provided to families. We have two additional comments to make regarding our submission, and then we hope we can be of assistance in answering any questions you may have.

Ms Nolan—I would like to address the committee regarding children held in immigration detention in Australia. I will do this by responding to questions 35 and 36 of the questions provided by the committee to witnesses regarding the United Nations Convention on the Rights of the Child. This shall be done by reference to articles 37(b) and 39 of the above convention.

The evidence given today and in the previous Australian Red Cross submission to the committee on immigration detention is based on the experiences of the Red Cross worker in Sydney and myself. We both visit the immigration detention centres on a weekly basis in our respective cities.

I will begin with question 35, which asks: to what extent is the government policy towards refugee children consistent with the principles of non-discrimination, best interests of the child, the right to life, survival and development, and respect for the views of the child?

In reference to article 37(b), the United Nations Committee on Human Rights recently found that the Australian government practised arbitrary detention towards Cambodian asylum seekers in the Port Hedland processing centre. Children were featured among this group.

With reference to article 39 of the convention, Australian Red Cross does not consider an immigration detention centre an environment which fosters the health, self-respect and dignity of the child. Briefly, Australian Red Cross workers in detention have observed the following effects of the detention environment on child: loss of appetite and interest in playing, aggression and blame directed towards parents, withdrawal from or over-dependency on parents, slow speech development, uncontrolled crying, and slow response to stimulation.

There is a lack of outdoor play equipment in both the Sydney and Melbourne centres. In Melbourne, access to the large grassed area is normally restricted to approximately one or two hours a day, which does not sufficiently allow children to express their frustration and confusion in a relatively healthy manner. Nor does the centre allow respite from the children, as a smaller main recreation area is directly in front of the

family sleeping area.

Continuing with article 39, in neither the Sydney nor the Melbourne centres are there organised or supervised recreation activities outside school. This is especially problematic if the children are not of school age, if it is school holidays, or if the children vary widely in age. These things decrease the probability of spontaneous play, as does the existence of a single child or a sole child from a specific ethnic or language group.

A proposal for a playgroup using volunteers with assistance by Australian Red Cross and church groups in the Villawood centre, Sydney, was rejected last year by the Department of Immigration and Multicultural Affairs. There is no respite care available for families with small children, and no family specific counselling or support services.

The physical layout of the Melbourne and Sydney centres provides an inappropriate environment to house families, especially for periods of many months. The family areas in the Melbourne immigration detention centre are single rooms with ensuites. There is no privacy for either adults or children. Parents often transfer their distress inadvertently to their children—for example, by the children overhearing their parents' concerns about their family refugee claim.

The detention environment leads to changing roles for parents and children. The powerlessness of the parents and their disorientation and confusion is witnessed by the children, who often take on this anxiety and express a desire to fix things or to vent their anger at a situation or country they do not understand. The parents' inability to control the family situation, to answer questions about their future, or secure the family's release, add to the children's disorientation and distress.

Question 36: what measures have been taken to avoid asylum seeking children from being kept in custody while they await deportation? In this connection, what rules, regulations or guidelines exist to ensure that detention is used only as a measure of last resort and for the shortest appropriate period of time, as provided for in article 37(b) of the convention? What mechanisms exist to monitor such detention if it exists? What alternative solutions have been developed to avoid the use of detention in such circumstances?

With reference to questions 35 and 36, asylum seeking children who do not have a valid visa are the only group of children in Australia who are mandatorily incarcerated. Asylum seekers who enter the country with a valid visa and then lodge a protection visa application are not detained. This policy appears contradictory to the principle of non-discrimination. Immigration detention is mandatory for all unauthorised arrivals from arrival and detection to deportation. This practice included long-term detention for children from birth up till 18 years of age. The release of the family unit on a temporary visa until the asylum claim is determined is not allowed under the current policy. Children under 18 years may be released without the parent accompanying their release. A survey of the

literature would support the principle that a child from a different culture and with a previous traumatic experience would prosper more in an environment that included his or her family.

An alternative detention model to that currently practised in Australia has been submitted to the minister, but has yet to be commented upon. The report outlines the system of detention in three stages, according to the level of security necessary. No mechanisms currently exist to monitor detention of individual children and adults in Australia. Thank you for your attention. I am happy to answer any questions that the committee may have.

CHAIRMAN—Thank you very much. In the previous government's ratification of this convention in December 1990, there was one reservation that was produced by the government and that was in relation to article 37(c). Does the Red Cross have a policy view on that reservation? Was it an appropriate reservation? Implicit in what you are saying is that you do not support that reservation. Basically, it is saying that, because of demographics and geographic requirements, it is unavoidable that in some cases children will be incarcerated—if that is the right word—with adults.

Ms Nolan—As far as I am aware, the alternative model that is in front of the minister does accept the necessary detention of children, but for a maximum period of three months. I think that the Red Cross would follow this line: that it is necessary to determine the identity of the child and indeed the adults, but after an initial period of three months, after the necessary security checks have been done, that a child should be released with the family unit.

CHAIRMAN—My second question at this stage is in relation to recruitment in the Australian Defence Force, in terms of those under the age of 18. Your submission has indicated that, whilst it has been brought up from 16 to 17, you would like to see the age lifted from 17 to 18. Firstly, is that a realistic recommendation in the light of contemporary Australia? Secondly, what is the record of other countries? Are you aware of what other countries have done in relation to the age set for service in defence forces?

Ms Walsh—It is one of the areas I am not qualified to comment on. However, there is an international humanitarian law conference in Melbourne this week, and this question was raised yesterday. It is my understanding, based on what is known about child soldiers being recruited into armies throughout the world, that the Red Cross's position is to raise the age limit to 18. However, I can take the question about whether it is a realistic expectation in today's climate to our international humanitarian law people and get back to you on that.

CHAIRMAN—That is fine. My observation would be anecdotal and otherwise would be that most Australians would oppose the boy or girl soldier approach which you see in many other countries, unfortunately. But that is not what Australia involves itself in.

The reason I asked the question was to ascertain whether that recommendation by the Red Cross is unrealistic in terms of Australia's contemporary needs. You are taking it on notice.

Ms Walsh—Yes.

Mr TONY SMITH—Just looking at some of the examples of the administration of the ASAS scheme, are you able to help with that?

Ms Walsh—We know a little about it but I think there are more qualified people to comment. If it is an easy one, I can answer it. If not, I would be happy to get back to you on that.

Mr TONY SMITH—On page 6 of your submission, you say that in September 1996, Red Cross was advised by the department of further changes. You say:

As a consequence of this decision, the Red Cross has all but withdrawn from the exemption process as it feels that the 'tighter' guidelines are unacceptable from a humanitarian perspective.

Can you just explain what you mean there?

Ms Walsh—It is probably a question I should get further clarification on. My understanding is that there has been in the past some capacity to assess claims as exemptions for people who may not currently meet the criteria for the asylum seeker assistance scheme. The guidelines for that were tightened to a degree where I believe that they became discriminatory and contravened what Red Cross saw as acceptable in a humanitarian way. I think that is the basis of that. But the actual specifics of it, I can get back to you on.

Mr TONY SMITH—This is probably a question to Ms Nolan. What number of people are you seeing at the centres? There are two centres in Melbourne, are there?

Ms Nolan—No, there is one centre in Melbourne in Maribyrnong or Maidstone. Is the question how many children or how many in total?

Mr TONY SMITH—How many people altogether and then how many children.

Ms Nolan—At the moment, there is one child and one woman who is eight months pregnant, so she will give birth next month. I have been involved in the centre for nearly two years. Last year there were 13 children at one point, and those children varied from mid-teens to newborn. With the adults, at the moment it is quite full. I would say that there are approximately 65—I think the maximum the facility can hold is 70 people.

Mr TONY SMITH—Are these people who have overstayed visas? Where have

they come from?

Ms Nolan—Most people that are detained in Melbourne have entered the country without a valid visa and are apprehended at the airport. The majority of these people will lodge protection visa or refugee applications. A minority are apprehended in the community violating visa conditions or overstaying visas, working when they should not be—those sorts of things. They are taken from the community, put into the immigration detention centre and then deported or given another appropriate visa.

Mr TONY SMITH—You explained something about how the proposal for play was rejected. What was the basis of the rejection?

Ms Nolan—That was in the Sydney centre. I am the Melbourne worker, but my communication with the Red Cross worker is that her concerns were that the children were under-stimulated. I think she, together with the National Council of Churches, put together a proposal to the Department of Immigration and Multicultural Affairs that some sort of voluntary play model should be set up. Immigration said no. I am not actually sure why, but I can get back to you on that, if you would like.

Mr TONY SMITH—I wouldn't mind getting something.

Ms Nolan—Certainly.

Mr TONY SMITH—From your experience working in this centre at Maribyrnong, are there circumstances where you believe the children's best interests, if you can possibly look at it broadly, are being undermined by the nature and restrictions involved in the detention? Are you able to look at it broadly?

Ms Nolan—On the whole their best interests are undermined by the detention environment. It is okay for some people. Earlier this year there were some 17½-year-old males who did not want to be released because they had friends in the centre and they had no community support. For them it was better if they stayed. But for the majority of children, especially the younger ones, they are under-stimulated. I have observed that they are under-stimulated. They become very anxious. They do not sleep and the parents are unable to carry out normal parenting to these children. For example, if the child is hungry, the parent cannot feed it unless it is the appropriate meal time to do so. Just small things like that are against—

Mr TONY SMITH—Is there an alternative?

Ms Nolan—Yes, there is an alternative detention model currently before the minister. It was put together by the Refugee Council of Australia, the University of New South Wales and Nick Poynter from the Human Rights and Equal Opportunity Commission. It outlines three stages of detention. The first one is closed detention, based

on a similar model to what we have now. Once the identity is established and security checks are done, the people can be released either coming back at the end of the day to sleep at the centre, but spend their days away.

Mr TONY SMITH—Like a bail, a curfew type situation?

Ms Nolan—Yes, it is like a curfew situation. If the parents are lucky enough to find work they can pay for their board and lodging at the centre, but still be free during the day to move about and the children can engage with other children. Then the final stage of this detention model would be that they do not sleep at the centre at all.

Mr TONY SMITH—I have raised this matter with the minister generally and if you have any specific examples, I would be pleased to get them because he asked me if there were specific examples of problems.

Ms Nolan—Specific examples of problems with children at the centre?

Mr TONY SMITH—Yes. Perhaps off the record you could talk to me about that.

Ms Nolan—I am aware of the existence of a case that I am quite concerned about currently in the Villawood centre in Sydney. The case involves a woman and her child. Initially it was the mother, father and the child. But as you may be aware, in Sydney there are two stages. There is the maximum security stage, stage one, and then there is the minimum security stage, stage two.

The family unit were originally in stage two. The father subsequently escaped from immigration detention so the mother and child were moved up to the maximum security wing because it was thought they would escape as well. The mother is under a lot of stress. She has repeatedly asked for assistance in parenting. She does not know where her husband is. She is facing return to her country of origin. The child is not sleeping and is not eating properly. The child must crawl about on a floor full of cigarette butts. People are walking around the child.

Mr TONY SMITH—This is at Villawood, is it?

Ms Nolan—This is a 16-month-old girl.

Mr TONY SMITH—Where is this?

Ms Nolan—Villawood, in Sydney. Red Cross and the Human Rights and Equal Opportunity Commission in Sydney have both approached the department to get this child and the mother sent back to stage two. Immigration has said no, that the risk of escape is too great. I think that is reason to be concerned because a 16-month-old child is in maximum security.

CHAIRMAN—What nationality is involved?

Ms Nolan—They are Nigerian.

CHAIRMAN—As an observation, we thank you as a committee for your support for our fifth report in terms of anti-personnel landmines. That is with the government at the moment as to how they might see the recommendations. But is there anything else, apart from the ratification of protocols II and IV which are involved in that report, that the government or others might be doing in terms of what is an absolute scourge—the tragedy of anti-personnel landmines?

Ms Walsh—I will have to take that on notice.

CHAIRMAN—Okay. You might also want to take this question on notice. At the end of your submission you talked about legislative and administrative changes regarding detention. Does the Australian Red Cross have a view on the wider legislative and administrative measures in terms of the implementation of this convention? I am asking whether the Australian Red Cross sees the need for some sort of umbrella legislation, some federal legislation, to reflect the convention. Is a lot of it more appropriate to states? For example, does the Red Cross support the concept of a children's commissioner and, if so, what sort of a commissioner? These are obviously things that you might more appropriately want to take on notice, but we would be interested in a Red Cross view.

Ms Walsh—Yes. Thank you.

CHAIRMAN—Is there anything else you would like to tell us before you leave?

Ms Nolan—Yes, Mr Chairman. I would like to go back to the best interests of the child in immigration detention. Last year there was a Somali family in Maribyrnong detention centre in Melbourne. They were detained for six months. There was a mother and four children—three boys ranging from mid-teens to about five or six, I think, and there was a young girl. The mother had to spend six months in one room with all of these children. The children were becoming quite aggressive. They were from Somalia, which I am sure you are aware was a very traumatic place to be, and the children were exhibiting symptoms of pre-detention trauma. I found that that was very much against the best interests of the child and, indeed, the mother.

Mr TONY SMITH—Again, you would say that there is a model to fix that by maybe looking at a curfew type situation?

Ms Nolan—Indeed. I think that the family unit could have been released into a more appropriate environment or, if that is not possible, to get more support. The mother was given no support from external sources through DIMA.

Mr TONY SMITH—So if a person was released on a daily basis with a curfew in the evening and had to report in the middle of the day, particularly where children are involved and at a school, then obviously that is a way that the authorities could keep a fairly close eye on them but at the same time give them the sort of liberty that would improve the overall position of the children.

Ms Nolan—The boys were going to school but the mother was never taken out of the centre, nor was the young girl. I think that a day release in that instance would be far more appropriate than closed detention.

Ms Walsh—One final issue around detention at the moment is that the detention facilities are being tendered out to private organisations for the complete management and day-to-day maintenance of the centres. We do not know at this stage what that means in terms of the provision of health and welfare services within the detention centres for anyone there: children, families, individuals. It is an unknown outcome in the next couple of weeks, we expect.

CHAIRMAN—Thank you very much for your evidence. If you could take those four or five questions on notice, we would be very appreciative of your response to them.

[9.10 a.m.]

MOORE, Dr Timothy Gerard, Vice President, Australian Early Intervention Association Inc. (Victorian Chapter), PO Box 1068, Carlton, Victoria 3053

SWALWELL, Mrs Janene Margaret, President, Australian Early Intervention Association Inc., PO Box 4752, North Rocks, New South Wales 2151

CHAIRMAN—Welcome. We do not have a written submission from you. Are you going to table that today?

Mrs Swalwell—We would like to speak to our submission. We are in the process of organising that the submission be taken to our national organisation at its next forum, which will be in early August, after which stage we will table it.

CHAIRMAN—That is fine. Would you like to make an opening statement?

Dr Moore—What we need to do is to introduce early childhood intervention as an area. Our specific field represents young children with developmental disabilities—that is, children below school age—their families and the people who work with those children. This association has as members parents and professionals. The national association has chapters in every state.

CHAIRMAN—That is all preschool, is it?

Mrs Swalwell—Children who are between nought and six years of age; so between birth and school age.

CHAIRMAN—Thank you.

Dr Moore—And who have developmental disabilities. We are looking at the specific supports for those children. The forms of support that are provided to those children are designed to intervene early in the lives of children in order to take advantage of that period of greatest malleability or developmental growth and to offset to whatever extent possible the effects of the disability on a child. Therefore, by the time they reach school, they are to the least extent possible disadvantaged by their disability.

The services are also designed to benefit the families and support the families in ways that also help them adapt to the business of meeting the needs of their child. A variety of specialist services is provided by a multi-disciplinary team of specialists, but it also involves the provision of generic support services for the inclusion of children with disabilities into mainstream settings which might be child care, play groups, kindergartens and the like. We do have a definition and a couple of documents which we can table at this point.

CHAIRMAN—I do not think that is altogether necessary, given what you have outlined in the introductory comments. You could embody that in the written submission in due course.

Mrs Swalwell—Yes, we can do that. Our written submission will talk specifically to many of the questions that have been raised by the committee, but in our presentation today we thought we would highlight some areas of concern.

Broadly, there has been an enormous development in services for children with disabilities throughout Australia in the past 30 years or so. There has been a huge growth in services. Certainly early intervention services were largely not in existence 30 years ago, which is why we need to explain to committees what they are. We have great concern nonetheless that there are many areas which require further development.

We would like to talk to five major points: the area of national policy and national development of coverage of services; the area of service coverage generally throughout Australia; the cost-effectiveness of services and a service model called family centred practice that we believe has great evidence of effectiveness; issues around inclusion of children with disabilities in the community; and some general health issues.

Going back to the national policy issue, the Early Intervention Association has a great concern that there is really limited coordination and planning of services for children with disabilities throughout Australia. There is no national data about the incidence of these children. We would expect, from international research, that we are looking at perhaps three per cent of the community. But there has been very little work done to develop and to understand the situation in Australia. We would advocate that there needs to be a national strategy and we would advocate that the national parliament should be supporting the development of early intervention services through some coordination of the service system.

It is very difficult for families to find their way through the service system as it exists at the moment. It is extremely fragmented. It really does not provide for a coherent and consistent approach across states and territories. There are areas where there is good service development, but there are very many rural areas, for instance, and growth corridors where there is extremely limited service availability.

Dr Moore—The percentage of children that we think is probably being catered for by the system at the moment could be below one per cent. So there is a considerable number of children who are not receiving the kinds of specialist support services that they need in order for them to benefit from that period of development. That raises questions about the identification of those children—why they are not being picked up. It also raises questions about funding levels for early intervention services. Undoubtedly the number of children who are seeking support services is growing and the funding at national and state levels is not necessarily keeping pace with that.

Mrs Swalwell—The situation is, as you can hear, extremely difficult to quantify because the services are so fragmented and underdeveloped at this stage. Whilst there is information about service availability—for instance, in Victoria—there is simply no information in some states and territories because the service has not developed to that point at this stage. Again, we would advocate national assistance with regard to just basically getting some understanding of the incidence across Australia. Epidemiological studies would be extremely helpful in this regard.

What we do know is that the more isolated you are in terms of your rural location or being in a developing area, or if you are from a minority group, you are extremely unlikely to get access to services, particularly access to services early. Of course, early intervention is not early intervention unless we can access services as quickly as possible. There are many, many families who, having found that their child has a disability, may not get access to support services in the community for 18 months or longer. Having gone through the process, for instance, of finding that your child has autism, which is a lengthy diagnostic process, to then wait 18 months is just unacceptable, because it is an extremely critical period for promoting the child's development and minimising the impact—developing a whole communication system with somebody who is extremely unable to develop that, which is part of what autism is. It is just totally unacceptable.

Likewise, if you look at the situation with children from Aboriginal backgrounds, it is extremely concerning to find that, for instance, Associate Professor Terry Ninehouse, in a study of the Tiwi Islander children, found that the entire Tiwi Islander child population actually qualified for services for the hearing impaired in Victoria. The entire population had hearing loss of a major nature yet almost nothing has been done to assist that situation. There are some major concerns that really have significant developmental implications for our young children.

We would propose that services for minority group children are not at this stage developed to the point where they might be as user friendly as they could be. There is no service system which, for instance, at the moment encourages the development of Aboriginal services by Aborigines or the development of services through the mother and child units or through just more culturally sensitive approaches. These need to be available both for families where English is a second language and for Aboriginal children. Tim, would you like to talk about family centred practice and cost effectiveness?

Dr Moore—Yes. One of the philosophical approaches upon which early intervention services are based is an approach called family centred practice, which is basically as it suggests. It is addressing the services from the perspective of the family rather than from the professional. So it is turning the thing around. It is not that the professional determines what it is that the child should get but the services are based upon family priorities and family cultural styles and preferences.

That is, as it were, a philosophical preference on the part of early intervention

service providers but it is also a more effective way of working. That is partly because of the age of the child. Obviously, in relation to a young child's relationship with their family, the family has the most time with them. It is far more appropriate that that family be given the appropriate support and skills so that they can promote the child's development rather than it be done by outside people. But, in order for that system to work, it must be culturally sensitive to the needs of people. That kind of philosophical shift in early intervention services has taken place over the last decade and it is proving to be effective as a way of intervening.

As we mentioned at the beginning, early intervention seeks to make a difference to the child, but it also seeks to make a difference to the family. Early intervention services for children have proven to be effective. We know that, if we provide the right sorts of supports, we can make differences to the development of children so that they are less dependent upon expensive services later. If we provide the right kind of family centred support for families, we know that that support will also make a difference to families and that those families will then be in a better position to make changes for the children, help the children develop.

So the adoption of that family centred philosophy is critical to the success of early intervention services and to meeting the needs of these children and these families. Therefore, it needs to be a cornerstone of all services. That highlights an aspect which I think we need to bring out. Obviously this committee is looking at the issue of the rights of children. The adoption of a philosophical practice like family centred policy in working with children is both a rights issue, in that families deserve and need that kind of support and their children need that, and a pragmatic issue, in that it is more effective; you get better results if you intervene in that kind of way. That is an important consideration from a general community perspective as well.

Mrs Swalwell—The family centred practice is an approach which is also extremely supportive when protective issues arise. Children with disabilities, particularly young children with disabilities, can be extremely difficult to care for and extremely challenging for families. It may be that there is constant whining or there are difficulties in terms of the child's behaviour—their activity level, their safety, disrupted sleep routines, disrupted feeding routines—and challenging and difficult issues in relation to their health.

All of these issues cause greater incidence of protective concerns for these children. At the moment there is an acknowledgment from the federal government but limited practical support for families. Family centred practice is an extremely effective way to assist in promoting the wellbeing of families as well as the wellbeing of children, and is something that we would advocate being adopted.

We would like to talk next about the inclusion issues. It is obviously extremely important for children with disabilities to be included in the community in as many ways as possible; it is their right. There has, however, been a lack of participation in child care

which has been a major concern. We are pleased to note that the Commonwealth government has done something about this recently in terms of the special needs subsidy scheme, which is being implemented at the moment. This will enable more children to participate in child care.

However, we still believe that the whole question of the quality of child-care service provision needs to be monitored very carefully to ensure not only that these children are given access to gain inclusion in child care but also that the child care is of sufficient quality to promote their wellbeing. In terms of their wellbeing generally, these children are far more vulnerable than other children to environmental problems occurring. Child care has not been necessarily of the highest quality in the past, and we would be very concerned if these children were simply being included without there being adequate quality.

In terms of preschool children, at the moment the Commonwealth government provides supplementary funding that supports children's inclusion in preschool. However, this funding, whilst it has been increased very slightly over the past few years, caters in fact for only the highest-needs children. So in Victoria about 0.5 of a per cent of children actually attract funding for support into preschools. Those children only get funding, in terms of special needs assistance aids, for about half of their time in preschools. This effectively means that even these children either do not access the preschool for half of the time or they find that their families are seeking assistance elsewhere through the community, or through their own pockets, to fund the additional support that is required.

It is of critical importance that more children than just this very small number actually get access to preschool support and that more preschool support is available. The 0.5 of a per cent of children who get this support would probably in almost all cases require 100 per cent support to be able to fully participate in and benefit from the preschool experience as we would want.

Next we want to talk about some general health concerns. Broadly as an issue, hospitals are very poorly designed for young children with disabilities. They are not well designed for children in any case, but young children with disabilities are extremely vulnerable in hospital situations. These days most of our families find themselves providing full-time care for their child in hospital as the only satisfactory way to protect their child and to ensure that knowledge of their child's disability and its implications are conveyed to medical staff. There are instances—too many—of children with disabilities being vulnerable and sustaining burns and other injuries in accidents in hospitals because of their vulnerability.

So we have concerns about the increasing need for commuity support associated with children with more complex, long-term health needs being catered for in the community. Families that have a child on permanent oxygen, requiring periodic resuscitation, requiring rectal valium or requiring other complex forms of medical support

are on their own in the community without adequate back-up supports being organised and available.

There is the beginnings of these supports in metropolitan areas, but they are very difficult to obtain in rural areas. There is certainly limited support if you happen to be of a minority group. So there are some very complex issues developing in this regard.

The child disability allowance, which was mentioned specifically by the committee, is an area where we have some major concerns. We note that the federal government is proposing to change the allocation of the child disability allowance in July 1998 to one in which there is a distinction between a child's eligibility for a child health care card, for the child disability allowance or for both.

We note that the consultants that provided this recommendation specifically indicated to the Commonwealth that they felt there would be financial savings to be made by this means. We have very great concerns. We recommend that there be substantial monitoring of these changes because we are not aware of many instances, if any, of children accessing the allowance where they did not need it. We are really concerned that a change in, and the restriction of, funding may actually lead to families being very seriously disadvantaged.

We have concerns that the proposed modification of the child disability allowance appears not to allow families access to that allowance until the children are over six months of age. At the moment families find it difficult to access the allowance if their baby is in hospital, for instance. It is an extremely expensive time for a family if you have a baby in hospital, have child care for other children and are travelling backwards and forwards providing the care and support that we are trying to indicate is necessary.

There needs to be greater access, not less, to the child disability allowance early for some families. Certainly, the designated disabilities criteria which are set up under the child disability allowance may well also lead to some families finding it very difficult to access the child disability allowance. Certain disabilities will be readily described as ones where the child would get access to the allowance, but, for instance, if your child is in the process of being diagnosed for autism, it is a very lengthy process. We would hate to see the situation where those families found it extremely difficult to access the allowance until such time as the full disciplinary assessment had been undertaken.

CHAIRMAN—We are running out of time. You have raised a lot of issues there—others have to. We could take a lot of time taking those up. I think we might wait for the written submission. We have the oral evidence here this morning. We could supplement that. We might have to get you back again, I do not know.

Senator BOURNE—When we get the submission, I am sure I will have a few things I would like to ask about it because I had not heard of most of this, I regret to say.

Could we send off questions to you and get you to answer those?

Mrs Swalwell—Certainly. We would be delighted to answer any questions.

CHAIRMAN—The one specific thing that you have not mentioned that we would like your views on is, in terms of administrative and legislative change, what your association sees is needed. Is some sort of children's commissioner or some sort of legislative umbrella needed? We would be very pleased to hear what you have to say on a number of those issues.

Mrs Swalwell—We certainly have views that would support those ideas, yes. We feel that would greatly enhance the coordination of the services at federal and at state and territory level.

Senator COONEY—When you are preparing your written submission, could you look at the various parts of Victoria. Is any part of Victoria worse off than anywhere else? Is Bairnsdale worse off than Portland, or is Mildura worse off than Bendigo?

Mrs Swalwell—Rural Victoria is not well served at all, generally. Rural cities are better served than farming areas, but certainly growth corridors are also very poorly served. Early intervention services grew up at a time in Victoria where there was access to funding through various sources. There has been extremely limited access to additional funding in recent times. In fact, all of the major service providers in Victoria are finding that their funds are being reduced rather than increased. They are not keeping pace with CPI or wage increases or anything else at the moment. We have major concerns about the need to spread the service system more equitably across the state but also about the need to raise the whole service system to a level that is adequate.

Senator COONEY—And within the city of Melbourne, is there any difference between the west and the east and south-east? What about Broadmeadows?

Mrs Swalwell—Yes, there are services in Broadmeadows. They have waiting lists that are one and two years long—those sorts of things—but that is so even in eastern Melbourne at the moment. I run a service in that area, and my waiting list is 12 months long at the moment.

CHAIRMAN—To back up Senator Cooney's point—and again, it was implicit in what you said—we would like to hear about minority groups, geographic differences and so on. In particular, we would like comments about indigenous people and their problems et cetera. Thank you very much.

[9.37 a.m.]

DAVIS, Mr Alan, President, Taxi Employees League, c/- Flat 6/107 Victoria Road, East Hawthorn, Victoria 3123

CHAIRMAN—Welcome. We have received your very comprehensive written submission. We will give you an opportunity to make a statement, but in terms of the specifics of the submission, do you have any amendments or additions?

Mr Davis—No.

CHAIRMAN—If you would like to make an opening statement, we would welcome it.

Mr Davis—I would like to say we are in conciliation with the forgotten generation, and I would like to add that we believe the taxi employees' children are a forgotten generation because their parents are denied the right to a fair and reasonable wage within the industry, which is against the minimum wage conditions by law. We submit that the Commonwealth and state governments' responsibility to recognise and to uphold and implement the conditions of international treaties and conventions duly signed and ratified by the Commonwealth and the states should be adhered to.

In talking to various judicial officers, I find there is a big concern about the separation of powers between state and federal governments and the separation of powers between the legislative and the judicial arms, and the rights of citizens in the legal process cannot be addressed due to lack of finance.

In a submission by the Australian Democrats to the wage and conciliation process, there is a concern about the change of government and the policy on finances, where economic rationalism has gained way over social issues. In the Democrats' submission they addressed some of those issues and looked at the change of government policy on social issues and in the area of finance. The social issues have completely given way, and the lower class of citizens is no longer being looked after. This is creating an imbalance in the social structure between the wealthy and the poor class. Therefore, the middle class, which is a pillar of society, no longer has stability within the social order.

Talking to people within the taxi industry, both within the taxi and outside, these issues seem to be prevailing. They seem to be of concern to most Australians. I think there is a concern that a class of people such as the Hanson factor are getting access when this is against the very good order and structure of Australian society.

Senator BOURNE—Let me ask you about a completely different part of your submission. You talk about children as consumers—consumers of the legal system as well as of the whole system in Australia. Would you like to elaborate a bit more on that and on

where you think children need special protection there?

Mr Davis—The issue with children as consumers is that they do not have the wisdom to understand the basic aspects of consumerism. They have been targeted by the media, especially in advertising, and unless they have parents who can guide them into safe and good products then they can be subjected to exploitation. This is our main concern.

Senator BOURNE—And that is happening at the moment?

Mr Davis—That is happening at the moment. There is no screening of the media. I notice that in the media there are more violent shows, and it is the same when you go to a video shop. The more violent these shows are, the more they seem to be targeted to children, and they seem to have an effect. I think, from a psychologist I have spoken to, that there is concern that this is poisoning the consciousness of our future generations and turning them towards violence.

Senator BOURNE—I have one more broad question, on a different topic. You are particularly concerned with children from low income families.

Mr Davis—Yes.

Senator BOURNE—Where do you think they are most disadvantaged in the scheme of things? Where is the absolute most disadvantage?

Mr Davis—It is within the care and the basic welfare and protection of the family structure. A child from a low income family probably has a denial of rights to education and to the basic necessities of clothing, housing and shelter—the essentials of life—which are essential for the welfare, goodness and growth of a child.

Senator BOURNE—Do you think there are many who are being forced out to work? You mention particularly immigrant children being exploited as outworkers.

Mr Davis—Exactly. Recently I had some dialogue with the retail sector within the Trades Hall Council. The big concern is not that the outworker is suffering. The main concern is that the companies and the directors who benefit from the exploitation are not being prosecuted. Those who are directing the control and the abuse of the child as an outworker are not being targeted. I think that there should be something within the treaty process to eliminate these people as exploiters.

Senator COONEY—You speak for the Taxi Employees League. Is it still the system that the non-owners drive the taxis on a lease arrangement?

Mr Davis—That is correct.

Senator COONEY—That is still the situation. What is the average number of hours that a person who is leasing a taxi would have to drive to make, say, $300 a week? Have you worked that out?

Mr Davis—The average is about $50 per shift, and then there is taxation from that. Under the lease agreement at the moment, taxi employees are not being paid superannuation. There is a case before the Federal Court—coming up in August, I think—to determine whether we are employees, but in the meantime there is an industry sector within Victoria which declares that we are. The big question is: why has the union that represents taxi drivers federally not implemented a workplace agreement, or at least a no disadvantage test under the lease agreement? That is my concern.

Senator COONEY—What union is that?

Mr Davis—That is the Transport Workers Union. The question arises whether under common law there is a duty of care to the employees whom they represent.

Senator COONEY—That is an action against the union?

Mr Davis—Against the union. The superannuation for employees came in in 1992. However, this taxation case has stated that superannuation would be implemented from the date of the decision. So, in the meantime, what happens to basic fairness and the judicial rights of an employer paying superannuation? If one part of the industry is above the law and has no respect for the law, then how is that going to affect other industries?

Senator COONEY—Depending on what the court decides, how much time could a taxi driver, a lessee, or an employee, be able to spend at home with the children?

Mr Davis—Very little. This causes a lot of dissent and family breakups. Some of our members have had strokes due to the excessive hours of work, and there are stress related illnesses and just basic work fatigue.

Senator COONEY—When you say $50 a shift, what is a shift?

Mr Davis—A shift can be from 6 o'clock in the morning to about 5 o'clock in the evening. Some drivers work from 4.30 a.m. until 4.30 p.m. Others do a hungry shift which can be 18 hours. So there are no limits on driving time. I have taken this up with some of the senior police commissioners and they are concerned about safety issues.

Senator COONEY—But you are concerned about the family.

Mr Davis—In this instance I am concerned about the family, but there are safety issues which have been raised. It was not until last year when I spoke to the minister and asked whether the taxi was a safe workplace and whether occupational health and safety

provisions were relevant, that he finally agreed they were. There were no OH&S provisions until recently. We have had several deaths in the cab industry. I think that there was an inquiry into the safe workplace of taxis, but many of the provisions of the report at state level have not been implemented.

Senator COONEY—How long would it take—doing the best you can because it no doubt varies—

Mr Davis—It would be about 60 hours.

Senator COONEY—Sixty hours to get what—$300?

Mr Davis—Yes, $300.

Senator COONEY—To take home $300.

Mr Davis—Yes. It can vary sometimes—

Senator COONEY—That is an average?

Mr Davis—Yes.

CHAIRMAN—With reference to your recommendation in terms of a human rights children's commissioner within the Human Rights and Equal Opportunity Commission, you also talk about judicial appointments rather than government appointments. There are various models, whether they be advisory or investigative. What is the model as you see it? What do you mean by judicial appointments?

Mr Davis—By judicial appointments I mean that he has judicial powers and can order warrants for the arrest of people who abuse children, that he has judicial functions and, if need be, he can operate a judicial court. So he has got statutory and judicial powers.

CHAIRMAN—So he would be both administrative and advisory?

Mr Davis—Administrative and advisory, yes.

CHAIRMAN—Investigative?

Mr Davis—Investigative, yes. He probably needs to report to a minister as well on an annual basis about the capacity of function of his office.

Mr TONY SMITH—I have a couple of questions about your submission. You speak of the need for a royal commission to probe caste systems, class apartheid and class

prejudices within family law. What are you actually saying there? Do you feel that in the current system there is a particular problem for children in those areas? What do you mean by that?

Mr Davis—In speaking to members of the Family Court I found that low class persons in the family law process have not got access to the judicial process. That is one concern.

Mr TONY SMITH—When you talk about the low class person—pardon my ignorance—what are you talking about?

Mr Davis—I believe that it is a person whose family wage is below $30,000. On the Henderson poverty line, I think that it is declared at $27½ thousand, if I recall rightly.

Mr TONY SMITH—Are you saying that people in that range are not getting proper access to justice?

Mr Davis—Exactly.

Mr TONY SMITH—I would have thought that the argument really is that people above that line and below about $50,000 are the people who are complaining most about access to justice because they cannot get legal aid whereas the people below that line, if no-one else gets it, are the ones that usually get it.

Mr Davis—The legal aid process has changed. Sometimes a person on a low income who has got a mortgage of the house, would have to mortgage the house to get the legal aid and then pay off the loan from legal aid. I think that it is important that procedural fairness is a major part of a judicial system. When we look at some of our major cases, such as the Chamberlain case, in the procedural process evidence can be fabricated. I know that even in the Family Court, evidence can be fabricated, especially in some of these child reporting instances. I have had cases where under mandatory reporting, one person in a family law matter who wants to gain an advantage will report the other party and that person will have no basic protection to defend the case. Legal aid is denied so, sometimes, it is at the expense of the children. Or you have one party who might be able to afford a good lawyer and the other cannot, so one might concede to the benefit of the other, but it is the children who suffer. I have not gone into the basic child advocacy, but there are some papers from the Family Law Court, especially from the Chief Justice, looking at the advocacy of children and children's rights, and I commend those papers to the commission.

Mr TONY SMITH—You would not want legislative implementation of the treaty unless that legislative implementation provided cohesion for Australian society and did not provide a tool of division—is that right?

Mr Davis—Yes. With the implementation of treaties, you have got to look at the broad section of the community and the benefit between both the judicial and legislative powers. You cannot have one without the other. There needs to be a balance.

CHAIRMAN—Let me take that question a little further. In your submission you said:

> We submit that the provisions of Treaties and Conventions should be incorporated into domestic law by statute. We submit that treaties and conventions are mere cosmetics unless they can be incorporated in domestic law and operate as a direct source of individual rights and obligations under that law. We submit that the Exercise of executive power is to act in accordance with International Treaty Obligations for the management of good government. We emphasise that the executive government has a fiducial duty to be committed to the compliance of treaty obligations.

Are you aware of the Teoh case?

Mr Davis—Yes, I am.

CHAIRMAN—And are you aware of what the present federal government is attempting to do to clarify the situation, post-Teoh?

Mr Davis—I know a bit about some of post-Teoh. Once again, it comes back to a matter of balance between legislative and judicial powers. I believe that if judges have the right to implement the common law, the government has a right to look at the legislation and amend it if necessary. It is trying to work out the balance. Personally, I think that there should be more meetings between governments and some of our judicial officers.

CHAIRMAN—You are aware of the Teoh case which involved the Convention on the Rights of the Child directly—or an element of it. As an association do you support the legislative solution being put forward by the federal government at the moment?

Mr Davis—No. Personally, we support a bill of rights—and I think that the Australian Reform Commission did bring out a paper several years ago—but there are two different questions. If you have a bill of rights, does that take away from the legislative? I think you have got two different doctrines, one from Justice Gibbs and then the Mason doctrine, which looks at implementing a bill of rights such as in the New Zealand model and giving citizens rights within the judicial and the pursuit of fairness functions.

CHAIRMAN—Thank you very much. Do you have any final points before you leave?

Mr Davis—The question arises as to the implementation of the treaties into domestic law, and also the broad spectrum of citizens' rights within the function. It is no use implementing some of these international bills unless the citizens know their basic rights, so I think there needs to be an education process on citizens' rights.

CHAIRMAN—Education is an important point at issue and it has come up in almost every public hearing we have had. So what you are saying, without wanting to put words in your mouth, is that there needs to be an enhanced educative program in terms of this treaty and others, but on this occasion on this specific convention.

Mr Davis—Yes. There are two good books which have been released recently. One is an annotated constitution, which had been written, I think, by the Victorian chapter of the Constitutional Centenary Foundation, in the hope that some of those processes may be used in the education process. There is a very good book on citizenship which I think was written recently by Mr Rupert Davis, and also I think a chapter was written by the recent governor, Mr McGarvie. That states the basic process of citizens' rights within the Australian function of citizenship. I commend those two books.

CHAIRMAN—Okay. Thank you very much indeed.

[9.57 a.m.]

KROHN, Ms Anna Maria, Principal Research Officer, Southern Cross Bioethics Institute, Adelaide, South Australia, on behalf of Nick Tonti-Filippini et al, c/- 15 Alburnum Crescent, Lower Templestowe, Victoria 3107

CHAIRMAN—Welcome. Would you please state the capacity in which you are appearing before the committee.

Ms Krohn—I appear as one of the authors of the submission under the title 'Nick Tonti-Filippini et al'. I am a principal research officer at the Southern Cross Bioethics Institute in Adelaide.

CHAIRMAN—We have received the written submission. Are there any amendments to the actual written submission?

Ms Krohn—Not substantially, no.

CHAIRMAN—Would you like to make an opening statement?

Ms Krohn—I would like to say that the submission really is more of a collaborative reflection by some Australian bioethicists and philosophers who largely worked independently but have come together for the purpose of preparing this submission.

We wish to stress the importance of the UN Convention on the Rights of the Child as a moral and jurisprudential authority that can be a constructive force welcomed in a society where moral, cultural and religious diversity is a feature. We believe it is critical for the committee to view the principles of the convention within the context of its parental instruments and their preambles, particularly in the light of those instruments' insistence that the source of all rights and obligations are the inclusive and inherent dignity of each and every member of the human family, regardless of age, ability, development, self-perception or social status.

We would urge the committee to promote this view of human dignity in the light of the CRC and instruments and the overarching insistence on the protection and support of rights of the child, nurtured as they normally are within the commitment and organic wholeness of the natural family, and, in the absence of that support, within the wider community. We also believe that the CRC, taken in the wider context, is a document which is prescriptive about the primacy of the family in delivering and mediating various essential community resources.

In particular, our group has been interested to analyse the implications of the CRC for health, law and bioethical principles largely, although we have acknowledged other

social areas where that is of importance. I suppose the paramountcy of the interests of the child would be one principle we would see as important. The need to overcome the tendency to selectively apply human rights legislation, as we refer to in our submission to the committee, is also important. We see that the autonomy principle needs to be balanced by the view of human dignity which is affirmed and reasserted in the CRC and its parent instruments. We would see that the interpretation of human rights needs to be more emphasised within a communitarian and interdependent interpretation—the whole view of responsibilities and rights be read in that light as well.

At the moment we think the tendency is to interpret the human rights arguments within a highly autonomous and atomised perspective, which tends to lead to models of conflict rather than a more mutual communitarian perspective. We also believe that the CRC is a very important source for reasserting the inherent inviolable and inalienable nature of rights. This acts as a corrective for certain tendencies in the community to drive health law by, say, market driven, eugenic or overly dominated sorts of views of human health. We also think it provides a very helpful perspective from which state and Commonwealth law could be corrected, reviewed or reformed.

CHAIRMAN—My first question goes back prior to the ratification of this convention. In 1988-89 there was a fairly strong, vociferous, emotional and emotive group that felt that this convention was anti-family and that specific provisions, particularly articles 12 to 16—the ones that came up over and over again—were anti-parenting. Having taken evidence right around the country that those perceptions still persist irrespective of the ratification, what is the view of your group in relation to CROC? Is it anti-family? Is it being read out of context by these people? Is it open to wide interpretation and, therefore, does it need to be clarified?

Ms Krohn—I think it is understandable that certain groups do see certain provisions like the freedom of expression and freedom of privacy clauses in particular as being highly atomised and anti-family. We do not believe that that is the case. We think that the CRC ought to be read, first of all, within that wider human rights perspective, which tends to anchor the concept of the family in a more stable way and, therefore, give a much more helpful interpretation of those provisions.

We agree that in some ways, for instance, the expressions of freedom provisions do remain silent about the roles and responsibilities of parents. But, if you read it in the light of other aspects of the CRC, it starts to take on a more cooperative and definitely pro-family position.

CHAIRMAN—Article 5, as I recall it, talks about the family, but it also specifically refers to 'within the parameters of this convention.' Some people would argue that that still means that it does not give due emphasis to the rights of parents as distinct from the rights of children. Do you think that article 5 clarifies the situation or do you think it further clouds the situation?

Ms Krohn—I think it does help to clarify it. I think there are other provisions in the CRC that help spell this out. By balancing the rights of the freedom of expression against the very protective aspects—I think in article 19(34), which prevent children from sexual abuse, for instance—it seems to provide a very important balance to the arguments that this is going to allow children to see pornography on cable TV, for instance. There are strong suggestions that not only is the family to have the responsibility of protecting children but that the community itself ought to protect children from such harms.

Once you read that within the light of both the wider instruments and other aspects of the CRC, you can see that it does take on a far more protective interpretation. I think it can be read very selectively.

Senator BOURNE—You mentioned human dignity a lot, which I think is important and I agree with you. Can you tell me where you feel that we are falling down at the moment in relation to human dignity, particularly in regard to children?

Ms Krohn—I think we explained in our submission that there has been a tendency since the development of the human rights movement to interpret dignity as that which you can assert within a social status or upon how much autonomy you have and how you can make a claim for rights. We think that is overbalancing what is actually a bedrock statement about dignity being inherent and quite prior to the ways in which people can express it. This is particularly true in relation to the CRC because children are those individuals who precisely cannot assert their autonomy for all sorts of developmental reasons and therefore need to have the nurturing of their dignity and rights. We believe the document asserts that the family is the place that that is primarily done.

Senator BOURNE—And there would need to be more teaching of teachers and that sort of thing?

Ms Krohn—Yes. We say in one section of our submission that it is perhaps important to have this understood within the formation of marriage and family. We strongly assert that this is not an anti-family document. The reason for that is the way dignity is the foundation of the document.

Senator COONEY—This is a very comprehensive document and I want to ask you about it. One of the problems we face as a community is that if we adopt into domestic law something like CROC lots of things may follow. I think this submission is a particularly good example of that. If you adopt this treaty into domestic law you have got to do all these things that you have set out. I think that might be one of the problems we face. In other words, people may say, 'If a treaty did a, b and c—did half these things that you said—that would be alright, but it is the other half that I am a bit worried about.' Did you give any thought to that?

The way you have researched the paper—and looking at the list of those who were

involved with it is obviously a high level document—it shows that if as a community we do adopt this treaty into domestic law and treat it seriously we are going to have to do all these things that you have said and that might be a bit overwhelming. Did the people preparing this document have any thoughts about that?

Ms Krohn—We were certainly struck by the enormous scope of the CRC in various ways. We also considered that there was no univocal way of interpreting this. It is really one document which needs some careful reflection. We urge in various places that the committee consider, for instance, how parens patriae might be interpreted in light of the CRC and there are various ways that this may take effect. It may be at a state level or a federal level.

One example that we considered was the area of surrogacy which is a major area in health bioethical law. Up until the ACT's amendments relating to surrogacy, there was a national approach to the prohibition of surrogacy on the basis of the paramountcy of the interests of the child. We thought that was a very helpful sign. It did not take Commonwealth legislation dictating a principle for the states to understand the importance of a very central aspect of the CRC.

By way of the same contrast, we saw the ACT reform as a return to an autonomous interpretation, the atomised interpretation—that is, where it says that if someone demands that they ought to receive it. We saw that as travelling away from what was before that a very united front on the question of surrogacy. We are not saying this is an exhaustive list, but there certainly are enormous ramifications. I think we say in our document that the CRC primarily is a statement of principles by which various things can be interpreted and there is a lot of work to be done on that.

Senator COONEY—So if Australia were to adopt it, it ought to adopt it as a standard to be strived for rather than a prescriptive law?

Ms Krohn—We believe it has prescriptive elements which ought to act as a corrective for certain tendencies. One of those tendencies we outline as a problem area is the ways in which the anti-discrimination legislation is being applied, not because we wish to interfere with various privacy aspects but because of the implications these have for the rights of the child. We do not see it perhaps in the way that other people might see it—that is, as being primarily something which should restrict personal relationships per se, but as something which ought to be considered in the light of the interests of the child.

CHAIRMAN—We do not want to get too deeply into what is a child and what is not a child, abortion and some of these issues which you very appropriately raised in your very extensive submission. You said in one of your concluding paragraphs:

We have been concerned primarily with the matter of the Commonwealth fulfilling its responsibility under the CRC to ensure that the rights of children born or to be born through reproductive

technology are protected.

There are views at both ends of the spectrum in terms of to what extent this convention covers those who are not physically born. Would you like to explore that very briefly?

Ms Krohn—It is obvious that in other ways, quite apart from the abortion issues, the responsibilities of the Commonwealth or the state in funding ARTs are far more important than considering children who may be born in other situations because of the State's cooperation in that. We feel that the Commonwealth, in funding these techniques, has a responsibility to make sure these techniques are not detrimental to the child to be born, even if you do not want to tackle the issue of what status you feel the embryo has. We believe that all the international bills of human rights actually do assert a protective view of all members of the human family and that can act as a guiding principle even where there may be disputes about how that is interpreted.

CHAIRMAN—And that extends to the unborn?

Ms Krohn—Yes, it does extend to the unborn. I think there would be many groups in the community who would support that view—even groups coming from perhaps entirely different perspectives. For instance, some of the feminist groups who are critical of reproductive technology would say that we should take a more interdependent view of the mother and child, and we would support that interpretation.

Senator COONEY—Could I follow on from what the chairman raised. The issue of abortion is a very important one, and this clearly reflects on that matter. There are two things—the legislative provisions, or the law as it is, and whether they are enforced. The law in Victoria, as I understand it, is still the Menhennett ruling. Taking your interpretation of the Convention on the Rights of the Child, what does your group think about how bringing it into the law might affect the execution of the Menhennett judgment?

Ms Krohn—If we can go back one step. I think we give an example of one particular issue that relates to the unborn child—that is, the rights or responsibilities of mothers who may or may not be using various substances and the effects that may have on their unborn children. We mentioned that, in the United States, there is a highly litigious sort of way of dealing with that. We would urge that the CRC does not promote that view—that is, to set up a conflict between the mother and the unborn child. The CRC states numerous times that the parents should be supported in the care of their child. That would apply to the mother in that situation.

We would say, for instance, that educational support and other means of assistance would be the way to deal with a woman who is abusing some substance which would harm her child. We would not see it as being a direct and punitive intervention but rather something which would provide an alternative solution to that woman's dependence. We

believe you cannot put the woman in gaol and expect the child to benefit.

I think what we see the CRC as providing is perhaps a fresh way of evaluating the abortion situation, that is, it does not pit the mother against the child, but it may be a way of reviewing where we are going with abortion in this country. We have not tackled it directly. Obviously, it seems to us that the UN documents support an inclusive view of the human family—that is, no matter what stage of development you are at you are a member of the human family and therefore owed protection. It will be up to the Australian community to see how it interprets that, but this has implications for abortion and the way in which the community views it. It could act as an educative document in that sense.

Senator COONEY—What effect do you think it would have on the enforcement of the law? The Menhennett ruling in Davison's case is still the law in Victoria, but I doubt if anybody thinks that it has been enforced. Do you think that the CRC would make any difference to the enforcement?

Ms Krohn—It could, yes.

Senator COONEY—In what way?

Ms Krohn—As I say, it could remove the concept of the conflict between the foetus and the mother and promote a more supportive view of that. Obviously, you would have to have social change. Because of the acceptance of abortion in this country no legislative change at this stage would practically affect that but it certainly could prompt us to review the way in which abortion is provided or the way in which we fund abortion or provide access to it or educate about it. I think that would be the first step.

Mr TONY SMITH—I have to admit I have not read all of your submission and I apologise for that. I just noticed a footnote of John Finnis, a writer for whom I have the greatest respect, particularly his article against abortion, written a long time ago. When I read it I came to the conclusion it was an unarguable proposition from a legal perspective. What you are saying is that you do not see the convention as anti-family, the reason being that you do not want to see it as anti-family. Is that your interpretation?

Ms Krohn—We are justified in thinking that because we have interpreted it in the light of the parent documents and in the light of the preambles of those documents which do not give a gloss which is anti-family.

Mr TONY SMITH—Have you seen recent rulings by the UN committee on the meaning of certain provisions?

Ms Krohn—Yes, I have, and there is a development in the ideology of how the documents are interpreted and we do not necessarily support those developments.

Mr TONY SMITH—I understand what you are saying, but that raises the whole issue here that there are ideological interpretations that are open—

Ms Krohn—Of course, yes.

Mr TONY SMITH—Others would say they are quite distinctly anti-family or capable to being argued as anti-family.

Ms Krohn—We would be quite sympathetic with those family groups, for instance, who would have a concern about some of those aspects, but if you return to this bedrock you can find very many reasons for interpreting it in another way.

Mr TONY SMITH—Yes.

Ms Krohn—What we are urging is the committee does that, that it returns to this foundation or source.

Mr TONY SMITH—Correct me if am wrong, but you do not profess to be experts on statutory interpretation or treaty interpretation, do you?

Ms Krohn—No.

Mr TONY SMITH—I noticed your paper cited article 14 and you state what the criticism is of that in 3.1.4. You then say such an interpretation would seem to be in conflict with article 18(4) of the ICCPR which you cite as:

The States Parties . . . undertake to have respect for the liberty of parents, . . . to ensure the religious and moral education of their children in conformity with their own convictions.

Even that is an example of the balancing because—

Ms Krohn—Yes.

Mr TONY SMITH—I am glad you concede that and that strengthens your submission generally by you making that concession because the argument is 'to have a respect for' and what does that mean—

Ms Krohn—Yes, and what does that mean.

Mr TONY SMITH—And what is the extent of state intervention when it comes to the crunch. The problem with something like this is that you will always get arguments on one side or the other.

Ms Krohn—Yes, we cannot do away with the political process that intervenes

between this and—

Mr TONY SMITH—In itself that process creates division, does it not? Is there not division when you have one side or the other?

Ms Krohn—Yes, there is.

Mr TONY SMITH—Therefore, is there an argument for saying, 'We have not got it perfect, but why do we confound ourselves with a document that creates even greater division?'

Ms Krohn—I think that at the end of the day, the contributions in getting us back to that jurisprudential base are quite significant. I agree that there are problem areas—for instance, article 13, when it says 'all kinds of information' seems to be floating free and, in fact, preventing parents from restricting any kind of access to information to their children at any age. Also, with the section on freedom of association, one imagines children going on go-slow demonstrations and things like that with the justification of the CRC. All kinds of interesting things seem to be encouraged within the CRC.

Going back to those preambular sections and reading the document in the light of some of the other provisions, it is clear that the primacy of the family, as the means by which these rights are not only acknowledged but are nurtured and developed, seems to us to be at least the strongest point of the CRC and something which can act as a useful corrective in Australia.

Mr TONY SMITH—Is not one of the weakest points the fact that we are, in a sense, submitting ourselves, in the way that the situation is running at the moment, to interpretations from outside? That is an area where critics in Australia would say—

Ms Krohn—You mean outside Australia?

Mr TONY SMITH—Yes, like the UN committee, for example. Is it not arguable that that creates an even greater wedge of division within Australia, because we do have this system where outsiders—particularly outsiders from non-democratic countries, I might add—are saying that this is what this really means and this is the way you should read it?

Ms Krohn—I think sometimes particular political forces or particular ideological movements get behind some human rights legislation or interpretation and push that as hard as they can go. There is no doubt that that happens. But what we are saying is that there is a complete picture which was in the minds of the people who drafted the document. That continues to be the grounds on which there is any consensus between countries and that really is the positive force of this instrument. This can be used, primarily as a moral document, one which acts as a principle, but not as an overriding principle in the sense that it abolishes state responsibilities or in the way that it authorises

domination of the Commonwealth over the states or anything like that. We do not see that.

We also see that it is quite possible to view this document within the principles of subsidiarity; that is, viewing the smallest possible group, or the most intimate possible group is the best means by which these goods can be protected. We think, overall, that is the great importance of the document.

CHAIRMAN—Can I just extend that a bit further? What you said in your introductory comments, without using your specific words, was that it was a desirable framework. But at the same time, from what you have said in subsequent evidence, it clearly is not an optimal document.

Ms Krohn—It is not infallible.

CHAIRMAN—No. There are two avenues of possible change there. One is, if it were possible—and it is not possible in terms of an Australian initiative alone—to amend the convention. But if it were possible to amend the convention, where might it be amended? And secondly, in a domestic sense, do you also agree that until such time as the general thrust of the convention becomes part and parcel of Australian domestic law, it really does not have the impact that it should?

Ms Krohn—In answer to the first question, I do not think the CRC—and I do not know how the others would consider this—necessarily requires amendment as such, because I think the principles in the document are clear. There are some clear documents which do have moral and legal force which can be used as a guide within the Australian situation, but I think that the entire context of the CRC needs to be drawn out by anyone interpreting, or dealing with, or reflecting on its applications.

The example which we deal with most commonly in this document is the corrective to the merely individualistic notion that the anti-discrimination legislation has tended to convey, so that the human rights commission is interpreting something in a way which is quite different to this more complete reading of the principles.

The same might be said of some of the principles relating to the treatment of disabled children, where you have the principles of the Marion case on one hand and you have decisions being made, say, in the Family Court area, which seem to be at odds with that. So there is a certain corrective balance that is already possible within the existing CRC that we think is positive and constructive.

CHAIRMAN—What about the second question? Until such time as the application is embodied in Australian domestic legislation, that does not really have the impact just as an overall umbrella document.

Ms Krohn—It certainly would gain greater impact. I think there is a certain sense

in which some of the principles have been accepted and reflected upon for some years. An example of that is the surrogacy decision making by the health ministers and various welfare organisations. There has been a reflection upon what the paramountcy of the interests of the child means in relation to that particular means of parenting. That has been achieved without further flowthrough from the CRC. That has already become a point at which I think there has been a great deal of thinking and adoption of those principles in particular.

Adoption is possibly another area where I think there has been a great deal of thought in the light of some of these principles in which there has been a remarkable degree of consensus about the importance of protection of the rights of the mother. One of the great principles in the CRC is the role of identity and heritage. That is a very positive thing that has major implications for all sorts of areas of artificial reproduction, of adoption, of the treatment of relinquishing mothers and legislation. We have seen some of those changes already. I think they have been clearly understood and welcomed by diverse groups of people.

CHAIRMAN—We come to Teoh and the post-Teoh legislative changes that are going through the system at the moment. And, of course, Teoh dealt specifically with this convention. Do you think legislative initiatives that the previous government was about—and was starting to put through the House, and now my government is doing it—will clarify the situation or do you think there will be further legal challenge as a result of that legislation?

Ms Krohn—I think that sort of process will clarify some of these principles. Again, I do not think there is just one way of applying this principle. It does not need to be a strictly legislative interpretive kind of thing. While there is this ideological dispute about what some of these principles mean—whether or not we are going to take a purely libertarian view of this; whether we are going to take a more pro-family perspective; and the various grades of interpretation in between—I think there will continue to be challenges, disagreements and debates about this—not necessarily an unhelpful thing.

Senator COONEY—Correct me if I am wrong and if I have not taken you correctly. You say that the Convention on the Rights of the Child sets out a body of principles which, when they are properly understood, set a right way of thinking, if you like, for the community. It also provides a source for certain specific laws. I think you said before that it serves two functions: firstly, to set the committee thinking aright—that is, that the principles are rightly understood; and, secondly, that there will be some laws that are enacted by parliament based on the Convention on the Rights of the Child, but you do not envisage the federal parliament just enacting the Convention on the Rights of the Child as it is.

Ms Krohn—Not without further reflection and study of the implications of such a thing. We have pointed to areas where we think there is pretty strong emphasis and a

pretty strong prescription for change. That would be, for instance, in the reluctance of the states to regulate on reproductive technologies, particularly in relation to those issues of identity and protection of the child to be born from the ARTs. There has been a statement of principle earlier on by the health ministers and others and by various state committees and inquiries that there would be some kind of revision or protection of those areas and no action on that front. We suggest that, in that area, the Commonwealth can take an initiative.

Senator COONEY—What about the chairman's point, though? I think nobody would disagree that, if you were going to make specific laws using this as a source, there would be no problems about that. But what about the other function you envisage this as serving—that is, when it is properly understood, to form a set of principles that the community would operate on?

CHAIRMAN—Let me take that question a little bit further. I think implicit in what you have said is that my interpretation of what you are saying is that, because of it being a broad framework and there being interpretive question marks, it would not be possible to have some sort of umbrella legislation at the federal level to cover everything that is within the convention. But you are saying that there are elements of it that should be picked up at the federal level and at the state level in selective areas? Is that what you are saying?

Ms Krohn—Yes, that is what we are saying. For instance, another example we give in the submission is in the area of taxation reform. We say it is clear that the instruments point to the need to support families in some positive sense in order to support the rights of the child. This ought to be taken on perhaps in the unlikely area of taxation. It is not a simple, unilateral kind of levelling document. I think in that sense that is why we emphasise that element.

Senator COONEY—The other point I wanted to clarify was the other one the chairman raised. I think you have answered this to the chairman, but I just want to put it in this context. In relation to the issue of this document setting broad principles that would affect the community, how do you see that being affected if this government, as the chairman said, passed legislation which would interdict the effect of Teoh? How do you see the Convention on the Rights of the Child filling that function of setting out general principles for the community if legislation interdicting Teoh were passed? Would you like to have a think about that?

Ms Krohn—I think that is something that we could perhaps return to you with.

CHAIRMAN—How about you take that on notice?

Ms Krohn—I think we would like to put our heads together on that one.

CHAIRMAN—Because you have not mentioned Teoh in the submission. You have mentioned a lot of other things.

Ms Krohn—I think we ought to have.

CHAIRMAN—In the light of developments in the last few weeks and perhaps in the light of your group's function, we would welcome some comments on that. Would you like to take that on notice?

Ms Krohn—Yes.

CHAIRMAN—I do not think there are any other questions. Thank you very much.

[10.33 a.m.]

FORD, Reverend Doctor Norman Michael, Director, Official Secretary and Public Officer, Caroline Chisholm Centre for Health Ethics Inc., 7th Floor, 166 Gipps Street, East Melbourne, Victoria 3002

PHELAN, Mrs Tracey Anne, Research Officer, Caroline Chisholm Centre for Health Ethics Inc., 7th Floor, 166 Gipps Street, East Melbourne, Victoria 3002

STOKES, Ms Anna Louise, Research Officer, Caroline Chisholm Centre for Health Ethics Inc., 7th Floor, 166 Gipps Street, East Melbourne, Victoria 3002

CHAIRMAN—I welcome representatives of the Caroline Chisholm Centre for Health Ethics. We have received your written submission. Are there any amendments or additions to that written submission?

Dr Ford—There is one correction. I had quoted the *Age* newspaper. I found out that was a mistake. It was the *Australian* newspaper.

CHAIRMAN—Under the heading 'Reproductive technologies', is it?

Mr Ford—Yes.

CHAIRMAN—Where you have got (The *Age* 15/3/'97), it should be (The *Australian* 15/3/'97). Would you like to make an opening statement?

Dr Ford—We are happy to add to our submission at this public hearing. The rights of children need to be protected by laws on account of their inviolable personal dignity. Children have a personal dignity, an absolute value, which others may not violate.

The exercise of rational acts and free choice suffices to show we are persons. These rational acts, however, only take place because our nature is rational.

We submit children are human persons before the age of reason. Unborn and new-born children do not acquire a new nature at the age of reason to become persons. By virtue of their nature from their origin as human individuals they develop and acquire, in due time, the capacity to express their nature in rational acts. For this reason the child needs, in the words of the preamble of the convention, appropriate legal protection before as well as after birth.

Human nature and its requirements are important for our personal identity. What is artificial? Reproductive technology may not be natural, but it can be good provided it does not conflict with natural needs and basic goods. Because it deals with the origins of human life the law should protect the dignity of human life in its origins by banning

reproductive methods that unduly risk harm to human embryos or the resulting offspring, for example, in surrogacy. Children should not be trafficked in as if they were products of technology.

It belongs to our personal identity to have father and mother, brother and sister, cousin, grandparent, uncle and aunt, et cetera. This network of culturally entrenched personal relationships originates from our genetic origins and means much for our personal identity. Children should not be legally denied their need to know, love and be loved by their own genetic parents. Many adopted children yearn to know their own biological parents whose non-involvement in their lives brings them suffering. Hence we believe natural justice requires legal access to reproductive technology be restricted to married or stable heterosexual couples. This may require changes in the sex discrimination and equal opportunity acts.

Our submission quoted the letter of the secretary of AHEC who explained that under the NH&MRC Act:

> . . . AHEC is required to develop ethical guidelines in relation to medical research. It was therefore considered that social and clinical practice issues, including eligibility, surrogacy, genetic diagnosis and selection, genetic testing, access to identifying information and storage of gametes and embryos were more appropriately dealt with in legislation and were removed from the guidelines.

We also cited the following recent media report in the *Australian* of 15 March 1997:

> Politicians had 'abdicated their responsibilities' as law makers by leaving decisions concerning issues arising from reproductive technologies to the courts, the Chief Justice of the Family Court, Justice Alastair Nicholson, said yesterday.

We submit parenthood should not be achieved at the expense of the personal dignity and wellbeing of the child. If laws are to protect the rights of children, reproductive technology must surely be an appropriate area for legislative action. Federal funding for better marriage preparation in schools might lessen the number of marriage breakdowns, enhance the wellbeing of children and contribute to social stability. Granted our economy is increasingly geared to two income households, greater financial and other assistance should be given to low income families for the rearing of children, together with adequate access to health care and financial support for child care where both parents work. In the light of articles 6 and 23 of the convention, ante-natal diagnosis should not be reduced to a search and destroy mission. Adequate counselling and support should be given to mothers whose unborn children are diagnosed with a serious disability so that abortion is not the only option offered.

Governments should encourage the development of media guidelines for the protection of children in relation, say, to reports on immunisation, models bordering on anorexia, and the availability of sexually explicit or pornographic material in various forms of the media—articles [24.3, 34, 24, 2(a) and 17(e)]. I admit much has already been

done in this regard quite recently in the federal parliament. Thank you, Mr Chairman.

CHAIRMAN—Thank you very much, Dr Ford. I know that the principal thrust of your submission is in terms of health ethics, but let me ask you a broader philosophical question first in relation to this convention. I am sure you heard me ask the previous witness whether the Convention on the Rights of the Child is anti-family, pro-family or neutral. Would you like to make a general comment about the convention itself rather than specifically about the health ethics?

Dr Ford—I will give a political answer to that, Mr Chairman. On the one hand it is and on the other hand it is not. There are good elements and there are elements that could be interpreted negatively towards family.

CHAIRMAN—Let us have you expand that a little further. You are like an economist, 'On the one hand and yet on the other. . . ' so let us have some balanced comments on both sides. What are the pro's and what are the anti's in terms of whether it is or it isn't?

Dr Ford—One of those articles—17 or 13—spoke about the freedom of expression of children, then on the other hand it spoke about restrictions that may be necessary in terms of the rights of others. But it also upheld the rights and duties of parents in the monitoring of these rights. I interpret that to mean that because a child is defined as under 18 years of age, a 17-year-old and an 18-year-old must have their freedoms whereas a seven-year-old might not. That is going to be left to the discretion of our parliaments—if they are going to adopt this—and of the courts if there is ever a challenge, so I can understand how it is written that way. It is 'on the one hand or on the other,' depending on the age.

Mr TONY SMITH—Freedom of expression, for example, is qualified by civil constraints—and even, in some cases, by criminal ones—not to defame someone. One of the potential problems I see in one of those articles 12 to 16 is that while an adult person, a person sui juris, is able to have regard to his or her own position that if he says something wrong he might be sued, a child is really not capable of being sued for defamation and yet potentially could be allowed to make decisions on matters which that child knows nothing about and which could quite clearly defame somebody, and there is no redress for the other person. So that is an area of potential concern.

Dr Ford—I agree with you there.

Mr TONY SMITH—In relation to the general abortion area, you say that the clock cannot easily be turned back and so forth. Do you read into article 6—from memory it is article 6—more than just a bland statement of a right to life rather than a right of life? Do you see in that article 'a right to life' rather than the use of the words 'a right of life'? Do you think that is a significant way that it is put? How do you read article 6?

Dr Ford—I read it as referring to an inherent right to life, but I also noted the difference between this convention and the early declaration where phrases that spoke about protecting the unborn in the declaration were removed. Also, when it is talking about the care of the mother and her child, protection for the foetus was excluded, so I think this convention was designed not to exclude abortion. I am sorry to say so, but that is how I think it really is, and I did consult some of the officers of this inquiry. That is why we did not weigh in heavily on the abortion issue, whereas the embryos are not part of the abortion packet—they are not within the mother at that stage.

Mr TONY SMITH—If you did feel, however, that the article did address that issue, you would have had more to say about that?

Dr Ford—Absolutely. I was led to believe that with the convention, granted that most of the countries around the world do have legal access to abortion, they are not all going to be signing a document that was going to ban what in their own countries they were doing. So I did accept that definition—that advice. However, had it meant that it included a right to life of the foetus, we would have made a much stronger case than that.

Senator BOURNE—I want to ask about your views on the media which seem to be quite strong. I must say that mine are in many ways too. Could you expand on what you have written on culture and media and children?

Dr Ford—Yes. May I also invite Tracey and Anna to join in. This came from one of our research assistants, a mother of three, who is not here today. She could not come today because she is on holidays looking after her children, appropriately. She has three daughters. She was very concerned about the media images of these models who are bordering on anorexic. There is a responsibility in this regard. A lot of parents have this problem with girls trying to reduce their weight to the point where they endanger their health. The media portrays these girls. We admit that the media has done a lot to cut out abuses like female genital mutilation and other things, but perhaps it is just one of those things where they are caught. We would not expect legislation on this, but the convention does talk about guidelines. A lot has been done on this, I have to admit, but Tracey or Anna might be able to elaborate on it.

Mrs Phelan—Can I return to article 6 part 2. I think one of the moves at the moment that I have been reading about is to take abortions out of private clinics. That could fulfil part of the state's responsibility to ensure that if abortions are going to occur they are for reasons that sit within the Menhennett ruling. Part of the problem with the availability of abortions in private settings is that the reasons women are giving for abortions may not necessarily actually meet that ruling or be sufficient even for socially recognised reasons. So perhaps part of the responsibility to ensure, to the maximum extent possible, the survival and development of the child could be to ensure that if there are going to be abortions, they are going to be for extenuating circumstances rather than the current system we have at the moment.

Senator BOURNE—Did you have anything to say on the media?

Ms Stokes—The immunisation issue we have discussed a lot at work. Part of the problem of course is that Australia now has one of the lowest immunisation rates for children. That partly seems to be because of reports in the media about reactions that children have to immunisation. There seems to be almost political decisions on the part of parents that they are not going to immunise their children. What they do not realise is that diseases can be passed on to children who cannot be immunised because they are too young. So someone who perhaps has not been immunised against whooping cough will pass it on to a six-month-old child who is too young to be immunised. We do think that the media has some responsibility for that sort of thing.

CHAIRMAN—In terms of the comment you made about the female genital mutilation issue, are you aware that many of the Muslim countries that have actually ratified this document—and I come back to the question I have asked a number of witnesses—have it as a general framework rather than putting it in biblical terms? It is very difficult for me, and I am sure many people, to understand how a country can ratify the document and yet indulge systematically in female genital mutilation. Do you agree with me—and I think I saw Dr Ford nodding when we discussed this with the last witness—that this is a broad document and until such time as it is brought into domestic law, either at the federal or the state level, it should be looked at in that light? It is a good set of principles in many ways, albeit with some question marks in some people's minds, but we should not just say, 'Yes, it is a bible for Australia to adhere to.' Is that what you are saying?

Dr Ford—I would like to answer your question. May I finish my answer to Senator Bourne, and I will come back to that. One child in 10,000 might be harmed by the immunisation program. But for the other 99 per cent it is doing a lot of good. The media highlights the damage possibly done to one child. We really do not know this. I have listened to Professor Fiona Stanley from Perth on this. Parents get scared off, they do not immunise their children and then hundreds of children get whooping cough and die. That is the major thrust, that I was really talking about, from a health perspective. I just wanted to pick that up. That is what I mean. My authority for that is Professor Fiona Stanley from Perth, who was one of the consultants to the federal government.

But to return to your question, Mr Chairman, my personal view—because we have not discussed this in the centre—is that we should be reluctant to sign treaties. I would much prefer to see all these documents as valuable documents for inspiration for our parliament rather than as binding treaties. I would much prefer Australia to paddle its own canoe.

I was led to believe that we had signed and ratified it, so we were prima facie bound by it. If so, our submission was based on the fact that we are not doing what we had signed we were going to do. My own view is we should not be bound just because

the United Nations passes treaties.

On another point, I have lived overseas for 11 years—three years in India and eight in Italy. Their approach to law, particularly in Europe, is not our approach to law. Even our own church—I am a Catholic, a priest of course—passed canon laws. Over there, they interpret them with a large view; out here, even some of our own clergy tend to interpret them as black and white.

So I really think our own parliament ought to learn from the jurisprudence and the experience of those who have lived in Europe and in Latin American countries. I have studied with people from there. They do not take any of these things to be interpreted as black and white. That is why I think we need the Anglo-Saxon culture with the common law tradition which is fairly strong on that—so we do not feel too bound by it, but we look at the issues that are relevant for us where perhaps we are lacking in natural justice. A genuine framework, as you said—I think that is a terrific phrase for the Commonwealth and the states as appropriate.

CHAIRMAN—That is the rationale for the previous government and the present federal government to introduce the post-Teoh legislation. I do not know if you know much about Teoh and what that entails, but it basically sets out to do exactly what you have said.

In terms of accepting what the United Nations says, I know there are a lot of perceptions out there generated by some of the vagaries and misinformation of Pauline Hanson—which I think we should all reject in these areas because it is uninformed. The difference between the signature and ratification is really the function of this committee.

Just to give you a one-minute thumbnail sketch: what this committee does is a result of the initiative of the present government which started in May of last year. In the past, conventions like the convention on the rights of the child have been signed and then in due course ratified, without due consultation. That is the point that you made—whether that consultation is with state and territory governments, non-government organisations or individuals coming to hearings like this.

The function of this committee is that area in between the initial signature, which gives the moral intent, and the ratification, which gives the intent in international law. We report within 15 sitting days of those treaties being tabled. We have had 80 or thereabouts of those treaties since September of last year when we tabled our first report. We have considered the treaties in hearings like this—whether it be a double taxation agreement with Vietnam, an agreement between Australia and South Africa on international air service or whatever—and we have reported back to parliament within that time scale.

After that, the government considers our report—bearing in mind that it is a function of executive government to implement treaties. What the piece of legislation that

is before parliament at the moment does is introduce very much the parliament into it and therefore the people.

That is what we do. But the difference between this convention and this inquiry is that the joint resolution of both houses, the House of Representatives and the Senate, says that we are entitled to look at those treaties that are specifically tabled—like some of the ones I just mentioned—and those that have been deemed to have been tabled. In other words, those that are extant—such as the convention on the rights of the child—and there are about 1,000 of those at the moment.

We pulled out the convention on the rights of the child over the Christmas-New Year break last year because I felt—and the committee agreed—that it was one that created a lot of emotion in 1988-89. We wanted to see how well we had faired in terms of implementing it, albeit ratification was done without due consultation, and some of my colleagues here may not agree.

So that is the difference between the two, just to put it in perspective. That is why we are looking at this convention. What we will do, as I indicated in the opening comments before you arrived, is we will take evidence on this for the next two or three months and then we will report to the parliament.

At the one end—and I have covered this on many occasions on radio and TV over the last few months because there is a lot of interest around Australia in this—we could recommend total deratification—that is possible within the individual convention—or we could recommend the status quo, or somewhere in between. We have all got different views at this stage. We have got to put that together and then we would report to the parliament, hopefully before Christmas, depending on how Cheryl is able to give us the initial drafts on that one. We will make a lot of recommendations in terms of all the sorts of issues that you and others have raised in your individual submissions.

Dr Ford—I am certainly in support of all you have been saying now. I do think Australia should be governed by laws made in Australia.

CHAIRMAN—Without being too cynical and too flippant, the point that I and many of my colleagues, on both sides of the political fence, would make is that, simply because Geneva and New York cough, in treaty terms, we should not necessarily catch a cold.

Dr Ford—No, nor sneeze.

CHAIRMAN—And that is why this legislation is so important. After that little lecture, I apologise.

Dr Ford—No, I am pleased I heard it.

Senator COONEY—Just to make it clear, are you saying that only those laws that are conceived in Australia should be followed by Australia, or only those laws that are actually legislated for should be followed in Australia?

Dr Ford—Either composed and passed in Australia, or treaties that have gone through the parliamentary process and agreed to by the parliament. Then I will accept that as law, an Australian law.

Senator COONEY—What about the philosophical thrust: do you say that should develop in Australia only?

Dr Ford—On the philosophical thrust, I think, it could be that we get inspiration from outside, but we still make our own laws. I do not mind treaties, provided they have gone through the parliamentary process for ratification. Then we make up our own laws.

Senator COONEY—Can I ask Mrs Phelan a question about the Menhennett ruling. I do not want to go into the rights and wrongs of it so much as the way the community treats that. I then want to use that as perhaps some indication of how the law may be taken up, or not taken up, by the community. That is still the law, isn't it, but you would never get a prosecution these days.

Mrs Phelan—No.

Senator COONEY—A prosecutor would have to run a million miles from the suggestion, because he or she would know it would not go through.

I do not want to go into the rights and wrongs of abortion, but what does that say about the community and the attitude it might take to a thing like the Convention on the Rights of the Child? This is where I would like your comment: is the community only going to accept that part of any law that it thinks is proper for it to take up? If that is the case, is it likely that the community will only take up that part that it feels is going to be of significance to it?

Mrs Phelan—I suppose that is likely.

Senator COONEY—Would you have a think about that and give us a reply in writing?

CHAIRMAN—If you want to take some of these things on notice, please do.

Mrs Phelan—If we could. That is a very valid point.

Senator COONEY—You can see the point I want to get at. You are talking about the black-letter law of CRC and some people say that is going to come in and grab us like

a octopus and take us in. Others are saying that all it is is a general indication of how perhaps we ought to treat children and families. I would like to know what part the community is likely to play in that. Politicians are the embodiment of the community, they are the peak of all that is good but, leaving them aside, how does the community itself react? I think that what you were saying about abortion and the Davison case and the Menhennett ruling, and the way the community goes about that, is a significant thing to look at. So would you have a think about that.

Mrs Phelan—Certainly.

Dr Ford—I have a couple of points, and Anna is a lawyer on our team. I do regret that that case last year never got to the High Court, because with the law as it was the High Court would have said that the Menhennett ruling should be thrown out. Then it would have been thrown back to the parliament, and it would have gone through an agonising process then.

Senator COONEY—The Victorian parliament has provided a law about that, I would have thought, that the Menhennett ruling was based on.

Dr Ford—Which law?

Senator COONEY—Was the Menhennett ruling in 1969?

Dr Ford—Yes.

Senator COONEY—I do not think the law has changed since then.

Dr Ford—Under the law in Victoria it is still technically illegal, but if you abide by the Menhennett ruling that abortion would not be unlawful.

Senator COONEY—I see what you are saying. For the purposes of this particular issue I am not interested in that. What I am interested in is the community's reaction to the Menhennett ruling.

Dr Ford—I was around then. The Inspector Jack Ford who was involved in those cases then was not my uncle, by the way. That ruling was accepted by the community. The community accepted that ruling because it was fairly stringent, but we have slipped since then.

Senator COONEY—I really do not want to make an issue of whether that was right or wrong. What I do want to make an issue of—and this is pretty important for the purposes that I am interested in—is the community's reaction. Do you understand what I am saying?

Mrs Phelan—Yes.

Mr TONY SMITH—You mentioned the point about young girls as models and so forth before. One of the things that really disturbed me earlier this year was a photograph on page 3 of one of the papers of a girl who was probably only 13 in an extremely provocative pose. While I am quite reluctant to see the state interfere in parent-child relationships, would you like to comment on that particular area? I know we do not have this in our law, but if ever there was a case for arguing that the state should start looking at that sort of exploitation, this brings it up.

It seems to me that having regard to articles 32(1) and 36, there really is becoming a case for that. It is my personal opinion that because of the money factor—and there are huge amounts of money involved in these things—quite shocking exploitation of young girls is going on sometimes. Is this somewhere where you feel that some redress is needed?

Dr Ford—I think I might remember the picture. Was it a Melbourne situation?

Mr TONY SMITH—I think so, from memory.

Dr Ford—Yes. I think it implicates the mother. She might have been supportive of the girl—

Mr TONY SMITH—Yes, quite supportive.

Dr Ford—And the school was not that happy. Where do you draw the line between freedom of expression and the beginnings of exploitation?

Ms Stokes—Are you saying there should be some law that says children under 16 should not be used in modelling situations?

Mr TONY SMITH—There was a distinct sexual overtone in that photograph: there was no doubt about it. In an age where it seems that paedophilia is quite rife, is that not sexual exploitation of a child?

Dr Ford—I think it is. Possibly the way the go, as Anna suggested, if you are going to be portraying young girls in seductive poses is to set an age; but then you are going to have a court case on what a seductive pose is.

Ms Stokes—The problem also could be that you could use an 18-year-old who looks young for her age and have her dressed up as a 13-year-old. It would still look like the seductive pose of a 13-year-old girl.

Dr Ford—I might mention one thing. Anna has done quite a long study in our

centre on surrogacy. It is not simply ideological, it is looking at the case law and what has happened in America and Australia. It is a long study—50 or more pages. When I sent in our submission I tried to make it short, because I thought of the poor members having to go through all this; but I have been led to believe that you were looking for substantial submissions. Would a substantial submission that has been done on surrogacy be an apt submission for this committee? It is done already.

CHAIRMAN—We would welcome that. The committee has been told that in Australia there are a number of backyard adoptions. How extensive is this in Victoria?

Dr Ford—I would not know.

Mrs Phelan—I have no idea.

Ms Stokes—That would be very difficult to know, because there would not be any records.

Dr Ford—You could find out from country parish records years ago. All these sorts of things were going on then.

CHAIRMAN—Okay. We would welcome that, together with the other one, if you could take that on notice.

Dr Ford—Do you mean private arrangements?

CHAIRMAN—Yes, plus the surrogacy paper. If you would give us that paper, we would welcome it. Thank you very much.

[11.06 a.m.]

SAWYER, Dr Susan Margaret, Deputy Director, Clinical Programs, Centre for Adolescent Health, 2 Gatehouse Street, Parkville, Victoria 3052

CHAIRMAN—Welcome. You are also, I understand, a senior lecturer in the Department of Paediatrics at the University of Melbourne. We have received your short submission on this. Are there any amendments or additions to that particular piece of paper?

Dr Sawyer—There is actually an error that it is perhaps useful to highlight. I thought I might just take a few minutes to give an example of that which highlights the issues.

CHAIRMAN—Sure.

Dr Sawyer—Within our community generally there is now an increasing understanding that the health risks faced by teenagers are great; that many of the health problems they face are complex; that they do require health professionals who are well trained in, and understanding of, the nature of these issues and how best to address them; and that there needs to be appropriate and consistent legislation to support the efforts of health professionals in this regard.

I think we would all be aware that recent media attention has perhaps appropriately highlighted the extent of some of these problems within the community. For example, the current suicide statistics for young men, in particular, suggest that it is enough to be categorised as a national disaster. For this group, there are important opportunities to intervention. A number of these young people have indeed visited their general practitioners, for example, prior to death. But one of the difficulties faced by health care professionals is that many times the young person has not been noted to be in any distress and that the young person indeed has failed to disclose any of the issues that have obviously worried them. All too often, sadly, it is only in retrospect that the extent of these concerns has become obvious.

There is very good research evidence that not only is a doctor's provision of an explicit statement of the confidential nature of health care a potent method of increasing the trust and respect with which young people view their doctor, but specifically and most importantly it increases their willingness to disclose personal concerns and worries such as depression or risk of suicide. The right to confidential health care is obviously a very first step to trying to improve health outcomes for young people.

However, I would suggest that the legislation surrounding young people and their right to consent, their right to confidential health care and their right to refuse health care is a legislative mire. There is inconsistency between different aspects of legislation within

the one state. So, for example, under the Child and Young Persons Act in Victoria, whilst generally a 16-year-old who is considered to be a mature minor can consent to medical treatment—and this is the mistake in my submission—they indeed do not have the right under legislation to refuse medical treatment. That is a noted inconsistency.

Similarly, there is marked variation from one state to another in terms of the age basis of consent and confidentiality. There are very significant inconsistencies between state and Commonwealth legislation. The Commonwealth freedom of information legislation is an example of that.

Imagine this situation: I am a respiratory paediatrician and I am referred a 16-year-old girl for the management of asthma. Inquiring about her smoking habits is obviously an important part of her clinical care, but if her parents are in the room I am less likely to get an honest response if that is something that she has been keeping from her family. So my approach in terms of trying to get the most reasonable understanding of the truth is to see a young person on their own for at least part of that consultation. Part of that process is to explain to the young person and their parent that the provision of health care to a 16-year-old is something that I deem confidential, and that she can talk to me about confidential issues, even things that I would keep quiet from her family.

I see her alone and we discuss her tobacco smoking, but she also discloses that she has been regularly smoking marijuana. I also determine that she is significantly depressed. She has decided she wants to stop tobacco and marijuana smoking. We discuss some strategies that might assist her to do that. We also look at an approach to the treatment of her depression, and I make an appointment to see her the following week to discuss her asthma, her smoking and her depression. Under Victorian state legislation, I am perfectly able to do that because my consideration is that she is a mature minor and that these are not life-threatening situations we are talking about.

On the other hand, however, it just so happens that, despite the best asthma care in the world, she has an acute exacerbation, she has a respiratory arrest and she ends up in the intensive care unit of the Royal Children's Hospital. Her father—let us say he is a major QC—decides that for some reason the care that his daughter got in ICU at the Children's was not ideal, and he is wanting to sue the hospital because he thinks that there was some inappropriate care in the intensive care unit. He approaches the hospital to get a copy of her medical record under freedom of information legislation. He can do that. He does not need his daughter's consent to look at her record because she is under the age of 18.

Whilst, on one hand I have reassured the daughter, I have got some very confidential information and I think I am working in her best interests, on the other hand here we suddenly have a situation where the father has indeed got a copy of the record and sees what she and I have discussed. Our FOI officer at the Children's has vetted the record but has failed to perceive that the discussion of tobacco or marijuana, which I duly

noted in the history as an important part of medical record keeping, is in any way sensitive because we are talking about asthma and a respiratory arrest here and the father is suing the hospital for something else. I am now in the situation where there has been an absolute dissolution of the trust of that doctor-patient relationship. The father is furious with his daughter because, unbeknown to him, she is smoking. He is furious with me because his perception is that I have not been fully frank with him. You could argue that I would lose completely my ability to act in the best interests of this girl because confidentiality has been seen to be broken.

Clearly from our perspective as physicians to adolescents, access to health care and the provision of confidential health care is a very important part of ensuring appropriateness in health care in terms of the UN Convention on the Rights of the Child, but our current legislative difficulties are really acting in a way so as to confuse some of the issues and to make it very difficult for medical professionals and other health professionals who are trying to act in the best interests of young people.

CHAIRMAN—I notice your submission has a theme common to a number of others. Last week we took evidence in Perth and Adelaide from the College of Paediatricians, the teaching centre. Their concept of a special office, which I am attracted to personally but I do not know if my colleagues are, is that it would be small, advisory and within the Prime Minister's department, the Prime Minister's office or something else—that has to be developed. Would that sort of office get around the problem?

Dr Sawyer—I would like to think it could. If you had an office of the child, an office of children or whatever one would choose to call it, I can see that if it had some clout—not necessarily political—and if it were listened to, it would be a very important first step. One of the concerns in terms of where children come into being is that whilst, if you like, their parents have legal responsibilities, very clearly the state also has legal responsibilities. But because young people—children and adolescents—do not vote, it is very hard for the state in certain situations, apart from purely protective issues where perhaps there are more obvious grounds for its involvement, to act necessarily in the best interests of the child when there are situations that are deemed to conflict with parental responsibilities and rights. I would see the proposition from the Australian Association of Teaching Hospitals to establish an office of children as a very important step in that regard.

CHAIRMAN—Is it that lack of consistency which is a key ingredient in not getting the optimum solution? Is that what you saying?

Dr Sawyer—It is a key ingredient. Whilst there are clearly a lot of other factors as well, one concern is the lack of consistency. When I give general practice talks, as I do all over Victoria, one of the major concerns and lack of understandings that general practitioners have is in terms of an understanding of how the law will deal with them in the very situation that I have addressed, and could they be sued by some aggressive

solicitor parent for treating their son or daughter in a confidential manner.

My reading of the legislation, my discussions with jurisprudence experts, indicates to me that the law is absolutely on the side of the young person, but that is an interpretation. State law is quite different between different states in terms of the wording. For example, South Australia and New South Wales are much more explicit. For health care, 16 years is deemed absolutely the age of maturity, if you like, whereas in Victoria it is much more this concept of a mature minor and an assessment that the doctor makes.

CHAIRMAN—Would that situation still apply in the example you gave about respiratory problems? If that young lass was pregnant or she had STD or something like that, would that be the same situation?

Dr Sawyer—Yes, the same situation would apply. In Victoria, for example, notwithstanding the previous discussions from the previous submission, if a young woman was to come to see me as a 16-year-old and was pregnant and was not wanting the child and I deemed that for a lot of reasons the termination of pregnancy should proceed, whilst I would work extremely hard to involve her parents in that decision, especially her mother, and whilst in many cases one is successful in being able to do that, it is very clear in terms of the information that we have about who signs consent forms for termination of pregnancies in the state of Victoria that at one Victorian hospital probably half of the terminations that are performed on 14- and 15-year-olds are performed without parental consent.

I would support that as a highly appropriate step and an important aspect of confidentiality legislation for young people on the basis that their medical professionals are working very hard to engage their families, but, notwithstanding that, there are situations in which family knowledge is not necessarily in the best interests of the young person at all. I would say that that extends not just to the simple straightforward things such as tobacco but also to reproductive health issues such as the oral contraceptive pill and specifically to termination of pregnancy.

CHAIRMAN—What about STD or HIV or something like that?

Dr Sawyer—Absolutely. I would argue that the American legislation which looks at confidentiality arrangements purely within a reproductive health domain is very inappropriate. I think that in Australia, notwithstanding the inconsistencies that we currently have in our legislation, the fact that confidentiality and consent legislation is not purely within the reproductive health domain is very important.

Senator COONEY—On the hypothetical case that you were describing with the father, was that obtained under the Freedom of Information Act in Victoria?

Dr Sawyer—Yes.

Senator COONEY—In the hypothetical case, he did not issue a—

Dr Sawyer—No, that can be obtained under freedom of information legislation.

Senator COONEY—The daughter's medical record?

Dr Sawyer—Yes, the daughter's medical record. All parents have access to their children's medical records under the age of 18 years without their consent. Currently, to me, it is a major inconsistency.

Senator COONEY—In your hypothetical case, the father has to take the action on behalf of the daughter, as I understand it. Who would make the decision as to whether the records should be released or not? If you leave it to the doctor then you have some problems.

Dr Sawyer—In terms of the Royal Children's Hospital where I am based—and this is purely a hypothetical case—when I did follow this up, when it was brought to my attention, with our hospital executive and then spoke with the freedom of information officer, the information that was released to the public, to the interested party, was very much at the discretion of the freedom of information officer. So if, for example, it had been something that was more obviously sensitive such as I had indeed arranged for a termination of pregnancy to be performed, then presumably I would like to think that that would be, if you like, overtly sensitive information and would be blacked out and not indeed released even to the parent.

Senator COONEY—So you are happy for that sort of decision to be left to the person who runs the freedom of information procedures?

Dr Sawyer—No, I am not because my concern is that, while overtly sensitive issues such as termination of pregnancy might be deemed highly confidential and therefore a standard FOI officer would presumably think that is confidential and not disclose that, I talk to patients about a lot of issues that I have assured them about confidentiality on that are not necessarily deemed by a third party to be acutely sensitive in nature. To leave it to the discretion therefore of a third party I do not think is sufficient.

Within our own institution my response to this is that I have said that any freedom of information request that comes to a patient from the Centre for Adolescent Health needs to come to me first and that in consultation with the FOI officer I am happy to vet that history and will decide what is released. But currently it is the FOI person that has some element of training—

Senator COONEY—But your solution to that is to have the decision made by the hospital and the treating doctor and the FOI officer?

Dr Sawyer—That is, but that decision has purely come about because it came to my attention. If I had not realised that there was this legislative discrepancy any information could have been given out on my patients and still does presumably in other department's responsibilities. Whilst we may think that, for example, in divorce cases and custody issues where often health issues for children are deemed to be a significant component of the legislative battles that go on, those sorts of issues would not be given out to one or other parental party, again I have ample anecdotal evidence that that sort of protective schemer does not come under me.

Senator COONEY—What I am asking is: what is your solution?

Dr Sawyer—My solution is that if I think a young person at the age of 16 is deemed to be sufficiently mature and responsible to consent to medical care and to consent to confidentiality then they should be equally deemed responsible that they are the one who decides whether their medical record should be viewed by a third party and not their parent.

Senator COONEY—What about for 14-year-olds?

Dr Sawyer—I would suggest that the same issue holds for a 14-year-old. Clearly, it is easier in terms of a 16-year-old because in Australia it has really come to be that 16 years is the assumption of maturity unless there are obvious causes by which you would suggest a young person would not be deemed mature. The younger they are the harder that decision is. I still believe strongly that many 14-year-olds are able to make those sorts of decisions, especially if the nature of the health care that they obtained was done so under an explicit statement of confidentiality, which it should be. My understanding is that they should have that same level of responsibility and right to make decisions about who views that medical record.

Senator COONEY—I suppose you can get some 10-year-olds who are in difficulties. What you are saying is that if there is evidence that the particular patient was assured that this would be confidential then it should be kept confidential?

Dr Sawyer—The difficulty that we have, and I suppose it is increasingly an issue in terms of the computerisation of medical records for example and third party access to medical records, is that whilst I assure patients of confidentiality I do not write on the top of every history of a patient that I see, 'Confidential information'. For me it is an inherent part of the medical consultation.

Senator COONEY—Before we get to that, I think what you are going to go on to now is the way you define it for people to see that this is a confidential document. But on the issue of the confidentiality itself and the ability of the child to exercise that, would you go so far as to say that there ought to be a general proposition that, if a doctor said to a child, 'You tell me the dark secrets'—if I can use that expression—'which I need for your treatment,' that would be confidential? Would you go so far as to say that that

should be kept confidential no matter what age the child?

Dr Sawyer—Clearly, in terms of all confidentiality statements to young people, there are exclusions to that which are in terms of threat of homicides, suicide or self-harm. Those exclusions hold for anyone. But I would have thought generally, if that material is obtained under a statement of confidentiality, then that would indeed hold.

CHAIRMAN—I cannot go into the details, but in Western Australia we heard about a very tragic case last Thursday afternoon in open forum, but in many ways in camera. I cannot go into the details. However, I will take you back to a hypothetical situation of a 17-year-old girl with a drug dependency and in receipt of youth homelessness allowance as a result of downright lies to the appropriate welfare department in Western Australia. The parents were saying things, but the system said there was not a problem, and eventually she overdosed. Whether that was suicide or whether that was an accident, nobody quite knows.

In relation to medical treatment and the consultation with, in this case, equivalent Victorian departments, if a young lass of that age were to come along and it was clear she had a drug problem and she was suicidal in your assessment, how would the parents be involved—bearing in mind that she is receiving something to stay away from her parents anyhow, which the government is paying for?

Dr Sawyer—If my medical concern is that she is suicidal—and if she did not want me to do anything in terms of talking to her parents and all the rest of it—I would obviously try and talk with her in terms of letting her know that I cannot not talk to people who are in a protective and responsible position because she is suicidal and therefore that does cut through all of the confidentiality reassurances that I have given her.

I would try and involve her in that decision to involve her family, and would talk to psychiatrists or other institutions about it. I suppose my approach is that I would still always talk to her first and not just automatically go above her head in that. But clearly in a situation of suicide, or a report of homicide, the confidentiality is not an issue any more.

CHAIRMAN—In your anecdotal experience, what is the consultation with appropriate departments in Victoria in that sort of situation?

Dr Sawyer—When there is a clear concern, like someone is deemed to be suicidal, then confidentiality issues are usually not a problem, because the young person is usually very distressed and very depressed and therefore working with them in a constructive way is usually not an issue. I do not think in terms of the legislative issues that when someone is falling into those exclusionary criteria, there is a concern with the legislation as it currently stands.

Mr TONY SMITH—On the Victorian legislation, you comment that:

. . . adolescents are deemed to have the right to confidential health care from the age of 16 and younger if their health practitioner considers that they are a mature minor.

I take it there is no requirement for the decision on maturity to go beyond the immediate health care practitioner?

Dr Sawyer—That is correct.

Mr TONY SMITH—So there is no committee, or determination that you must see two specialists or what have you to make that determination. Is that right?

Dr Sawyer—That is correct. That is the independent and individual assessment of the medical practitioner involved.

Mr TONY SMITH—Would you not think it prudent—and I am asking you probably as a specialist—for a health practitioner in a circumstance like that to take some advice or to refer that person on?

Dr Sawyer—Yes, your point is well taken, and, if you like, the younger the child and the more, let us say, invasive the procedure that we might be talking about, the greater I think the anxiety or concern on behalf of that medical profession should be in terms of really being seen to fully investigate the issue of maturity. So, for example, if it was a matter of prescribing the oral contraceptive pill to a 15-year-old who was already sexually active and who has not previously been using contraception but comes to me wanting to go on the pill, I will work hard to try and engage her parents and help her to talk to her mother about that. But if she is absolutely adamant that she does not want her mother to know, I will prescribe that quite happily, despite the fact that she is under the age of 16, because, as far as I am concerned, that is a very mature, responsible decision to be making.

Clearly, however, if she was coming in pregnant and requesting a termination of pregnancy, and if she was, say, 14 years old—so younger and asking for a more invasive procedure—I would have a much greater level of concern and, yes, I would be actively seeking a second opinion. I would not necessarily be referring her on and not looking after her myself, but I would be referring her to a more senior colleague perhaps in terms of getting their opinion on maturity. I think the nice thing in the medical profession's favour, for once, in this situation is that there is no clear definition of what constitutes a mature minor. I think that it is important that that is left to the medical profession's discretion.

I have one point to make in regard to the previous submission in terms of exploitation of children. Again, I have raised this with the Victorian community police squad and it seems to me that this is perhaps a good opportunity to raise this point, because they felt that legislatively they could not do anything further. A 14-year-old girl, whom I had been managing for asthma, came to me very distressed and suicidal. It turned

out that the issues were that she was a very lonely young girl at home, that in an effort to get over her loneliness and make friends, she had been telephoning an adult only friendship line—I do not quite know what you call these telephone lines for how to meet people, which is—

CHAIRMAN—0055 is one.

Dr Sawyer—And at a cost of a local call. So she had been phoning this telephone number and had been talking to a number of adult men over the phone and indeed had then, at the age of 14, arranged to meet three of these men—I do not know whether at her own suggestion, but she volunteered to meet these men—and indeed had sexual intercourse with them as a result. When I tried to follow through in terms of what the repercussions are in terms of the legality of this, it was clear that, as a 14-year-old, the three men that she had sexual intercourse with were all over the age of 18 and this was therefore, by definition, carnal knowledge. She did not want to proceed pushing any charges and her parents were in agreement that if she did not want to proceed, that was okay. They were obviously incredibly concerned and distressed by the whole situation.

When I actually got the telephone number from the girl and I phoned this number myself to find out what it was, the recorded message I got was, 'If you are under the age of 18, get off the line.' So what? Clearly, there is no bite to any of this. When I spoke with the Victorian community policing squad, whilst they were aware of this they did not feel that this was anything they could do anything about. I realise that perhaps this is not the forum either that you can do anything about it but I would be interested in your opinions.

CHAIRMAN—It is and it isn't. Now that you have put it in the evidence it is something that can be followed up. For example, Senator Alston, who is the responsible minister, is doing something about that at the moment—not that specific case, but looking at making it more difficult to access, to start off with. That is one part of the solution. There are other issues too. I do not have a pat answer to your question. But as a result of this evidence, we can raise it with Senator Alston.

Dr Sawyer—Thank you very much.

[11.36 a.m.]

CROWE, Mrs Marianne, Chairman, Council for Family, Catholic Archdiocese of Melbourne, PO Box 5067, Alphington, Victoria 3078

Mrs Crowe—Thank you for the invitation today. I apologise that you have just a letter from our council. This is because of the time constraints and the fact that we received knowledge of this too late. We are very pleased to be able to contribute and if there is anything further from today we would be very happy to contribute then.

CHAIRMAN—Are there any amendments or additions to the actual written submission?

Mrs Crowe—That is fine.

CHAIRMAN—Is there an opening statement or comments you would like to make?

Mrs Crowe—Yes, I would like to make a statement. As you would expect, the Council for Family feel that the best interests of children are served within the family. According to international instruments, the family—founded on marriage—is the natural and fundamental unit of society. The family represents the most concrete and effective pedagogy for the active, responsible and fruitful inclusion of children in the wider horizon of society.

Today's families face different and difficult times and rapid change in social and economic conditions, unemployment, and increasingly complex and often fractured relationships. I suppose one of the concerns that we have is the need to look at difficult cases in special categories. We recognise that is a need but they should not deflect the committee from giving attention to the needs of all children.

We would suggest that the most important task of the Joint Standing Committee on Treaties, in the interests of all children, would be to reinforce and reaffirm the importance of family. It could recommend a sustained national focus on the necessity and feasibility of reversing the current trend of family fragmentation which is so harmful to children. I do not think I need to point out to this committee what occurs in that fragmentation.

One of our concerns, in helping families more—and we have just had some discussion on this area—is the present financial state of families. As we are in the midst of discussion on tax reform, this could be an ideal opportunity to give families central consideration so that they may provide security, nurturing and care for their children.

There has been a dramatic removal of financial support for families rearing children over the last few decades. In fact, it extends over 30 years and it is just getting

worse. This directly affects half the households in Australia and many of them live on marginal incomes. There seems to be little awareness of this or the magnitude of the removal of resources from parents of dependent children. I can give you studies by Alan Tapper and a paper that we did ourselves a couple of years ago, *Let's put family first*, which outlines the disadvantages suffered by families.

The Smith Family study, called the *Working poor dilemma*, is one that I would like to mention to give an indication of the financial situation of families. It said that in 1990 the Smith Family had 100,000 clients and they could help 90 per cent of them. In 1995, the Smith Family had 400,000 clients, of which only 35 per cent could be helped. We believe that this is important to look at within the context of the rights of the child.

Another area is in the services for children. I will just quote one because I am particularly familiar with it. I am on the board of the O'Connell Family Services. We now have a waiting list of eight weeks. The other two centres, Tweddle and Queen Elizabeth, have exactly the same waiting lists. I would like you to reflect on what waiting eight weeks for health care must do to families with a troublesome child, a baby or a mother suffering all sorts of problems. I mention that one example because I am associated with it.

We also feel marriage education is vital. To counter the trends towards family separation and divorce, a national drive for marriage preparation and enrichment could be implemented. We know there have been improvements in this area, but we feel that they have not gone far enough.

Whilst many single parents perform an admirable job of raising children in often very difficult circumstances—they need all the help they can get; and I happen to be one of them—the evidence is clear that, on the whole, the two-parent home is the best model for child rearing and society's wellbeing. The goal at the moment should be to reverse the trend of family fragmentation, to increase the proportion of children who grow up with two married parents in supportive circumstances and to decrease the number who do not.

The council has expressed concern in its letter regarding the vulnerability of children who are born pursuant to IVF procedures. Especially of concern is the freezing or destruction of embryos produced through IVF procedures. Society abhors violence, especially against children, but it must be recognised that the dignity and self-esteem of children are undermined by the violence of procured abortion or forced sterilisation. Whilst the convention is drafted to guarantee the rights of children, it must not undermine the rights of parents who are a child's first teachers and major providers of love, guidance and protection.

Senator BOURNE—I want to ask you about work practices. Are they becoming more or less family friendly in your opinion?

Mrs Crowe—I think there is some emphasis on them, but they are far from family friendly. There are some organisations which pride themselves on family friendly policies, but they are few and far between.

Senator BOURNE—Would you recommend looking at work practices in relation to family—

Mrs Crowe—Yes, it is crucial to families.

Senator BOURNE—In regard to tax as well, which you also mentioned, is there anything specific that you would like to recommend as far as that is concerned?

Mrs Crowe—To make family the central aspect of tax reform. I think this is a golden opportunity that we have at the moment while this tax discussion is on to assist families. For instance, two-income families are doing so much better than one-income families, which are heavily penalised. They stay at home and care for their children. They forgo income. They do not share the benefits of child care. Many parents, either mum or dad, would like to be the full-time carers of their children. Assistance could be made in this area of tax. Instead, they are penalised.

If they were on the same threshold as a two-income family, they only get one tax threshold as compared to the two tax free thresholds. There are a number of ways that this could be helped. This council is discussing at the moment the ways that we might help people through the tax system.

CHAIRMAN—Except of course—and I hope you would acknowledge this—that, from 1 January this year, there is a very substantial family tax initiative which takes up much of the situation that you refer to.

Mrs Crowe—I acknowledge that.

CHAIRMAN—It has not fed through yet because it took effect only from 1 January.

Mrs Crowe—It was a wonderful development in recognising that a family with dependants needs more help as against a family without dependants. But given that consideration of extra help, the overall pattern of all the increased costs of the last budget, the family is no better off.

Mr TONY SMITH—You mentioned two areas that I want to ask you about. In relation to the Smith Family and that increase of approximately 500 per cent, why do you think that is? It does not seem to me that there has been a dramatic increase in unemployment in five years or a dramatic increase in family breakdown in five years. I query that statistic a little, but I am not saying that it is not factual.

I want to know the underlying basis of it, if we have any—that is the obvious discrepancy of only 35 per cent being able to be helped. In relation to waiting lists, you talked about waiting lists of about eight weeks or something like that. What areas are we talking about there, Mrs Crowe? What areas of waiting lists for what particular aspects?

Mrs Crowe—If they come into these institutions, they are helped. For instance, if the baby does not sleep at all at night, the three major institutions in Victoria can change the pattern and can assist these families. In fact, it is quite dramatic the way the sleeping pattern of a baby, for instance, can be helped. Or they could help a mother who is unable to handle her baby, who has problems perhaps herself, apart from not being able to handle the baby. I cannot help but notice at the moment that amongst many mothers there is a lack of maturity—perhaps it is because of a lack of having had role models to help them.

It could be argued that the two-day, three-day exit from hospital is one of the major causes. I do not think that is the full answer. I think it is one of them. I think mothers should be given more assistance in hospital and it should not be for just two or three days. It will vary with the maturity of the mother or the health of the mother.

In the area of helping families overcome the problems they have—because the whole family is affected when a mother and baby are upset—there is a new development in the fact that these institutions now take in the fathers and the other children. I think that is a splendid development so that the whole family becomes immersed in the problem.

CHAIRMAN—Is this convention—and you have heard me asking this question before—pro-family, anti-family or neutral? How do you read the convention?

Mrs Crowe—Like most of the others, I would have a bob each way. However, my experience of treaties in the past is that they are probably quite good. For instance, if you take the treaty on the removal of discrimination of women, who could argue with the fact that there should be the removal of discrimination? But it is when the legislation is enacted in the country that the crucial parts of these conventions happen.

I think it will be the same with this treaty on children's rights. A lot of it is a matter of interpretation, as has been outlined today, and it needs time and consultation to examine the legislation. But it is in the area of legislation that I believe we have to be very careful.

Senator BOURNE—If you could give us copies those papers that you talked about, that would be good.

Mrs Crowe—Yes, thank you.

CHAIRMAN—Thank you for appearing before the committee.

[11.57 a.m.]

FUNDER, Dr Kathleen Rose, Principal Research Fellow, Australian Institute of Family Studies, 300 Queen Street, Melbourne, Victoria 3000

KILMARTIN, Ms Christine, Coordinator, Family Trends Monitoring, Australian Institute of Family Studies, 300 Queen Street, Melbourne, Victoria 3000

CHAIRMAN—Welcome. So far we have received chapter 1 from the book *Citizen Child: Australian Law and Children's Rights*. What you have provided today is a supplementary submission—is that the case?

Ms Kilmartin—It is. It is a first submission—we did not have a submission before.

Dr Funder—Perhaps it might help you, Mr Chairman, if I just explain that these are possibly two parallel submissions: the one that you have with the book and a second one.

CHAIRMAN—That is all right. It is just that procedurally we need to get this into the evidence.

Ms Kilmartin—This is a submission.

Resolved (on motion by Senator Cooney):

That the submission from Ms Christine Kilmartin be accepted into evidence.

CHAIRMAN—Would either or both of you like to make a short opening statement? You need to take us through in very general terms what is in this submission because we are not aware of what is in it. If it is parallel to chapter 1 of the book then we have got a fairly good idea of it.

Dr Funder—I will be begin because what I have to say is quite brief and you have the book. The first thing is to say that I submitted the book *Citizen Child: Australian Law and Children's Rights* in its entirety to the committee. Chapter 1 is by me but the gist of the book is a set of contributions coordinated by me and published by the Australian Institute of Family Studies.

CHAIRMAN—I see, so you are the editor.

Dr Funder—As the collection includes chapters by people who are eminent in the field of discussing children's rights, I thought that that might be for the general information of the committee.

CHAIRMAN—Sally Castell-McGregor we heard from in Adelaide last week—very extensively, I might add.

Dr Funder—I thought you might have heard from some of the contributors. So that was just to say that that was the substance of that submission. The second thing is that in Christine Kilmartin's submission there is a reference to another document which may be of assistance to this committee. It is a report to the Attorney-General written by me and Bruce Smythe entitled, *Evaluation of the impact of part 7 of the Family Law Reform Act 1995: public attitudes to parental responsibilities and children's rights after parental separation*. That is a report published by the Australian Government Publishing Service and available from there. I draw that to the attention of the committee. It is referred to in Christine Kilmartin's submission but that is the full citation for it should the committee want to look at it. That was a piece of work done in response to a request by the Attorney-General to sample public opinion in Australia relating to part 7 of that act. Part 7 deals with children, and the principles set out in that part refer to the substance of articles in the United Nations Convention on the Rights of the Child.

This piece of evaluation was, firstly, in order to have some notion of acceptance of those principles in the Australian population in general and, secondly, the acceptance of those principles by people who were themselves divorced, in other words, people for whom this act would have an immediacy. That was done and published in 1996.

That may be of use to the committee in that it shows degrees of acceptance of those principles by the general public in Australia. That is to be part of a two-part evaluation so that when this act has been in operation for perhaps two or three years, in other words, when there is a body of people who have actually experienced that legislation, then the notion would be that we would go back and sample opinions and behaviours in those people in order to see if this legislation, which is guided very much by principles about the rights of the child, has had any impact on that population. So that is to be part of an evaluation and that may be of interest to this committee. I am happy to answer any questions on that.

CHAIRMAN—I have just had a quick browse through your article and there are a number of issues in there which we have heard about in the last few hearings, particularly in relation to educating people about the convention. Clearly, education is inadequate at the moment. I think you would agree that education in terms of the convention has not been very extensive.

Ms Kilmartin—The institute is attempting to comment from the point of view of research based knowledge but certainly what has been drawn to our attention by other players in the field is that there is further education required.

CHAIRMAN—Dr Funder, in terms of your chapter, we have discussed this ad nauseam over the last 12 months in this committee—and leading up to some legislative

initiatives, which I will ask about in a moment and the Teoh case—albeit that this book was written in 1995, you made the point—

Dr Funder—It was published in 1996, but it was written earlier.

CHAIRMAN—There will no doubt be many subsequent challenges of law to the Convention on the Rights of the Child, and you were specifically referring to Teoh. We have heard some evidence on this this morning and in previous public hearings. You are aware of the legislative initiative taken by the present government that would have been taken by the previous government, albeit there would have been some changes in our legislation in terms of the focus of the parliament.

First of all, are you aware of that legislation and what that legislation entails? Do you agree with the thrust or the intent of that legislation? Do you still think that, as a result of that legislation, there will be future challenges—as you indicated in that book—to the convention based on the Teoh precedent?

Dr Funder—Challenges of what sort?

CHAIRMAN—I do not know. You were not explicit in terms of what you have said in that chapter. On page 4 you said that Teoh, for example, is illustrative of the flux in administrative law in relation to international conventions. Then you say it is discussed in some of the following chapters in that book and that it pinpoints dilemmas in administrative law for signatories to the convention and that there will no doubt be many subsequent challenges at law to the Convention on the Rights of the Child.

Bearing in mind that it has left the House of Representatives and gone into the Senate, assuming that it gets through the Senate as it is, is it a move forward; is it a move backwards? Let us have some comments about it.

Dr Funder—Am I aware of that legislation? I am at one level. I know that there has been legislation but I think I have to say that law is not my area and I would not be a competent person to foresee what the implications of that legislation were in any broad sense.

What I was saying in that chapter was that I foresee further challenges and I think those challenges are going on right now in family law, which is the area that I do have some up to the minute understanding of. For example, I think there is a case to be reported today of B v. B in Queensland on appeal, which is about the implementation of the principles in the Family Law Act, part 7, vis-a-vis children's rights to contact.

CHAIRMAN—Is this the one where the federal Attorney-General appeared on behalf—

Dr Funder—Intervened, yes.

CHAIRMAN—We are waiting for that as well.

Dr Funder—I believe it was in my pigeonhole as I left, but I went out one door and they rang me to say that it had been delivered at the other door.

CHAIRMAN—What he was reported as saying—as I indicated to him, and he said he did not quite say it this way—on ABC Radio, and I heard him in Brisbane, was that the rights of the child are paramount and that parents do not matter. He may have been taken out of context—

Dr Funder—Who said that?

CHAIRMAN—That is what the federal Attorney-General was reported to have said.

Dr Funder—And the parents' rights do not matter?

CHAIRMAN—Yes, something like that. But he said that the rights of children are paramount. It may have been, with due respect—there are no ABC representatives here anyhow—selective reporting by the ABC. That is why we have also sought the judgment and all the rest of it to have a close look at that.

Dr Funder—In answer to your question about whether I foresee new challenges, I think they are going on now and I think that case would be a case in point. That is the only area of law that I monitor as family law in any detail. I cannot tell you about that case as I have not seen it; I just have a copy of a summary today. I do think that there will be challenges in that sense, challenges probably for further explication of exactly what the principles will mean in terms of children and contact.

CHAIRMAN—I think grandparents' rights were involved in that case, weren't they?

Dr Funder—I cannot tell you because I have not read it. I have just returned from two months overseas on study leave. I am sorry, I just have not got that piece of information.

Senator COONEY—What did you study there?

Dr Funder—I was on sabbatical leave at the Oxford Centre for Socio-legal Studies at Wolfson College. I am writing a paper on economic consequences of marriage breakdown in the 1990s.

CHAIRMAN—How long were you there? Two months?

Senator COONEY—We just want to say we did not go overseas.

CHAIRMAN—We rorters, yes. I think it is important to hear your views, bearing in mind that you have already put it in your book in terms of Teoh. Could you have a look at that? Have a look, firstly, at what the legislation entails and, secondly, can you take on notice some sort of response in relation to that? In particular, do you feel that there will continue to be legal challenges to CRC in the light of the post-Teoh legislative initiatives?

Dr Funder—I would be very happy to do that.

Mr TONY SMITH—You would be aware of reservations that were expressed fairly early on at a number of various levels, including fairly senior political levels, about article 5.

Dr Funder—I just need to be reminded about article 5.

Mr TONY SMITH—Mr Peacock MP, as he then was, as shadow Attorney-General, referred to articles 12 to 15 and then in particular he referred to article 5, which he said in itself may not be strong enough to give sufficient recognition of the rights and responsibilities of parents. There have been other concerns expressed to the committee, and I guess you may have heard of other concerns more widely expressed about article 5 earlier. I then look at what you say about article 5 in this report that I have just received from Ms Kilmartin. You make reference to it at page 8. Then you say that this idea of the evolving capacities of the child is one which is being explored in the context of the Institute of Family Studies and Bureau of Statistics project, which I take it is ongoing, is it?

Ms Kilmartin—It has started and hopefully it will come to an end at some stage, or at least it will come to a series of ends, but it is ongoing at this stage.

Mr TONY SMITH—Are you aware of a relatively recent interpretation of the status of article 5 in the context of your investigations by the United Nations committee on the rights of the child?

Ms Kilmartin—No, I am not. I would appreciate having my attention drawn to it in more detail.

Mr TONY SMITH—In paragraph 13 of its concluding observations on the implementation of the convention by the Holy See, the committee said that parental rights are secondary to the rights of children, outlined in articles such as 12, and then said this:

The rights and prerogatives of parents may not undermine the rights of the child as recognised by the convention, especially the right of the child to express his or her own views, and that his or her own views be given due weight.

That contains some general observations about article 5. In your memo at page 8, you state:

The notion of appropriate direction and guidance is one which will be open to interpretation, but which, in the extreme, would also be a matter of interest to the state and of possible intervention by the state in the implementation of the convention.

Having regard to some of those remarks—and this is probably something you are going to have to look at—is it not arguable that it may not necessarily be extreme cases where the state, under the guise of the UN committee on the rights of the child, because in a sense that is the start of the process, is the critical eye that is looking at implementation and that already we are seeing the critical eye of the state feeding its way into interpretations of article 5, which some people have expressed concern about at a political level and generally?

Ms Kilmartin—I think at this stage, it would be beyond my capacity to comment on that. What we are trying to do with this project is go a little more into reflecting the Australian set of values and priorities in relation to children. Whether they fit very specifically with the articles is a matter that I think we can only come to in time. Part of the reason for including some of the work of Kath Funder and Bruce Smythe was to draw attention to the fact that there are groups of people who hold particular opinions. I think the role of the institute, if not the dilemma of the institute, is to try to reflect that broad spectrum of Australian families, rather than to be towed down a particular line. So the project is trying to acknowledge at least that we may come up with different pieces of data, for instance, that reflect different opinions about any particular article. The project itself is not tied strongly to the articles of the convention.

I have been through the exercise of fitting the articles of the convention, as well as I can, to the model that we have developed for the project. They tend to cluster together in certain elements of the model. I have included this at the back of your handout. We are trying to use the model to reflect what we think are the broad spectrum of elements for the life of a child, only some of which are reflected in the convention. So fitting tightly the articles of the convention to this project has not been an aim. Eventually if we have the resources and can look at this more closely, we may be able to reflect on how well the articles pick up the issues for Australian society.

Mr TONY SMITH—I think I should also mention some further observations by the UN committee in relation to the United Kingdom. In February 1995, as far as sex education was concerned, it said:

A child should be invited to express his or her opinion about sex education and that the child's

opinion should be given due weight.

I am probably relating those sorts of suggestions, which amount to concerns out there in the community about just how far we go with this thing, to the question of the educative role, which you comment on. In commenting on the educative role, the treaty itself requires states parties to provide some education about the treaty. It would necessarily involve both sides of the argument. You could not say that this is a great treaty and these are the reasons why it is a great treaty without citing the other examples of interpretation that have occurred so far, as well as the other side of the argument. Would you agree with that?

Ms Kilmartin—I think the role of the institute is exactly that: to capture the fuzzy edges around policy or legislation. You may have a piece of legislation in place which allows people technically to take a particular action. It may be only a very small proportion of the community who end up, ultimately, taking that action, with other people taking a range of other actions which might be either side of a piece of legislation or policy.

So the role of a data collection project is perhaps to reflect the perspectives around the article without necessarily making a judgment about the article. It may be the role of other people you have talked with, the NGOs and what have you, and the parliament to take the data and to then place some judgments on it. Where a piece of data reflects very clearly that children are not progressing or that some aspect of a child's wellbeing is being particularly hampered by a set of actions in society, then an organisation like the institute can certainly come out and draw attention to that. We really do have to reflect the broad spectrum of Australian society.

Mr TONY SMITH—Where does funding for the Institute of Family Studies come from?

Dr Funder—The institute is funded as a line in the federal budget. We are a statutory body set up and funded.

CHAIRMAN—In terms of your relationship with your project and the articles of the convention, have you seen anything so far that shows that those articles are wildly inconsistent with our social objectives in this country?

Ms Kilmartin—No, because it is still up to interpretation. The articles are not legislatively binding in that sense, so it is a matter of interpretation.

CHAIRMAN—We discussed this earlier this morning while you were not here. Would you not agree that this convention is a broad framework of principles into which individual countries slot their appropriate responses to the set of principles?

Ms Kilmartin—That would be my understanding, yes, with a country like Australia really working hard to reflect the issues for children as best they can.

CHAIRMAN—Do you feel at this stage able to comment as to whether the convention should be embodied legislatively as an umbrella piece of legislation in Australian law, federal and/or state or a combination, or do you feel that it is best done with individual pieces of federal and state legislation in whatever areas that are appropriate relating to the convention? Secondly, do you feel that we, as a country, need a commissioner for children, as New Zealand has? If so, what sort of model should that commissioner follow? Should we have an office for children with an advisory or an investigatory role? Can you make some comments on both of those?

Dr Funder—I will make a comment on the first one about whether the legislation should be put in holus-bolus. I think it is far too complex a question for me to enter an opinion to the committee that would be useful, so I do not think I can assist you with that one. With the commissioner for children, I think it obviously has a symbolic value, which is important. The model that I know a little about is the Norwegian one. I think that that is symbolically a position which sets a value on children in society which is a very laudable thing to do. Whether it has to be a commissioner that does that is a another question.

I think there would be many ways in which a society can have it seen clearly that children are very important to the society and that there are mechanisms in place to advocate children's wellbeing and protect them from harm and protect their rights within the society and represent them. I do not think a commissioner is the only way to do that but, if you look to a model like the Norwegian one, it is a very prominent way in which a society reflects its values.

CHAIRMAN—I think the Norwegian and the Swedish models are very similar. My understanding is that they are basically ombudsman type functions.

Dr Funder—I only know a little about the Norwegian one, which I think has been one of the longest established positions. Yes, it was set up as an ombudsperson, but I think it goes beyond that now and it is a position through which quite a lot of opinion and public knowledge about children are channelled. I think it takes on a bit broader symbolism than just the very specific complaints model. That will lead me to say a few other things, but I am very happy to pass the two questions across here for the moment.

Ms Kilmartin—On the first matter, like Kate I really do not think it is my area of expertise and I would not like to comment. I do not think the institute has done work which would allow us to comment on that, except more broadly to pick up the point that Kate made in relation to the commissioner. I think that can be made in relation to legislation or to positions that are created—that is, it is not only the symbolic value but the encouraging value that you can obtain from statements of position which are clearly made and which society understands are being endorsed by the very actions of

government. To take holus bolus into legislation the articles of a treaty such as that may cause more difficulties, but that would only be something I would pass a personal comment on.

In my submission to you, I have briefly drawn your attention to something that I got my hands on. I also have been overseas, like Kate, and one of the places that I visited somewhat spontaneously was Tunisia. Tunisia produced a code de la protection de la femme which has been described, as I made reference to here, by the UN committee as a set of guiding principles which goes beyond the articles of the treaty. Tunisia spent two years reviewing its own legislation in order to come up with this document. I actually brought it with me, but it is all in French, so anybody who can read French is welcome to have a look at it. I do intend to have it interpreted or to try and find an English version.

Senator COONEY—You haven't got the Arabic version?

Dr Funder—It is in Arabic. Can you read that? I am serious. It has got the Arabic in the back, the French in the front, but no English in the middle, unfortunately.

That is a way a government, which is a democratic republic, 98 per cent Muslim, has approached the issue of looking at children. It is very proud of it, I might say. I have also picked up another document which I think is somewhat similar. I have given you some other examples in the submission as well of a range of things that people are doing which may or not involve a commissioner.

A part of my overseas trip was to go to an urban childhood conference in Norway where I did hear the Norwegian ombudsperson, Trond Wange, say how much the role had changed in the years since it had been established. I think the point he made best was that the role has opened out as people have gained confidence in it as not just a complaints role but a more positive role on behalf of children. That was endorsed by a number of other commissioners, ombudsmen or whatever who were there from various countries. From the point of view of the experience of countries which have set up this role, it does appear to have some value for children, both symbolically and in reality.

CHAIRMAN—I noticed Tunisia actually signed on 26 February 1990 and ratified on 30 January 1992. It would be interesting to see in that document—bearing in mind they have done that, and I am not aware of whether they have any reservations expressed—how as a Muslim society they reconcile that with female genital mutilation?

Ms Kilmartin—There are other issues of filiation, as I understand it, that exist. The community is not perfect. I do not know the answer about the resolution at the moment. If the committee is at all interested, when I get an interpretation of this I will be able to supply it.

CHAIRMAN—We will have a look ourselves and, if we need some more

information, we will get it from you.

Senator COONEY—We have talked about whether the treaty, in full or in part, should be legislated into law or should be left there, in part or in whole, as a set of general principles. In that context do you have any opinions about whether the way children are treated should be left to general principles, say, 'This is the sort of thing that families ought to do,' or from a church, 'If you have a child, this is what you should do'? Or do you think that the treatment of children should be left to black-letter law or to a bit of both? In what proportion? Do you have any impressions as to how you would look after children in Australia?

Dr Funder—I have a few responses that might bear on that question. I think that law is obviously, whether it be international law or national law, concerned with minimalist intervention in children's lives, setting minimal sorts of standards and so on. I think that this is one of the dilemmas that people have with an international convention on the rights of the child which sets out so many principles. How far will those principles translate into direct intervention in children's lives and in areas which in our society we would say would be very much private areas?

I would like to make a couple of comments on that. I think that the sort of work that we do, which is not legal research, and other research might be helpful. I think many of the discussions on children's rights are about children in adverse circumstances, extreme circumstances. They might be what you would call children at risk, children who are already in contact with the law, whether it be the law of protection, law of juvenile justice or so on.

I think there that people get a notion that the only legitimate role for a set of principles is to do with children who are actually a very tiny proportion of the total society. Our work is very much concerned with children and families across the board. I think that is a notion of functioning which is healthy, if you like, which is normal and which is usually outside of legal prescription.

I will turn now to issues relating to education in relation to the United Nations convention. I think we need to have information available for parents which sets out that these principles are principles which apply across the board to children. They do not presume an intervention between families, parents, responsible adults and children. On the contrary, they are to support people in their roles as first-line responsible people for children.

In the media and in the debates that I have read I think that is not reflected well. I think that what is reflected is a notion that talking about children's rights is a zero sum gain. If you talk about children's rights, you are in some way interfering with and diminishing legitimate rights and responsibilities of parents. I think really a fundamental plank in any education campaign has to be to tackle what I see as a false notion of

children's rights being a zero sum gain. I think that is a point that I want to make.

The second thing is that that is not the case, because principles about children's rights in the society do not just apply to fringe children or children at risk, they apply to children in the mainstream of society and the family environments in which they live. I do not think that has been part of any education or publicity that I have seen, particularly about this.

The third point that I would like to make is that we need to have very clear information back from mainstream Australia—and I have put before the committee some work in that regard—so that, as Mr Smith raised earlier, we do not get one version of what children's rights might be about, but rather a pluralist interpretation; because it is a pluralist society that many of us would wish to have an assent to.

Senator COONEY—I would like you to comment on that. As I was saying before, in the old days—well before you were born, Dr Funder—we used to have the churches putting in their influence.

Dr Funder—I respect your memory!

Senator COONEY—You would go to church and they would say, 'You have got to do this,' and I always used to obey that. That has thinned out a bit. That sort of influence is not quite there any more. There was a general understanding in the community of what you would do. Do you think there is a need for some sort of universal? It need not necessarily be the Convention on the Rights of the Child, but no doubt that is a typical example of what I mean. Do you think a slacking off of the influence of those old institutions, if I can call them that, has led to a turning to these new ones?

Dr Funder—I am not convinced that those institutions are slack. If we are talking about churches as institutions, then I think that they are probably not as central.

Senator COONEY—Not as universal, perhaps, in today's world.

Dr Funder—Yes. I do think that there are probably many other voices in society tackling the same sorts of issues, but they probably do not speak with what seems like one voice. Perhaps when we reflect all that long time ago in your memory—which is so much better than mine—we remember it as a unified voice, but I am not absolutely convinced that it was unified. There were huge debates about children. Education of children was a hot potato for 100 years in Australia. The debate was intense, and not so unified. I think it was quite good that there were those intense debates because again, symbolically and really, that puts children in the focus. Perhaps there are different ways of doing that.

Ms Kilmartin—I endorse what Kate has said, but the institutions in society such

as schools do feel the pressure of picking up some of those issues. Certainly that is one of the areas that we would like to have a closer look at within this project, just at a broad level. We cannot do everything in this project—there are not enough legs.

Recently I was on talkback radio in relation to figures about young adults who are not having children. I must say I was extremely impressed by those who rang in who described the fact that, although they were not having children, they saw it as their responsibility to assist others who did. One man who himself had children rang in. He was in the nature of work that allowed him to look at this, and he described it as 'sharing their freedom', which I thought was a very interesting turn of phrase. What it said to me was that there are a set of values within society that do get transmitted, that do get reflected. They may not get reflected through the standard organisations, but they still exist.

Dr Funder—I will come back, if I may, to one last point I want to make in relation to what I see as rights being applied to children across the board. One of the key articles in the convention concerns the rights of children to be heard in matters which concern them. I think that there again we need to look at children's voices in an empirical way, so we are not just using adult oriented or adult managed approaches. I want to draw the committee's attention to research which we have done at the institute in the past, in which we have gone to mainstream children and asked them about all manner of things in a fairly rigorous, empirical way. We have asked them about their position in the family, their wellbeing, and notions of justice in their lives. I am talking particularly now about children whose parents have divorced. We will be doing further work where we will be interviewing children. In fact, it is ongoing at this moment, in a project called the Australian divorce transition project.

I want to draw attention to the fact that there is a requirement, if we are to inform educative endeavours relating to the rights of children, that we actually get their voices. Only then can we say that we have actually listened to what children have to say about management in families, rights and responsibilities of parents and children in families, and ways in which they would see these things as being protected, as well as listening to the adult version. That requires resources, of course. The institute has a certain amount of resources to do this sort of work, but I think that the committee's attention might be drawn to other avenues for providing research funding to a variety of organisations—this is not just a plug for the institute—in order to have some very well researched information about children, their families and the way in which their rights can be protected in society.

Ms Kilmartin—I have drawn your attention in the submission to a couple of examples, but I might say there are many examples now developing across the world of processes of consultation with children, either research based or action based. If there were anything to be said about the position of the UN convention in Australian society, it might be to suggest that some ways of implementing the principles in the convention without necessarily getting into legislative bunfights might be a good way that an industrial society, for instance, could go. Certainly, listening to young people and giving them some

experience of speaking about their own communities and about their own families and their own lives is a positive way to go—in fact, it almost sets up a best practice situation—rather than a straight legislative one.

CHAIRMAN—Thank you very much indeed. I will go back slightly to Tunisia and look at their declaration in terms of this convention. This highlights the interpretive differences between sovereign states. For example, Tunisia says:

The Government . . . declares that it shall not, in implementation of this Convention, adopt any legislative or statutory decision that conflicts with the Tunisian Constitution.

It also declares:

. . . its undertaking to implement the provision of this convention shall be limited by the means at its disposal.

Look, for example, at the reservations by the UAE, the United Arab Emirates, which says it 'shall be bound by the tenor of this article'—which is article 14—'to the extent that it does not conflict with the principles and provisions of Islamic law'.

Thailand says:

the application . . . shall be subject to the national laws, regulations and prevailing practices in Thailand.

It really means different things to different sovereign states.

Ms Kilmartin—But beyond that reservation, they went through a two-year process where they used their own legal people and some international people, as I understand it, to develop this document. Certainly, the UN committee has had better access to this document than I. I actually did not realise that until I came back with this document and then read what the UN committee had said about it. I might say that I have not had access to all of the documentation relating to the implementation of the convention that obviously the parliamentary inquiry has.

CHAIRMAN—If you cannot get hold of it, we could give it to you. In relation to Tunisia, for example, there are three declarations, all with a fairly strong caveat to them, and three reservations, particularly in relation to voluntary termination of pregnancy—all sorts of things.

As there are no more questions, we thank you very much for your evidence.

Luncheon adjournment

[1.33 p.m.]

CURRAN, Ms Liz, Executive Officer, Catholic Commission for Justice, Development and Peace, Ground Floor, 404 Albert Street, East Melbourne, Victoria 3002

CHAIRMAN—Welcome. We have received your very extensive submission. As a procedural matter, are there any amendments, omissions, additions or errors in your submission that you wanted to put on the record before we ask you to give us an opening statement?

Ms Curran—No.

CHAIRMAN—Would you like to make an opening statement?

Ms Curran—What I will do in the opening statement, if it pleases the chairman, is just highlight the main points of the submission, because I think it is more important that you ask questions.

CHAIRMAN—That is fine.

Ms Curran—The commission really hopes that the convention will not be watered down in any way because we fail to meet the basic standards. Rather, the strategies, projects and mechanisms in order to raise the standards in which we treat our children should be implemented and raised so that compliance can then be easier. Rather than water down the convention, what we need to do is really improve our performance under the convention, particularly in light of the alternative report that was made to the United Nations Convention on the Rights of the Child.

In our submission we also refer to the reports of the national inquiry into children by the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission, which was a joint inquiry. When I was at the Federation of Community Legal Centres, I prepared an 80-page submission to that inquiry, which basically took into account individual case histories of young people and their experiences with the legal and other systems in place.

CHAIRMAN—For the benefit of the *Hansard* record, is that the May 1997 report?

Ms Curran—The May 1997 report, yes. We also seek to highlight that many of the recommendations in that report go in part to improving Australia's compliance under the Convention on the Rights of the Child.

We also have referred to the *Bringing them home* report which was recently released by the Human Rights and Equal Opportunity Commission. Likewise, we believe that the unfortunate media coverage of the *Bringing them home* report has tended to focus

on past events without acknowledgment of how past events are impacting upon young children today and that those people who are now parents are these young children. We also believe that many of the recommendations of the HREOC report are worthwhile to be considered and would hope that, at some stage, the parliament would consider implementing them.

It is also important to note that the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission both say that the report was really mainly related to the most disadvantaged children of society who face, due to family breakdown, socioeconomic and educational disadvantages, systems abuse, psychiatric conditions or drug and alcohol dependency. When Australia as a nation has a capacity to limit the disadvantages experienced by children through pro-active and coordinated measures, we believe that Australia should seize that opportunity. We see the convention as one framework within which we can do that.

The Catholic Commission for Justice and Peace makes its submission to the committee on the basis of Catholic social teachings which basically states that every person possesses an absolute inviolable dignity made in the image of God. Women and men have a pre-eminent place in the social order and human dignity can be recognised and protected only in community with others. Children as humans are therefore entitled to dignity. Where their dignity is denied, it is the responsibility of the community jointly to improve the situation and not to act in a self-interested way.

The recent studies of the Monash Centre for Population and Urban Research highlighted the fact that one-third of Victorian children were living in an acute chronic phase of poverty. I think that that forms an interesting framework for the discussion about children's rights. As children are not capable of voting and rely heavily on the system and their parents or siblings for support, it is important that we ensure that their human rights are upheld and protected by not only the other people but also the structures that exist in both the governmental fields of operation and the manner in which corporations operate and affect their rights.

We are concerned that the two inquiries I referred to earlier—the national inquiry into children in the legal system and the *Bringing them home* report—demonstrate that children often suffer from systems abuse through inadequate resourcing and the absence of experienced staff within those institutions who deal with children in society.

The Catholic Commission also considers that family is vital to the protection of children's rights and for protecting those rights. Implicit in the teaching that the family is considered to be vital to society is that the family should be supported and that parents also have a responsibility to their children. In many cases, the pressures on family are likely to cause breakdown. In addition, some parents can abuse their relationship with their children or fail to provide adequately for them. Accordingly, the best interests of the child must remain paramount. Children, by virtue of their vulnerability and dependence, are part

of the core and warrant special care and protection.

We recognise the integral role of the family and parents in attaining the rights of the child. It is important to note also that the preamble of the convention also highlights the integral role of parents. We are of the view—I might be able to cut some debate short for later on—that the rights of parents compliment the rights of children. They should be complimentary and should not be seen as in conflict with each other.

In many cases and in many instances, as I have outlined in the submission, what often happens is there is a failure of the parents to provide for children. It is important that children be protected by the basic principles outlined in the convention and by legislative and other social action by the government. We also note that the government often plays the role of parent, particularly in the care and protection area. It also has some responsibilities in that regard.

There is a correction that needs to be made to the paragraph immediately following the preamble on page 5. I referred there to the Council for the Family. It should read the Catholic Family Welfare Bureau, rather than the Council for the Family because it is the direct service delivery type angle.

The other issue I wish to raise relates to Teoh's case. We are of the view that the Administrative Decisions (Effect of International Instruments) Bill 1995, is of concern in relation to the way—

CHAIRMAN—You mean 1997.

Ms Curran—Yes, I mean 1997. I guess it is coming back here before the parliament—

Senator COONEY—It has been brought back, I think, much the same as it was before.

Ms Curran—Bureaucrats and government departments hold a lot of power in decision making and policy making. It is absolutely imperative that those bureaucrats who have much power in terms of making determinations on matters such as social welfare, education, health, the legal system at a national level, refugees and immigration should take into consideration the international human rights conventions that we have signed. That should almost form a protocol that departments should defer to. That does not mean, and Teoh's case does not say that it means, that they are bound to abide by those decisions, but they should at least take them into consideration. For example, in a case of a decision involving a child they should in fact look at what is in the best interests of the child. We think that what is called the anti-Teoh bill is contra the Convention on the Rights of the Child.

The areas where there are major concerns are in the resourcing of families and support for families. We have major concerns about the winding down of many of the support services for families and the redirection of, for example, moneys direct to families. That can be appropriate in some instances, but, in other instances, these families are crying out for help and they need somewhere to go to get some support. To that end, and I guess this will be a common thread running through our submission, that there is a real need for an overall coordinated role of both the national government in relation to ensuring the protection of children's rights and in relation to the capacity of agencies to do research, to work out what the problems are and to find out ways that they can make systemic changes to improve the system.

The abolition, for example, in the 13 May budget of the 11 family resource centres, the winding down of immigration resource centres and so on we see will have a negative impact on family life. Some of the funding has been redirected directly to families. When I work at the community legal centre as a volunteer I realise the absolute need that people have. Many people have not got the wherewithal to help themselves. Their situation is one of acute breakdown. There is a concern for the welfare of the children and if those families are supported, then the children are more likely to get a better go. I think there is a general need for coordination.

I have major cause for concern in relation to our capacity to abide by principles of the convention in relation to the provision of legal aid in this country. I have stated to previous Senate inquiries that I think that the current position in Victoria in relation to separate representatives is totally unacceptable. The Victorian Legal Aid Commission does not consider the circumstances of the child in appointing a legal representative in family law matters. It should be noted that normally children's representatives are required to be appointed by the Family Court. The children's representative is generally appointed in relation to matters where there is an allegation of sexual assault by one or both parents, where there is a question of separating the siblings, or where there is a question of the capacity of either or both parents to care.

The Legal Aid Commission in Victoria do not tend to look at the circumstances of the child and whether they are at risk or not when they grant aid; they now look at the capacity of parents to pay. If one parent is unaided, then they are now asking that parent to pay half the legal costs. The issue there is that, now with the introduction of family law caps, firstly, the fact that a parent is not a recipient of legal aid does not mean that they are pecunious, because it may mean they have reached the legal cap and therefore aid has been refused; and, secondly, it is inappropriate for a parent, where an allegation is being made against that parent, to be funding the children's representative. On the face of it, it can be seen as being an undue interference of that legal representative in the appropriate bringing before the court of the matters that are in the best interests of the child. We believe that Victoria—we hope that other states will not follow the example of Victoria—is at risk of being in contravention of a number of the provisions of the articles under the convention, and that relates specifically to article 9(2).

Basically, we do not agree with concentration of media ownership. We believe in the need for pluralism. We believe in the need for continuing religious broadcast quotas and educational children's programs. We note the importance of an independent national broadcaster where a lot of different views can be exposed that often do not get a run in the commercial media because of shortages of time or desirability of making conflict a focus of the media reports.

There are other issues in relation to children which are becoming increasingly worrying. In the context of when the submission was written, I was not as focused on this as I have been in recent days, due to some clients I have seen at the legal centre. The commission has a concern in relation to de-institutionalisation without the provision of adequate community support and housing for these people. Many of the people who are suffering from mental illness nowadays often come from a homeless background and are children. This seems to be on the rise. Last year, the figure for homelessness in Victoria alone was 3,500. We believe it is now in the vicinity of 4,000 children on the streets, or rising up to that level. We think that there is a need to look at the gaps in relation to the provision of mental health strategies generally for children and specifically for children who are homeless and therefore have trouble accessing generalist services. We have a concern about the increase in class sizes in the education system and the capacity of teachers to look after the welfare of children.

The final point that I would like to make is that often the interests of the economy seem to justify the non-provision of an adequate standard of living for all Australians through the diminution of funding and support, cost cutting, reduced access of citizens to services and the diminution of the democratic processes by which children and young persons are both protected by and able to participate in the operation of our legal, administrative, social, political and cultural systems. We believe that the future of this country rests with how we treat our children today, and the consequences of past policies highlight how damaging it can be if we override the rights and interests of children.

CHAIRMAN—Thank you very much. I suggest to you that there are a few other amendments that need to be made to your submission. There are some errors of fact. I refer you to your recommendations on page 10. In recommendation 1, you made reference to the 'Joint Senate Committee on Treaties'; it should be the 'Joint Standing Committee on Treaties'. In recommendation 2, your reference to the Senate should instead be to the committee. In recommendation 3, again it should read 'Joint Standing Committee,' not 'Joint Senate Committee'. Recommendations 4, 5 and 6 stand. The last paragraph of the summary on page 11 should read 'We believe the committee in its recommendations. . . ' not 'We believe the Senate in its recommendations. . . '. Are you happy with that?

Ms Curran—Yes, of course.

CHAIRMAN—I am sure there might be a few others further back, but just so that we have got the name right, it is the Joint Standing Committee on Treaties involving me

and Mr Smith as members of the House of Representatives.

Ms Curran—You wish to be acknowledged.

CHAIRMAN—Yes, we do not want to totally disregard the role of the House of Representatives. Let me just ask you a question about the post-Teoh legislative solution. Why do you say that it is not in the spirit of the convention? Surely, if the convention—as we have heard over and over again this morning, as indeed we have heard in all other hearings—is a broad statement of principles, and of course Teoh specifically referred to legitimate expectation in administrative terms, how can legislation that has just been introduced into the House of Representatives and will be introduced into the Senate in August be seen as flying in the face of the convention?

Ms Curran—I think you have got to look at the practical application of the bill. I know that at one point in time there was consideration of the fact that there should be some protocols introduced for bureaucrats and public servants who were in a position to make decisions. I think it is important that all people who are involved in determining the implementation of something—for example, social security levels, the setting of provisions for universities, the national mental health strategy or whatever—be actually conscious and aware of the human rights implications, concerns or considerations they should take into account before they make a decision, otherwise they are operating in a vacuum.

Although the convention on the rights of the child has a number of articles which highlight principles that should be adopted by all the sovereign states that are signatories to it, it is important that those people who are actually on the ground making practical decisions which can impact upon those people's lives at least defer to those. The fact that they are required to read them, look at them and be aware of them means they can make their decisions from a broad context and an informed position, rather than a position that might mean they do not have to tackle those things that Australia has said to the international community as a good international citizen, 'We will try to maintain within our country.' So I think that is the important key.

My concern with the executive statements that are now on the record and my concern with the actual bill is that the major linchpin of the Teoh decision was the fact that it was an expectation that public servants, bureaucrats and so on would take into account those human rights conventions, although they were not bound to consider them. I think that should remain. I think the High Court was basically saying that, now in a time when bureaucrats have more and more power, they should also with that power have responsibility and accountability and should take into account the full impact that a decision they might make might have. When you look with reference to the actual case of Teoh and you look at the fact that there were children involved, I think those issues are really important.

Mr TONY SMITH—All of them in care, by the way. They were not even in the

care of the mother ultimately, because she went to gaol after Teoh went to gaol.

Ms Curran—Those things need to be looked at. There are other issues—for example, the correctional system—and I will get on my hobby horse now. Recently, I have been looking at the mandatory sentencing provisions in Western Australia and the Northern Territory. The International Covenant on Civil and Political Rights looks at cruel and inhumane treatment of human beings. My view is that the bureaucrats and public authorities who enact that legislation or who look at the policies and what they are going to introduce should question whether it is cruel and inhumane punishment to send a 23-year-old indigenous woman to gaol for possibly 28 days for the theft of a $2.50 item. I see no appropriateness. I feel that is just totally inhumane.

Given the mandatory sentencing provisions, a court no longer has the power to look at the individual circumstances of either the defender or the victim or the circumstances surrounding the actual commission of the offence. That is really inappropriate. It is for those sorts of factors that a cursory reading, or the introduction of protocols within all the government departments where they have to consider these international covenants which are signed and ratified, is a good process. It is good firstly for educating them, secondly, for informing them and, thirdly, for ensuring that we can comply with our human rights obligations.

Mr TONY SMITH—On that point, were you talking there about the Northern Territory legislation?

Ms Curran—There is mandatory sentencing legislation now in Western Australia and the Northern Territory, and Victoria has been considering the introduction of mandatory sentencing.

Mr TONY SMITH—Is that in relation to indictable offences?

Ms Curran—No, it is in relation to minor property offences. I used to know the Western Australian ones, but they have gone out of my short-term memory. In the Northern Territory, if you are over 16 years of age and you are up on a second charge of an offence, you automatically go to prison for 28 days.

Mr TONY SMITH—This is very important. Is it an offence or an indictable offence?

Ms Curran—It is a minor offence.

Mr TONY SMITH—Then you have to determine whether it is an indictable offence heard summarily or on indictment.

Ms Curran—It includes minor offences. There is a list. In the legislation they list

a certain number of offences. They say mandatory minimum sentencing laws target 'property offences; stealing, other than shoplifting; robbery; unlawful entry of buildings; unlawful use of motor vehicles, caravans and trailers; receiving stolen property; criminal damage'. Those can include minor criminal damage.

In the Northern Territory, if you are 16 or 17 years of age, on your second offence you can go inside for 28 days. If you are an adult and it is your first offence it is 14 days, and for a second offence it is 90 days for those offences that I have just outlined. For a third offence it is 12 months.

Mr TONY SMITH—You just said 'you can go inside'. Is it a case of you must go in?

Ms Curran—It is mandatory that you do, and people are put inside.

Mr TONY SMITH—If you have had three previous convictions of an indictable nature, is that—

Ms Curran—No, it is not specifically referenced to serious indictable matters, it can be minor theft or vandalism charges.

Mr TONY SMITH—That is very important because in Queensland we have the Regulatory Offences Act and that deals with the minor $2.50 type offences, shoplifting and the like. Obviously, that is not dealt with on indictment as it once used to be. People used to have to go the District Court for stealing ice-creams. I would need to be absolutely convinced that that was the case because I think that would be outrageous.

Ms Curran—I will refer you to a case. On 24 June 1997, Edward Brown, a 20-year-old indigenous man, was sentenced to 14 days imprisonment for the theft of petrol worth $9.

Senator BOURNE—It was a first offence too.

Ms Curran—Yes. It is unfortunate that the Convention on the Rights of the Child is only for people up to 18 years old in this context. The magistrate said that had it not been for the mandatory sentencing provisions he would have been imposing a fine.

There is another case that may have gone before the Northern Territory court of a 16-year-old indigenous girl who fits within the mandatory sentencing area. She was charged on two separate presentments with two separate offences. She is going before the court for the first time, but given that she has been charged on two separate presentments, it may well be that she is up for the second strike and she is out.

The 14-year-old girl who was charged with exactly the same offence arising out of the same circumstances got a bond. This 16-year-old girl will, if the two presentments go

separately and are seen as two separate charges, be up for 28 days imprisonment. She is 16 years of age and it is her first time before the court, and she is indigenous.

The Northern Territory has more than three times the incarceration rates of any other state in this country. We had on Friday a meeting of ministers talking about the problems with Aboriginal deaths in custody and high incarceration rates. That is just a point to highlight some of the initiatives of our legislature which really work against the interests of children.

Mr TONY SMITH—What you are saying sounds very good, but the problem is you are bringing into sharp focus the problem that we as a committee have to face, and that is, is the state government responding to community outrage at constant crime that is being committed against individuals. They have to make a decision about balancing the rights of the person who has committed the offence and their possible rehabilitation against the rights of individuals who are constantly having their homes broken into, their property destroyed and what have you, their cars stolen. This is the problem for us. Are you saying that in a situation like that, because it offends against the convention—or the provisions, the articles, of the convention—that state governments ought to be overridden by the Commonwealth so that we bring them into line with what an outside body is telling us about how we should behave? Are you saying that?

Ms Curran—If I might go back a few steps, I will clarify exactly what it is that I am saying. The first thing that I am saying is that, yes, there is an issue in balancing in any form of public life, particularly where you are making legislation. The first thing that I would say there is that the government has a responsibility, when it does respond to perceived or real community need, to make sure that they introduce legislation that is balanced, is fair and advocates for a fair justice system. That is the first point I make. I see little balance between 14 days imprisonment for a first offence of $9. In fact, since this has been made public—

Mr TONY SMITH—I am sorry. I do not want to be misunderstood here. Fourteen days imprisonment for a first offence?

Ms Curran—Yes, $9.

Mr TONY SMITH—No other offence?

Ms Curran—No.

Mr TONY SMITH—You are saying the person has no previous conviction but goes to prison for a first offence?

Ms Curran—Because that particular individual was over the age of 17 years. Then

the other mandatory laws that I outlined before came into effect where your first offence was 14 days, your second offence, I think, was 90 days and your third offence is 12 months.

Mr TONY SMITH—But he must have had other offences. I mean, there is no legislation that says people go to prison mandatorily for a first offence.

Ms Curran—Yes, there is in the Northern Territory. It was passed in March of this year.

Senator BOURNE—Yes, there is.

Mr TONY SMITH—For a first offence?

Ms Curran—Yes.

Mr TONY SMITH—I find that just extraordinary.

Ms Curran—Talk to the Northern Territory minister, Shane Stone.

Mr TONY SMITH—It is out of line with any provision in the common law world.

Ms Curran—I would agree, other than some of that three strikes legislation in America.

Mr TONY SMITH—A bit like euthanasia, I suppose.

Ms Curran—Going back to answering your question, Mr Smith, the situation—

CHAIRMAN—In Western Australia too there is three strikes legislation, but not for a first offence.

Ms Curran—Yes. The situation that you were asking was should the Australian legislature be bound. I think that the issue is not that; the issue is that Australia has signed, ratified and made a statement to the international community that we will try to comply with our convention on the rights of the child and that it as the national sovereign representative of the people of Australia as a whole acknowledges its right and its obligation to protect the interests of all its Australian citizens and to accord them basic human rights, dignity and respect. In achieving that end, which it said it will to the international community, it should try to implement legislation that basically represents—I have a statement here that human rights are not absolute, that they must be referenced back to the society or common good. Children's rights should be similarly referenced back to the family that these rights coexist with.

The statement that I have written down there is that the government of Australia has made an international commitment to abide by certain principles and to ensure that within Australian shores it will advocate for and promote those interests. That is in the way in which its systems operate; in the way in which its laws are passed, and that that is done in the context of the society in which we live and for the common good of the citizens.

So, in answer to your question, I think that is the way in which it should be approached. Where one state is out of wack with internationally accepted—and let us face it, the Convention on the Rights of the Child is probably the basic minimalist approach to children's rights, because in order to get that many signatories to it—

Mr TONY SMITH—Some would say it is a maximalist approach.

Ms Curran—That is a matter for interpretation. I have heard a number of people arguing a number of different points, but I think that the focus of where it should come from is when one reads the preamble of the convention and sees what it sets out to do. I think it is correct that children are one of the most vulnerable groups. They cannot vote. They cannot get representation in that form. They are vulnerable because of their developmental stage. They are also vulnerable, particularly when they do not have the protection and care of family. They need to be looked after appropriately.

Mr TONY SMITH—I understand all that. What I think is important in what you have just said is that this particular convention has never gone to the people of Australia to decide. It was done by executive decision making and it was done by—

Ms Curran—As were all the other conventions.

Mr TONY SMITH—It was done with certain representations about the need to put appropriate reservations here and there by the then government, and that did not occur. It is a political question, isn't it? When you say that the country has accepted it, we are here looking at this convention. One of the terms of reference of the committee is its implementation into Australian law, and that is one of the issues that we have to look at.

I want to take you to a couple of other points. I want to say generally, and I do not mean this as a negative criticism, that I tend to feel—and you seem to acknowledge it in the last part of your article—this is quite a negative sort of approach to things. Being at the cutting edge, you see the worst examples. Of course, you are not a dilution. You see people who will tell you a story and you follow it, like a lawyer. You get your instructions, and you follow them. You do not question those instructions.

What I am saying is that you speak here about some states having a particularly poor record and you talk about organisations—I do not think you mentioned the departments of families services—but there is a real damned if you do, damned if you

don't situation with family services and those organisations, isn't there? If they intervene, they are damned. If they do not intervene, they are damned.

Ms Curran—Yes. I think you will find in the submission that we have said that is a hard call. We acknowledge that. We say that processes need to be put in place where the people who are at the cutting edge, so to speak, feel that they have adequate resources, feel that they are adequately experienced, feel that they are not constantly in a crisis situation. Therefore, they can make informed and appropriate decisions rather than take knee-jerk reactions. The report that I referred to earlier has been borne out by the national inquiry of the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission. It has also been borne out by the Auditor-General's report in relation to care and protective services, particularly in this state.

I guess our submission is really a submission being made by this state. It really tends to focus on the Victorian situation, but there have been parallels made with other states, of course, in the national inquiry. The situation is one in which—with ever decreasing resources, cost cutting, diminution of experienced staff, the winding back of youth worker positions: all of those sorts of contexts—it is becoming more and more difficult for children and families who are, for one reason or another, desperately in need of help and assistance to get appropriate services. I think that is intrinsic in what you are saying. I think we have seen a massive winding back of those services. The result is going to be fairly damning in terms of the crises that people are facing.

Mr TONY SMITH—There is a question I would like to ask. I want to draw your attention to your reference that children should always have a lawyer present. With respect, that is an impossibility both in terms of finance and in terms of practicality. And have you not forgotten that a judge has a discretion to exclude evidence that is unfairly or unlawfully obtained by way of admissions. In that process, you weed out to a large extent. I can give you an example. I was involved in a murder case which involved a young 17-year-old Aboriginal fellow. That case finished up in the High Court. It is absolutely clear that it was not the fact of the legal representation or what occurred in terms of the legal support that he got in funding and so forth. It was far and above anything any other person would have got, I might say. The problem that I saw, as counsel appearing for him, was the process. There he was with a white judge and a white jury and he was as black as black can be. The white publican of the town was killed. I saw the process as being a real problem. You do not seem to say much about why we have not got more Aborigines on juries and that sort of thing.

Ms Curran—I would agree with the latter part of your sentiment. I would also say that where we are coming from in relation to the suggestion of legal representation of young people relates to the experience of a number of people and agencies and my previous experience of young people who are arrested. For young people who are arrested, often the most important thing on their minds is 'How can I get out of here?' I have seen children who have been offered deals whereby they can get out and can get bail if they,

basically, 'fess up'. The children's attitude is, 'I want to be out of here as quickly as possible'. I have seen the situation where children have a right to make a 'no comment' interview when they have their parents present, and their parents say, 'Cooperate with the police.' In the Northern Territory, in a recent case, a fellow rang me and said that, if he had known about the mandatory sentencing provisions in the Northern Territory, he would not have suggested to his son, as he did in the interview with the police, that he basically admit to all the charges.

Mr TONY SMITH—But you raise the point of confession. That evidence would be excluded because it is a threat, promise and inducement.

Ms Curran—But these are cases where there is a plea of guilty entered. It goes before the court and no-one ever knows.

Mr TONY SMITH—If he is pleading guilty, I guess he is accepting that he is guilty.

Ms Curran—He is, but with an inducement. That is what I am saying. There needs to be an appropriate third party. It does not have to be a lawyer. It could be an appropriately educated person. We have this problem with independent third parties who are in interviews with people, who have an intellectual disability, who basically really need to be appropriately trained. Because they are so scared of the police, and the police authority, they actually allow things, which should not and are not appropriate, to happen. I guess this is relevant, because there are also children with disabilities. The independent third party should be someone who knows something about the process, who can protect the children's rights, rather someone who is a passive, almost condoning person or someone who basically encourages a person to their disadvantage.

CHAIRMAN—Unfortunately, we have run out of time; in fact, we are well over. Are there any other final comments you wanted to make to us?

Ms Curran—Yes, there is probably one in relation to the comment that Mr Smith made. I think this is really important, when one looks at human rights, particularly with regard to children. It is not about states' rights or political party lines. It is about acting responsibly and in the common good. It is about ensuring that Australia can comply, by the raising of its standards and its mechanisms to protect children, with the convention rather than looking at whether or not Australia can comply with the convention and whether or not, therefore, the convention is inappropriate. It is about improving Australia's game in the way in which it delivers services. I cannot more highly recommend the national inquirer's report and reiterate the point made earlier about the desirability of having an office for children that is appropriately resourced, that can have a coordinating and overseeing role in looking at complaints from children and their parents about the way their children are treated in the system. Thank you.

CHAIRMAN—Thank you very much.

[2.15 p.m.]

SANTAMARIA, Dr Joseph, President, Australian Family Association, 582 Queensberry Street, North Melbourne, Victoria 3051

CHAIRMAN—We have received your written submission. I assume there are no amendments, errors, or additions that you wish to make?

Dr Santamaria—There is a typographical error, but I presume they would have been picked up by others, on the second last page in the top paragraph on the second line. The very last word there should be virtually. If you go into article 16, the very first word under article 16 should be article.

CHAIRMAN—Would you like to make an opening statement?

Dr Santamaria—The statement that I would like to make is really summarised in the first page of our document—that is, that we are only addressing certain terms of the terms of reference. I would like to point out that our document is divided into three parts. In part 1 of our document we indicate that we feel that the Convention on the Rights of the Child is really a major departure from the original Declaration on the Rights of the Child, which was promulgated in 1959. I think it is an inferior document to that earlier one.

The Declaration on the Rights of the Child was concerned with what you might say are the rights of children to actually have their basic needs—such as care, nurture, food, education, love and what we broadly term normal socialisation—supplied. In other words, that the family acts as the major buffer between the wider society and the individual. But the Convention on the Rights of the Child moves into the development of what you might call the autonomous action of children, which actually creates major problems in the normal dynamics and functioning of the family. We are concerned about the health of the family and thus concerned about that departure.

In the second part of our document, we wish to draw attention to the danger that exists in the use of international conventions, or what are often referred to as international instruments, that may override the established domestic law of a nation. Therefore, we draw heavily on a document that we submitted by Professor Richard Wilkins. The third part of our document looks at specific articles and tries to point out the inherent dangers in those articles.

Finally, I would like to say that like many international instruments there is a tendency for them to be expressed in general terms—what one might call a whole series of motherhood statements. Those statements very often lack clear definition and specificity and very often, on specific items, need to be very carefully qualified. Otherwise, if they are left in that form, it raises the very grave danger as to how it may be interpreted either

at the political level or at the judicial level.

CHAIRMAN—Let me just take up the first point about the degree to which conventions can override domestic law. That is a myth. It may be an extensive perception, but the whole situation will hopefully be made very clear in terms of the international instruments legislation currently before the parliament—which is through the House of Representatives and in the Senate for the August sittings. That makes it very clear—to use the analogy I used earlier this morning—that simply because Geneva or New York might sneeze that Australia should get a cold. I know it is a perception that is strongly held but it is untrue.

Dr Santamaria—We need to look at it from our perspective as we perceive the situation. Firstly, a call is made on all nations to sign the terms of an international convention—that is, become signatories to the convention. Secondly, you ratify the convention. As I understand it—and as we perceive it—ratification means you have moved a step further towards having to very seriously consider implementing the necessary legislation to allow those provisions that you have ratified to flow. Consequently, we have grave reservations about what happens when you ratify the convention—and we have received certain legal opinion on that.

I have actually submitted another document, which I have referred to, in part, in our original document, which is a record of the speech given by Jesse Helms in 1995 in which he indicated that the United States would not have a bar of going down that particular track of having to implement in legislature all the provisions of the convention. That is one of the reasons why, by and large, the United States does not tend to ratify conventions.

CHAIRMAN—With due respect, there is a big difference between the US and the Australian situation. In the United States context, it is the Senate that actually ratifies conventions. When that happens, it becomes part of federal law within the United States. That is not the case in Australia. We do not have the same mechanisms. To use the Helms analogy, whilst it is an interesting one, is not factually correct. You are quite right in saying that there are two steps—the signature and the ratification. This committee, in general terms, although not with this convention because it has already been ratified and that is why we are having another look at it, gets involved between the signature and the ratification. Once they have been tabled after signature, we have 15 sitting days in which to report back to the parliament for appropriate ratification or otherwise.

You are quite right in saying that that ratification signals a legal intent in terms of international law. But there is a further caveat to that which was highlighted in the Teoh case in relation to legitimate expectation and will now be clarified further in the 1997 legislation, which is going through at the moment. Until such time as that is ingrained in Australian domestic law, it has no more legal effect than that. I know these perceptions are around and they are the sorts of perceptions—I am sorry to mention her name for the

second time today—that Pauline Hanson puts around which are just totally uninformed.

Dr Santamaria—There is another element to it which is actually mentioned in Professor Wilkins' paper that we submitted. Even though a convention may not have been signed or ratified, it is still a subtle instrument hanging about out there that can be used as a method of interpretation of the law or even the institution of political policy even if it has not been ratified. It is a subtle influence on decisions that are made at various other levels which could, in their own right, then threaten what you might call the nature of the culture in which we live in a particular country. I would like to draw attention to that.

CHAIRMAN—I think we would all accept that that is the thing that creates perceptions. There is no doubt about it; it does create perceptions. I am not arguing against your case; I am just pointing out that that is the factual situation and to hear people talking about Australia blindly accepting what Geneva or New York dictates is a long way from the truth, although those perceptions might abound.

Senator COONEY—You talk about treaties hanging about and influencing the culture of a particular country. Do I take it from that that you have objections to any universal principle influencing Australia? Would I be wrong in suggesting that? What I was going to suggest was that throughout the history of man the Ten Commandments have really been a standard which, whether you accept Judaism or Christianity, most people would say were a right. I just want you to correct the impression that I have that you are saying there are no universal standards that Australians should press into law; that Australia should only decide issues within its own philosophy, whatever that may be.

Dr Santamaria—No, I do not think I said that and I certainly hope I did not imply it. But I do believe in the concept of a universal declaration of human rights. Even given the fact that there may be different political systems and a great level of abuse in various countries, it is still a standard that every country should aim for. That is where you might say the international community tries to bring pressure on individual countries to conform to those particular standards.

When we come to the Convention on the Rights of the Child, however, there are certain standards there that in actual fact are not really spelt out in any convention that I know of. It talks about the rights of parents, the nature of the family and the dynamics of the family and therefore the individual responsibilities and rights that exist within that social unit. Consequently, a lot of the ideas that are reflected in the Convention on the Rights of the Child are, by and large, rights that we give to adult persons of a mature nature, of a state of mind and of sufficient mature development to be able then to be responsible for the exercise of the rights that are given to them.

But when you are in a category of what we often call 'minor', there are qualifications to those rights as far as children are concerned, given the sort of

responsibilities and the rights of the parents within a particular country. There is no convention that we can talk about in relation to the rights and responsibilities of parents in that regard. So by giving these particular autonomous rights to children, which are fundamentally those that we give to adult people, we are then going to set up a kind of dilemma or, more than that, a tension between parents and their children as to who has the right to make a decision or exercise what you might call a particular right within that fundamental social unit.

Senator COONEY—I presumed that was the sort of thing you were saying. I just wanted to check that. What you are saying is that universal principles are not only good but essential, but what worries you about this particular prescription is that the principles themselves are wrong. It is not wrong to have general principles, but in this particular case some of the principles that are set out in the Convention on the Rights of the Child are wrong. Is that correct?

Dr Santamaria—I am saying that the principles that are set out in the Convention on the Rights of the Child are drawn on principles that are normally applied to adult people.

Senator COONEY—They may be appropriate for adults but they are inappropriate for children?

Dr Santamaria—They are inappropriate in the case of minors.

CHAIRMAN—But are you saying that the convention is anti-family?

Dr Santamaria—If you look at the convention, they refer to other international instruments that are supposed to be considered in relation to the convention on the rights of the child and there is a whole host of those where you might say that they protect certain elements of the family and so on. But the provisions of this convention actually depart from that and they do not really fit neatly in with those other conventions. Consequently, I think that the potential here of exercising rights, such as they are expressed in the convention on the rights of the child, has the great danger of creating both tensions in the family and insecurity in who makes the decisions and who really is then going to intervene as an arbitrator in differences of opinion between what you might call minors and their responsible care givers.

CHAIRMAN—There is this balance between the rights of children as against the rights of parents; that is explicit in your submission in that you specifically refer to articles 12 to 16 which are the ones that came up in 1988-89 and continue to come up in the context of this hearing. That is basically what you are saying?

Dr Santamaria—Yes. I would like to not just use the word ‘rights’. I think you have always got to use rights with responsibilities. There are obligations that go with rights.

Senator COONEY—I think you rely on the opinion of Mr Francis and it may assist you to know that he will be giving evidence tomorrow.

Dr Santamaria—That is right. A major part of our document is, in fact, a reproduction—

Senator COONEY—If you want to discuss any issue we have raised with him, between now and then, that may be helpful. I think I know the answer to this question, but I want to get it on record. As I understand it, you are saying that the Declaration on the Rights of the Child 1956 correctly sets out the principles that should guide the Australian community in deciding how to look to the welfare of children and the right prescriptions for the rights of the child, but the convention on the rights of the child that we are dealing with now doesn't? Is that a fair summary of your argument?

Dr Santamaria—Yes, absolutely. That is what I am saying.

Senator COONEY—But the convention on the rights of the child is not because it really does not help in the welfare of children in most of its articles.

Dr Santamaria—I am not sure if it is the 1956 or the 1959 declaration—

Senator COONEY—That is what you have got here.

Dr Santamaria—I think that that is a far superior document and takes careful consideration of roles of parents and children in a total context of the family. But the convention, because it has introduced these concepts that we normally give to adult individuals, has in fact clouded the whole issue and made it much more difficult to determine how a family is going to function.

Senator COONEY—I know the chairman wants to move on so this is my last question. Would it be possible for you to have a talk to Mr Francis, if you cannot do it now, and delineate any parts of the convention on the rights of the child that you say are alright and those parts that you consider that are wrong? Are there any parts of the convention on the rights of the child that you would give approval to, or are there none?

Dr Santamaria—There are many parts of the convention that I would give approval to. Remember, as I read the convention, some of their provisions are actually straight lifts from previous conventions—even from the Declaration on the Rights of the Child.

Senator COONEY—Would it be possible for you, either now or through Mr Francis, to mark out those parts that you think are good and then mark out those parts that

you think are bad? If you would prefer not to do it, do not worry about it, but it may be helpful if you could.

Dr Santamaria—I would be prepared to do this. I do not think I could do it off the top of my head at the moment.

Senator COONEY—No, that is why I was asking whether you could talk about it with Mr Francis.

Dr Santamaria—I will speak to Mr Francis and then I will put in a supplementary document of my own. That will add to this particular document and deal with that question.

Senator COONEY—Thank you very much.

Mr TONY SMITH—I have got to confess I have not read all of your paper yet and for that I am sorry, but I was pretty amused at reading Jesse Helms—no wonder he is referred to as being so controversial. I do notice here Professor Richard Wilkins who apparently is Professor of Constitutional Law at Brigham Young University in Utah. It says here:

. . . he was the official representative in a delegation to the UN conference called HABITAT 11.

Dr Santamaria—No, it is HABITAT 2. That is my typing.

Mr TONY SMITH—Can you tell me, and maybe Senator Bourne can help me, from what perspective it was official? Was he a US government representative?

Dr Santamaria—No, he was not a US government representative. He was a representative of a non-government organisation—an NGO.

Mr TONY SMITH—Which was?

Dr Santamaria—I do not know exactly which one it was. In all probability it would be associated, I would say, with the Church of Jesus Christ of the Latter-day Saints—coming from the Brigham Young University. He was there fundamentally to represent the concepts of what you might call the traditional family. In his comment, which I have quoted in my document, he was saying that there was very little opportunity, if any, to put what you might call the pro-family point of view at that particular conference.

Mr TONY SMITH—You were questioned by the chairman about whether there were anti-family provisions. Just to clarify it in my own mind, is your answer really that it has the potential for that rather than you saying there are particular provisions that are

distinctly anti-family?

Dr Santamaria—It is a bit of both. I think it depends on how you interpret the statement because, as I said before, a lot of the statements are made in language which is very hard to actually be specific about. But the point is that the whole tenor and the actual provisions that are mentioned there are expressed in adult terms. Those adults' rights and privileges are being extended to children who are still under the care of their parents. People who, in all the legislation that I know of, would be referred to as minors. Consequently, because they have not qualified their statements in any way in the document, it therefore does have an anti-family tenor to it as well as the potential that is built in.

Mr TONY SMITH—The passage that is extracted here, which I think I should quote to give as a background to my question, is from a report by the United Nations committee. This is the full extract that I was looking for before. It goes:

> In relation to the possibility for parents in England and Wales to withdraw their children from parts of the sex education programs in schools, the committee is concerned that in this and other decisions, including exclusion from school, the right of the child to express his or her opinion is not solicited. Thereby, the opinion of the child may not be given due weight and taken into account as required under article 12 of the convention.

Having regard to the fact that a UN committee has thereby expressed an interpretation and application of article 12 to a particular set of facts in England, are you saying that the fact there is an outside body capable of making these interpretations, which will have some effect—its precise measure is not known—on the Australian social and political environment means that something is wrong with the process itself and the way it is structured?

Dr Santamaria—I am merely suggesting that the document as it presently stands needs to have certain specifications built into it so that you can clarify the meaning of various provisions and clarify the rights of parents, as against the so-called rights of the child. Having a lot more specification built into the document would, as it were, cause people to feel more comfortable with it. But, as it presently stands, those specifications are not there. Therefore, as it presently stands, the Australian Family Association would have marked reservations about it.

CHAIRMAN—Thank you very much. Do you have any other final comments to make before you leave?

Dr Santamaria—Not really. I confirm that I will put in a supplementary submission.

CHAIRMAN—Mr Francis will be appearing tomorrow afternoon at about 2 p.m. Are you a brother or cousin of B.A. Santamaria?

Dr Santamaria—I am a brother. Some people ask me how my father is getting on, and I love that.

CHAIRMAN—With your inflections, I would have guaranteed that you are B.A. Santamaria's brother.

Senator COONEY—You are not also a QC, are you, in a younger form?

Dr Santamaria—It is a disability I have to live with.

CHAIRMAN—Thank you.

[2.42 p.m.]

BOYD, Mrs Phyllis Emma, Senior Executive, Family Council of Victoria, PO Box 864, North Melbourne, Victoria 3051

Mrs Boyd—I have been chosen to represent the Family Council of Victoria. I am an ex-social worker. I am not as impressed with the social work that is done in this country as one of your previous speakers is. I have seven children and 17 grandchildren.

CHAIRMAN—Thank you very much. We have received the council's written submission. I assume that there are no amendments, omissions or errors that you wanted to highlight.

Mrs Boyd—No. I do not think so. I did not realise that you were going to ask me that; I might have looked at it more carefully in that case.

CHAIRMAN—I am sure that we have missed a few in other submissions. Would you like to make an opening statement? You would have heard Dr Santamaria. We have canvassed articles 12 and 16 very extensively today.

Mrs Boyd—We object to 12 to 17.

CHAIRMAN—I just make that as a precursor to your statement. We welcome an opening comment from you.

Mrs Boyd—Thank you. I wish to discuss briefly article 5. It has been drawn to my attention that in a letter to *News Weekly* on 12 July 1997, David de Carvallo, the deputy director of the Australian Catholic Social Welfare Commission in Canberra, stated that article 5 did protect the rights of parents. In 1990, the then commissioner of the federal Human Rights Commission, Mr Brian Burdekin, made the same claim. I had an argument with Brian Burdekin about that. I have been appearing before things like this for 27 years, and I do not seem to be getting anywhere.

Our advice, then and now, from members of the legal profession has been that the article contains two important restrictions on the rights of parents. Here I quote directly written advice from Mr James Bowen QC, who was a former prosecutor here in Victoria. The parental direction and guidance of children in the exercise of their new rights under the convention must be appropriate and consistent with the evolving capacities of the child. This question then arises: who decides what is appropriate and consistent with the evolving and developing child?

As our federal human rights commissioner, Mr Chris Sidoti, and the head of the Family Law Court, Justice Nicholson, are both pushing for a children's commission and a children's commissioner, parents are justifiably concerned that the state is seeking to

interfere further in family life. No doubt the justification for such bureaucracies would be article 4, which says that states are obliged to take measures to give effect to the rights recognised in the convention. Further, both articles 18 and 29 talk of a state's right to supervise parents. The state, in article 19, is to promote a recognition of the common responsibilities of parents, which may not agree with the general public's idea on such responsibilities. The state and the parents may not agree. Article 29, which deals with education, states that individuals are free to establish educational institutions subject to standards laid down by the state.

The more one reads the convention, the more concerned one becomes about talk of the state's responsibilities concerning family life. The associate professor of law at Macquarie University, Professor Cooray, in a letter to the *Australian* on 5 December 1989—I was involved in fighting the ratification of this convention in 1990—warned that the convention, as a whole, is biased towards the rights of children as against the duties and responsibilities of parents in rearing their children in a protective and caring atmosphere. The articles that concern us particularly are articles 12 to 17.

CHAIRMAN—Feel free to expand on them, if you want to.

Mrs Boyd—We feel that they provide a basis for the scrutiny of family relationships. Those articles, put by a federal government agency, relate to the court's present powers to have jurisdiction in the neglect or physical and sexual abuse of children. We have powers to interfere in that area now via our various state parliaments. Parents will have to cope with problems that will arise when children demand the exercise of these new civil rights: the right to have their views given due weight in matters affecting them; the right to seek and receive information and ideas of all kinds; the right to freedom of thought, conscience and religion; the right to freedom of association; and protection from 'arbitrary interference with privacy'.

When the convention was ratified in late 1990 by the then Labor government, the Premier of Victoria, Mrs Joan Kirner, immediately asked teachers in the state schooling system to start teaching children their rights. I will tell you a story about my grandson, James, who was then nine in 1990. He came home from school after having had a class on his rights. His mother said to him, 'You left your bedroom in a terrible state. You have to go and clean it up.' He said, 'No. That is my bedroom. I have rights. I do not have to go and clean it up.' My eldest daughter was quite stunned. She said, 'I had to think for a moment.' She said, 'Well, there is such a thing as parents' rights. You go and clean up your room.' That is just a minor thing. It could be developed into children getting involved with things that parents really feel are not good for them.

As American lawyers Professor Bruce Hafen and Jonathon Hafen have pointed out in an article published in the Harvard *International Law Journal* in the spring of 1996, a basic assumption is that traditional families are repressive and the cause of many problems. This view was stated in a UNESCO publication, I think it was in 1989. It stated

that the traditional family was repressive and that, therefore, the state had rights to intervene. That is a very broad statement, isn't it?

I am going to pick up on perceptions; I hope that you will not mind. We are concerned at the number of conventions that have been signed and ratified by previous governments and the way that the federal government can use foreign affairs powers to override both federal and state parliaments. This goes back well before Pauline Hanson. I really object to Pauline Hanson being brought up. This has been raised long before Pauline Hanson came on the scene.

In the Franklin Dam case, Bob Hawke used the foreign powers. Both my husband and I fought against the Franklin Dam being built. We were very concerned that the foreign powers were used to override that. My husband was arrested at the Franklin Dam. Foreign powers have been used. This can be used. You say that there is something going through parliament at the moment. That has not been brought to our attention by the press. How do we find out?

Senator COONEY—As the Chairman said before, it was a bill that was brought up during the last government, the Labor government. There was a very extensive public inquiry about it around Australia.

Mrs Boyd—Somehow or other, I did not hear about it.

Senator COONEY—Including Melbourne. As the Chairman said before, this is just a re-run of that. So I do not think this government—I am not a member of this government—has tried to hide it. I can assure you of that.

CHAIRMAN—Probably the opposite.

Mrs Boyd—Groups within your country could appeal to the international jurisdiction, whatever it is called, in the Hague.

CHAIRMAN—The International Court of Justice.

Mrs Boyd—The International Court of Justice. So I am not too happy that you are saying our perceptions are wrong. These perceptions, as I have said, go a long way back.

CHAIRMAN—I did not say that your perceptions were wrong. I said that the perceptions are there. Those perceptions, in themselves, are not backed up by the facts.

Mrs Boyd—But the facts are that a foreign power has been used.

Senator COONEY—Again, I am not of the same party as Mr Taylor. I listened to him very specifically. I think he is absolutely right. He said that the perception that the

signing and ratification of treaties makes it part of the domestic law is wrong.

Mrs Boyd—I see that. But it can be used.

Senator COONEY—He said that that perception has been put out by those who support—

Mrs Boyd—Maybe you will not put it all in, but the perception is not wrong that you can use foreign powers to override something.

Senator BOURNE—I want to make a point about the Franklin Dam. That was only used after there was domestic legislation that went through both houses of federal parliament. It was based on a treaty that we had signed, but it was enacted through both houses of federal parliament. It really was domestic legislation. It was not just using the treaty.

Senator COONEY—The Chairman was absolutely right. I know that he is not a delicate person. However, as somebody from another party, I should assure you that I think he was absolutely right in what he said.

Mr TONY SMITH—You are saying that you are concerned about the use of the external affairs power as a base for legislation that will implement those treaties. That is what you are concerned about.

Mrs Boyd—Using it that way seems to infringe on the Australian constitution. We are steadily transferring power from the states to the Commonwealth without the approval of the Australian people in a referendum. After all, we are a federation. We are not like England, although they look as though they are becoming a federation too. I feel that it gives a lot of power to the faceless bureaucrats of the United Nations.

Article 43 in the convention states that there is to be an international committee on the rights of the child, which I think has already been formed, for the purpose:

. . . of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention . . .

These conventions have increased the powers of our High Court in a political sense. In the past, there has not been enough publicity before such conventions have been signed. I understand that we have signed and ratified an awful lot of them. This one did get publicity in 1990. The external affairs powers can be exercised by a mere administrative act without a vote in federal parliament, unlike in the United States, where such conventions have to be ratified by the President and the Senate. I ask you whether that is still so. I have had that on legal advice.

CHAIRMAN—It is technically feasible, but of course there is a strong political overtone and it depends on political will. This committee in many ways is not a partisan committee—it is cross-party committee of both Houses.

Mrs Boyd—I realise that.

CHAIRMAN—The Prime Minister has given an assurance that, whilst he remains Prime Minister, the coalition will not use the external affairs powers unduly.

Mrs Boyd—In the International Covenant on Civil and Political Rights, which my husband and I read very thoroughly when we were leading a fight in the Chamberlain case years ago, article 25 says:

Every citizen shall have the right and the opportunity, . . . :

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

That presumably could override other conventions. We are not happy about articles 12 to 17. We have been told that after you have ratified a convention you cannot put reservations on certain articles. Is that true?

CHAIRMAN—I will come back to that. First of all, I am not criticising your perceptions because those perceptions abound. The point that I was making before is that in fact those perceptions are not borne out by the facts. That is the point I am making and the actual situation will be reinforced as a result of the legislation that is before the parliament at the moment, and one would hope that it will get a safe passage through the Senate. There is no indication that it will not because the Labor Party, to take up Senator Cooney's political party, was basically saying the same sort of thing in trying to redress these perceptions in the last parliament.

Let me just go back further and clarify something, because you were not here before lunch and nor were the two people sitting down the back either. Perhaps if I could just spend two minutes giving you a thumbnail sketch on what this committee is all about.

This committee is tasked with recommending to the parliament whether or not treaties should be ratified. There are two signature processes. One is the initial signature, which gives the moral intent, and the second is the ratification, which signifies the legal intent subject to, in our case and in most cases, the domestic overtones. We are given 15

sittings days—not 15 days—in which, once the initially signed documents, conventions, treaties, or protocols are placed before the parliament, we have to recommend or otherwise.

That process was one of the first initiatives taken by the present government in May of last year. The first statement in the House by the Minister for Foreign Affairs was the implementation of these treaty making reforms to get around the very perceptions that you have and Pauline Hanson has and that she does not want to understand have taken place even since she has been there.

We generally get involved specifically between the signature and the ratification. We have tabled eight reports since September last year when we put our first report down involving something like 80 treaties that have been brought before us having been signed before they go to the final ratification process.

The Convention on the Rights of the Child is not one of them. It was ratified in December 1990 by Australia and I have to say without due process of consultation. Senator Cooney may disagree with me, but that is a fairly strongly held view. As a result of a joint resolution of both the House of Representatives and the Senate, this committee can also look at any other treaties that have been deemed to have been tabled. In other words, that means any treaties that are extant.

At the moment we have close on 1,000 treaties that are extant. One of those treaties happens to be the Convention on the Rights of the Child. As the chair, what I felt over the Christmas-New Year break was appropriate was that we should revisit that—bearing in mind as a member of the opposition I was very critical with Andrew Peacock and a number of others of 12 to 16, but Senator Evans, as he then was, went ahead and ratified the convention. We felt it was appropriate that after 6½ years a paper should be written by the secretariat with no agenda—just a paper on the issues. That was agreed and it happened.

That is why we are out on the road now. We are having a look at how well we have implemented it as a result of the ratification process; what other issues there are; whether the 12 to 16 perceptions still persist, and they do in some quarters; and whether there is a need for some formal legislative or administrative actions. To take up your question about reservations, Australia did ratify but ratified with one reservation in relation to article 37C, which relates to the detention of children with adults.

Some might argue, myself included, that that is a relatively minor reservation compared with some of the other things that might have been put down as reservations at the time. Nevertheless, that is what happened. To answer your question, once a country has expressed a reservation as part of the ratification process then that country cannot inject any further reservations unless it is commenting on another country's reservations.

Mrs Boyd—Can you withdraw?

CHAIRMAN—The options are: total de-ratification at the extreme, and within this convention there are parameters on which you can withdraw from the convention; or you can seek to make a number of declarations in terms of it; or you can make an appropriate comment to the parliament—because that is what the legislation before the parliament is all about, it is about the further involvement of the parliament—and debate on some of these issues and, indeed, having people like yourself appear in public before this committee, which has never happened before. I agree entirely with you that that is what should happen and has happened over the last 12 months since we have come into existence. There are all sorts of in-betweens that we can recommend. But in the extreme, yes, as the family association has said, not only here but in other states, let us pull out. That is one option.

Mrs Boyd—I think some members of the Family Council of Victoria would want that option too. They are worried about those articles. In our Victorian legislation years ago we had a young persons act. We had changes to it. We were very worried at the time about the fact that it put great emphasis on emotional abuse, as distinct from physical and sexual abuse and neglect. Having worked in the field of psychology and as a social worker, I am very worried about how people interpret emotional abuse. I am not terribly impressed with some of the things the community services have done here in Victoria. That is not a question of cutting back services but that is a question of staff and how staff have behaved. We feel this is getting into an area where it is giving children the same autonomy as adults. If children are taught about it at school it is going to cause tremendous tensions.

CHAIRMAN—That is a major issue that has been reflected in the evidence given. The autonomy issue is one that has come up over and over again. I am reluctant to mention her name again—

Mrs Boyd—I wish you would not.

CHAIRMAN—In her first speech, her only contribution to the parliament, Pauline Hanson said in part in the treaties area, 'I am going to make sure that we withdraw from all of these treaties.' That was one of her many simplistic comments which grab at the heart strings of a lot of people in a lot of areas and the very perceptions that you refer to and that I refer to. I would very much like her to be sitting there just to explain the situation to her.

Mrs Boyd—Yes. There is a fear of world government too. So many people within the United Nations talk about world government and I did work in external communications and external affairs in 1948 under Dr Evatt and he used to come and stand beside me while I did his signals. I also did these signals when I was in communications in the air force. When the United Nations was first being formed, he used

to send his signals back through RAAF headquarters in Melbourne to be decoded. He did talk a lot about world government too. I feel if you have some queries about world government—

CHAIRMAN—We are digressing. The new world order and all that, international conspiracies—

Mrs Boyd—I do not believe in international conspiracies.

CHAIRMAN—We understand what you have had to say and we thank you very much for giving evidence.

[3.10 p.m.]

MEDICA, Ms Karen Anne, Manager, International Programs, Oz Child: Children Australia Inc., PO Box 1312, South Melbourne 3205

PITMAN, Ms Susan, Manager, Information and Research, Oz Child: Children Australia Inc., PO Box 1312, South Melbourne 3205

Resolved:

That the committee receives into evidence submission No. 336 from Oz Child: Children Australia Inc.

CHAIRMAN—As a procedural matter, are there any amendments, omissions, additions or errors in your submission that you want to put on the record before we ask you to give an opening statement?

Ms Pitman—Unfortunately, when we put the submission in, the original submission that we were drafting was in the hands of the manager of our legal service, who happens to be away at the moment. Due to a misunderstanding on the time line, she was unable to get the original part of her submission in. We would like to ask whether there is an opportunity to table this at a later date, given that she is able to give a legal perspective which is relevant.

CHAIRMAN—Yes, I think that is important. Just looking quickly at this submission for the first time, the impact of Teoh, for example, is now a little dated in that a few things have happened since this was written.

Ms Medica—I am sorry. Could you expand on that? My understanding is that with Teoh there was a re-introduction of that bill.

CHAIRMAN—Yes, what I am saying is there is legislation now before the parliament in terms of the post-Teoh situation. It is factually correct up to a point in time, but since then things have happened in a parliamentary sense in terms of the Teoh decision. Perhaps we can explore that.

Ms Medica—But we would still register a reservation with the current procedures of that bill.

CHAIRMAN—We can explore that in a moment. Would you like to make an opening statement?

Ms Pitman—In addition to the information in that submission—which, as I said, was drafted fairly late because we were assuming the other one was going to be in

place—we would like to verbally contribute a practice perspective that augments the information we have got there.

CHAIRMAN—Sure, we would be very happy to receive a supplementary submission, if that is what you are saying. Would either of you like to make an opening statement?

Ms Medica—You have information and background about Oz Child. I think it is important to re-emphasise that we are a very multi-disciplinary style organisation that is very focused on the needs of children. We operate in a range of contexts and a range of geographical contexts as well, because we have an international program as well as a number of domestic programs. I think we can make a good contribution to this particular study because of our diversity, if you like, into all sorts of services that impact on children in all sorts of geographical contexts. I would just like to emphasise those points.

I would also like to emphasise that we are a very longstanding organisation that originally began in the 1800s. So we have a very long and proud history and I think we are quite well qualified to talk about children's issues, based on our very, very longstanding focus on children's issues. I just emphasise those points.

Ms Pitman—It should also be noted that one of the three organisations that made up the amalgamation which became Oz Child was the National Children's Bureau of Australia, which took a leading role in supporting the initial ratification of the treaty. It was responsible for the first critique of Australia's compliance, which is that publication that you may or may not be familiar with. It had a fairly active role in advocating for the rights of children and establishing the UN convention as the basic framework for the organisation to frame its mission.

Ms Medica—I will just add that we have always had a strong role in advocacy as well as the provision of services to children. I guess we get the practice perspective as well as lobbying advocacy sorts of activities that the organisation is involved with.

CHAIRMAN—Can you read out the title of that for the *Hansard* record?

Ms Pitman—*Where rights are wrong: a critique of Australia's compliance on the UN Convention on the Rights of the Child*. It may also be of interest perhaps to show you that we published the first compilation of facts and figures around the wellbeing of children, which is entitled the *Profile of young Australians*.

CHAIRMAN—Any other comments before we get into questions?

Ms Medica—Also on the issue of publications, the President of Oz Child, J. Neville Turner, has recently published a paper called *Monitoring the UN Convention on the Rights of the Child*. It is a comparative approach to the convention, looking at

countries in the Asia-Pacific region and Australia.

CHAIRMAN—We will be talking to him in Darwin, so you can leave it for Mr Neville Turner to address. His name has come up in these hearings before. I was just reading through for the first time what you have had to say. Let me quote what you have said:

The new procedures relating to National Interest Analyses (NIA) and associated frameworks (not referred to in the briefing papers)—

those are the briefing papers, I assume, provided by the secretariat—

are concerning insofar as the provisions may have the potential to undermine the intent of CROC, in particular with respect to protocols, which are developed since the intro of the new NIA procedures.

If CROC were coming before us now as an amendment to protocol, the NIA would have been produced by the departments, by NGOs and by consultation before it came to us. When it comes to us, we then ask all sorts of questions as to whether the appropriate consultation has been held—to pick up the point that you are making and your concerns about the lack of consultation.

I will just give you one example—double taxation agreement with Vietnam, which is one that we did some months ago. When we came to this sort of hearing and discussed it with the Deputy Commissioner of Taxation, it had not even been discussed with the peak accounting bodies. So I think I can set your mind at rest a little in terms of the NIA process if it were affecting this particular convention.

I think your reservations are not correct in that I think we would tend to pick that up in terms of the public hearings and further comments from you. We would be advertising the fact and you would be able to come along as you are today if it were a fresh protocol.

Ms Medica—One of the concerns I had about the national interest analysis was what would be the particular weighting of the criteria. For example, there have been some international decisions very recently—not to do with children—such as the greenhouse decisions where the weighting of that decision was very much based on economics and yet the environment was almost a bit of a side event. I wonder how children would fare, for example, if there were a protocol on child labour rights. If it were seen to be not within Australia's economic interest, how would that weigh up against if it were seen to be complying with human rights? That is my concern.

I am very uncertain as to where human rights would win out versus perhaps a trade or economic argument. I am not convinced that human rights would be the primary objective in a national interest analysis. I know that there is no precedent because we have not had a treaty. I do not think it has gone through the process.

CHAIRMAN—That is right. That is exactly the note that has been passed to me. There is no NIA for the greenhouse situation that is being debated publicly at the moment. All I can say to you is that, and I am sure other colleagues might want to make comment as well, the appropriate balance would be explored in this committee. I can give you assurances of that, bearing in mind that we are cross party.

The other point I have not made today that I should—I make it at just about every other venue we have had so far—is that this particular committee, particularly in terms of CROC, does not have an agenda. There is no agenda. We are here to hear the facts and hear views. Yes, we will have to make some judgments in due course and balance things up to make the appropriate recommendation, but there is no agenda. To quote some of the NGOs who have been a little vociferous on this in some areas, we are not the voice of the present government. We are an appropriate joint standing committee of the parliament. Senator Cooney, do you have any questions?

Senator COONEY—Thanks very much for your submission. I do not have any questions.

Senator BOURNE—I want to bring up something that we have had a couple of times earlier today. Article 17 is the one that relates to the media and children's rights to see appropriate things, education and that sort of thing. Do you have any views on children's rights in relation to the media at the moment, such as what is being shown and what should be shown? In particular, one earlier witness was of the opinion that we should have federal legislation looking at appropriate standards of what children should see in the media. Do you have a view on that?

Ms Medica—As an agency perspective, I know that we have discussed it at a very low level. I do not think we have an agency position on it.

Ms Pitman—Not at this stage. We did a background paper at some stage a little while ago which looked at the impact of the violence on TV. We found at least some evidence which supported the argument that seeing violence on television in effect enabled modelling to take place and contributed to the sort of negative learning around violence. We do not have an agency position at this stage.

CHAIRMAN—Would you like to take that on notice and give us comment, or isn't it appropriate for the agency?

Ms Medica—We can look at it. We may not respond, but we would like the opportunity to do so. For example, the woman who is overseas might have a particular position on it and we could draw that to her attention.

CHAIRMAN—Okay.

Ms Pitman—I think it is probably a fairer thing rather than off the top of our hat.

CHAIRMAN—Yes. If you could let the secretariat know in due course that, no, you are not going to comment or you are. As a result of this *Hansard* record, we need to know.

Ms Pitman—The other thing we could do is forward the background paper that we did, noting that it is, I think, three or four years old. There may be research that has subsequently come to light which would argue against the general position taken there.

CHAIRMAN—Sure. All right.

Ms Medica—If you think that is appropriate, that would be good.

Ms Pitman—I think it probably would.

Mr TONY SMITH—In relation to your submission, if the view is taken that implementation of CROC is fraught with difficulties, which is just turning around what you are saying a little, if you know what I am saying there, are you saying that there should be a children's commissioner in any event, forgetting about the convention, et cetera? If so, what role should that commissioner play? In so saying, I am taking away the coordination role of CROC and all of that. Do you see where I am coming from?

Ms Pitman—No, not really.

Mr TONY SMITH—Okay. You say here that the implementation of CROC will continue to be fraught with difficulties in the absence of a central coordinating body like the commissioner for children.

Ms Pitman—Yes.

Mr TONY SMITH—I am saying, if a view is taken that the implementation of CROC itself is fraught with difficulties, are you then saying that there should still be a children's commissioner in any event, forgetting about the coordinating role and all of that? If you are saying that there should be, in any event, a children's commissioner in this country, what role would you say the commissioner should play?

Ms Medica—Is your question: does Oz Child believe there should be a children's commissioner or a central coordinating body regardless of whether there are difficulties with the implementation or not; or do we believe that there should only be one in the event that there are difficulties with the implementation?

Mr TONY SMITH—What I am saying to you is: sweep aside CROC for a moment. There are a lot of views about CROC on one side or the other. On one side,

people are saying that there is so much difficulty in implementing this convention into Australian law that we just should not have it; it would create too much division in the country. So sweeping aside that and underpinning everything is the notion that we all want. I do not think one person has come here and said, 'We don't want what is best for the children.' So sweeping aside all of that stuff about an international convention like CROC, are you saying, 'In any event, we need a children's commissioner'? If you say 'yes' to that, what sort of role would you envisage the commissioner playing? Would it be investigative, would it have powers to conduct inquiries, would it have powers to make rulings and so forth—obviously non-judicial ones, having regard to a recent High Court decision?

Ms Medica—Our experience has been that there are many issues that deal with children that federally seem to get handballed around. I can give you a pertinent example: when the report back on the Stockholm committee on the sexual exploitation of children was held, it was attended by somebody from Foreign Affairs in Canberra. They said that they actually found great difficulty in trying to identify who was going to attend because they understood that Attorney-General's had carriage of the Convention on the Rights of the Child. But when they were phoned, it was suggested that they ring somebody from Foreign Affairs, and when Foreign Affairs was phoned, it was suggested that they ring somebody from the department of human services. So there was this general feeling within the bureaucracy that no particular department had carriage of the oversight, if you like, or had some sort of central coordinating role for children's issues.

Mr TONY SMITH—Was this in relation to a prosecution?

Ms Medica—I am talking about in general on children's issues, including the Convention on the Rights of the Child. No particular government department seemed to have carriage of it overall. This was just a practical example that was related to me by some of the bureaucrats, saying that it was actually difficult to get somebody to attend because nobody was really quite sure who was meant to have carriage of the issue and therefore it was—

Mr TONY SMITH—Carriage of what issues?

Ms Medica—Children's rights and children's issues overall.

Mr TONY SMITH—In terms of what?

Ms Medica—If there was a central coordinating body, for example, in Prime Minister and Cabinet, or as a separate department or in Attorney-General's or wherever it was, if there was a dedicated section, whether that be a commissioner or whether that be an office of children, if there was some central coordinating body, then issues to deal with children would always inevitably end up at that particular point and there would be

somebody who would have a good broad handle on all the issues. So rather than having Attorney-General's with carriage of the Convention on the Rights of the Child and perhaps the department of human services with some of the service delivery aspects related to the convention, you would actually have a central coordinating body that just had a general oversight of all the sorts of issues dealing with children and that ensure children's rights.

This has been my experience, and that is just at a very practical level. But it is also felt very much by the agency that there really has been a lack of a central coordinating body. Whether that be a children's commissioner or whether that be the establishment of an office for children, this would be a good mechanism that would just coordinate everything and that could act very much along the lines, if you are looking at the children's commissioner model, of what was set up in New Zealand with Laurie O'Reilly, the commissioner for children in New Zealand. That really has been our experience.

We have also operated through the National Coalition on Children's Rights. You are probably familiar with this. It is a loose coalition of organisations that deals with children's issues. It is promoting that an office for children be established in the Department of Prime Minister and Cabinet to provide that central coordinating role.

CHAIRMAN—We have taken evidence in Perth, Adelaide and again this morning from the paediatric teaching centres, which are recommending just that sort of thing. It certainly attracts me and, I suspect, other members of the committee at this point in time. But it is small and it is advisory. It is not investigative. You are suggesting an investigative role rather than an ombudsman type of role, is that right?

Ms Medica—We were suggesting an ombudsman role—ombudsperson, as the UN actually refers to it now.

CHAIRMAN—I will still stick with ombudsman.

Ms Medica—Susan has a more local perspective on a monitoring role.

Ms Pitman—Part of the difficulty is that there is no identifiable role or advocating on behalf of children per se. Often children are seen as adjuncts to or as part of families and policy development tends to be done in a more global family focused manner rather than a child focused manner. I think the establishment of a role such as a children's commissioner would highlight the fact that, in some instances, the child's best interests are not necessarily those of the natural families. There are often tensions between whose rights should prevail. If you do have a role such as a commissioner, you will have somebody arguing purely from a child's best interest perspective.

That would have a flow-on effect down to the practice level, where you have got services—such as the services that we provide in foster care, for instance—which are dealing with children who have come from problematic family situations. Decisions have

to be made about what is in the child's best interest. Often there is a tension there about whether what is being offered is in fact in the child's best interest. At the moment, because the people making the decisions in most cases are part of the protective services, department of human services, they are constrained by their own guidelines, their own funding, their own resources. So often decisions have to be made within that framework without anybody actually arguing in an independent fashion for what is in the best interests of the child.

You get situations where, for example, children come in to care and case plans are developed. There is no real in-depth assessment of their own natural family's capacity to change to the point where they can effectively take charge of their children. Because of staffing and time constraints in the department, they are then required to move through their caseload. You get case plans developing which leave children in limbo, in effect, in placements. There is no decision made about whether or not they should be permanently placed at the earliest possible instance. Those decisions are quite often put on the backburner because there is a philosophy that the child's needs are best met in the family situation. In most cases, that is the case but, in some families, that is not the case. Yet there is a reluctance to acknowledge this in terms of early case planning for permanency.

So often you get a situation where no decision can be made for two years. In the meantime, a case plan might be set up which, in effect, because the family's limited capacity to change has not been acknowledged, it is setting the family up to fail. It is setting the child up to being moved from one placement to another often. In terms of young children, their understanding of time is a lot different: two years in one placement with a three-year-old child is two-thirds of their life. Yet a decision might be made at the end of that two-year period to try to return the child to the family. Whereas somebody advocating for the child's best interests could argue fairly strongly that this is not in the child's best interests. They could argue that the bonding that may have taken place over that two-year period was of greater significance than perhaps the capacity to re-bond with the parent, particularly if there has been little change in the parent's capacity to move on from where they were when the first difficulties arose.

So, if there was a children's commissioner who, in a sense, personified the idea of somebody standing up for children's best interests in their own right, I think it would, hopefully, flow onto the generation of roles further down at the practice level. There could be a child advocate-type role or guardian-type role at case planning or where protective decisions are made, such that children may well need to be removed, either temporarily or permanently, from their natural home. I think it has a lot of symbolic value, apart from real importance, in terms of the way in which practice standards are set.

CHAIRMAN—Isn't a lot of what you are suggesting, though, more at the practice state level rather than at the federal level? Would you see the commissioner concept being duplicated both at the state level and at the federal level?

Ms Pitman—I suspect it needs to be duplicated at the state level.

CHAIRMAN—You cannot see that that is an escalating bureaucracy, or do you think it is necessary?

Ms Pitman—It is a good cause.

CHAIRMAN—We have only one state at the moment which has a commissioner, and that is Queensland. That has only been in practice for five months or something. We are hoping to hear from a gentleman from New Zealand, but he is very ill at the moment. That is the only reason that he has not appeared before us. We were actually flying him over to appear before us but, because of his illness, we cannot do that.

Ms Medica—I should just say that within the sector we have had an involvement in terms of advocacy with children's commissioners since about the early 1990s. It seems to have been an ongoing battle in terms of NGOs such as ours and others wishing for a children's commissioner or a central coordinating body. It is also, I have noticed, picked up in the UN report that there is a lack of a central implementing body within Australia. So it just seems to have been an ongoing thing that has been pursued over a number of years, but it has not come to fruition yet. Yet, if you take community consultation seriously, there really has been a big effort by community based groups to pursue the establishment of a children's commissioner or an office for children.

CHAIRMAN—That covers the bureaucratic process area, but what about the legislative arena? Would you see coming out of CROC some sort of umbrella legislation at the federal level, bearing in mind that what we have heard today is reflective of what we have heard elsewhere? There is a lot of misunderstanding, mixed interpretation of what it all means. Is it possible and is it feasible to produce some sort of umbrella legislation at the federal level? Do you have a series of pieces of legislation at either, or both, federal and state level? How do you see the legislative network?

Ms Medica—Other international treaties have legislation that is specific to the treaties. I think it probably works quite well. I think it is also possible to be able to implement the treaty without legislation. Wouldn't the establishment of specific legislation only serve to shore it up?

CHAIRMAN—That is why I am asking you how feasible you think it is in the light of what you may have heard in the limited time you have been here today. What we have heard all day and in previous hearings is that there is a very mixed reaction to what it really means.

Ms Medica—I think we are saying two things. We are saying that, because there is a lack of umbrella legislation, that should not allow the government to abrogate its responsibilities in terms of implementation. However, if it were seen to reinforce the

convention, perhaps legislation would be a good thing. I think also this would be an issue that the manager of the Oz Child legal service would probably be able to take on notice and respond to.

CHAIRMAN—Okay. If you would do that, that would be very helpful to us. I have just read through the last couple of paragraphs in your submission. You do get on to the 1997 legislation without referring to it, but it is not the same legislation as it was in 1995, it is different, and it is different in that it does bring that word 'parliament' in a lot more. That is the thing you have expressed. You say:

In particular, concern has been expressed that constitutionally, the executive government holds exclusive authority to negotiate, sign and ratify treaties.

That is true under section 60. You go on to say:

It is important to state the CROC has over 190 ratifying members and in terms of international treaties is unsurpassed in terms of ratification levels.

Again, that is true, but you also have to look at reservation levels and the degree of those reservations. To pick up a point that I have made on a number of occasions today and that has come up in previous hearings, some of the Moslem countries, for example, have ratified and yet as part of their state practice there is female genital mutilation. Some of them have ratified without reservation. That puts a big question mark over the moral, ethical, whatever intent of some of those nation states.

I do not think it is unreasonable—and I would be interested in your reaction—for Australia to say, 'Yes, we can do much better', which it has. Of course we can, we can do much better in most things, but I do not think in the international order of things that we stack up too badly in terms of the rights of children.

Ms Medica—In terms of Australia's support, wasn't our only reservation—

CHAIRMAN—It was 37C.

Ms Medica—Yes.

CHAIRMAN—Yes, that is right. That is the point I am—

Ms Medica—And that was based on our geography.

CHAIRMAN—Our demographics and geography, yes. A lot of people would argue that was a somewhat minor reservation to put down rather than perhaps some of major reservations or declarations we might have made, as the Holy See did. If you read the three declarations of the Holy See, it really does put a bit of a question mark over the whole thing. That is why as an individual I find it difficult to go along with views that we

should have some umbrella legislation. It is very difficult to do that without putting further question marks over the intent, the principles.

Ms Medica—We can look at responding to that on notice.

CHAIRMAN—Yes, if you would. You can give us as much supplementary information as you want to.

Ms Medica—One issue that you have touched on, and it is in our report too, is that there are a lot of different interpretations of the convention and perhaps fear within some community groups that it in some way infringes their rights. We believe that a human rights convention on children does not in any way infringe the human rights of another sector. If anything it serves to support a rights perspective in general.

The other thing that is important in order to deal with people who are not understanding is that the government needs to provide some sort of resources to inform the community of what is the Convention on the Rights of the Child. To my knowledge, there has not been any effort to let the community know what the Convention on the Rights of the Child is, what it means for families and, in particular, what it means for children? For example, the preambular language of the convention is very supportive of children in the role of their family.

CHAIRMAN—But that does not have any legal impact, it is preambular, and that is the argument that some people use.

Ms Medica—There is also a number of articles in the convention too that refer to children's role within a family. If people were made aware of that and there was an education campaign around the Convention on the Rights of the Child, a lot of these problems would be overcome just by the provision of education around the convention and what it means.

CHAIRMAN—If you take the analogy of human rights internationally, there is no umbrella legislation in terms of Australian human rights, for example. That is the point I am making, it is something that we accept, although perhaps other countries do not. We accept and we do reasonably well in some aspects and quite poorly in some others, but we do not necessarily need that umbrella legislation. We need some specific legislation both at federal and state levels. Anyway, I will leave it at that.

Mr TONY SMITH—Are you aware of any interpretations by the United Nations committee on certain of the articles?

Ms Medica—No. Can you give us an example?

Mr TONY SMITH—One interpretation relates to a parent's right to withdraw

their children from sex education programs. The United Nations committee looked at that in terms of article 12 and said that that right was qualified in the sense that that right could not be exercised unless the opinion of the child was sought. That opinion must be given due weight and taken into account. There would be many parents in this country who would regard such an interpretation with absolute horror. Would you not agree?

Ms Medica—I do not think we would have a position on that; we are not aware of the committee's interpretation. I think our main issue is really the overall rights of children and the protection of children, especially children that are somehow disenfranchised, and we have not got down to that level, if you like.

Mr TONY SMITH—That is the problem, you see. When you get into the detail, that is when you get these anachronistic, if I may say so, interpretations, which is the problem that we are facing. It is an interpretation like that. You say we need education, when the United Nations committee is making interpretations and going around the world and telling governments, 'Look, this is what article 12 means. It means that you are offending article 12 if you don't ask your children to be involved in a consultative process as to whether they participate in sex education classes.' So that is the problem. The problem is in the detail.

Senator COONEY—Would it help if Mr Smith was to give you that case and have a look at it and come back to us?

Ms Medica—To us that would almost be slightly peripheral to the overarching agenda, if you like, of the committee in promoting children's rights.

Ms Pitman—But it also does highlight that tension between what are perceived to be parental rights and what are perceived to be the rights of the child. You could well argue that it is in the best interests of the child to have an adequate sex education. If the parents are unwilling to allow the child to have access to appropriate information, in a sense they are putting the child at some risk.

Mr TONY SMITH—But this is the crux: if the parents want to withdraw their children from a class, many parents would argue that that is their right to do so. This is where you get the—

Ms Pitman—It is a very difficult dilemma, and perhaps one of the roles of someone like the commissioner for children would be to first highlight situations such as this, where it is obvious that opinion would be divided, and to perhaps try and tease out some of the solutions that could be possible or some of the interpretations—

Mr TONY SMITH—Conduct an arbitration between the parents and the child.

Ms Pitman—There is a thought.

CHAIRMAN—Or just leave it to basic parenting.

Ms Pitman—Perhaps educate parents that sex education is not threatening, that it is a good thing for children if it is handled well.

Mr TONY SMITH—That is a particular view that you might have, but it is maybe not the view that other parents might have.

Ms Pitman—Some parents would, some parents would not. Obviously, there are going to be situations where—

Ms Medica—I can see good analogies on the issue of corporal punishment, because, for example, there have been parents that have said it is a right to dish out physical punishment to their children. An agency such as ours would advocate very strongly that we would want to be protective of children, but there are alternative modes of discipline. So perhaps within the framework of the Convention on the Rights of the Child we would be promoting alternate forms of discipline, and again education about what children's rights are. That is quite a proactive, perhaps less affronting way of dealing with a similar sort of issue as to what you are raising.

CHAIRMAN—You see, corporal punishment has come up in this committee anecdotally, in written evidence, and the disciplinary aspects of parenting. But we have some anecdotal evidence to indicate that there is a view in some quarters, as I recall in some quarters of that committee, that if in fact that happens it is a breach of the convention.

Mr TONY SMITH—Mr Chairman, it is more than anecdotal—they have actually made a ruling.

CHAIRMAN—I know that, but at this stage it is not really on the record that that is the case. The committee has made some fairly strong views known and it would help us—and I hope it would help you—if you looked at some of these things and see exactly what the intent is as far as some of these are concerned. I know that the people who are on that committee do not represent their governments, they are individuals, nevertheless, some of the countries that they come from are not really high on the pecking order in terms of some of the human rights and democratic issues that I think you and I would both feel are very important. Thank you very much for appearing.

[15.51 p.m]

CLARKE, Dr Priscilla Murray, Director, Free Kindergarten Association of Victoria Inc., 1st Floor, 9-11 Steward St, Richmond, Victoria 3121

CHAIRMAN—Welcome. We have received your written submission dated 3 April. Are there any errors or omissions that you wanted to amend on the record?

Dr Clarke—No.

CHAIRMAN—Would you like to make a short opening statement?

Dr Clarke—Firstly, I commend the federal government for initiating the inquiry and giving the community the opportunity to respond, both in a written form and to attend the hearings. For almost 90 years, since 1908, the Free Kindergarten Association has worked to promote the rights of the child and to influence policy development and practice within Australia in order to achieve desirable outcomes for children and families.

In the last 20 years, the Free Kindergarten Association has given special attention to children from non-English speaking backgrounds. This support includes promoting the positive settlement of non-English speaking background children into children's services, encouraging parents to maintain the first language and supporting the maintenance of the children's home languages and culture. This provides the foundation for the learning of English as a second language.

The Free Kindergarten Association, through the multicultural resource centre, provides bilingual support to children in state and Commonwealth funded services. It also provides consultancy and training for staff in all services for children prior to school entry throughout Victoria. All state and Commonwealth funded children's services have access to a wide range of bilingual and bi-cultural information resources

As an organisation that has children's rights as one of its core principles, the Free Kindergarten Association advocates all of the articles of the convention and the fundamental principles it upholds. Article 6 of the Convention on the Rights of the Child states that the state has a responsibility to ensure the survival and development of the child. In particular, the Free Kindergarten Association is concerned for the rights of refugee children, children from war-torn countries and survivors of victims of torture. The Free Kindergarten Association urges the federal government to make these children and families with high support needs a national priority.

Article 4 of the Convention on the Rights of the Child states that the state has an obligation to undertake all legislative, administrative and other measures to transcribe the rights of the convention into reality. The Free Kindergarten Association is concerned that the federal government has no mechanisms in place to implement the convention or

monitor its implementation. Of major concern is the lack of a departmental framework to draw the attentions of the public to the rights of children.

We urge the federal government to establish a children's commissioner, whose role it would be to monitor and oversee Australian legislation as it affects children within Australia. The establishment of a children's commissioner would also ensure that the articles of the convention are implemented, independently monitored and reported on.

The Free Kindergarten Association would welcome the drawing up of a national agenda for children, that agenda to have specific goals and strategies, and a budget to ensure that these could be met. It is important for adequate discussions to be held between federal and state governments to ensure that existing and future governments at all levels endorse and support the principles of the convention, and work towards common goals.

In conclusion, the Free Kindergarten Association endorses the Convention on the Rights of the Child. By ratifying the convention, the Australian government has formally agreed to respect the rights that are set out. To fully meet its obligations, the Australian government must continue to endorse the rights.

CHAIRMAN—Thank you very much. Without wanting to be too pedantic about it—and, I am sorry, I will get myself into trouble again if I do not watch it—it is not the federal government that has decided to hold this hearing on CROC; it is this committee. There would be some within the federal bureaucracy who would be wishing that we had not decided to hold this hearing. As I said before, because it is an extant treaty or convention, we have a right to pick up whatever we want to and look at it. We have done that in the context of six and a half years of progress, or arguable progress in some quarters, with a view to coming up with some sort of appropriate report.

Dr Clarke—I should amend my first statement to read 'commends the joint standing committee'.

CHAIRMAN—No, we were not looking for praise. With the commissioner for children, do you see the New Zealand experience as being something that we should be looking at?

Dr Clarke—I know that they have a commissioner, and I understand that there is also one somewhere in Europe, I believe. I do not know very much about the work of the commissioner; I have heard a little of the work of the New Zealand one. I agree with the previous speakers from Oz Child that, for many years, those of us who have been involved in this area have been pushing for some body or commissioner.

I understand that a big national and international early childhood conference is coming up in September. I understand that the commissioner, if they are well enough, will be involved in that, and I am hoping to learn a bit more about it.

CHAIRMAN—What about the Queensland commissioner?

Dr Clarke—I did not know about that. Is that a children's commissioner?

CHAIRMAN—Yes, a children's commissioner—

Dr Clarke—I made a note. I will go and find some more out.

CHAIRMAN—of five or six months standing, with limited terms of reference. But I commend that one to you for your observation.

Senator BOURNE—There is one thing I am particularly interested in, and I did not see this in the original couple of pages of your non-English speaking background programs. With children, particularly those who come to Australia from other countries, with their having been traumatised being a real problem, what basic problems do they need looked at?

Dr Clarke—Many of them are settlement issues. In some instances, their families have only just arrived in the country and are anxious to seek employment or go into a course, and the children are put into child care or into pre-school. That is where our role is: we assist with the settlement of those children. If they are recently arrived immigrants, then the settlement process might not be as long.

But for children who are victims of torture or whose parents have been victims, settlement issues can take a very long time. They can have many different types of effects. Those children can be disturbed. For instance, with children who have recently come from Bosnia, we have had instances where whenever a door has slammed they have run and hid under a table. They are very unsettled. They find it difficult to adjust to other children. They find it difficult to separate from parents. They do not speak the language. The staff in the centres may or may not have access to bilingual support.

We provide bilingual support. We are funded by both the Commonwealth and the state to provide some bilingual support. It is a unique program. It is the only state that has that type of support. Other states have access to bilingual support but in a slightly different way.

In relation to the language issue, the children are sometimes silent and may be silent for a very long time. This can be in terms of not speaking English, not understanding English and so not being able to speak English. You cannot expect children to speak English if they have not learned it. In some cases it is a form of mute behaviour—I do not like using this word because it is often used wrongly. It is a deliberate choice of that child to refuse to speak or to be involved in that sort of interaction. That can be prolonged for a very long time and it is quite common in the early years of schooling.

There is often psychological behaviour. They do not want to eat. They find it hard to play with other children. They might show tendencies of aggression. Sometimes they will not sleep when it is sleep time. As you probably know, child care has a very structured program. In many cases the parents are so anxious to get into the work force or to learn English that the children go into child care for long periods of time during the day.

The whole child-care area is changing dramatically. We have now got more private sector child care than community based child care. In the past—and I think it is changing—there has sometimes been more inexperienced staff in those centres. The emphasis is slightly different in those centres and it is more structured. That is not always the sort of structure the children need. They are now having to be in large groups of children, where perhaps their only memory of a large group has been in a refugee camp. They may have had traumatic times.

The parents themselves are often very traumatised. We have had instances of parents from Central America who have had extremely difficult times and of families from the Horn of Africa. The parents themselves are often unable to have a strong parental role when they are dealing with their own types of problems. We feel that these families need a great deal of support in terms of both the family and the children. We work very closely with the Society for Foundations for the Victims of Torture, which is a very good service. They need ongoing support, which we cannot provide. Also, our funding is predominantly for working with the staff rather than with the parents. So we need to have bridges.

It is very important. What I think is even more important—and this is one of the things that I have tried to highlight—is that we believe very much in the children being able to continue their first language not only because, as is known in the research, it provides a strong foundation for learning a second language but also because it is a carriage of culture and family. Those children need the security of not feeling that they are neglecting everything that they previously remembered, which is why the cultural aspects and the language aspects are so important.

Mr TONY SMITH—How would you envisage article 12(2) working in the context of your second last paragraph?

Dr Clarke—In terms of expressing opinions, I certainly believe it is not a question of parents' rights or children's rights; I think it is a question of being able to have a compromise between the two.

In relation to article 5 and in terms of parental guidance, we believe that the children have the right to be able to express their views. They can really only express their views if they are encouraged to express it in their own language. There are conflicting rights between families from non-English speaking backgrounds and families from Anglo-Australian backgrounds. Obviously, there are conflicting rights in terms of

what punishment, what form of guidance or what children are allowed to do.

The parents have to have full access to information about programs and about philosophies in their own language. You cannot expect them to understand everything in a language that is not their first language. It is information about children's rights; the staff need to understand about children's rights. They need to understand about how they can work with children to learn about their rights. There also needs to be a lot of discussion with parents about what is important for children and what is important for parents and how their roles are dual roles and how one does not take away the right of the other. I was very concerned at some of the submissions that said that it should not be children's rights, that it should be parents' rights. I believe that it is a mutual process; one does not take from the other. There has to be both children's and parents' rights. Does that answer your question? Do you want to direct it a bit more?

Mr TONY SMITH—The concerns that we have about article 12(2) relate to the capacity for conflict and division that might arise between children and their teachers, and parents and their children, and what role, if any, the state ought to play in resolving those conflicts and potential areas of division.

Dr Clarke—The children we are dealing with are in the nought to five age group predominantly and they are not as likely to be conflicting with their parents in that sense. But we do see conflict between what parents think the children should be doing in terms of a preschool program, which may conflict in terms with what Australian society thinks is right for children to do. In all of that, there has to be a lot of debate, a lot of information for both sides and a lot of compromise initially. There has to be a point where both parents and children negotiate rights. It is not just a question of children having the right and parents not having the right. It is very difficult.

Basically, we are concerned that some of the rights of the children are not being met, particularly article 17 in terms of access to appropriate information. How appropriate is the information if you cannot read it or if you are not literate even in your own language? It is a question not just of access but access for people who have different levels of literacy or who, in fact, have come from another country where they have not had time to develop enough English skills.

You asked a question of one of the others about the media. One of the problems that we see with the media and children's programs is that the baddie, if you like, the villain of the piece in many of the children's cartoons and video games is usually an Asian or black person. In the portrayal of people being the bad or the evil or the violent one, it is very important that we are not giving a stereotype image of that person—for instance, the person has to be Asian or black. I think that needs to be addressed in the media. There are also a lot of programs that are completely unsuitable.

By the same token, there are very few programs for children in languages other

than English, and that is another whole area. If you believe that children have the right to their own language and culture within Australia, in some of those issues, even though we might say, 'Yes, we will have bilingual information' or 'We will have access to a bilingual staff person', we are denying children some of the rights by not having enough information or not having it in newly arrived languages.

CHAIRMAN—Thank you very much, indeed; it has been a great help.

[4.10 p.m.]

GOW, Ms Melanie Susan, Public Policy Officer and Researcher, World Vision Australia, 1 Vision Drive, East Burwood, Victoria 3151

WALKER, Mr Roger, Bureaux Co-ordinator, World Vision Australia, 1 Vision Drive, East Burwood, Victoria 3151

CHAIRMAN—We have received into the evidence your World Vision submission dated 18 April, a very extensive one. Do you have any amendments of fact—errors, omissions—that you want to read into the evidence before we invite you to make a statement?

Mr Walker—No, we do not.

CHAIRMAN—Would you like to make a short opening statement?

Mr Walker—We appreciate the opportunity of appearing before you and appreciate your efforts and consideration of these matters. As we have commented in our submission, we feel the need to stress, in our judgment, the need for either a commissioner for children or a federal minister for children, with state and territory counterparts. We feel that would be an appropriate step for the government to take. We believe that person, if suitably staffed and so forth, would help promote the issues of the Convention on the Rights of the Child in a comprehensive way, and continue to provide supportive understanding of the implementation of this convention in its various dimensions. This is the particular point that we would like to stress.

We would also like to highlight our organisation's concern, being primarily involved with children overseas, to strengthen the sensitivity regarding the way that children may come before the courts under the child sex tourism act. Recent experience that we have had with that would lead us to be concerned that adequate consideration of children's issues had not been taken into account in attempted prosecutions. We are concerned, for that legislation to be effective, that children who come under it, particularly from overseas, need to be given adequate protection and consideration. So they are the two main points we would like to highlight.

CHAIRMAN—On that one, does that specifically relate to the inadequacy of evidentiary aspects of the recent Department of Foreign Affairs and Trade investigation of paedophilia?

Mr Walker—No, not the evidentiary aspect, more the events leading up to the pre-trial hearing. For example, the incapacity of the Federal Police to provide protection for the children while they are overseas; the fact that the children were required to appear in the actual pre-trial hearing, whereas if the alleged offence had occurred in one of the

states of Australia, they would have been able to be interviewed by video, for example. They are the sorts of concerns we have. We are not making comment. The court has ruled on that and that is a matter of record. So we are not talking about the question of whether or not the evidence was sustainable.

CHAIRMAN—We will come back to that in a moment. Just on the concept of the children's commissioner at state and federal levels, which is what you are proposing: what about the legislative umbrella? Do you see some sort of umbrella legislation being developed to adequately reflect the CROC, or do you see that that is just a statement of principles that needs to be reflected in some part, in various areas, in either federal or state jurisdictions?

Ms Gow—Ideally, I guess, we would like to see that CROC is implemented in terms of Australian domestic law. Whether it is reflected in the legislation that currently exists, or whether that means further legislation has to be taken forward, we would be primarily concerned about a national agenda that would come with a commissioner or a minister. Whether that national agenda would translate into legislation or a non-legislative but working document, I am not sure. I think it would be a matter of investigating the laws as they are currently applied and perceived in terms of CROC.

CHAIRMAN—Would you concede, for example, as we have heard again today and everywhere else, that there is a wide spectrum of views as to the specificity of some of the provisions of the convention? There seem to be different interpretations of the same articles. You would take that view?

Mr Walker—There certainly are different interpretations of various aspects of the legislation.

CHAIRMAN—But, in general terms, World Vision is happy that that convention is an appropriate umbrella under which to develop appropriate domestic legislation?

Mr Walker—We have that view; that is correct, yes.

Senator COONEY—In part of your submission, you talk about the economic exploitation of Australian children. You refer to the report from the Textile, Clothing and Footwear Union of Australia in Sydney in 1995. That is very substantial evidence. Do you have any other evidence besides that report?

Mr Walker—We have had anecdotal evidence and staff and extended family experience. We do not have any organisational or direct experience ourselves. We are supportive of the concern expressed about the matter. That is why we included it in our submission.

Senator COONEY—Have you got any impression of how widespread that is?

Often times you do not have specific evidence, but you can get an impression from the general evidence that you receive. Have you got any impression of whether it is widespread?

Ms Gow—The unions are reporting that it is becoming increasingly widespread. The incidence of children working in outsourcing under hazardous conditions is increasing. I think they would even say that it is difficult to gauge a precise number but that it is on the increase.

Senator COONEY—There would be specific laws against that sort of thing, in any event.

Ms Gow—Yes.

Senator COONEY—Have you looked at that to see whether those laws have been enforced or whether an attempt has been made to enforce them?

Mr Walker—The difficulties with the enforcement of the laws is that the people who are being 'exploited' are vulnerable and powerless in expressing their concerns to the middle person. If they do, they are fearful of losing what business they are given.

Senator COONEY—A lot of it seems to involve, from what you have said here, families who are very vulnerable.

Mr Walker—Exactly.

Senator COONEY—Your impression is that it is not being policed as widely as its occurrence.

Mr Walker—We understand that some companies are taking affirmative action to encourage their suppliers to be more respectful of the law so that the outworkers are treated fairly. From what we can gather, it is about the middle person who deals with the householder. They are often given very limited time to fill an order. For example, 100 bed sheets or 500 pillow slips may have to be done overnight. Their family will work all those intensive hours to get them done.

I have never been able to clarify why that pressure of time has been put on the family. It is just beyond me. Whenever I have talked to families about asserting their concerns, they have obviously been reluctant because they feel powerless to do that.

Senator COONEY—But you have had occasion to talk to families about the issue?

Mr Walker—Yes, I have.It is very hard to also ascertain a per hour rate. There are

a number of steps in the various processes that are done at home and the whole family contributes to it. My estimate is that it would about $5 to $7 per hour, if you worked it out.

Senator COONEY—The impression I have from what you say—correct me if I am wrong—is that there is a significant problem and that the major cause of it is what you call the middle person.

Mr Walker—They negotiate between the retail outlet and the householder who is doing the sewing. I do not what other levels are between them. It is the immediate person removed from the householder who provides the cut-outs and the work at the direct household level. The householder relates to that person only.

Senator COONEY—And it seems to put pressure on the household.

Mr Walker—Yes. There are many cases where the children are working okay. I am not saying that in every case it is a problem.

Senator BOURNE—You say that the same thing is happening on the international scene. It is even worse internationally. You suggest that aid projects in particular and Australian companies working with overseas links should have a set of standards or ethics. Do you know whether that is happening already?

Ms Gow—Some of the companies are taking it upon themselves to instigate those codes of conduct. Amongst Australian companies, it is perhaps not as prolific as some of the larger organisations from overseas. Some of the big names, such as Levi Strauss, are doing some terrific work with it. In the US, you may have heard of the recent understanding between Nike and some of the other larger organisations. They have instituted their own codes of conduct about labour standards. So some companies are taking it on board. World Vision says that there is a role for government in encouraging these sorts of codes of conduct for companies to engage in and take on board internationally.

Senator BOURNE—Do you have any names of Australian companies that are good guys?

Ms Gow—Myer-Grace Bros, particularly in their rug area. A gentleman called Nigel Dalton is doing some brilliant work. It is really good, encouraging work. He is bringing in a label that you may have heard of called Rugmark. A percentage of the proceeds from the sale of those rugs goes to helping children who were formerly exploited in child labour making rugs to get into school. It helps their communities and so forth in association with UNICEF and the Indian government. So Myer-Grace Bros would be probably one of the more obvious stand-outs.

Target Australia has entered into an agreement with the unions here about their Australian manufacturers. To my understanding, they have yet to manifest that into international obligations as well. They get a substantial proportion of their goods from overseas. At the moment, they are focusing on their companies within Australia meeting labour standards.

Senator BOURNE—For instance, if I buy sheets from Target and they are made in Australia, they are pretty safe?

Ms Gow—You can sleep well in your sheets at night.

Mr TONY SMITH—Firstly, you support the introduction of child impact statements to accompany policy considerations. Would family impact statements be a better option?

Mr Walker—Certainly, Mr Smith. We look at the convention as supporting the family in a whole host of ways. We are certainly not being anti-family.

Ms Gow—In some instances, particularly with the children that we work with, unfortunately, family is not always a reality. With child labourers, there may not be a visible family present. In those sorts of projects, we would be thinking about the children. Most especially, in all of the project work that we do, it is always family and community based.

Mr TONY SMITH—When you speak of the recommendations, are you talking about the overseas situation with AusAID projects and so forth?

Ms Gow—Yes.

Mr TONY SMITH—You are speaking entirely in relation to overseas projects?

Mr Walker—We also have concerns about indigenous children, as expressed in the recommendations.

Ms Gow—Yes. It should be.

Mr TONY SMITH—What is your comment about article 24(4)? That, to me, is one of the very important articles in the convention in terms of imposing on Australia an international obligation in relation to developing countries. You have said a lot about a commissioner for children, which is very Australian focused. I have some serious doubts about that, mainly because I think we have a pretty well developed system here. A group of people who know the world as well as you do would surely say, 'Look, we're not doing too bad here when you compare us with them.' Why should we spend more money here when we could put that money into projects that World Vision does so well at;

namely, the individual village projects—getting the water, getting the seed, getting the rice plot and so forth? What do you say about what Australia is doing in terms of article 24(4)?

Mr Walker—Could you remind me of what article 24(4) says?

Mr TONY SMITH—Article 24(4) says:

States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realisation of the right recognised in the present article.

That is a general right about health and things like that; that is, hygiene and appropriate health care to combat disease and malnutrition. All of those things are endemic in third and fourth world environments.

Ms Gow—And in parts of Australia, too.

Mr TONY SMITH—It goes on to say:

In this regard, particular account shall be taken of the needs of developing countries.

So, in effect, it is an obligation on the part of—as I see it, and it is my own interpretation—the wealthy countries. I guess it is an obligation on all countries which have signed, but I see it more as an obligation on the wealthy countries to ensure that the position of children in those poorer countries is uplifted; that is, the basics.

Mr Walker—Yes. We would certainly support that. We have been on record, for 12 years now, to encourage the various Australian governments in relation to the achievement of the UN target of 0.7 of GNP's overseas aid. We are concerned—and we have expressed this over the last 13 or 14 years—about the declining proportion of GNP allocated to overseas aid.

Mr TONY SMITH—It is now 0.25, isn't it?

Mr Walker—Yes, its lowest ever.

CHAIRMAN—It is 0.26.

Mr Walker—Yes, it is 0.26 or 0.27, but it is of concern to us and, we know, to many other people as well. We have urged the governments of the day to improve that, but our concern is that the direction is not changing. We have had direct discussions with the various foreign ministers and the leaders of AusAID over the years and made various submissions on it. We continue to be very concerned about it. So we do believe Australia has an obligation. Unfortunately, in our view, it is moving away from meeting those

obligations.

Mr TONY SMITH—You would say, wouldn't you, having regard to your focus, that if there is spare money around, it should not go to setting up another bureaucracy in this country? Rather, it should be spent on helping some of the projects you have overseas.

Ms Gow—We would say certainly not another bureaucracy. If it is a commissioner for children or a federal minister, as perceived to be functioning and necessary, then we would see it as positive. In terms of how Australia is going, we do not have a huge domestic mandate, although we do probably only in terms of the work that we do with indigenous people and some of the church work that we do. Child poverty is a reality in Australia. UNICEF did a study in 1993, I think, that indicated that, out of 18 industrialised countries, we rated behind the USA and were up there with Canada as having the worst child poverty.

Mr TONY SMITH—We saw that study and, speaking for myself, I was very unimpressed with some of the comments of that. Didn't we discuss that earlier on?

CHAIRMAN—Yes.

Mr TONY SMITH—Some of the lines were pretty ordinary, I must say.

Ms Gow—There have been other studies done, though. For example, for sole mothers living in Australia, the poverty line is indicated there.

Mr TONY SMITH—There is no comparison between that benchmark and the position of mothers, say, in Kenya, where they are having children in the midst of working in the open. They are tying the umbilical cord with grass that has tetanus spores on it, and their children die. There is just no comparison.

Ms Gow—No, obviously not. What we would be arguing is that the reality is that child poverty does exist in Australia, and we should not ignore it.

Mr Walker—We would urge that it is a matter not of either/or, but of both. We are very supportive that a caring society cares for those at home as well as overseas. We do believe that Australia has the resources to do more in both areas. We realise that is a political choice, but we have the view that it is not a matter of whether a particular bureaucracy is established or not.

Ms Gow—The other reality perhaps is that policy coherence was perfect but a federal minister for children could quite easily work well with AusAID and a federal minister for defence.

Mr TONY SMITH—I particularly wanted to get on to an area of great interest to me and that is what you initially raised, Mr Walker. I presume you are raising specifically that prosecution in Canberra, are you?

Mr Walker—That is correct.

Mr TONY SMITH—I have already raised this in committee hearings. The procedure, obviously, is a problem. I want to tease you out a little bit on this and, if necessary, I would love to have some supporting documentation at some later stage if possible. First of all, you talk about witness protection. What are you saying in particular? What occurred? Were those witnesses got out by people?

Mr Walker—What I say here may be complicated from legal aspects; I need to take a reading on that, Mr Taylor.

CHAIRMAN—I think we have got to be very careful in terms of privilege and sub judice in some of these things. I know that case is finished because of lack of evidence or unsatisfactory evidence.

Mr Walker—Yes.

CHAIRMAN—I think we need to be a little careful. I leave it to you. Just be a little careful. It is on the public record. It could be seen in some quarters as being defamatory.

Mr Walker—Yes; and I certainly do not want any comments of that nature.

CHAIRMAN—With due respect, Tony, as far as World Vision is concerned, the general comment has been made that there are problems in this area. They have made some general comments. At this stage, we should leave it at that. In later hearings, when we get back to Canberra, we might take this up, maybe in camera or something like that. Maybe you could explore whether there is anything further to elaborate on those couple of paragraphs.

Mr TONY SMITH—It is an interesting point; I have always had a judge to come in and warn the witness. I might have to warn the witness in the midst of my questions. This is a delightful position to be in. But no, I will not even pretend to do so. It is an area that I am very concerned about; just let me give you the background to it. I believe that, in that sort of area, we must get the process right and that is what you seem to saying, do you not? You cannot have child sex legislation, if you do not get any convictions, because it will not deter anybody. The people will go off on a frolic of their own and say 'You will never get convicted because there is not adequate protection' and so forth.

I take the example in Queensland and I mention section 93(a) of the Evidence Act

which permits a record of interview to form part of the evidence in chief of a child witness in sex cases and that evidence in chief is an interview between an experienced police officer and the child taken on video. It is intended as the evidence in chief on a committal hearing and therefore becomes evidence of those facts in a prima facie sense. Generally speaking, that means that the defendant will be committed for trial even if there is cross-examination. Notwithstanding the cross-examination—unless it is a total destruction of the witness and unless the witness totally recants everything that was said on the video—generally speaking, it is enough for consideration by the jury, which is very important in this process. Are you saying that was absent in this procedure, that it was a lacuna in the law—a gap in the law?

Mr Walker—A gap in the law, yes. What we are affirming is that the legal proceedings that are available to children in Australia who come before the courts in matters of these allegations, the same types of provisions should apply to children under the extra territorial legislation. We realise that there are some variations.

Short adjournment

CHAIRMAN—If you would like to ask the questions, they may be taken on notice, and we will leave it at that.

Mr TONY SMITH—Bearing in mind that I am virtually acting without a brief and just off the top of my head, the particular questions I am interested in are: were the complainants in that particular case adequately protected in the country of origin? If they were not adequately protected, in what sense were they not adequately protected? Could you outline whether there is any suggestion, in relation to that particular matter, that, firstly, they were interrogated by any person or persons connected with the defence in the case; secondly, whether they were inappropriately treated by the defendant—as I understand it, there was some background to that—or any persons connected with the defendant in relation to the case or in any preliminary dealings between the complainants and the defendant or persons acting on his behalf. Were the police investigating the matter adequately briefed about the background? Were the police sensitive to the cultural and other issues involving their dealings with these children? Were there adequate interpreter services provided? Were they interviewed in the presence of their parents or a recognised next friend or guardian?

In relation to the evidence that was taken from them, was it taken by way of statement? If so, in what circumstances? Who took the statement? Were there any World Vision staff involved in assisting the police in relation to the investigation? Was it quite clear that World Vision staff were, in a sense, not too close to these complainants so that they could give full and adequate information without any suggestion of undue influence by World Vision staff?

We have heard that there was no video evidence taken, as I understand it. When

the boys—I think there were two boys involved—came to Australia, were they adequately looked after? Did they have family support or other support and some sort of cultural support? Were they totally illiterate as far as the English language was concerned, or did they have some knowledge of English? In the proceedings themselves, it is understood that much cross-examination was undertaken of the complainants by experienced counsel. Was there any barrier between the defendant and the complainants whilst they were in court, or could the defendant at all times see them? Was there an adequate segregation of the boys from the defendant and/or counsel acting on his behalf? That has hopefully covered as much as I can think of.

CHAIRMAN—The point I make about all this is you do not have to answer all of those questions of course. We leave that to your discretion.

Mr Walker—Yes. We will take those questions on notice, Mr Chairman, and give our considered response in writing.

Mr TONY SMITH—I have one final question. In particular, having regard to what you have said here, you have probably covered—

CHAIRMAN—Is this to be taken on notice?

Mr TONY SMITH—Yes, probably. Whatever you come up with is a matter for you of course, but, ultimately, having regard to what you have said about suggestions, would you be interested in a model similar to the Queensland model which segregates the defendant from the complainants in court and anywhere else so that the court precincts at no time permit any interaction between the defendant and the children? Secondly, would you support a barrier being erected in the court itself? Thirdly, you have said video proceedings.

CHAIRMAN—In terms of your reply, particularly the ones that you take on notice, could you indicate when you come back to us those replies that you want regarded as confidential.

Mr Walker—Yes. Thank you.

CHAIRMAN—Then we can consider it. The other thing is, if it is confidential or you assess it as being confidential, there is a right of reply involved in it too. I say that just so you know and understand that. I have one very final question, a general question. In the submission you made the point that aid for the child element was about 10 per cent in 1993. I have to say that I will be discussing some of these issues in another capacity at an aid seminar in Canberra on Friday.

Mr Walker—We will have to send our boss there.

CHAIRMAN—To what extent has that 10 per cent varied over the last four or five years?

Mr Walker—It is quite difficult to get.

Ms Gow—We were discussing this before we came. We were actually saying it was difficult to gauge. UNICEF is the one that obviously does most of that sort of work.

CHAIRMAN—Perhaps we will leave that until Friday.

Mr Walker—Yes. We have not been able to find that out precisely.

Mr TONY SMITH—I have one other question which you can take on notice. Were you satisfied at all material times in relation to that particular matter I have been asking about that you had the full unbiased and independent cooperation of the Department of Foreign Affairs and Trade and any officers employed by them?

Mr Walker—We will take that on notice.

CHAIRMAN—Thank you very much.

[4.49 p.m.]

SMIT, Mrs Pauline Mary, National Secretary, Women's Action Alliance, Suite 6, 493 Riversdale Road, Camberwell 3124

CHAIRMAN—We have received the written submission of the Women's Action Alliance of April 1997. Are there any errors, additions or omissions to that written submission that you would like to inject into the evidence before I invite you to make a short statement?

Mrs Smit—No, I am happy with the submission.

CHAIRMAN—In view of the time—and I am sorry, I do not want to rush you—can you keep your statement as short as you can?

Mrs Smit—Yes. I really only want to reiterate some of the points that we made in our submission anyway. Those who have had the opportunity to read it might remember that we mainly focused our comments on terms of reference Nos 6 and 7 that were to do with the importance of bolstering marriage and trying to redress Australia's dreadful marriage breakdown rate, because we fear, as many others do, its impact on children. In fact, quite wide-ranging research both here and in other developed countries is now showing that children do suffer as a result of marriage breakdown.

I know we get mixed evidence on this. Studies tend to say that most children are not badly affected by their parents' marriage breakdown. Most are not possibly seriously affected, but when you examine the rate of school drop-out, drug addiction and a whole range of other difficulties that young people get into, you see that the rate is much higher amongst children where the parents have separated or where there has never been two parents in the family.

I think the life chances of the children are certainly impacted on—usually it is the father not living in the family. They are certainly also impacted on by there not being the natural father of the children living in the family. That evidence is fairly clear now, too. There is much more abuse, et cetera in those families.

I suppose one of our biggest focuses in the submission was on encouraging the government to do more to help promote stable marriages. We have suggested that the compulsory notification period, which is now only a month, be extended to three months. Our reason for that being that that would give the government an opportunity to write back to that couple who have submitted their notification and say, 'Congratulations. We are delighted that you have chosen to marry'—and we believe that the choice to marry should be affirmed—'Now we would like to see you participate in a pre-marriage education course. Here is your discount voucher to participate in an approved course.' You know that there are already quite a lot of those course. We congratulate the government on

the improved funding to marriage education agencies that has happened in the most recent budget.

There is another thing we feel could be done. There is a fee that you pay at the time that you notify that you want to marry. We are suggesting that could be reduced if the couple were to undertake a marriage education course. Perhaps the fee could be reduced significantly, say, down to 20 or 10 per cent because it would come to the couple's notice then. It would actually shove it under their noses. That would say that we want you to participate and that we think it is a good thing. There is no coercion; it is simply encouragement.

Currently, only about 15 to 20 per cent of couples marrying in Australia do participate in any pre-marriage education. We would like to see those figures turned over so that it is only 15 to 20 per cent of couples who do not. You can assume that there will always be a range of couples who do not for some reason, but surely it should not be as high as 85 per cent.

On the other things that we alluded to, we would also like to see a greater availability of parenting courses for the sake of the children. We would like to see the children's services program be more inclusive. We feel it is far too exclusive. Only 23 per cent of children under 12 in Australia ever go into paid child care. Yet I have got some figures here that say that the paid child-care industry is now a $24 billion industry, and sixty per cent of those costs are met by the government. The increase in Commonwealth funded child-care places since 1983 has been 55 per cent, so a huge burgeoning. If you drive around the suburbs of Melbourne today, especially my own area, which is out east, the child-care centres are popping up like mushrooms.

CHAIRMAN—It is not only in Melbourne.

Mrs Smit—No, I am sure it would be everywhere. So there is an obvious trend to children not being in parental care. I am quoting from the EPAC child-care task force when I say that only 23 per cent of children ever go into paid care. We should face up to the fact that most of the other child care that is done is informal. It is largely by grandparents or other family members, sometimes by older siblings, sometimes neighbours et cetera. However, despite that big imbalance, 77 per cent of children never go into paid child care. You have 60 per cent of the $24 billion being met by government, whereas the home child-care allowance, now known as the parenting allowance—and sometimes we wish they had not changed the name, because home child care better spelt out what it was for, we felt—is $600 million. So 77 per cent of children are getting $600 million and 23 per cent of children are getting whatever 60 per cent of $24 billion is. Anyway, I think the figures speak for themselves.

The other thing is that some poor families are getting no child-care assistance. Every baby that is born has to be cared for. Whether the parents forgo income to care for

the child themselves or they purchase child care should be their neutral choice unimpacted on by government policy. But, just to take a model, say you have got a taxi driver husband and a mum at home with three little kids. They are struggling, they are just not getting enough to pay their bills, so mum decides she has got to get a bit of work. She wants to work in her own neighbourhood, so she will not be spending a lot of travelling time, so she goes to the local supermarket: she gets a job shelf stacking two nights a week.

Because of the severe income test on the parenting allowance in the hands of the recipient, she loses the parenting allowance. As soon as she earns $30 a week, it starts to cut out. But, because the children are at home in bed with dad while she is out working, so they are not paying for child care, they get no benefit from the children's services program, no child-care cash rebate. They are a poor family—no help at all.

Compare them with the wealthy professional couple, both in high achieving jobs, who have a nanny who lives in at home and they can get $62 a week back through the child-care rebate on their child-care expenditure. Are we looking at justice here? We say no.

The International Year of the Family Committee and the EPAC task force have both come out suggesting some kind of direct child-care payment to parents. The EPAC committee limited that to parents using paid child care. We would say that would not be inclusive enough. We think it should go to all parents with children under 18 years of age. It could be means tested. We have suggested a way of means testing it, and that is simply to make it part of the family's taxable income. Then, of course, those paying high taxes will return more of it to Treasury; those paying little or no tax will return very little. So everybody will get some benefit, but the poor will get more than the rich, and surely that is the way we should be heading.

That is just a suggestion that we have been making for many years, actually. We are really pleased to see EPAC and the International Year of the Family Committee come up with something similar.

That would involve rolling into that some of the current assistance. You would not be rolling in family allowance and things. You may; the government could examine a range of ways of doing this. But you would certainly roll in the child-care rebate, child-care assistance and what have you. We have actually spelt that out in a bit more detail.

The other recommendation we put forward is that the priority of access guidelines need to change in child care too, if you are going to be just. The first priority should be on the basis of need, not on the basis of who is in the paid work force and who is not. That is what it is at the moment. Children in serious risk of abuse come third, down the priority list. We would have thought people with extreme needs like that should be at the top. The other needs that should be given first or second priority are economic. But there

is no mention of that in the first priority at the moment. If it is a two-parent family, both must be in the paid work force or seeking work or studying with a view to work. If it is a sole-parent family, that parent must be in the paid work force. We think it is wrong.

We congratulate the government on the family tax initiative. We think the moves have been in the right direction. We do not think a woman should be penalised when she pulls out of the paid work force to look after her kids. She still is because, if she goes to work, she gets a full tax free threshold. If she stays home with the kids, she gets $2,500—less than half of what the worker gets. This says to her 'Your work is not really as valuable as other people's' or 'You are not as valuable' or 'Your living costs are not as much as other people's.' In fact, she has to pay the same for her petrol and clothes as everyone else and she has no income. We think she could at least be given a full tax free threshold not only for financial reasons to support family income but also for self-esteem reasons for that worker.

We would like to see a form of family unit taxation introduced. We feel that the movements the government made in the budget go in that direction, but we would like to see it pushed even further. I know the criticism of that is usually that it benefits the rich more than the poor. In our family unit taxation policy, we acknowledge that, although our policy says there ought to be a limit of $15,000 that you can siphon off to each family member. So that dampens that effect considerably. We then say, too, that, if you still feel that it is giving too much value to the higher income people, let us look at the raising the marginal tax rates at a higher level and penalise all high income people not just high income families. Why do high income families come in for target?

As one of our recommendations, we also mentioned maintaining current legislation protection for children regarding the age of sexual consent. I read in the *Age* this morning that the government has said it will not be changing the age of sexual consent.

CHAIRMAN—Is that your final point?

Ms Smit—Yes.

CHAIRMAN—Let me cover that one first. That emerged from the standing committee of Attorneys-General. The age of consent is something that was specifically raised, along with other issues. They were proposals that emerged from the Attorney-General of New South Wales. Tony Smith and I are Queenslanders and the Queensland Attorney-General has made it very clear publicly and privately that it is unacceptable to the state of Queensland. You can rest assured that, whilst it is very desirable that we move towards some sort of national criminal code, one element of it will not be what has been suggested in the draft. I have had to put a very strong letter to the editor about that in my area because a strong Christian coalition was pushing this around and saying that this was a firm view—and it is not.

Ms Smit—I know we should not fly into a panic every time any little committee makes a recommendation but, if we do not react—

CHAIRMAN—Yes, that is right, exactly.

Ms Smit—The government is entitled to think no-one seems to care. Kite flying is quite important to react to.

CHAIRMAN—Yes. I think you have covered everything that I was going to ask.

Senator BOURNE—I have one question on parenting courses. Are there any in existence at the moment?

Ms Smit—Yes, there are quite a lot, actually. In our submission, we say that we would like the participation in parenting courses almost to become a standard thing that young couples do when they start having a family—not sort of an optional add-on that they might do. They need affirmation; they need better funding et cetera. A lot of them are done out in the community sometimes through places like neighbourhood houses and schools. They bring trained people in and provide them to the parents at the school. My husband and I certainly participated in one years ago on that basis. I always give credit where credit is due, and there is quite a bit of effort being made. I know that both the previous government and this one have serious concerns about parenting.

One thing I would like to mention—where there has been a legislative change away from caring for children—is the move by the Victorian government recently to allow de facto couples to adopt children and also to have access to assisted reproductive technology programs. This was not so in Victoria until recently. I do not know whether you know what happened, but I think you would. The Human Rights and Equal Opportunity Commission fined two of the providers of IVF—as the old term was—programs in Melbourne. I think there was the Frankston one and the Monash one. I might be incorrect on those, but two of them were fined $20,000.

The commission stopped short of actually ordering those programs to provide the service, because it would have been illegal. The Victorian law said they could not be provided to de facto couples, you had to marry. Very soon afterwards the state government suddenly decided that was not important any more. We think they made that decision on the basis of money, not on the basis of what is good for kids. To me, that is just not good enough. We cannot afford to be paying these fines. We do not have the energy to fight it, so we will just let them have it.

There is ample evidence now—and the Human Rights and Equal Opportunity Commission itself has brought forth some of this evidence in the past—that de facto relationships not only break down at a much higher rate than marriages, but there is a lot more abuse and violence within them. Brian Burdekin said years ago that there is 300 per

cent more child abuse in de facto relationships than in a marriage. Now is that not a good reason to maintain that? The other thing is who cannot marry in today's society? Since we have had the Family Law Act, there is no-one who cannot get a divorce. So what is in the way of them marrying?

Also, the Women's Action Alliance believes that such serious things as the sharing of property and the sharing of responsibilities for children should, in our society, be the basis of contract. You would not enter into other serious matters without a contract, so why enter into such very serious matters as the care of children? Also, there are still legal protections for children in the Family Law Act that are not there.

So just by doing the right thing by your children, you ought to marry, not for any moral or religious or other reasons. I know that the churches feel very strongly about this. We might have personal convictions one way or other, but I think it is a very lame duck for the Victorian government to take that stance just because it has been fined some money. I know it has to be responsible with the taxpayers' money, but I wonder whether the children's needs get put first or not.

While we were talking about the little child-care centres popping up everywhere, in this morning's *Age* we saw yet another report entitled 'Illness more likely in child care'. This is an epidemiological report from Canberra from the National Centre for Epidemiology and Population Health, which shows that children in child care get six more respiratory infections a year than children who are not. The average little child gets a couple of colds a year. So, presumably, these kids are getting eight colds a year. A cold lasts 10 days, a fortnight or sometimes a month. These children are being sick an awful lot, aren't they? I am not saying that they should not be in child care at all, but I just think that those parents who make the choice not to have tiny children in child care often make them for these sort of reasons. They actually think their children are better off at home. We know they are.

CHAIRMAN—There was one comment that I wanted to make now that I think of it. You made the comment about proliferation of child-care centres, particularly private child-care centres around the country, and that that does not necessarily mean that standards have gone the same way.

Mrs Smit—No, unfortunately, they have not.

CHAIRMAN—In some cases, standards have been eroded. I suspect that is one of the reasons for statistical reports like that.

Mrs Smit—Yes. Is it true that 11 centres were failed on the accreditation examination and yet did not have their subsidies removed? I read that somewhere.

CHAIRMAN—The whole idea of the new child-care provisions is to lift standards

and to re-jig them. Demographically, they were misplaced under the previous program. That is a political judgment that has to be made. I know it has been criticised in some quarters, particularly in relation to the removal of the operational subsidy for community-based long day care centres. That is one that still bounces around, albeit that some financial provision was made for them to re-order the deck chairs in terms of their financial arrangements.

Mrs Smit—I read this article this morning. It says that, when a young child's nose is running, the child-care worker is advised—and this is the standard—to take a sandwich bag, put it over her hand, pick up a tissue, wipe the child's nose, then pull the sandwich bag over it and dispose of it. She then has to go and wash her hands thoroughly for 20 seconds, and that would apply after changing a nappy and all the rest too. I can understand that is what would be required. But I can see it happening, with five children in her care—which she can have legally—she would no sooner have done the 20-second hand wash for one and she would look around and the same child's nose would be running again. If it were not his, it would be someone else's. The children catch colds from one another.

The only point I really want to make out of all of that is, when mothers decide to stay home for a few years with their children, they should not be penalised for their choice by not having the same tax-free threshold, by not having the same access to child-care rebates, et cetera. That mum who does do that little bit of paid work to try to top up the family income gets nothing. Nothing at all.

CHAIRMAN—You have made a very strong argument for tax reform too.

Mrs Smit—I hope so. That is what we are here for.

Mr TONY SMITH—I know my sister, who is both an ardent feminist and an academic, would love to hear what you have just said because she made that very choice. She had a child in child care and had so much trouble with illness that she took a year off work to specifically get through that system.

I very quickly wanted to ask you about parenting, following up from what Senator Bourne said. Are you saying basically that a parenting course and a relationship course should be prerequisites or should attract a voucher-type system before you get married?

Mrs Smit—The important thing is that the government affirms and encourages couples to participate in pre-marriage education. There is quite good evidence to show that they do work.

Mr TONY SMITH—I know already that ministers of religion, generally speaking, try to do a fair bit of that and encourage that. But marriage celebrants who are marrying 50 per cent of people these days—

Mrs Smit—Are not required to, are they?

Mr TONY SMITH—They have a vested financial interest in not doing it, I have to say.

Mrs Smit—That is exactly what the government should be examining perhaps.

Mr TONY SMITH—So you are saying that some sort of a voucher system should be—

Mrs Smit—Perhaps there ought to be some legislative changes that require marriage celebrants to at least give couples a list of places where they can go and to encourage them to participate. I do not know how it should work really, whether we should have some kind of a voucher, but I just cannot see that it would be all that difficult.

We have suggested that the notification period be lengthened because, if you are only notifying a month in advance, by the time the government writes back to you it is probably 10 days or two weeks later and it is just too late to do a proper course in what is left of the three weeks. Why is that such a hardship? Young couples are not in such a hurry to marry these days, are they? They very often live together for three years before they marry anyway. It is not as though we are putting a lot of pressure on where it would not be appreciated.

Three months is not unreasonable. It is really just affirming the value of marriage and the value of parenting and not being dissuaded from that by a whole lot of specious rights arguments. I am not saying these rights are not valuable—some of them are very valuable—if we are looking at the rights of children. In my opinion, no child can be better advantaged early in life than by living in a family with both parents who love one another and are committed to one another.

We know that many couples fail at that. We are not going to lay it on sole parent families. They do a great job. Some of them raise children very successfully, heroically and very often in reduced financial circumstances. We should salute them. But we should not step away from the ideal which we think is a married couple who love one another, show their children that they love one another, help one another, share the tasks of parenting and, if they choose, share the task of breadwinning too. That should be an autonomous decision for the couple, not one that is impacted on by government structures.

CHAIRMAN—Thank you very much. I do apologise for making you wait like that. We have had a long day. We have managed to keep the program pretty well on time.

Mrs Smit—We congratulate you and wish you well with your deliberations. It is a very important matter.

CHAIRMAN—Thank you.

Resolved (on motion by Senator Bourne):

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

Committee adjourned at 5.13 p.m.