COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

CANBERRA

Monday, 16 June 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 into and report on:

Treaties tabled on 11 February 1997 (double taxation agreement with Vietnam).

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

CANBERRA

Monday, 16 June 1997

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Bartlett
Senator Coonan	Mr Hardgrave
Senator Cooney	Mr McClelland
Senator Neal	Mr Tony Smith
	Mr Tuckey

The committee met at 9.16 a.m.

Mr Taylor took the chair.

CHAIRMAN—I declare open this hearing on the UN Convention on the Rights of the Child. We have received over 200 written submissions to this inquiry. It is generating quite a lot of interest and some emotion on both sides of the camp. Yesterday there was an interesting article in the *Sydney Morning Herald* about this inquiry. We will circulate that to members—most of you may not have seen it—later today.

I particularly welcome our witnesses this morning, the first being from Amnesty International. Over the next couple of months we will be travelling to all states and territories right around the country, taking further evidence on this. As the article in the *Sydney Morning Herald* pointed out, we are doing this at a time when there are a lot of other reports out, including one on the stolen generation, the drug experiments on children in Victorian orphanages and legal sterilisation of some intellectually disabled girls, et cetera. The article pointed out something about the immaculate timing of it. Anyway, that is the task for this committee.

The inquiry will probably go until the end of October, depending on additional submissions. We will then make the appropriate recommendation to the parliament.

ROWE, Mr David, National Executive Committee Member, Amnesty International, Private Bag 23, Broadway, New South Wales 2007

CHAIRMAN—Welcome, Mr Rowe. Do you have any comments you would like to make on the capacity in which you appear?

Mr Rowe—I have just recently been elected as a national executive committee member on 26 June this year. I have been asked to stand in for Amnesty. We are going through a restructuring at the moment and they are trying to fill a position for people who do this sort of job. So I am here in a voluntary capacity.

CHAIRMAN—We have received submission No. 115 from Amnesty International. Are there any amendments or additions to the written submission that you have made?

Mr Rowe—No.

CHAIRMAN—Would you like to make a short opening statement?

Mr Rowe—Yes, I have a brief statement. Unfortunately, today I am very ill. I have been ill for quite some time, so I hope I can do justice to youth and to Amnesty International and to the committee by turning up today.

I was asked to represent the international body of Amnesty International. I would just like to reiterate that we do recognise that there are other non-government organisations, a number of them in Australia, who would be better placed to look at what is going on in Australia more closely.

A list of individuals and organisations was provided in the submission that I gave to you of material that came to us. I stress that these are not the views of Amnesty International, and we ask the committee to have a look at those and to possibly call those people to speak. We would be quite interested in what the response would be.

Amnesty International is here looking at part 1 of the mandate, which was the promotion of and awareness of human rights and the indivisibility and interdependence of all the human rights instruments. We would also like to compliment the parliament on their commitment to human rights on Human Rights Day of last year, in which we worked with them on a forum at the Press Club. The Prime Minister and the Leader of the Opposition got up and spoke quite strongly about human rights on behalf of the Australian people. Thank you.

CHAIRMAN—I assume you are aware of the rather extensive list of reservations by some nation states to this convention. For example, the Holy See has introduced some reservations which in many ways question the convention, although they ratified it. It is the same with some of the Islamic states, where they have ratified but, of course, bearing

in mind that they involve themselves in, for example, female genital mutilation, it rather puts a question mark. To what extent do you think that the credibility of the convention is adversely or otherwise affected by those reservations?

Mr Rowe—Amnesty's view is that we look for the highest possible standards in human rights instruments, and we are looking at the equality of all individuals. That is stressed in the opening part of the Convention on the Rights of the Child. I think it is something that we have to negotiate with and work towards to lift the standards so that these things can be adhered to. I think it is a process of diplomacy and working towards these things.

Mr McCLELLAND—Amnesty supports the treaty as part of the general treaties dealing with human rights internationally—international treaties. To what extent have those human rights in Amnesty's experience become part of the accepted norm of at least Westernised countries?

Mr Rowe—I would have to take that on reservation and refer it back to the AIC, I am afraid.

Mr McCLELLAND—I have another question. On page 7 of our published document, you have suggested that child abuse and neglect research and investigations have an element of bias in them. In what way do you think that there has been bias in that research?

Mr Rowe—Are you referring to the statistical records?

Mr McCLELLAND—Yes, in paragraph No. 2 under 'Child Maltreatment' in your submission.

Mr Rowe—Some material came to hand. As you know, the police royal commission has just been going through quite an extensive evaluation of corruption in New South Wales, and out of that there was a very strong awareness of some very grave concerns. This is also covered in the convention under article 19, and this is where we are looking at awareness of.

When some of the documents came, such as in the statistical material, and when we presented those the person who wrote those documents said, 'There are a lot of difficulties with interpreting these statistics.' They had grave concerns about people picking them up and getting the wrong message, and that is why I asked for them to speak on their own behalf in relation to that.

They also stressed that those statistics did not give the total picture of what is actually going on because they do not, from memory pf what she said, include what goes

through the actual police investigations. So they are only going through what DOCS is concerned about. I think you would get a feedback from the actual person who wrote it.

CHAIRMAN—Wilson, did you want to follow up on that point or another point?

Mr TUCKEY—No, I have got another point really.

Mr BARTLETT—Mr Rowe, on page 3 of your submission you urged the committee to consider the application of the convention to Australia's education system. Do you have in mind any shortcomings in our education system where we do not accord with the best interest principles?

Mr Rowe—Well, as you know, at the forum we put forward some performance outcomes. One of those addressed the 30th anniversary of the Convention on Anti-discrimination in Education. Article 5 specifically relates to a number of things that have been in the media this year. It says that education will be directly related to the full development of the human personality and to the strengthening of respect of human rights and freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. So we are coming from that far back right to the present and, as you know, there is a submission there from the police royal commission in which an education department was taken up and questioned on two occasions as to their conduct in relation to children.

The other aspect is that we are very concerned about human rights education and how much of that is actually being practised and taught across the nation. This comes back to our call for a national committee on human rights education, which goes in support of the Oxford declaration; it is not just schools.

Mr BARTLETT—But is it your opinion that generally Australia is in its education system in accord with the principles of convention and basically fulfilling the best interest principle—albeit it with one or two—

Mr Rowe—I think there is a question raised over that. I would call on you to have a look at that when you look at the actual government report that was handed out and you look at some of the material that has come out like in the Police Royal Commission. It raises a lot of questions, and, as I said, Amnesty International has not really looked into these specific issues. It is just information that has come to our attention and we are just drawing it to your attention, assuming that no other NGO has drawn this to your attention.

Mr BARTLETT—Would it be your opinion that the establishment of a commissioner for children or a similar sort of role would enhance the education system, or do you think that could be done just through some administrative reforms with the education ministries and departments?

Mr Rowe—From reading, as I say, the police royal commission, it raises serious questions about the administrative qualities of some education establishments. I think an independent person—assuming we have a careful look at how it is structured and whether there are limitations on who they are allowed to look into and who they communicate with—could definitely be a benefit in the short term and hopefully we can see a greater adherence to these things in the long term leading up to the year 2000, and particularly 2001 with our centenary.

CHAIRMAN—Would you see that at the state level or the federal level or both?

Mr Rowe—I think it has to be a national approach right across Australia in trying to get consensus. There is a lot of, as you know, difference between states in approaches to things, and then you have, within each state, different educational establishments as well and different approaches to education.

Mr TUCKEY—Amnesty International of course is exactly that and has a substantial opportunity to check the performance of the participating nations in this particular convention. I am advised that it has been ratified by nearly 200 nations. What is Amnesty's assessment of the performance of all these countries in terms of their legislation and their practice? And where, in Amnesty's opinion, does Australia sit in a scale of one to 200?

Mr Rowe—That is a good question. I will take that on board and pass it on to London and give you a response.

Senator ABETZ—Can I just follow up that question. In one of the supporting documents, the article *Betrayal of Children*, by Neville Turner, he asserts that the truth is that Australia has broken faith with its children; its record is well below par. I have got to say to you that the vast majority of kids in the world would prefer to live in Australia, growing up as a child than, I would suggest, in at least 170 out of those 200 countries that have signed up to the treaty. So I am wondering where that assertion comes from and why you have given that as one of the supporting documents to your submission.

Mr Rowe—I have, as I said in my opening statement, presented this as a document that we came across. It is not a view of Amnesty International. We have asked this committee to call the person who wrote this to address that. My interpretation, and I think this would be our view, is that we are trying to see the highest possible standards for children. To lower the standards of Australian children because of the standards of the other countries would not be what we would hope to see. Australia is in a tremendous position to lead in this area.

Senator ABETZ—Wouldn't the truth be that Australia is doing very well but could do even better? That would be an appropriate way of phrasing it but to say that Australia is below par is once again one of the sort of black armband versions of what

Australia has done in its past which I just find is insupportable, given the evidence around the world. I think Australia has a very proud record albeit we could do a lot better.

Mr Rowe—Yes. I think being so general is not good. I think if you confront a child who has been abused—I mean through the legal system—and for instance been raped and then harassed through a legal system and you say we have a good record, with someone like that it is very difficult.

CHAIRMAN—I understand your reaction to Mr Tuckey's question, which is an important, fundamental question. We have dealt so far in the evidence before this committee with a lot of domestic, anecdotal and other evidence. I think it is important that we balance that with assessments internationally. Amnesty International is well placed to make that judgment so I would really ask if you could take that one on notice. It is an important one and we would like to have something from you because I also share Senator Abetz's views that in the scale I would think Australia would be very high indeed. That is not to say that we cannot do better domestically. I think it is important so would you please take that question on notice and get back to us as quickly as is reasonable.

Mr Rowe—Yes.

Mr HARDGRAVE—I had a similar line of questioning in mind. Essentially, Mr Rowe, you have to agree that Australian children have a good life here?

Mr Rowe—I am concerned with that generalisation when you put Australian children into that broad context. It is nice for us to sit in this room here and say that children have a great life when there are things going on around the country that you come across from day to day like the example I just gave—to front up to a child and say you have a good life after you have seen them abused so severely or committing suicide and these sorts of things. You can draw those comparisons and say Australian children may be better than country X, but I agree with Mr Taylor's assertion that we should be doing a lot better. We can do a lot better and Amnesty's view is 'Let's lift it to the highest possible standard.' We have made a commitment, and this came through on Human Rights Day, calling on all parliaments around Australia to work together. It does not matter which party you are you should put the people first and that includes the children. They do need special care and protection depending on their ages or development et cetera.

Mr HARDGRAVE—The horror of youth suicide—we saw an 11-year-old committing suicide in recent days. We hear of it all too often. I was talking to somebody who told me about their child, not even double digits in age, who has talked about suicide. Does that point a problem in Australia's treatment of children? What thoughts has Amnesty got behind children's suicide? Why are children committing suicide?

Mr Rowe—It is not an issue that Amnesty actually gets into. It is coming through

in part 1 of our adherence to this treaty. It is looking at the highest possible standards which come back to our education and our parenting skills. Other organisations get into this in greater detail. I have actually nominated one at the end for you to have a look at which is, I think, the William Glasser Institute. It is a psychology association which may be able to give you a better answer to that. There is also a prominent child psychiatrist that I refer to you as well who may be able to address that issue better.

Mr HARDGRAVE—There are those who have put evidence before this committee, both written and oral, that suggests that perhaps the convention penalises many Australians, that by it trying to help a handful who are doing the wrong thing the majority of Australians are penalised. Do you think restricting natural parenting, restricting the traditional roles of parents, restricting the traditional structures of our society in order to enhance the lot of young people, which the convention tends to do, is a good thing? Do you think that the many have to be sacrificed for the few?

Mr Rowe—I do not see it as the many being sacrificed for the few. The whole concept of this is to do with equity and looking after each and every individual.

Mr HARDGRAVE—So tougher laws, tougher rules, tougher regulations that must be adhered to in order to pick up the few who are not doing the right thing is a fair enough thing. Is that your view?

Mr Rowe—It is not an issue Amnesty International can make an assessment on. We have growing numbers in our prisons who give us an indication that making more laws may not be the best answer. Is there another approach? That is why we have asked you to look at some of these other options that may be able to answer your question and provide a solution.

Mr HARDGRAVE—I understand where you are coming from, but, on the other side of it, do you think the penalty structure is sufficient to punish those who do do the wrong thing rather than seemingly, given the way the system is structured, punishing those who do the right thing?

Mr Rowe—That is not an issue that comes under—

Mr HARDGRAVE—It is. You have just talked about penalties. Do you think that the penalty structures for things such as child abuse are sufficient in Australia? Perhaps that in itself might be something that governments could look at to make it pretty obvious that the book that is thrown at somebody guilty of child abuse is a very heavy and thick book indeed.

Mr Rowe—I assume the idea of punishment is to act as a deterrent so if it is deterring then you may be able to assess that it is working. It is not an issue that I have total expertise in and could give you an accurate answer.

Senator COONAN—Just going back to your preamble, you say in the very first paragraph:

We have so far not been able to look into possible violations of CROC but we understand that other local NGOs are better placed to highlight relevant violations to the convention. To this extent this report only intends to draw attention to articles, views and documents that may not be highlighted by these NGOs.

What violations of the convention are you actually referring to that have been identified by NGOs?

Mr Rowe—As you are aware, there was an alternative report produced and supported by the Attorney-General's Department. We were a part of that but as we said in the opening, we have not been concentrating totally on what has been happening in Australia. As people pointed out, there are very serious issues on a much bigger scale in other countries around the world which Amnesty works on in different parts of our mandate. This is why it is structured under part 1 of our mandate, which is our promotional and adherence role.

Senator COONAN—Just so I understand you, you are not actually wanting to address us in relation to violations of the convention in the broad sense. Is that right?

Mr Rowe—Someone mentioned the child abuse thing and I referred to article 19. I am aware that there are people on the committee here who have expertise in law and this sort of thing and so we have provided the documentation and asked you to call those people and to have a close look at that. You are better placed to look at those breaches using your special skills.

Senator COONAN—So you are not actually adopting these annexures that have formed part of your submission, you are simply flagging them for our attention. Is that right?

Mr Rowe—Yes. We are just saying, 'Here's some documentation that has come to us. These are not the words of Amnesty International, yet they may contribute very heavily to breaches of this convention. If you are greatly concerned about them, draw these people forward and have them speak to you.'

CHAIRMAN—For example, Mr Turner will be appearing before us in Melbourne, so we are picking up some of these as we go around.

Mr Rowe—Yes, that is great. Senator Abetz can then, of course, ask him that question and he can defend himself.

CHAIRMAN—Unfortunately, as he points out to me, he is not going to be there.

Senator COONAN—What I am really interested in is to what extent, with Mr Turner's article, your organisation subscribes to the views that are in that article, 'Betrayal of children'?

Mr Rowe—Amnesty International subscribes to the fact that we want the highest standards for human rights and adherence to the Convention on the Rights of the Child. As we said, we are happy to work with parliament and with organisations to see that come about. There are a number of concerns in here which appear to breach this convention quite a bit. Some of them are generalisations. If they breach that, that is a concern of Amnesty, because there is not an adherence to it. Somewhere in here I think he makes the statement that Australia has breached every article of the convention.

Senator COONAN—Do you think that?

Mr Rowe—Amnesty, as it states, has not looked closely at the breaches of the convention within Australia. We have left that to other NGOs. Here was an article that targeted it in a very brief form and, as Mr Taylor said—

Senator COONAN—All right then; maybe we should leave that for Mr Turner. My last question for you is: has amnesty identified breaches of the convention in Australia?

Mr Rowe—They have not had a close look at it. There have been some that we have campaigned against.

Senator COONAN—What are those?

Mr Rowe—I am going to be reporting back and I can give you a further insight into that.

Senator COONAN—I am particularly interested in what Amnesty says, so that is why I am trying to get you to identify what Amnesty says are breaches.

Mr Rowe—That is why I made that opening statement, which you referred to.

Senator COONAN—Thank you.

Mr TONY SMITH—Following up what Helen just said, does Amnesty agree with this comment by Mr Turner? I will give you some preamble:

> Australia was one of the first countries to ratify it. This country thus proclaimed itself as a committed champion of children's rights and interests. True, there had been some fragmented opposition to its ratification. It came chiefly from hysterical right-wing groups who feared either that it was a charter for recalcitrant brats or that it was an affront to Australian sovereignty. But balanced opinion prevailed.

Do you agree with that comment, that opposition to the ratification came from hysterical,

right wing groups?

Mr Rowe—He has not actually specified what they are. As I said to Senator Coonan, these are not the words of Amnesty International. This is an article that has come forward—

Mr TONY SMITH—So you do not adopt those words?

Mr Rowe—No. Mr Turner is probably in a better position to justify those comments.

Mr TONY SMITH—I will look forward to asking Mr Turner about that.

CHAIRMAN—In terms of the views of Amnesty International Australia, we would be interested in a formal response to Mr Tuckey's question on the pecking order, if that is possible. But, quite apart from your summary here of pulling these articles together, which we thank you for, I think we need to have an Amnesty International Australia view on some of these issues. It would help us if we have a view from you, as a domestic organisation, looking at both the international and domestic ramifications of this and other things in the human rights area. So could we ask that you take some of these things on notice as well?

Mr Rowe—Yes.

Mr TONY SMITH—I was going to ask a similar question to Wilson's. Accepting the fact that Amnesty has obviously had little time to do things, I was a little bit disappointed that there was no reference to the international perspective, given that that is what I thought Amnesty was really about and given that the convention itself enjoins Australia to do things in relation to human rights for children in these other countries, such as in areas of child labour in particular. That is an area I am particularly interested in, and I would ask you, if you were able to address that point, to look at it.

Mr Rowe—You want us to look at our interpretation of how Australia is doing in other countries?

Mr TONY SMITH—Yes.

CHAIRMAN—That is one dimension of Mr Tuckey's question. For example, with child labour I would think Australia is right up near the top. Some other countries would be right down near the bottom. We need some sort of balanced view with a lot of these implications as they affect children. If you can come up with something it would be helpful. At the same time give us some considered views about what is happening in Australia at the moment.

Mr Rowe—That is where this submission was targeted: at what is actually happening in Australia.

Mr TONY SMITH—With respect, I would have thought that that was the purpose of your submission, namely, to point out that there are these problems in other countries and that, as a signatory and ratifier of the agreement, we have certain obligations to address those concerns, in an international sense. That is what I thought you would be giving us—what was going on in these other countries and, as part of our international obligations under the treaty, what we have to be aware of.

Mr Rowe—We do that through other forums. This one was particularly looking at what Australia is doing and whether it is adhering to this treaty within its own boundaries, its own country, and how it is treating its own children. We were hoping to come in on how effective the other NGOs are at looking at these things: do we need to go back and re-assess and take more involvement in what is happening within Australia? This material that I have just put in may not have come through from other NGOs but it is, as a number of you have already pointed out, of concern. While they are not our words we would like a response as to how valid these statements are.

Senator ABETZ—I have a whole host of questions. I take you to the heading 'Grave concerns' and the lack of awareness within the Australian community about CROC. What does CROC actually mean? Does it allow abortion on demand? Does it allow corporal punishment?

Mr Rowe—In the submission we are looking at the best interests of the child. Is corporal punishment in the best interests of the child?

Senator ABETZ—I would argue, unambiguously, that it is. I think the vast majority of Australian parents are of that view, including the former Attorney-General, Mr Lavarch. But, having said that to you, you have done, if I might say, one of the stunts that we politicians play: answering a question with a question. Can I ask you again, under Amnesty's understanding of CROC, is corporal punishment allowed?

Mr Rowe—Amnesty's view is that we are looking at the highest possible standards of human rights and adherence to this convention of rights for the child—

Senator ABETZ—Yes, but does the convention allow it?

Mr Rowe—Therefore, having all the knowledge we do have about child development and alternative approaches to raising children and these sorts of things, is there another better way of doing it? If there is then corporal punishment is not in the best interests of the child.

Senator ABETZ—I suggest to you that that is the whole problem with CROC and why there is not much awareness in the Australian community about it. Both sides can quote it for their own benefit. Some would argue that CROC does allow corporal punishment and abortion, others say it does not allow corporal punishment and abortion. So awareness of CROC within the Australian community would not necessarily advance matters all that far.

Can I take you to your heading 'Family values'? In that you say:

'For many children in the world, including Australia, that protection is manifestly not enough. We have no way of knowing how many boys and girls are physically or mentally abused, or economically exploited, by the families that are supposed to provide them with security and love. We ask this committee therefore to question what constitutes family values?

We then go over to Mr Turner's article, which says,

Most Australian adults claim to love children.

What does all that mean for me as a parent and all the other parents—that we need somebody above and beyond us as parents to tell us how to bring up our children, that somebody knows better than we do?

Mr Rowe—I think it comes back to when you have a child, is there a responsibility to act in the best interests of that child?

Senator ABETZ—Of course there is and every parent would tell you that they are doing the very best and you ought to leave it to them.

Mr Rowe—Is there a responsibility on governments, educational institutions and psychology and psychiatry associations to educate parents in child rearing and child development and all these sorts of things? For example, when you have a child, where is your background on how to raise that child? Is it as a response to what your parents did? It all comes back to the best interest. What we are saying is sit down and think about what is in the best interests—for example, as a parent, you evaluate your performance. How do you decide what is the best interests of your child? How can you justify what is?

Senator ABETZ—The comment that I find in the written word and what you have just said is virtually identical to the white approach to the stolen children. There were people who were of the view that they knew a lot better how to bring up children than did the Aboriginal parents. There is the same sort of intellectual arrogance creeping through that there is a body higher than the parent that is somehow able to engender or show more love and more concern for the children than the natural parents. Can you see the similarity of approach?

Mr Rowe—I find it very difficult with these generalisations. You are saying that

every parent is virtually acting in the best interests of their child, yet we have all these things coming through which I presented here—for example, the police royal commission statements. We know that there is a lot of abuse going on with children. Those parents are still parents, aren't they, of those children? Can they justify what they are doing by your same philosophy?

Senator ABETZ—No, but it is a question of how you make the rules. Mr Hardgrave was asking those sorts of questions earlier. Sure, some abuse their children—there is no doubt about that—but the vast majority don't. It is a bit like the tough call reading in the *Bringing them home* report of the Human Rights and Equal Opportunity Commission, where somebody decided to take a young girl from the tribal situation because if she was not, she would be given to an elder as his chattel. That was a pretty tough call to make in those days, wasn't it? Should you allow the young girl to become the chattel of an elder or do you take her away from the tribe and give her a education and try to give her a life of her own? Most people in the context of the report say that it was wrong to snatch that young girl out of the tribal situation.

How does CROC then apply to our indigenous affairs? Would we allow spearing of youths if they had done something wrong? It is a form of corporal punishment. Yet we have other international conventions telling us that we have to respect indigenous cultures and the way they do things and they ought to have self-determination. How do we dovetail all those conventions into a coherent set of focal policies for Australia?

Mr Rowe—You have covered a whole gambit of things there. In part, you have also answered some of your own questions. We are talking very broadly here on a number of very complex issues. One of the things we did point out when we requested working with the parliament was to sit down and discuss some of these issues in more closer detail rather than being too broad and generalistic because one person can argue one side and one person the other. That is why we have the view of adhering to the highest possible standards and acting in the best interests of the child.

You will notice that some of the material I have given you addresses that. For example, there is an article about appropriately professionally trained people doing certain things—assessing some of these things and being available to parents to assist them. A report came out where parents came before a House of Representatives committee—I forget the name of it—and they actually asked for assistance in parenting skills. All of these sorts of things are coming back to the same issue. To try to answer that whole massive thing, I do not personally have enough information on all of these treaties. I have not sat down and looked at them to properly answer it.

Senator ABETZ—At the very beginning of your submission you tell us that the Amnesty International object and mandate is to promote awareness and adherence to the universal declaration of human rights and other internationally recognised human rights instruments. There are now so many of them that they are starting to contradict each other.

As your mandate is to promote awareness of them, I thought you might be able to assist us to get through the maze and see how they dovetail together or, if they are in conflict, which ones ought to take precedence over the others.

Mr Rowe—I could take your question on notice and spend some more time thinking about them and going through them. They are quite extensive documents.

CHAIRMAN—We might ask you to take those two dimensions of what is a very large subject on notice—the international pecking order, if that is possible, with some explanatory comments on that, and a rationale for your judgment as an international body. Secondly, you can take up some of these issues that you heard this morning in terms of our domestic record and make some judgments there as well. I think that is best. It is very probable that we will invite you back again, hopefully when you are a little better physically as well.

As I indicated, we will be moving around the country in the next six weeks or so. Undoubtedly, as a result of that, a lot more issues will be raised, a lot more questions will be raised and maybe a few answers might come. Almost certainly we will get you back again for some further hearings in Canberra.

Mr Rowe—The other thing I meant to mention was that I have only just received some of the documents from the committee, so I have not had a change to read them all to be better prepared. I may have been able to answer some of those questions had I a bit more time.

CHAIRMAN—Thank you.

[9.59 a.m.]

CHAMBERS, Miss Rae Linda, Member, Friends of SWOW Inc., PO Box 3271, Manuka, Australian Capital Territory 2603

CONNOR, Ms Kelly Brenda, President, Friends of SWOW Inc., PO Box 3271, Manuka, Australian Capital Territory 2603

SHANNON, Miss Brooke Adele, Member, Friends of SWOW Inc., PO Box 3271, Manuka, Australian Capital Territory 2603

SHANNON, Ms Lesley Ellen, Treasurer, Friends of SWOW Inc., PO Box 3271, Manuka, Australian Capital Territory 2603

CHAIRMAN—Welcome. We have received your written submission. Are there any amendments or additions to that written submission before we move on?

Ms Connor—No.

CHAIRMAN—Would you like to make an opening statement?

Ms Connor—In this opening statement we would like to address two issues which this committee placed considerable importance on during the previous sitting days in Canberra. The first involved questions to your previous witnesses about whether their organisations had ever had occasion to use or rely on the convention in any concrete way. The second involved questions about whether the current level of protection offered to Australia's children by present legislation and regulations were sufficient and indeed was equal to that offered by the convention.

Twelve months ago the Friends of SWOW would probably have answered in much the same way as many of your previous witnesses: no to the first question and yes to the second. Today, however, our answer is quite different.

A year ago when the ACT Department of Education announced its intention to close the School Without Walls in Braddon and replace it with a new untried, untested alternative education program at Dickson College, we presumed that the formal safeguards of the democratic system would protect our students. We presumed that we could rely on proper administrative procedures being followed which would clearly show that SWOW held a unique and important place in the ACT education system.

However, when proper administrative procedures were not followed, we then presumed that open dialogue and an investigation by the ombudsman would solve the problem. When that did not work we lobbied for support from politicians, presuming that what we needed was influential people speaking out on our behalf. One of those was your

parliamentary colleague Mr Bob McMullan who spoke out as a former SWOW parent.

When lobbying did not work, we presumed that an inquiry by the Standing Committee on Social Policy in the ACT Legislative Assembly would ensure the continuance of Canberra's only democratically run school. While awaiting the report of the social policy committee, SWOW continually attempted to resolve difficulties with the department and the minister, even to the point of participating on the steering committee set up by the department to oversee the establishment of the new alternative program. Rae Chambers and myself were both representatives on that steering committee.

Throughout this process it became abundantly clear that nothing that we said or did carried the slightest bit of weight. Not the students, the parents, the teachers, nor our supporters had any power, influence or rights in this matter.

When the social policy report confirmed that the ACT department of education had been unable to provide substantive reasons to back up the decisions that it had made about SWOW, the minister immediately rejected its findings and announced that there would be no changes to the original decisions.

The political process had failed the students of SWOW. There were no other steps within the assembly or within the bureaucracy that we could take. This meant that SWOW had only one recourse left, the protection of the courts. But, unfortunately, neither the Education Act 1937 nor the Schools Authority Act 1976 provide any legal rights to students. We had to rely on the obscure wording of section 6(2) of the Schools Authority Act which reads:

> The Authority shall so perform its functions as to ensure that adequate provision is made for persons attending, or seeking to attend, preschools and schools conducted by the Authority.

I describe this as obscure because no-one has ever been required to determine just what the words 'adequate provision' actually mean. In fact, much to our surprise, we discovered that there was no legal precedent in Australia involving a school community challenging the decisions of their education department.

This lack of precedent meant that we first had to overcome the government solicitor's assertion that (a) Friends of SWOW had no legal standing in the matter, and (b) the Supreme Court had no legal jurisdiction to hear the matter. We won that right, and we won an injunction preventing the closure of SWOW while we awaited a full hearing.

At that hearing we would have relied heavily on the Convention on the Rights of the Child to protect the rights of SWOW students. We would have argued that the convention enshrined certain legal rights for students of Australia that, although currently absent from present domestic legislation, should nevertheless be available to them.

Regrettably, we did not get our final day in court, so we can only hope that the convention would have lived up to its grand promise, a promise made to the children and youth of Australia that we care about them, honour them, respect them and, most importantly, that we trust them. That does not mean that we give them total freedom; it does not mean that we, as parents, as teachers, as politicians, as adults, need to feel fearful or suspicious of the motives of the convention, or of the young people who claim the rights it offers to them.

SWOW has always offered rights to students which in many ways replicate those spelled out in the convention. SWOW students rarely abuse those rights. Instead they dedicate themselves with great sincerity towards developing a true understanding of what it means to have rights, and yet to respect the rights of others. The SWOW students present here today are fine examples of young people who are striving to comprehend the complex nature of rights.

I have also submitted transcripts of proceedings from the social policy committee where 15 students gave evidence on why they had left the mainstream system and chosen a democratically run school, which will give you a very good indication. Although we were not directly dealing with the issue of the convention there, every student that speaks talks about how important it is to have rights. That is what SWOW offers. I can assure you that Brooke and Rae will have some very enlightening things to say on the matter.

CHAIRMAN—Thank you very much.

Resolved (on motion by Mr Tuckey):

That the transcript of the ACT Standing Committee on Social Policy of the ACT Legislative Assembly be accepted as an exhibit.

CHAIRMAN—I have a couple of points before my colleagues ask their questions. You made what I suppose you could say was a provocative comment in your opening statement when you said that SWOW was Canberra's—to use your exact words—'only democratically run school'. On what basis do you make that assertion? What is democracy all about? Why is it the only democratically run school?

Ms Connor—Democracy is about everybody in a community having equal say on matters that directly affect them. SWOW is the only school where every student has an equal vote in determining the policies and the decisions of the school. Every decision that is made is put to a general meeting, and a decision is only taken when a majority vote—preferably a consensus but, if that is not possible, a majority vote—is achieved. Because the quorum of the meeting insists that there have to be two students to every staff member, students are always in the majority. SWOW is the only school in Canberra, and one of the very few schools in Australia, that offers those kinds of rights to students.

CHAIRMAN—I suspect one or two of my colleagues might want to follow that one up, anyhow. The second point at this stage is this: in your written submission you said in part that the closure of SWOW is in breach of the UN Convention on the Rights of the Child; that the Australian and ACT governments have failed to properly implement the convention and, finally, that the Australian and ACT governments have failed to adequately inform citizens of their rights under the convention. Would you like to say a little more about all three aspects, particularly how the closure is a breach of the convention?

Ms Connor—According to the convention—I have forgotten the exact wording—different types of secondary education must be made available to students. With SWOW now being closed, there is great conformity, particularly within the secondary schools in the government sector. There is very little choice, either in terms of the curriculum that is offered or the teaching methods that are offered. There is no small campus that students can go to if they choose to. For many students that is an issue—size is an issue. Being on a campus with 1,000 students is an extremely disquieting experience for some students but, if your only choice of education is the government sector, you have no choice now, you must go to a large campus.

Mr McCLELLAND—What sort of marks was SWOW getting in terms of TER scores, for instance?

Ms Connor—Over its 24-year history, for 20 of those years SWOW's TER average mark was the highest in the ACT.

Mr McCLELLAND—That is interesting. In your submission you have got reference to a phrase, 'recovery and re-integration of children without problems.' Was SWOW more than a rehabilitation sort of—

Ms Connor—Absolutely. There were, I suppose, predominantly two streams of students within SWOW: those that are high academic achievers and want the right to determine their own program in their own way and control their own education, and those who have come from very difficult, often brutalised backgrounds, who find submitting to arbitrary discipline extremely difficult.

Mr McCLELLAND—I was just thinking back to my own school career when you had kids who wanted to learn and were paying attention as against those who were less enthusiastic and inclined to muck up. How was the balance struck between fostering those who were achievers as against keeping content those who were not as academically inclined?

Ms Connor—In the most simple way possible. Attendance at class is non-compulsory so, therefore, those that attend want to be there and they participate fully. Although you may assume that by making classes non-compulsory nobody would attend,

in fact the opposite was the case. It was often that when students came for the first two weeks they might decide 'This is great. We don't have to go. We won't,' but after watching the enthusiasm of the other students and finding out that non-participation is fairly boring, they would actually choose to go and participate very effectively.

Mr McCLELLAND—Just a final point. I suppose some would argue that making it non-compulsory attendance is perhaps not honouring our obligation to provide education for all children.

Ms Connor—It is not compulsory for secondary students and SWOW is only for secondary students.

CHAIRMAN—Can I just follow that up? Mr McClelland has raised an interesting issue. Could we just ask Brooke and Rae to give us their personal experiences and their background. I do not want to get too personal, but it is up to you to pick out those two streams. Were you high achievers? Did you come from—to use your words—brutalised backgrounds? Just give us a thumbnail sketch.

Miss B. Shannon—Can I make another comment?

CHAIRMAN—You can do so if you want to, yes.

Miss B. Shannon—I was just going to say that a lot of people who are coming to SWOW are not actually achieving for the first six months or a year sometimes. They would take that time to get used actually having power again. A lot of them had to find their confidence in themselves. They had to get their self-confidence back up because they had none. After a year of not doing much, they would actually get down and get their year 10 or year 12 after that.

Ms Connor—And really do it well.

Miss B. Shannon—And really do it well. They would need that time just to adjust to having power and knowing that they had a choice to speak.

CHAIRMAN—Let us hear about your two situations.

Miss Chambers—I did not come from a bad background or anything. I was just sick of being treated more like a number. It was not too bad, but I was finding myself always arguing with the teachers, always wanting my own say and always wanting more than I had. It got to the stage where I was being just as pathetic as they were just to be spiteful. I would not do my work and I would not listen. Because I would say, 'No, I don't want to.'

Then when I got to SWOW there was nothing to rebel against at all. So if you

cannot rebel, what are you going to do? You just do your work. In year 9 I do not think I got anything above a C. In my year 10 certificate I got nothing below a C. I think I only got two or three Cs and the rest were As and Bs. I learnt a lot and we did so much work that it was just really meaningful.

The teachers would be more your friend and they would go with you to places. We did marine biology and we actually went down and did scuba diving and stuff. I do not know of any other school in Canberra that has gone and done scuba diving as a year 10 course. We went to the National Aquarium and we did it there. We did a lot of personal classes, like women's classes and stuff. Your teacher was always your friend. I cannot really explain it. There is so much to say, but I have to be brief.

CHAIRMAN—You are a former student. When did you finish at SWOW?

Miss Chambers—I finished my year 10 there at the end of last year.

CHAIRMAN—What are you doing now?

Miss Chambers—I am doing year 11 at Hawker College.

CHAIRMAN—Give us the difference between Hawker College and SWOW?

Miss Chambers—At Hawker I do not expect to have all the freedom that I did at SWOW, because you simply cannot in a big school like that. I enrolled on the first day at Hawker College, because SWOW was officially closed after the time I would have had to enrol there. The teacher was going like this to one of the other teachers. I thought, 'I'm here. No way are you doing that to me.' At SWOW nothing is ever kept from you. They were discussing something about the enrolment form, saying, 'You are going to have to do that.' It was just the way that they assumed that I could not know anything. That was my first day there and that is when I first noticed things being different.

CHAIRMAN—And what about you, Brooke?

Miss B. Shannon—I also did not come from any really bad background, but at school I had very bad experiences with some of the students and not having the power from other teachers.

CHAIRMAN—What do you mean by bad experiences?

Miss B. Shannon—There was so much violence at the school I was at before. There were stabbings, kids getting beaten up, people's bags being thrown out of windows and people being threatened with getting bashed up if you actually said anything. There was a constant fear.

CHAIRMAN—Was that in the ACT system?

Miss B. Shannon—Yes. It was an ACT government school. You were not really learning anything, because you always had this fear. You had teachers who could not actually teach their classes because the kids were very rowdy and making so much noise. I was years behind in some subjects like maths and the teacher actually said to us that we were over a year behind in what we were supposed to be doing. She could not actually teach the class because she was disciplining the whole time. Most of the problems were that the students were given no respect, so they did not give any in return.

CHAIRMAN—What years did you do at SWOW?

Miss B. Shannon—I did year nine, 10, 11 and the beginning of year 12 at SWOW. I left the government school and went to a private school for a short amount of time but that was just as bad in different ways. I then left there and went to SWOW. I was very sick all of the time that I was at government schools. I was actually making myself sick so that I would not have to go to school. Psychologically you can make yourself do just about anything.

As soon as I went to SWOW I was never sick. I had not been sick for the first two years of actually being there. Any sicknesses I had were very minor. I suddenly had a lot of respect from the teachers and the students I was working with. There was no noise in the class. Everything was wonderful, I had the power. After I left the government mainstream system I had no self-respect and I could not speak very well in public. After I went to SWOW, I started to build up more confidence.

CHAIRMAN—That was in the school environment. What about the relationship with your parents? Did that change for both of you?

Miss Chambers—I have always had a really good relationship with my mother. I do not think it changed at all when I went to SWOW. She took me on my first day. She was always very supportive of me going to that school.

Miss B. Shannon—Same with me.

Senator COONEY—I do not know if you have thought about this, but I would be interested if you have for you to answer me. If you have not, perhaps you could go away and give an answer to us. If you look at the rights of the child and what you have thought about that—and you can correct me if I am wrong—you are not saying that the school system, other than this one that you support so strongly and so well, is in contravention of the convention, are you?

Ms Connor—I do not think they actively support it in the way that SWOW did. It is very difficult, particularly as a secondary student, when you are wanting your views and

your opinions to be validated. It is very difficult to even find a legitimate way to express what your needs and requirements are.

Senator COONEY—I can follow what you are saying there. But are you saying that there is some specific provision in the convention that the ordinary schools—if I can call them that—contravene in some way? If so, I would be interested.

Ms Connor—I am reluctant to go as far as to say contravene, but I do not think they have a commitment to finding ways to actively work with particularly those contentious articles, 12 to 16. They are the ones that SWOW was particularly good at upholding.

Senator COONEY—I can understand SWOW being very good at doing that, but it would probably help the committee—it certainly would help me—if you could explain why you think schools other than SWOW in some way do not live up to or contravene—

Miss Chambers—Can I put an example? This is a very extreme example, and I feel very deeply for the child that this happened to. It might not be appropriate to mention it here, but when I was in year 9 at *** high school, a year 7 boy was constantly being harassed by some year 10 boys. He just happened to be in the toilets at the time, you know, masturbating, and these year 10 students came in, broke the door down, caught him and beat him up. The matter was taken to the principal, and the principal made a public thing of him, saying how he should not have done that, and sent a letter home to his parents saying what he was caught doing.

That can destroy children. He was not a very popular kid, and he got harassment from that for months and months—every day it would not stop for him. He had to keep going to that school because it was compulsory for him to go. I do not know what his parents thought of it. It is just that the letter was sent home because he did something like that. It is his body. It was really wrong. And she mentioned it at an assembly. That is really wrong, I think.

Senator COONEY—I can understand that, but that does not seem to me to be part of the system.

Ms Chambers—That is a very extreme thing but—

Senator COONEY—That seems to be an individual example. What I am trying to get from you, if I can—because it is fairly important—is there anything systemic to schooling in Canberra that is against the rights of the child, as distinct from incidents where somebody has gone too far? Can you point to anything in the Canberra system and, if so, can you identify it? You might want to think about this.

Ms L. Shannon—One concern would be more about the department and the

minister. This is a little off the track from what you are asking.

Senator COONEY—No. It might be important.

Ms L. Shannon—The fact is that the ACT minister for education can make a decision to close a school without proper processes, without any accountability, and can deny these children their right to complete their education without notice. It was the way that the minister and his department acted that was, to me, very much in breach. The lack of accountability to the students and parents is of grave concern to me.

There is this expectation of governments, businesses and organisations that they follow certain procedures. There is an awful lot of rhetoric and legal expectation, and yet there is certainly very little obligation from state ministers. They can be elected and make a decision if they do not like the look of a particular school. I am not saying that that is the case here, but it could easily be. SWOW has been a safety net for 24 years in a system where there has been a great need for diversity. There is a need to have small community schools for some students who do not have family or any sense of community.

There are an awful lot of committees set up to talk about youth suicide and what we can do about it. This school was actively dealing with those sorts of issues. Over 50 per cent of the students who attended that school were considered at risk. Yet a decision was made and the school was given five weeks notice that it would be closed at the end of third term.

It was not even the end of an academic year, and these students were to be turfed over into another system which was untried, which was not even set up. To do that was to deny these students the right to complete their years 10 and 12. It took away the right of other students to access a government system which most students have to go to a private school to get. Here it was—an absolute gem in the system—a safety net for those students who do need some space.

A lot of the students who were placed there were foster placements. A lot of foster placements are not because the kids have got problems, but because they live in houses where others have problems. They need somewhere where they can get some space. Attending a school like SWOW, where there was some freedom and some choice, was often the only place where they could make a decision about their lives.

It was not only taken away without any proper procedures being followed by the department or the minister, but there was no committee set up with proper, alternative educators to assess the appropriateness of it in this day and age. If the school was to end, then it should have been done in an orderly fashion, one that did not disrupt the lives of not only the children who choose to go there because they like that sort of education but also the children who need to go there because for them it is often a life decision and not just an educational one.

On top of that, giving these students five weeks notice meant that for the last term of that year they were lobbying politicians; they were not getting an education. They were trying to survive because this was their family, their home and their community which was suddenly being taken away. When the school finally did close, they were given one week's notice to find alternative places. A lot of those students did not find one.

We can talk about the department of education and its role and responsibilities, but I have grave concerns about the way that the education system is going and the way governments are going in that now the executive directors or departmental heads of education are on contracts. They are directed to do certain things. It has nothing to do with the educational rights of these children; it is often just the personal choice of ministers. There are not necessarily any reasons given for those decisions. Experts are not called in so that considered and proper processes can be put in place to at least decide whether something like this should continue, what its worth and purpose is.

In this case, these students were denied their rights. I see this as a very sad direction, politically, that we are going in—that this sort of thing should happen—and I wonder where the responsibility lies. If businesses and organisations are expected to have certain procedures and standards, then, of all places, the department of education and ministers for education should have some sort of responsibility to follow procedures, and they should be seen to be doing that.

CHAIRMAN—What you are saying is that the closure, in your view, was in contravention of CROC?

Ms L. Shannon—I feel it was, yes.

CHAIRMAN—There might be legal argument about that, but your perception is that the closure was in contravention of the CROC.

Mr TUCKEY—I have a couple of questions relative to these matters.

CHAIRMAN—Before we do that, if my colleagues agree, we need to delete the reference to *** high school in the *Hansard* record. If everybody agrees with that, the name of the high school mentioned in Miss Chambers' evidence is to be left blank.

Mr TUCKEY—I want to get a couple of matters settled. We have been advised that for 20 of the 24 years the school achieved the highest TER mark.

Ms Connor—Highest average.

Mr TUCKEY—Did those other four years just intersperse?

Ms Connor—Yes.

Mr TUCKEY—Were they at the beginning or the end?

Ms Connor—No. There were odd years.

Mr TUCKEY—In other words, they were not at the beginning and they were not at the end consistently?

Ms Connor—No, just odd years throughout.

Mr TUCKEY—We have already been told there was no process. I have one other question and you can answer them altogether. The real question arises: what reasons were given for the closure? Why was it closed down if you were achieving at the academic level? You might add to your answer the number of children who generally attended the school. Finally—and this is a little different—in this process of empowerment, generally where did the resolutions originate that were considered by schools, school teachers, children, et cetera? Were they generally at the initiation of the students or the school's teachers?

Ms Connor—Which resolutions are you referring to?

Mr TUCKEY—You have advised us that no decision was taken at the school without the approval of, for instance, the students, that there was a participating process and basically a vote. I ask you—separate from my other questions—how did that process initiate? Did the school principal come out and say, 'You're going to have a vote on this,' or did the students stand on their feet and put resolutions?

Ms Connor—There was always an agenda at the beginning of every meeting. Everybody was free to put an item on the agenda and whatever was on the agenda was discussed.

Mr TUCKEY—Now will you take us back to my other queries as to why?

Miss Chambers—We had crappy furniture.

CHAIRMAN—Why was the school closed?

Ms Connor—One of the reasons they gave was that the furniture was not up to standard.

Miss Chambers—Because we had holes in our chairs and stuff. They could give us some money and we could buy some new furniture.

Ms Connor—When the review first came out there were very few concrete reasons why. That was again what the social policy committee confirmed.

Mr TONY SMITH—What were the concrete reasons?

Ms Connor—Things like shabby furniture.

Mr TONY SMITH—You said that there were very few concrete reasons. What were the concrete reasons?

Senator COONAN—I am only reading from a press report here, but this was exactly what I wanted to take up with you. It says here that the government's justification centred around the lack of resources and rundown buildings in Braddon, issues of a duty of care to younger students—which was something I wanted to take up with you—and its opinion that the ACT college system was flexible enough to incorporate SWOW's college age population. I gather what happened—and I apologise to my colleagues if I am the only one who has realised this—is that in the end SWOW would be relocated from the old Ainslie Primary School site to the Dickson College and years 11 and 12 students would join Canberra's mainstream colleges. Against that background, I am sure we would all be very grateful to hear your views as to what the real problem was. What was the substantive problem?

Ms Connor—They were originally talking about relocating the school, but in fact when you looked at what the new program was, it bore no resemblance whatsoever to the existing program. It was quite clearly a closure and then the establishment of something completely new.

Senator COONAN—What was being swept away in that?

Ms Connor—What was being swept away was a school where students had rights. At the new school, students do not have rights. What was being swept away was specifically an opportunity for college age students to be in a democratically run school, to determine their own educational needs and outcomes and to be in a completely non-hierarchical school. It is not completely non-hierarchical, because obviously the teachers have a certain level of authority that the students do not.

But SWOW only ever employed level one teachers. They are the lowest ranking teachers, the general classroom teachers. There was never any principal. The reason for that decision was that that was the closest way to ensure giving some degree of equality between students and the teachers. And particularly for years 11 and 12 students—as Rae said earlier—there was a relationship of friendship that often developed between the teachers and students which cannot develop in the traditional system where staff and students are seen as completely separate bodies. SWOW worked really hard—

Mr McCLELLAND—I do not want to steal Senator Coonan's questions but what would happen if you had a dud teacher, a teacher that you needed to sack?

Ms Connor—That did happen sometimes, particularly over the last seven or eight years when the department moved away from an original agreement where intending teachers would come to be interviewed by the school community. While that happened there were few problems, but once the department insisted that it would just send whomever it chose to SWOW, there were teachers who came that were not familiar with alternative education.

Mr McCLELLAND—But by general resolution you resolved to just terminate their employment?

Ms Connor—No. The school body could not do that. We did not have that authority. This often meant that things were left to fester and the department would not then take responsibility for dealing with issues. It placed the school in a difficult situation.

Senator COONAN—What was the problem about issues of the duty of care to younger students, assuming this is a correct report?

Ms Connor—The SWOW was originally intended for students over the age of 15 which is past the compulsory schooling age. But more and more we received applications for enrolment for students under 15.

Senator COONAN—What was the minimum age?

Ms Connor—We did take some 13-year-olds, but usually they were 14-year-olds that were applying. There was a limit determined by the school that we would try to have a maximum of only six under 15-year-old students. There were strict conditions for those students. Firstly, they had to obtain the permission of the department of education to enrol. Secondly, they had to sign in and out every day to prove that they were attending for a minimum of five hours a day and, thirdly, they had to agree to engage in an academic program.

Senator COONAN—That was more like a traditional school.

Ms Connor—Yes. There are different regulations for those under 15 from for those over 15. When the department said that they had difficulty with SWOW upholding those duty of care issues, we provided the signing in and out book. We followed everything that was required of us, but the department kept saying, 'This is not enough.' No matter how many times we sat down with them and said, 'Make it quite clear what else you need,' they could never do that. They could not do it for the social policy committee either because there was nothing else that could be provided; we were following the duty of care for under 15-year-old students.

Senator COONAN—Does the duty of care extend only to things like attendance, or is it more in terms of the sort of instruction that younger children are thought to need

developmentally and in terms of the curriculum?

Ms Connor—No. It is pretty much attendance for under 15s.

Miss Chambers—Every day that book would be looked over and every day they would know who was there and who was not and the teachers would ring them up if they were absent. They would usually ring the student or somebody who knew who they were. Ordinarily, how many teachers do you know in normal mainstream schools who would do this? One teacher knew that this girl had not turned up. He drove round Civic all day looking for her. He found her and he said, 'You have to come back. If you do not come back you are going to fall under.' He brought her back. He did that for her just because he knew she was just down there bludging. She was an under 15 and she did not want to go to school and that is what he did for her. Every day it was like that.

Whenever I left the school, when I had to walk through Garema Place, I would tell all of them that were down there, 'You have got to go back to school. They have just had a meeting and your name and your name and your name came up and they want to have a meeting with you now.' As soon as they got back to school, they would have another meeting with them in it and say, 'Why weren't you there?', rah, rah. They could not really punish them. It would always be, 'Where were you?'

If it got to an extent, the parents would be wrong, but not really because it was their decision. That mainly happened with over 15s, where the parent would not be wrong, but always with the under 15s, they would be if it was more than two days.

CHAIRMAN—Can we just come back to Mr Tuckey's question? They are tying the two in so we do not lose track of what Wilson was asking. It was about the school population, wasn't it?

Mr TUCKEY—That was the other question.

Ms O'Connor—There was a maximum of 100 students.

Mr TUCKEY—Was the average about 100?

Ms O'Connor—No, the maximum was 100. More often than not we were at maximum enrolment. Some years we fell under, but we usually were at the maximum with a waiting list.

Mr TUCKEY—On the standards of my electorate that is a large school.

Ms O'Connor—Is that so? You will not find any other secondary school in the ACT that has a 100 students.

Mr TONY SMITH—With regard to the comments in appendix D of your submission that 'schools must be democratic, equitable and just ' and then your comments about articles 12 to 16, do you agree with the proposition:

Democratic education ought to mean not the education which democrats like but the education which will preserve democracy.

Ms O'Connor—You will need to explain what you consider the difference to be.

Mr TONY SMITH—There is a difference. Do you see that there is a difference between a democratic education and one that is geared to preserving democracy?

Ms O'Connor—I am not sure that I would see it the way you do. For me, if a school is running along democratic lines, where all the members of the school have an opportunity to participate effectively and equally, that surely is upholding democratic principle.

Mr TONY SMITH—Aristotle actually made that comment I just quoted:

Democratic education ought to mean not the education which democrats like but the education which will preserve democracy.

I take it you wonder about that. Do you?

Ms O'Connor—I am not quite sure what you are getting at, to tell the truth.

Mr TONY SMITH—What I am getting at is that democratic education as such—that is making everybody feel that they are participating equally and receiving equally—does not necessarily breed democracy. That is what I am saying.

Ms O'Connor—Unless you give active democracy to the participants, that would be right. But SWOW did give active democracy to the participants.

Mr TONY SMITH—You do not make a distinction between an education which will preserve democracy as we know it as opposed to a democratic education?

Ms O'Connor—I guess you could say that mainstream education would espouse upholding democracy, but it does not give any democratic rights to the students.

Mr TONY SMITH—C.S. Lewis, one of the great thinkers of the 20th century, said:

A truly democratic education, one which will preserve democracy, must be in its own field ruthlessly aristocratic and shamelessly highbrow.

Ms O'Connor—I would not agree with that.

Mr TONY SMITH—You would not agree with that?

Ms O'Connor—No.

Mr TONY SMITH—I will finish with this comment of his:

A mild pleasure in ragging, a determination not to be much interfered with, is a valuable break on reckless planning and a valuable curb on the meddlesomeness of some minor officials, envy bleating, 'I am as good as you', as the hot bed of fascism. You are going about to take away the one and ferment the other. Democracy demands that little men should not take big ones too seriously. It dies when it is full of little men who think they are big themselves.

What do you say to that?

Ms Connor—I do not see the relevance.

Mr TONY SMITH—I think it is relevant to what you are saying in here, is it not? You are saying that your school is a democratic one which gives equal democratic rights to all of the students and then you are saying that the articles themselves, in 12 to 16, would tend to reinforce that. Yet, if all of the schools adopted that philosophy, we would probably be caught out by other nations who adopted a philosophy of ensuring that those who are bright are enhanced and those who are never going to be bright—

Ms Connor—Why do you presume that in a democratic school those that are bright will not be enhanced?

Mr TONY SMITH—I am not presuming anything, but I am asking: do you ensure that those who are bright are going to be enhanced in their democratic education—

Ms Connor—SWOW proves that that is true.

Mr TONY SMITH—Or are you trying to get everybody about the same?

Ms Connor—No.

Miss Chambers—Democratic just means that. If I am at my school now and a group of my class want to go on an excursion, the principal can just say, 'No.' He can come up with a reason and say, 'No.' At SWOW you cannot just say, 'No.' There is no hierarchy.

Mr TONY SMITH—So you do not think there should be rules?

Miss Chambers—No, of course there should be rules.

Mr TONY SMITH—About the incident in the toilet, if the school had a rule that that was not allowed, you would disagree with that, would you?

Miss Chambers—Can respect not be a rule?

Mr TONY SMITH—No, but just answer that question.

Miss Chambers—What was the question, sorry?

Mr TONY SMITH—The question is: if there was a rule against behaving like that in a toilet, you would say that that is a rule that should not be observed, would you?

Miss B. Shannon—Behaving like the boy, or behaving like the boys who came in and beat him up?

Miss Chambers—Yes, which one?

Mr TONY SMITH—Doing what he was doing in the toilet.

Miss Chambers—No, I think it is perfectly—

Mr TONY SMITH—No, but if there is a rule that you cannot do it, then you would say that it is not a democratic rule.

Ms Connor—If it is a rule that has been imposed by the principal that has not been discussed with the students, it is not a democratic rule.

Miss Chambers—It is if the whole school got together and everybody's vote meant one vote. For some people in normal schools, one vote can equal everybody's vote. A hundred people can say, 'We want this,' and one person can say, 'Well, too bad.'

Mr BARTLETT—Can I just ask how it works in practice then in your school? You have the consensus, or if you cannot reach consensus, then a majority on what the rules ought to be. What is the procedure then for someone who still does not adhere to those rules that have democratically been decided?

Miss Chambers—You get put on a last chance contract. It is not just any contract. You have got to sign it. You will have a meeting with you, somebody else and usually a person who is in the middle and you will sit down and discuss it between a small group of people and you will work out the rules that you need to abide by. You swear that you will not do this and this, like if you have been fighting—that is usually the only thing that ever

came up.

Mr BARTLETT—And if you breach a last chance contract, you have to leave the school?

Miss Chambers—You are asked to leave the school.

Mr McCLELLAND—What about for 13- and 14-year-olds? Is that still the case?

Miss B. Shannon—When you come to SWOW you have to write out permission notes saying that you would adhere to the school rules and you would be at school for this many hours and that sort of stuff. We would go through a procedure where you would put them on a last chance contract; that was generally for under 15-year-olds. First we would tell them to change their behaviour or they would be asked to leave. If they did not change—if they kept breaking the rule or whatever it was—then we would go through the procedures. We would start by writing three statements to the department of education saying that they have got problems and then, with the last one, you can actually ask them to leave. But we put them on a last chance contract and then if they broke the rules then they would be asked to leave straight away.

Mr BARTLETT—What about lesser infringements that were not serious enough to require expulsion?

Miss B. Shannon—There are things like community service. You would be asked to clean something or—

Mr BARTLETT—And who would decide on those?

Miss B. Shannon—Everyone.

Mr BARTLETT—The whole school would?

Miss B. Shannon—The general meeting would.

Miss Chambers—We would come up with things, such as they could clean the bus or they could vacuum the room or they could clean up the art room—something like that.

Miss B. Shannon—It depended on how bad the infringement was. Sometimes, if it was just a fight between two people then we would have a small meeting which would then help to conciliate the problem.

Mr BARTLETT—What was the general standard of behaviour in the classroom?

Miss Shannon—Very good.

Mr BARTLETT—Were there ever one or two disruptive kids who—

Miss Chambers—You would just tell them to get out.

Mr BARTLETT—So that happened frequently? Kids were—

Miss Chambers—Not frequently. A kid might come in and go bang, bang, bang with their hands and you would say, 'Stop it!' And they would go bang, bang, bang and you would say, 'Stop it!' Then they would say, 'All right,' and they would just leave, or you would say, 'Look, we're trying to have a class here so just leave.'

Mr BARTLETT—So they would just leave.

Miss B. Shannon—There were never any fights. There was never any rowdiness in class.

Mr BARTLETT—So it was frequent, then, that students would not be in the class?

Miss B. Shannon—No. There was a lot of—

Miss Chambers—No. Kids who were not even enrolled in that particular class would come in. You could walk into every room. You may not have been enrolled in a class but you could go in and share in the discussion. If I was not in a media class but I walked in because I happened to think the conversation was interesting, I could sit down. But if I disrupted their class they could just all tell me to leave.

Mr BARTLETT—What about someone who was enrolled in the class?

Miss B. Shannon—If you are not going to participate in the actual class and you are just going to disrupt it, then you are asked to leave. You say, 'If you are not going to participate, then there's no point in your being in this class, so would you please leave the class.' But I only ever found that people who were in the classes wanted to be there. They wanted to learn. They were given a variety of classes as well as alternative classes, such as massage. It was the classes that the students wanted. So, if the students came to the class, that was the class they really wanted to do. It was not a class that was forced on them. You will usually find that, if people do not want to be somewhere, that is when they are going to start chatting to other people and start disrupting the class. People who were in the classes at SWOW wanted to be in the class and so there were no disruptions. If anyone came in and was disruptive, then they were asked to leave.

Mr BARTLETT—Ms Connor, you said that adherence to the convention required

that different types of education be made available for different children and for different needs. Where do you see the limit of that has been? Does that mean that, in relation to every group in society that figures they should have a type of education peculiar to their interests, for instance, that should be pursued and provided at government expense?

Ms Connor—It is something to look at. Certainly where a school has proven its value, it seems to me a clear breach to remove that school without offering something equal to it. We are getting fewer and fewer choices now for students in the government education sector, even to the point where the department has now insisted that the two colleges in the ACT that have a different term structure—some of the colleges are on semester structures; two are on trimester structures—conform to the majority and change from trimesters to semesters. Most of the students go to those trimester colleges because they want that. They want something different.

Mr BARTLETT—So greater choice in schooling systems and education is consistent with the Convention on the Rights of the Child?

Ms Connor—That is how I read it.

Miss Chambers—I go to a school which has trimesters, and changing it over next year will look funny on my year 11 and 12. On my year 11, I have a certain amount of classes done because of the trimester, and then it is all going to change—and for what? What is the point of changing just so they can all be the same. I do not think that is a good enough reason to give me: that I have to change the pattern of my schooling just so it can be the same as the rest. That is the only answer they can give.

Miss B. Shannon—Some students need that little extra amount of time to grasp a subject.

CHAIRMAN—Brooke, just one final question to you. You said you finished at SWOW without completing year 12—

Miss B. Shannon—Yes. I am now at a college.

CHAIRMAN—This year?

Miss B. Shannon—Yes.

CHAIRMAN—You finish at the end of 1997?

Miss B. Shannon—Yes.

Ms L. Shannon—To expand on that, though—

CHAIRMAN—I assume you are Brooke's mother.

Ms L. Shannon—Yes, I am. Brooke had got enough points to get an accredited year 12. It was her decision not to go on and get a tertiary year 12 because she was pretty distressed about the whole process that she had been involved with, in the past year in particular. She decided to take an accredited year 12 and she is now enrolled at a college part-time just doing one subject, because she just did not want to go back into that system. She was pretty worn out by the whole process.

Miss B. Shannon—I had been one of the lobbyists going to the ministers and I had been fighting pretty much for two years trying to save SWOW. I was also a board member and a student representative. I had been for two years and it was my second year. So in the end I was too stressed. I did not want to deal with the education system any more. I do not have any respect for the system.

CHAIRMAN—Do you feel that the SWOW environment, where democracy—to use your words—was a key criterion, would prepare you better for the tertiary scene than the more traditional one?

Miss B. Shannon—Especially for university.

Miss Chambers—Universities often really liked SWOW students coming there. They want SWOW students coming there because they just knew that they have already been through years and years of having to make all your own choices. Even college is not making all your own choices for you. It is now compulsory to go to my college. I have to go to classes. That is very different from SWOW.

Ms Connor—On the subject of tertiary, SWOW has more university gold medallists than any other college in the ACT.

Ms L. Shannon—Out of a school of 100 students, that is pretty impressive. Could I just say that my biggest concern is the fact that there is not the diversity in the ACT any more. There are not the choices for those people who cannot afford a private education. What I would like to see nationally is a choice, because, from what I have observed at that school, you will get students who will go there for a period of time. Sometimes it is time out for them more than anything. I have watched quite a lot of them float for usually about three months. Some of them will float for longer.

It is interesting because you see a lot of adolescents who have got a lot on their mind these days and a lot of children do not have the parenting that I might have had. The concern is if you do not have some facilities like this. Obviously, you cannot have all of the colleges with 100 students in them because the system could not support that. Something like this should exist where students can go, particularly if they feel intimidated in big schools or have had all sorts of personal problems. They need a sense

of community, which is one of the things that is lost—a sense of family or a sense of community.

If we are serious about wanting to help children at risk and those that are marginalised, then this is the sort of thing that we need to have. You may only need a couple of SWOWs in a particular area to act as a safety net. It is not a safety net for all students, but it is a very impressive safety net for a lot of students.

Mr TUCKEY—Just a final question. Clearly this was a school under the public education system? In other words, it was free?

Ms L. Shannon—Yes.

Mr TUCKEY—The current policies of this government are very sympathetic to private school funding, but you do not believe as board members that you could take that opportunity because the parents of the children who normally came could not afford a level of fees.

Ms Connor—A lot of the parents could not afford it, but also a lot of the students did not have parents.

Miss Chambers—A lot of them were homeless. They were just living at other friends' houses and stuff like that, not living at home.

Mr TUCKEY—I just wanted to clear that up.

Miss Chambers—You asked a question before, not about examples, but in general how the education system failed in some way or did not do all the rights. Can I answer that?

CHAIRMAN—Yes.

Miss Chambers—One of the students, ***, was going to be here today but he could not make it. He got all the way to year 8 without anybody noticing that he could not read or write. I do not think that was really acceptable. In primary school they should have picked up on that. He could read, but very minimally and he cannot spell. He has got a lot better over the last couple of years. He can read fairly well now. He can read fluently, but he still cannot spell. He cannot go back.

He left school year in year 8 and he tried to do his year 10 at SWOW. He was not able to get all the marks up, because he just could not do all the work. He could not read the work he had to do, he could not read books, he could not read articles and he could not do this or that, so he then would fall behind. Then he got really low with himself, because he found he just could not do it. He kept on trying and trying. Now he has gone

to get a tutor and he is going to take a year or so off school and get his reading and writing back up and then go back for it.

CHAIRMAN—Again, we should delete reference to the name in *Hansard*.

Ms Connor—Could I just again draw attention to the fact that the Schools Authority Act and the Education Act in the ACT do not offer any rights to students whatsoever. You will barely find the word 'student' in this legislation. I have not checked the other states' legislation, but I would suspect it is probably similar. I would think that that is perhaps one area that this committee could look at.

CHAIRMAN—Bear in mind that most of what we are dealing with are states' matters anyhow.

Ms Connor—Yes.

CHAIRMAN—It is an important point to make. Thank you very much indeed. It has been a great help to us.

[11.02 a.m.]

DAVIES, Mrs Catherine, Convenor, ACT Grandparents Support Group, c/- Council for the Ageing, Hughes Community Centre, Hughes, Australian Capital Territory 2605

CHAIRMAN—We have received your written submission. Are there any amendments to that submission or any additions to that submission, quite apart from a statement which I will invite you to make in a moment? There are no changes to the submission?

Mrs Davies—I would like to note that at the time that I put the submission in I was trying to meet an impossible deadline for the original evidence that you were collecting here in the ACT at that time. I did not therefore have the chance to go and check statistical sources. I think that the one thing that I have some concern for is that perhaps in one of the first pages I have overstated the extent to which divorce takes place amongst family groups.

CHAIRMAN—That is fine.

Mrs Davies—In general I would say, however, that the demographic trends that I have put in there—while they are not supportive of specific statistical evidence—will be accurate.

CHAIRMAN—Would you like to make a short opening statement or would you like us to go straight to questions?

Mrs Davies—As to the question of additional evidence, I have actually given a bit more detail about both CROC itself, specific articles of CROC and the question of jurisdictional difficulties. Certainly, I think we are focusing on systemic problems that grandparents are having in terms of ensuring the care and protection of their grandchildren, and that obviously includes the rights of their grandchildren.

There are a couple of things that I would like to say at the outset. One other thing I should mention is that, while I am the convenor of the ACT group, in the last week I have had phone calls from four other groups to which, after publication of this submission, I circulated the submission. We have had continuous support from other grandparents' groups like this. I have had no criticism whatsoever of what we are putting forward here. We have also had some interest expressed in what we have said, and support, from a couple of the fathers' groups, and some general interest from legal professionals who are involved with family law issues who phoned to ask us for a bit more detail.

There is one thing that I would like to say, and that is regarding demographic facts that are not in the original submission. The sex ratios are something which are not often

dealt with. The Bureau of Statistics does produce sex ratios, but it does not produce sex ratios about the fact that women generally marry men older than themselves. We have been going through, for the last 20 years or more, a period in which women of marriageable and reproductive age outnumber men. This means, perhaps, that historically women have chosen partners who may have been somewhat less suitable than they might otherwise have been. It obviously leaves a number of available women around.

This does not seem to be written into the sociological literature, but I am sure it underlies to some extent the difficulties that are part of the problem with marriage today. There are lots of other factors, socio-economic factors and so on that arise, but I have not seen that one written up, and I do think it is probably more important than people recognise.

I might add that, if you look at the population pyramid, which I have not brought along, you will find that for those children growing up now there will in fact be a surplus of males to females in the future. I might make a wild and sweeping prediction that maybe in the future it will be easier for women to remain married because they will have a wider range of partners to choose from.

Mr TUCKEY—We might just have to legislate for polygamy.

Mrs Davies—A second fact, another demographic factor that we perhaps tend to lose sight of, is the very extensive migration which we have had, which has certainly speeded up within my lifetime, although it has been going on since industrialisation. That obviously means that extended family support has been gradually breaking down over time. We have particularly seen that in the past with rural to urban migration. I think we are seeing it with interstate migration more and more. That creates a situation in which the systemic difficulties of jurisdictional problems relating to child care become perhaps a lot more significant to individual cases.

CHAIRMAN—One of the suggestions that you make is in relation to a separate minister for children's affairs. Implicit in your submission is the role of, I suppose, the family and the extended family. What you are saying is that that seems to have been lost. Why just a minister for children's affairs rather than a broader minister responsible for family affairs? Why just children?

Mrs Davies—I think that, first off, a family—any anthropologist will tell you—is a social construct. There are different views of families by different sections of the community. You will also find that I have spoken about this, that I think most grandparents who go to the Family Court notice that the focus eternally comes back to the parents; the extended family is almost completely excluded in many of these circumstances, despite the importance of grandparents, both in the provision of day-to-day care for children and in terms of passing on norms and history and so on.

I do not dispute the fact that we could, perhaps, be looking at family affairs, but it seems to me that they do not necessarily take account of the rights of children. I think here that the many instances that have been publicised in recent times—but which have obviously been going on over decades now—of child abuse show that there really must be an emphasis on children's care and welfare first and foremost.

I realise that some parents are young adults, and many of them seem like little more than children themselves from where we stand, and certainly need support, but basically most parents are adults. Adults can make statements on their own behalf. They can go to the ballot box and vote on their own behalf. They can take legal actions on their own behalf.

Children are denied the opportunity to articulate their needs in many cases, and this is something which all of us who have had contact with grandparent support groups see—mostly grandparents who are having difficulty with contact and who will be either contemplating or taking action through the court system. We feel that, if our grandchildren's voices were heard far earlier, this would provide better care and protection for the children.

Whenever you listen to the seminars that have been going on about the amendments to the Family Law Act, you will find, when you talk to the legal professionals who are dealing in this all the time, that they will tell you, 'Yes, the best interests of the child' in one sentence, and in the next sentence they are immediately back to talking about the parents.

I guess if we had a minister for family affairs that it would have to cover a broad definition of family, and it would also have to take account of the fact that what constitutes a child's family these days changes at various times along the way according to what the parents, and particularly the custodial parent, may be doing. I think this is one of the things which as grandparents we see. We see the history of these transitions between one type of family and another, whereas most research focuses simply on what is taking place in the here and now.

Mr TUCKEY—There are a couple of matters, just for the record. What, if any, statistics are you able to provide the committee as to the degree to which the Family Court grants access to grandparents in the process of marriage breakdown, and have you anything you can tell us, once access has been granted, about how the Family Court responds to complaints by grandparents, for instance, that the custodial parent just simply ignores that access order? Are your members forced to go back to the court again at great expense, or is there some more simple process available to you?

Again, for the record, there is this question: as we are inquiring into the rights of the child convention, are you prepared to put something on the record as to what role you see? I am a grandfather, by the way. I think the benefit to the child that arises from the

involvement of grandparents in both continuing marriages and/or broken marriages needs to be on the record.

CHAIR—Mr Tuckey and I are both grandparents. We are a little older than most.

Mrs Davies—You have asked me more than one question there.

Mr TUCKEY—I have asked you three. We will go back through them if you like.

Mrs Davies—The first one is what statistics of access—

Mr TUCKEY—Just what is the evidence of rejection by the Family Court of access applications, if you have any? I know that is a difficult question. The second question is to what extent does the family cooperate where access orders are being ignored? Thirdly, would you give us a statement of your belief as to how a child benefits from access to grandparents both in continuing and broken marriages? I am not questioning that they do. I want you to put it on the record.

Mrs Davies—I would like to say we would desperately love to have funding for a full-time statistician to go through the Family Court judgments and see how frequently grandparents are given contact, as they now call it. Unfortunately, we do not have that.

Mr TUCKEY—Can you give us any anecdotal evidence then?

Mrs Davies—It is mainly anecdotal evidence. However, I think that the anecdotal evidence that we have certainly confirms the fact that the extent of grandparent support is not well understood by Family Court judges. Their understanding of what constitutes contact is remarkably limited. I have mentioned one case in which a judgment was recently issued on an interim contact order. By the way, that is one of the issues I have pointed to here. Volume IV contains a submission from the Queensland Law Reform Association. One of the issues they point to is the maintenance of the status quo in interim contact orders where there is a case, for instance, of residence pending.

We find that, if there is a residence case pending, grandparents will often be denied continuing contact with the child. I really think it is appalling that, if you have a case in which a grandparent has been forced to the court as a result of the fact that they know the child is in an abusive situation and interstate and they are desperate to try to remove the child into a safe environment, that you can have a Family Court judge trivialise the question of the grandparents bringing an issue for interim contact to try to maintain some support for that child in the court.

We have very good contact here in Canberra with all the other grandparent support groups. As far as we can see from those grandparents who are going to court, the majority of judges express sympathy but they give little contact and, in some cases, no contact. One

of the classic cases which has been reiterated since the amendments to the act is this notion that antagonism between the parents—and it is usually the mother, I am afraid—and the maternal or paternal grandparents is grounds enough upon which to refuse contact between the child and the grandmother. This is on the grounds that they will disturb the tranquillity of the mother and, therefore, this will reflect badly in the subsequent relationship between the mother and the child. Therefore, it will not be in the best interests of the child.

The convoluted rationalisation of that particular explanation fails me. At the time I put in the submission I think, as I said, I had spoken to over 100 sets of grandparents. It now must be 2½ times that number. It is beyond my reasoning. Not a single grandparent that I had spoken to—

CHAIRMAN—Just to interrupt you on that one, I think very recently the federal Attorney-General appeared before the Full Bench of the Family Court on that very issue when he represented the Commonwealth. My understanding is that in those circumstances—from the press reports that we have seen, albeit very limited—the judges rather dismissed, or in many ways appeared to dismiss, what he was saying. He said that the rights of the child in those circumstances are paramount. I think they were the words that he used. That is more in tune with what I understand you would want.

Mrs Davies—I think so. I think this is absolutely essential. I believe in the United States that their family law act as it pertains to divorce and so on gives the child the automatic right of contact with the grandparents. This means that, in the case where there is some problem that the parents feel about the grandparents, then it is incumbent on the parent to go before the court to have the possibility of contact removed rather than incumbent on the grandparent to go to the court to try and enforce contact. I would like to do better justice to that question, but without the figures we have difficulty with that first part of the question.

Mr TUCKEY—You have given us a fair indication. What you are basically saying is that in general terms grandparents run a poor third.

Mrs Davies—A very poor third. I think there seems to me to be a gap and there really is not a third, fourth and fifth. As far as cooperation in the Family Court about the ignoring of access is concerned, I think what actually happens is that, when grandparents discover that such contact orders as they have are being ignored, for all but the very worst cases they have already gone through such a substantial amount of money that they give up. They do not give up in the sense that we always tell each other, 'Send cards, send cards, and one day your grandchild may go to the letterbox and see your name and address.' In fact, in the last week we spoke with a grandparent whose grandchildren have just arrived on the doorstep. They are now in their early 20s. The grandmother actually had a roomful of presents that she had sent over the years to the grandchildren which had been returned by the parents. Fortunately, these grandchildren are now re-establishing

contact with their grandmother.

But I think, as Leila Friedman pointed out, for many of us time is in very short supply, and it is not just old grandparents. Once you get into your 50s your chance of dying of cancer or perhaps for men of a heart attack or whatever goes up dramatically.

We do know, as I stated in the original submission, and it certainly is true that there is a case which we have been advised of by one of the Family Court solicitors that he had finally managed to get a contact order to allow a child to come and visit her grandmother and the grandmother was actually buried the day before the child flew in.

Mr TUCKEY—Just taking that a bit further: if an access order is granted and that is just ignored by the custodial parent, are you confirming that there is simply no way by which the grandparent can have that court order enforced other than to go back into court and spend more money?

Mrs Davies—There is apparently a case on record, so I have heard, of one of the fathers who has gone back 38 times, before he finally gave up, to try and have contact enforced. Each time he has been given the right of contact and each time it has been denied to him.

I might add that unfortunately parents of either sex will go to enormous lengths if they want to do so to ensure that contact is not enforced. I have I think mentioned in the original submission the fact that since contact is often over a weekend period, it is difficult when the police are covered by the states. You usually have to get state family services to support any action. By the time you have managed to line these people up your contact time has gone.

I do know one particularly bad case with a grandparent recently who spent nearly two weeks interstate attempting to organise the contact that she had been granted. In the end she managed to get two hours supervised contact with a young grandchild before having to return to Canberra to continue working the two jobs that she needs to pay the legal costs that were involved. This is a particularly tragic case.

Mr BARTLETT—We are speaking of two different things here, aren't we—the rights of grandparents and the rights of children? Presumably, from what you have been saying earlier, you were arguing that if the rights of grandparents to access are increased then that affords greater protection to children in cases where grandparents can inform the courts of cases of abuse and so on. They can help protect the children.

Mr TUCKEY—That was my third question. I think that there needs to be a statement on record relating the rights of the child to access and contact—I made the point of both continuing marriage and broken marriage. I think you need to give us a statement that puts on the record why this is beneficial to children, not just something that a

grandparent would like to have. As I said, I do not want to query that, but I think you need in evidence to tell us that.

Mr McCLELLAND—If I can come in as a lead on that, I found in constituency matters that there is frequently a loss of objectivity on the part of parents. They are obsessed with their own circumstances and that obsession tends to engulf the child. That is my experience. Having regard to Wilson's comment, could you also include in your reply a comment on my experience?

Mrs Davies—Yes. I think that we have had quite a lot of philosophical discussion amongst the groups. There was a particular forum in November of last year where there was a meeting on family breakdown and the rights of grandparents and grandchildren. Certainly we find there are many different cases where circumstances are often very different between various grandparents who come to us. There is obviously some differences between what happens to maternal grandparents and to paternal grandparents in the circumstances under which contact gets denied.

We have, as a result of a lot of discussion amongst those of us who participate on a more active basis in this field, come to the conclusion that all the differences between us melt away when we look at the rights of the child. We focus very heavily on the right of the child to maintain contact with their grandparents. We do not see ourselves as owning grandchildren. We do not see parents as owning children either. We believe that children have the right to a loving family background, support and encouragement to develop into mature, caring adults that will in turn provide for their own child.

If I look back at my original submission, I would like to say that it may appear that I am being a bit critical of women in this case, but the thing is that women are more likely to be the custodial parent. There has been a tendency, I think, to demonise fathers. I had a period of three years, unfortunately, where I was doing battle with my own health that took me completely out of the field of research. When I came back and came into this the first thing that struck me was the war of the sexes that goes on. Whenever you talk about the issue of children's rights, people are back in the very next sentence to 'the mother this' and 'the father that.'

One thing that grandparents do bring in terms of a perspective to this is that because we have both sons and daughters very often in the same family, and we have seen quite often both parents being short-changed in cases of divorce or relationship breakdown, that really is not a good way to focus on looking at the whole question of how you provide for children's rights.

One of the things that we are all in pretty close agreement on is that mediation and so on in relation to children's issues should not be conducted in the divorce court. It is immediately the children, the television set and the kids, and the children just become pawns in a major dispute. That is exactly the sort of thing that I think you are alluding to.

This is why I feel a minister or ministry for children is better than a ministry for families. Families should go along. We should almost sit the child in the middle of the table and say to the family members, and this includes the extended family, 'What are you going to contribute towards the best interests of the child?', and where the child is old enough to say, let the child say.

As far as grandparents being of particular importance in marriage breakdowns, or also in situations of neglect and abuse, children are very protective of their parents. They also do not want to admit to other people that maybe they are being a bit short-changed by their particular parents compared with other children. We find that grandparents are seen by children as being a safe environment in which they can express criticism of their own parent, particularly where that is the adult child of that grandparent because they know the grandparent loves their own child and the grandchild. It then becomes safe to say, 'Mummy didn't get out of bed again this morning and I didn't get to school,' to that grandparent. It is a safety valve for children to be able to say these things.

I have actually heard somebody make a statement, which has a deal of truth in it, that where children go to counsellors with family problems, the problem becomes of major importance. However, when they go to grandparents, the grandparents know the family history and can encourage the child to see that in perspective. You allow them to say, 'Oh yes, I had a rotten day and Mummy this or Daddy that,' but at the same time you say, 'Well, it is difficult for your parents, they have this responsibility.' So you actually minimise rather than enlarge the problem.

In terms of the benefit of grandparents to grandchildren, I do not think there is a case around where parents have not said to their children, 'I realise that you can do that at Grannie's but you cannot do that here at home.' I think the children learn a great deal of tolerance because they recognise that there are different rules for different situations, and they learn to behave differently in those different situations.

I recognise that that might sometimes sound manipulative, but we live in a global world and we have to learn diplomacy to deal with different people from different cultures. If we leave behind to our grandchildren the experience of recognising that they have to deal with different people in different circumstances and to bring tolerance to those different situations, I think we will have left something of enormous value. We cannot leave behind the past to them; we cannot drag them back to the past.

I think it is very common for grandparents to wait for the grandchild to come round and program the video for them, or whatever, because technologies and things have changed so much in our time. So have social circumstances and social norms. Many of us have come here from overseas, from backgrounds where people have had different norms. We cannot be telling our grandchildren, 'This is what the future will bring you.' I can remember standing at the side of the road as a child with my aunt waiting for a horse and cart to come by and give us a lift into town in Ireland. Certainly I do not know, but my

granddaughter may be flying her own plane from one side of the globe to the other.

All we can do is leave generalised skills and a sense of values that encourages tolerance. I do believe that the objectivity of grandparents, plus the fact that there is always some difference between the parents and the grandparents in approaches to things, encourages the child to develop that sense of tolerance.

Mr TUCKEY—Just one question there, because you have used two words that I have written down: tolerance and objectivity. Are you prepared to comment on the objectivity and the tolerance of the parents of the non-custodial parent in terms of the family dispute? Do you believe there is greater tolerance at the grandparent level, as compared to the non-custodial parent level, in terms of the child? Is there more sympathy at that level if there is substantial hatred at the parent level?

Mrs Davies—I realise there can be antagonism where the contact has been cut off between the grandparents and the custodial parent. This is in individual cases, and perhaps this is a good reason why, as grandparent support groups, we need to extend to other grandparents generally who have not as yet appeared before the courts. Unfortunately, I think those of us who are running into problems are becoming rather a larger proportion in number. There is the factor that we are a more likely to see what also happens to a partner of the other sex. Obviously, with individual grandparents, there will be differences between them. I cannot speak for all grandparents and say that all of us have objectivity and tolerance. But, in general, I think the day-to-day animosity is not there in quite the same way that it perhaps is between the parents themselves.

I think it is important to recognise that the time at which the issue of child care and support from extended family arises in a child's life is not just at the time of divorce. That is another reason I feel that mediation services should be available to the family throughout a child's life and that it should be recognised that if a custodial parent, or a non-custodial parent, goes interstate as a result of the fact they may be offered a job—and we are always hearing about labour mobility and so on—then the circumstances under which the child can maintain contact are obviously going to change. I do believe that, if there is any disagreement, you must be able to come back and to discuss the contact with the child in a forum which is not part of a divorce court. You can call it a family court; but, if you do so, please let us remove the divorce out of it—that is the breakdown of a family.

There are a couple of other points which I might just mention. At the present moment in time, there is a case in Brisbane where there is a dispute over the right of the mother to move. I think we must note here that there is obviously a contradiction in the rights of the custodial parent to have freedom of movement and a child's right under CROC. I understand it is the Human Rights Commissioner who is supporting the mother's right to move. At the same CROC obviously does, through some of its articles, quite clearly support the rights of both parents, and also through article 5 the extended family

rights. So it seems to me that that is a contradiction and it is one which is not always easy to resolve.

It has to be looked at in individual cases and there does have to be the right, I think, for some actual court situation in which you go to a mediation service and, if there is not going to be some sort of reasonable agreement or people are not prepared to attend, that the court can issue an order that they must attend. For instance, where parents flatly refuse to discuss the issue of contact with either the other parent or with the grandparents, then I really feel that the court must issue an order saying, there must be a way in which, through a court or a tribunal or some mechanism, there is some legal mechanism that compels the custodial parent to attend and negotiate that. It is certainly not something you can leave to goodwill. The family law does make allowances for that and at directions hearings they do in fact compel the parties to go for counselling, whether it be parents or grandparents. But at the present time it is quite possible to wait anything up to six months just to get to the directions hearing which compels those discussions to take place.

CHAIRMAN—I think that may be the case where the federal Attorney-General appeared for the Commonwealth. It is a full bench.

Mrs Davies—Yes, in Brisbane.

CHAIRMAN—The one in Brisbane, yes, I think that may be the one.

Mrs Davies—I obviously cannot talk for all grandparents on this, but at a personal level I think, if you look back historically and anthropologically, people have not had the right, parents have not had the right, to hoof off all over the countryside as they feel like and remove children from their family. Part of my background is in anthropology and certainly that would not be approved by most village communities.

CHAIRMAN—We are in fact getting some information from the Family Court on that one, because there have been some reports of the Attorney-General's comments which we need to have a look at; let us put it that way.

Mrs Davies—I guess there are other circumstances under which it might be necessary actually for a custodial parent to move interstate to take advantage of their own parents' support, and that would obviously undermine the extent of contact for the other grandparents. There are no easy solutions to some of these things. That is the advantage of having computers and E-mail and things like that which will help us to keep better contact if we can only get better relationships established.

CHAIRMAN—Agreed. Are there any more questions?

Mr TUCKEY—Just one more. You are advocating a minister for children's affairs, and others have pointed out that they want a commissioner for children, et cetera.

Considering that it was politicians who wrote the Family Law Act and created the Family Court, why do you want more intrusion from us?

Mrs Davies—I might point out that we perhaps are better able to bring pressure to bear on politicians than we are on judges. We have no say whatsoever with judges.

CHAIRMAN—Politicians might take that view, too—particularly with some elements of the High Court! But I digress.

Mr TUCKEY—We could take up the American system.

Mrs Davies—No. I would be a supporter of the High Court but, perhaps with the Family Court as it is currently constituted, I have already indicated that I think the whole issue of bringing divorce and contact together under the one roof seems to me to not be a good thing. It is conceptually antagonistic. Justice Nicholson obviously has great concerns for children's welfare, so let us make him the senior judge of a court which deals in genuine family matters. What do you need for a no fault divorce court, for heaven's sake? Just somebody to stand there and stamp the papers.

Mr TUCKEY—Why not just a registrar?

Mrs Davies—I grant that there are obviously property settlement issues about it; but, when it comes to children's care, that really should be in a different forum. I guess that maybe all of us will have greater input into what politicians do. There certainly were some stuff-ups over the last amendments to the legislation, as far as grandparents were concerned. We were rather promised by the previous Attorney-General, Michael Lavarch, that grandparents would be seen as more significant in that legislation than they are—and that, more importantly, the right of children to have contact with their grandparents would be considered more seriously. I believe that we have been not put in the right section. There is a limit to the extent to which we can be involved. We are not automatically involved in things like parenting orders.

Mr TUCKEY—Taking your comment a bit further, again for the record, in terms of the rights of the child, you are telling us that the current Family Law Act's including custody and all those aspects of a child's rights in the divorce proceedings is wrong, and that it should be entirely separated and dealt with or adjudicated by a different body after, or concurrent with, the settlement of other property matters.

Mrs Davies—Yes; and it must come from the focus of the best interests of the child, and not from that of the best interests of the parents.

Mr TUCKEY—And they should not be another chattel.

Mrs Davies—No, most definitely not.

CHAIRMAN—Thank you very much for your very helpful evidence.

Mrs Davies—Are you talking to the ACT branch in this process?

CHAIRMAN—Yes, and we are talking to your group in Perth, by the way. Thankyou.

[11.48 p.m.]

TREGEAGLE, Ms Susan, Director, Program Services, Barnardos Australia, 60 Bay Street, Ultimo, New South Wales 2007

CHAIRMAN—Welcome. We have received your submission, thank you. As there are no amendments or additions to be made to the written submission, would you like to make a short statement?

Ms Tregeagle—Yes. For those of you who do not know Barnados or only vaguely know of it but are not quite sure why, we are a child welfare organisation that goes back to 1870s. We operate in New South Wales and the ACT and we have in our care and in our support services about 5,500 children. We break our services down into family support services, which is roughly about half of our work, and then our work with children who have been removed from their families, who are usually very disturbed children. We do quite a bit of work with homeless adolescents as well. So we are in a position to see the functioning of the social welfare service from very early breakdown to the disasters that we get when children are older and have suffered inappropriate interventions.

There are three things that I want to raise today. There is the need that very disadvantaged children in our community have for some sort of baseline standards, and our social structures and intervention services are really not servicing a particular group of children, albeit a smallish group in our community, very well. I have brought along a little collection of reports that have come across my desk in the last three or four months which document this. I am sure that most of you are well aware of many of the findings, from Burdekin right through to the International Year of the Family. The three most recent ones that I thought might be of interest to you were the study on wards needing care in New South Wales, the study on re-notification rates of children, also a New South Wales study, and the federal Human Rights and Equal Opportunity Commission report on legal matters with children. It is just one of about 30 reports on the kinds of issues for disadvantaged children that are fairly well documented in our community.

CHAIRMAN—That last one was the one that was released about four or five weeks ago?

Ms Tregeagle—Yes; these are just the most recent ones. My point is that there is a lot of work being done in the area of what is happening for very disadvantaged children.

CHAIRMAN—Would you just like to read into the record those three reports, just by title, date and all the rest of it, so that we can use that as a reference, rather than accept them formally today?

Ms Tregeagle—Yes. One is *Preventing re-notification of child abuse and neglect*, which is a New South Wales study produced in 1997—a couple of months ago. One is the

Wards leaving care study, from the New South Wales Department of Community Services, 1996. The other is the Human Rights and Equal Opportunity Commission report, *A matter of priority—children in the legal process*. But, as I said, they in themselves are not very critical.

CHAIRMAN—That last one was May 1997?

Ms Tregeagle—Yes. The things that I want to point to are the extreme disadvantage and the lack of action that we are seeing for a particular slice of Australian children, and our concern that the baselines are not being reached and that there is not the mechanism or the activity to really see much change in that area. I have been working in this area for 15 to 20 years. The overwhelming feeling that I have, which is shared by my colleagues, is that things do not change much and that, if anything, the nature of the problems are becoming more entrenched.

CHAIRMAN—Just on that point, most of this, as you have indicated, is state legislation. Are you saying that there is an intransigence, a reluctance, an inability to come to grips with some of these issues at state and federal level? What are you saying?

Ms Tregeagle—There are problems at the state level. There are also problems in jurisdiction, for which children get caught in the middle, because of the problem of federal- state responsibility for children. I could talk to a number of examples. The one we quoted in our original submission was a response from the Minister for Social Security about foster parents' ability to get sole parent benefit.

The other major issue of that state-federal problem of disadvantaged children falling through the middle relates to child care and the very enormous difficulties we have with very disadvantaged children, children who are neglected, perhaps just short of being removed from their families but living in very substandard parenting situations—though that is probably not the best term to use—

Mr McCLELLAND—In the evidence we have heard, one view against the CROC treaty is: children are very lucky to grow up in Australia; Australia is a great country; and what right has some convention or some administrative hierarchy got to come and interfere in the way parents exercise their rights in bringing up their children? I suppose that may reflect what we see as the television version of a family. But, in your experience and from your reference to reports, there are many circumstances confronting children which do not equate with that romantic television version of a family: is that right?

Ms Tregeagle—I am also sure that, for the majority of Australian children, this is not inappropriate. But I think government has to concern itself with the most needy, and there is a slice of the children of Australia who are indeed desperately needy.

Mr McCLELLAND—I know it is very difficult for you to give figures, but how

substantial are the numbers of those chronically neglected children?

Ms Tregeagle—We know that in New South Wales there are about 33,000 referrals for child abuse and neglect. About 10,000 of those are substantiated. Across Australia, those figures are magnified. Not all children hit the welfare system, but it is an indication of the numbers we see. We run places called children's family centres and in, say, communities like Auburn, Penrith or the Illawarra we would have 2,000 to 3,000 children just from the local areas going through our services every 12 months.

Mr McCLELLAND—Was that 33,000 reports per year of chronically neglected or abused children in New South Wales?

Ms Tregeagle—Those are the reported abuse and neglect figures, yes. But the substantiated cases actually work out to about 10,000 or so.

Mr BARTLETT—Clearly there are many cases of neglect. How effective do you see the convention to be in assisting Australia to deal with that neglect? To what extent would that be effective vis-a-vis a growing community concern and increased government attention? For instance, the increased attention that we have had to cases of child abuse within the education system has not directly come out of a sudden determination to apply the articles of the convention but, rather, out of a growing awareness of the problem and a growing commitment to dealing with that problem. I wonder to what extent legislating to apply the convention really is necessary, rather than just legislating to overcome the problems that we become aware of.

Ms Tregeagle—Agencies like ours find it very difficult. We are constantly trying to advocate on behalf of children in this position. It becomes very difficult without a benchmark to establish those kinds of situations. The convention does lay down some very good bases for thinking about children and their needs. In our recent work on the New South Wales act, we were able to pull some issues out of the convention which we hope could give a benchmark or basis for that sort of legislation—specifically, things like state parties rendering appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, and ensuring the development of institutions, facilities and services for the care of children.

One of the big issues that we have had—and that we have been talking about for 10 years—is the lack of family support services for very disadvantaged children. That has happened right across Australia. Ever since the federal government withdrew from the funding of family support services 10 to 12 years ago and made them a state responsibility, there has been no growth there. If we can get some statements of principle into the right sorts of places, then at least we will have a basis on which we can debate the issues; otherwise it is difficult. We have been talking about the desperate need for family support. We can produce cases coming out of our ears about children we have not been able to service. I cannot say that the convention is going to do it, but we are

desperate for any agreed benchmark.

Mr BARTLETT—Isn't it true though, to a certain extent, that that basis of minimum standards is there because of the standards that we as a society adhere to, regardless of CROC? For instance, we have adhered for a long time to a rejection of exploitation of child labour, and to a rejection of child sexual abuse. We have adhered, for many years, to compulsory and universally free education. Most of those standards are the things that are part and parcel of society, in this country, anyway.

Ms Tregeagle—A conviction is clearly not the only way that this happens, and clearly, standards of living and humanitarian concerns are critical. The problem is when you go to try and point out these sorts of problems. Most people do not see the sorts of children we are dealing with or the sorts of problems that they are hitting. There is really no objective measure in some sense apart from when the child is killed, injured or what have you. We need some sort of sense of community direction.

Perhaps I could say that in the UK legislation, which has tried to incorporate some of the issues of the convention, particularly in relation to supporting parents of very disadvantaged children and trying to get state support to them, the act has been framed in a very positive way and is actually making quite a lot of difference in practice. We find that sort of debate and that kind of operationalising and very proactive operationalising of objectives is just not happening. All I am saying is that if we had the ground rules in place we could move from that point. I realise in saying that that the convention has been controversial for some segments of the community.

CHAIRMAN—Regrettably, we are going to have to stop. I do regret it as far as Barnardos is concerned because we would like to have had them. But we will get you back. We have to get ready for a 12.30 p.m. sitting. I apologise for that after you have been sitting here for so long listening to a lot of other people giving very good evidence, but these things sometimes take a little longer than we originally thought. If we can just take some of these things that you have said in the submission on board and we will have you come back and talk to us in a little more detail.

Mr TUCKEY—Mr Chairman, something for that further evidence: Barnardos, of course, is also an international organisation. I asked previously of Amnesty where Australia rated on rights of the child performance on the scale of 1 to the 170 or 200 participants or those that have ratified the scheme. You might like to take that on notice for when you come back.

Ms Tregeagle—Thank you. I am glad I do not have to cope with that one now.

CHAIRMAN—I am not sure whether you were here when we discussed that.

Ms Tregeagle—No.

CHAIRMAN—We have had a lot of evidence of the domestic ramifications of this convention and the issues that have come under the umbrella of that convention. We have heard less about the international than the domestic—so I think we need both. What Amnesty International is going to do is think about where we are as Mr Tuckey said in terms of some sort of pecking order of 200-odd states.

Ms Tregeagle—The UNICEF report tried to quantify that. I know a year or so ago UNICEF tried to place where Australia was sitting, say in terms of adolescents—

CHAIRMAN—We would like to have your view of both the international and the domestic. In your submission, you have given us some comment on the domestic ramifications. If you want to put in something written in advance of your next appearance on the international ramifications, we would welcome that.

Ms Tregeagle—Barnardos Australia is purely an Australian association now. We are affiliated in a loose way with the UK.

Mr TUCKEY—That is the point.

CHAIRMAN—That is right. Thank you very much.

Resolved (on motion by **Mr McClelland**):

That this committee authorises publication of the evidence given before it at public hearing this day, with the exception of the two names mentioned by Ms Chambers in her evidence which have been deleted from the record.

Committee adjourned at 12.04 p.m.