COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

HOBART

Monday, 4 August 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:

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

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

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

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

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

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

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

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

WITNESSES

COLEMAN, Mrs Jill Estelle, President, National Council of Women of Tasmania, 79 Mount Stuart Road, Mount Stuart, Tasmania 7000 1126

CROCKFORD, Mr Robert, Secretary, Parents Rights and Support Group (Tas.) Inc., 3742 West Tamar Highway, Tasmania 7270 1115

CROCKFORD, Mrs Shirin, Spokesperson, Parents Rights and Support Group (Tas.) Inc., 3742 West Tamar Highway, Tasmania 7270 1115

DENMAN, Mrs Cheryl Ann, St Helens Christian Fellowship, 54 Cecilia Street, St Helens, Tasmania 1097

DIMITRIOU, Mrs Judith Anne, 560 Pelverata Road, Kaoota, Tasmania 7150 . 1097

GRANT, Mrs Linley, Honorary Secretary, National Council of Women of Tasmania, 79 Mount Stuart Road, Mount Stuart, Tasmania 7000 1126

GRAY, Mrs Pamela Joan, Convener—Child and Family, National Council of Women of Tasmania, 79 Mount Stuart Road, Mount Stuart, Tasmania 7000 1126

KAYE, Mr Stuart Bruce, Lecturer, Faculty of Law, University of Tasmania, GPO Box 252-89, Hobart, Tasmania 7001 1076

KUIPERS, Mrs Annette, PO Box 317, St Helens, Tasmania 7216 1097

KUIPERS, Mr Peter, PO Box 317, St Helens, Tasmania 7216 1097

MARSHALL, Mrs Roslyn June, PO Box 14, St Helens, Tasmania 7216 1097

McLEAN, Mrs Joanne Alison, 6 Lindsay Parade, St Helens, Tasmania 7216 .. 1097

RUBENACH, Miss Sarah Maree, PMB 2, St Marys, Tasmania 7215 1097

RUBENACH, Mr Peter Maxwell, PMB 2, St Marys, Tasmania 7215 1097

SMYTH, Mrs Eris Mary, Member, Tasmanian Branch, Australian Family Association, PO Box 191, Devonport, Tasmania, 7310 1097

TURNER, Miss Sarah Luise, Student, Faculty of Law, University of Tasmania, GPO Box 252-89, Hobart, Tasmania 7001 1076

WELLS, Mrs Sylvia Margaret, RMB 3195, Tasman Highway, Orielton, Tasmania 7172 1097

JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

HOBART

Monday, 4 August 1997

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Adams
	Mr Bartlett
	Mr Tony Smith

The committee met at 1.20 p.m.

Mr Taylor took the chair.

KAYE, Mr Stuart Bruce, Lecturer, Faculty of Law, University of Tasmania, GPO Box 252-89, Hobart, Tasmania 7001

TURNER, Miss Sarah Luise, Student, Faculty of Law, University of Tasmania, GPO Box 252-89, Hobart, Tasmania 7001

CHAIRMAN—I declare open this hearing into the inquiry into the status of the UN Convention on the Rights of the Child Australia. Before we take specific evidence, is it the wish of the committee that submissions Nos 48A, 168, 357, 348, 351, 339, 331, 334, 274 and 368 be authorised for publication? There being no objection, it is so ordered.

I make the point that we have had over 1,300 inquiries about this particular convention. We have already received 400 submissions and, of course, we are very pleased with what we have received to date. We would like to thank everybody, particularly the two witnesses whom we welcome before us at the moment, and we welcome the evidence that will be provided both this afternoon and later on this week.

The committee has visited most states and territories. We have already visited Perth, Adelaide, Sydney, Brisbane and Melbourne. We have another visit scheduled for Sydney tomorrow and for Brisbane on Wednesday. We will certainly be having further hearings in Canberra, but we may very well have a hearing for a particular reason in the city of Ipswich in Queensland, and in Alice Springs, to name but two more.

We will continue to receive submissions so long as the interest is high—and it is indeed very high, as I said before—and the length of the inquiry will depend on that public response. It would be fair to say that the perceptions that abounded in 1989, prior to the 1990 ratification, are still around and that we have a wide spectrum of views on, attitudes to, and perceptions of, what this convention means. It clearly means different things to different people.

There are a couple of points that I want to make before we start, in relation not only to your evidence but to later evidence this afternoon, and I will be interested in your reaction to what I am about to say. Firstly, there is an understandable perception by a lot of people that, simply because the UN decides—if that is the right word—certain things in relation to conventions, treaties, protocols or whatever you want to call them, Australia is legally bound thereby and simply follows on. The analogy I have used in previous hearings is that Australia should not get a treaty cold simply because Geneva and New York sneeze. That perception is out there, and we are going once again to take evidence this afternoon where those perceptions are very strongly held—and I am not being critical of those perceptions.

Secondly, in relation to reservations, Australia—as both of you would know—in ratifying in December 1990, put down one reservation in relation to article 29(c). Some—myself included—would say that it was a seemingly minor reservation, whereas perhaps

some of the more important ones needed to be reserved in a little more detail. Nevertheless, some people think that we can put further reservations down—which, of course, we cannot do. Again, I would be interested in the questioning of both of you to hear how you see some of these things.

Since some of the written submissions have come in, we have had not only the Teoh case but the post-Teoh legislative solution—if that is the right word—and I suspect that we will be asking you one or two questions on that. Clearly, the question of strong perceptions—particularly among parents groups and some church elements—that this convention is all about taking away the rights of parents is something that we do need to listen to and take cognisance of. But I have to say that some of it is not well founded in fact, and so we need to bring that in to the evidence this afternoon.

With those comments, I particularly thank you for what is one of the best written submissions we have had for a long time. It is good to see submissions that are without any bias. The final point I should make very clear is that this committee has no agenda, despite what some people might suggest. We are here to listen to the facts and, as a result of all that, to make the appropriate recommendations, hopefully by the end of the year or early next year, to the government for their further consideration. We thank you for the submission. Are there any editorial changes to that written submission, or any errors or omissions that you want to correct before we ask you to make an opening statement?

Mr Kaye—Yes. Actually, it was drawn to my attention earlier that we had failed to comment upon article 8 of the convention in so far as it applies to Tasmania or Tasmanian law.

CHAIRMAN—Yes; I see that you have jumped from article 7 to article 9.

Mr Kaye—It is only a relatively minor thing. It does not impinge to any significant extent on Tasmanian law but, in the way of omission, it is something that I bear responsibility for.

CHAIRMAN—In the context of the opening statement I am about to ask you to make, did you want to make some further comments about article 8?

Mr Kaye—Not expressly. If the committee wishes to be enlightened as to what we feel about article 8 in Tasmania, we are happy to oblige.

CHAIRMAN—I now invite you to make an opening statement.

Mr Kaye—The Convention on the Rights of the Child has generated a substantial amount of public attention in Australia in the past few years and, as was noted in the chairman's statement, some of this attention may be as a result of misconceptions as to the content and scope of the convention. On the whole, I am of the view that the convention

itself contains a series of rights which are essentially positive in looking at the welfare of children and ultimately—in addressing things like the standard—looking towards the best interests of the child. These are things that we should not be concerned about but rather should encourage in the application of our law.

Our survey looking at the consistency of Tasmanian law with the convention was essentially quite encouraging. We found that, for the most part, Tasmanian legislation does meet the basic criteria set down in the convention, which is as it should be if Australia—and Tasmania is a part of the Australian Commonwealth—wishes to hold itself up in the community as a good international member and as a place where the rights of individuals are respected.

What deficiencies we did locate appear to be to a large extent addressed in the context of two bills that are presently before the Tasmanian parliament. If those bills in their present form pass, we would be of the view that the bulk of the rights accruing to children under the convention would be essentially met, in terms of Tasmania's legislative structures.

There are some small areas that we have identified. We are happy to deal with these specifically, if the committee wishes, but on the whole we are quite encouraged by the content of Tasmanian law. Whilst further improvement is always possible, we think that, essentially, once these two bills have passed and become law in this state, the rights of children here are as well protected as one could reasonably expect within a democratic Western society.

CHAIRMAN—Did you want to make any opening comment?

Miss Turner—No.

CHAIRMAN—Let me take you back to your paper and the conclusions. You suggested that there were two options available. One was for some sort of umbrella legislation at the federal level to encompass everything—legally, morally, ethically, whatever way you want to look at it—that this convention encapsulates. For a number of reasons you have suggested that that might be difficult. As an individual, I tend to agree with that. From the evidence we have already had right around the country, and as I indicated in my opening comments, this convention means different things to different people. I agree with you on that.

The other option you suggested was a bit more like moral suasion on the part of the Commonwealth to get the states and territories to be seen to move towards the intent of what the convention stands for. In practical terms, how do you see that taking place?

Mr Kaye—The Commonwealth has a range of different options with which it can proceed. Obviously, with its ability to tie grants to the states, it can indicate in specific

areas, if it feels a state is not doing sufficient to promote interests in relation to the convention, that moneys will be forthcoming to assist a state to do that. In our submission we comment in the context of education, for example—that it may be possible for the Commonwealth, in tying grants to the states in relation to education, to require that schools be encouraged to ensure that there are sufficient counsellors available to assist with children and along those lines.

The Commonwealth can take a pro-active approach in terms of meetings of Australian attorneys-general and seek to encourage the adoption through those means and seek to coordinate efforts between the states to ensure that those objectives are met.Similarly, the Commonwealth can, through forums such as this, seek to encourage. It does not have to take a legislative stick to the states. I think in the longer term it would be advisable not to, because while there are public misconceptions about the content of this convention, if it were seen that the Commonwealth was imposing a solution upon the states, that could have undesirable consequences.

Mr ADAMS—With regard to the different ages used in the statutes in Tasmania, what are some of the practical difficulties with that?

Mr Kaye—As we indicated in our submission, it creates problems in terms of the application of different laws to children. Certainly, one would imagine that if a person is not yet at the age of majority, they are denied the right to vote and some of the other privileges of adulthood within our society. If laws are then imposed upon people who have not reached the age of majority without providing the benefits and privileges of that, certainly, I would regard that as inequitable. It creates difficulties in the application of specific laws.

In the context of the first article, we have looked at some difficulty in relation to police offences and the way children are dealt with and in terms of child welfare. To some extent, the bill that is presently before the House, the Children, Young Persons and Their Families Bill, will address most of these problems but not all of them. It would be logical and advisable for the Tasmanian government to consider whether it is appropriate to amend the various statutes to ensure that those inequities have been removed.

Mr ADAMS—Would you recommend that to them?

Mr Kaye—Certainly, it would be something that they should take on advisement. In specific instances, I can see why different exceptions have arisen, but some of these exceptions date back quite a number of years before there was any notion that coordination should be looked at and, indeed, when the age of majority was 21. Certainly, things have changed and it is perhaps appropriate to ensure that inequities that may have arisen simply by the passage of a considerable period of time are not permitted to continue.

Senator ABETZ—Can I follow along that line of questioning. I understand what you are saying—that if there are inequities, sure, we want to remove them. But aren't there different aspects of a child's maturation which would allow the law to be operated differently in relation to the child's age, taking into account the maturation process, so that for certain purposes, a child may be deemed to be a child until, say, the age of 16; at other times, up to the age of 18, depending on what the issue is that actually impacts on the child and the society.

I would have thought that having a different definition of 'child' for different pieces of legislation is in fact not inconsistent with the convention because the convention continually talks about 'in line with the maturation of the child'. If we were to put a simple age definition of 18 years and say that that is when responsibility starts for children, as opposed to only talking about their rights—let us also talk about their responsibilities—some of their responsibilities might in fact start before they hit the age of 18. If they have reached the appropriate maturation level, there is nothing inappropriate in doing that, is there?

Mr Kaye—Certainly, the convention implicitly indicates that you should treat children of different ages in different ways. I am not suggesting that it is appropriate to treat all children, regardless of their age, in precisely the same way. Obviously, as children mature, they should take greater responsibility for their action. Indeed, the bills that are presently before the parliament do this by specifying that children above the age of 14, prior to reaching the age of 18, are to be treated differently from other children; and children, as they approach 16 or 17, are also to be treated in different ways.

What is appropriate, though, is to remember that requiring greater responsibility on the part of a child for their action as they reach 16 or 17 does not mean that they should necessarily be treated with all the responsibilities, punishments and so forth that adulthood may bring. So it is appropriate to say that a 17-year-old should not be placed in Risdon prison with the general population if they have committed some sort of offence; it is appropriate that they be dealt with differently.

On the other hand, it would not be appropriate to deal with a nine-year-old in the same way as you would deal with a 17-year-old. There are different responsibilities. The convention, to some extent, recognises this implicitly. A logical legislative scheme to implement these sorts of rights should do so, too. If I have given the impression that a blanket age cut-off should be appropriate for everything, then that is not precisely what I was indicating.

Senator ABETZ—Thanks for that clarification. You indicated early in your opening comments the scope of the convention. It would be fair to say that that is the issue that has caused the most concern. Nobody has been able to tell us exactly what the scope of the convention is. Depending on your philosophical approach to it, you can say that it outlaws abortion on demand, for example. If you read it consistently, I think a very

strong case could be made out for that assertion. Others would argue that, clearly, it does not, but what it does is to say that you are not allowed to have corporal punishment of children, whereas other people tell us that the scope of the convention is not that far-reaching.

As I see it, that is the greatest defect in the convention—it tries to be all things to all men and women. Of course, whoever can hijack the public debate just quotes the convention to assist them and try to give them some moral authority. Do you have any comment about the vagueness or looseness of language within the convention? Do you, for example, agree that it would outlaw abortion on demand?

Mr Kaye—I would say that the convention deliberately leaves itself sufficiently vague to allow those sorts of questions not to be answered. In the context of international law, with large multilateral conventions where sticking points are reached during the preparation and negotiations it is often easier for the delegates to avoid a problem by couching the problem in such vague language that everybody's answers and concerns are addressed, so that the convention will not resolve those particular problems. Were it to resolve those problems, you would find there would be a substantial lack of international support that may prevent the convention itself ever coming into force.

So I suspect that the vagaries of the language in the convention are entirely deliberate upon the part of the states that originally adopted it. To some extent, that vagary is probably in part responsible for the tremendous international support that the convention has received, because people with widely differing views have been able to find support within it and urge their states to adopt it. While that presents a problem in terms of domestic law, in international law it is a strength.

From our own domestic point of view, the actual content of the convention need only be married with the content of our domestic law to meet our obligations. The convention itself does not have any direct substantive law impact upon our domestic law. The High Court has qualified the circumstances of that in Teoh, obviously. But the content of Australian law is still ultimately determined by Australian parliaments. Those parliaments are obliged in international law terms to act in accordance with the convention. If the convention gives a wide range of potential actions that can still be in accord with it, that is advantageous for Australian parliaments still pursuing their democratic obligation to reflect the views of the Australian public.

Senator ABETZ—Right. But following on from that, you have got a very vague convention, you say. The federal government interprets it one way; all the state governments interpret it another way; but, by virtue of the vague language, the federal government then has the legislative authority to pass laws along certain philosophical lines because it has found a convenient interpretation of the treaty which, for example, all the states might disagree with. Can you see that as a problem for the Australian context?

Mr Kaye—I can see that it would certainly occur and, ultimately, it is the High Court as the arbiter of the validity of our legislation that would have to determine that. If the problem is because the convention is vague, I would suggest that, in international terms, that problem will not be resolved and cannot be resolved in the present circumstances, so we must make the best of what we have. A cooperative approach, as suggested at the end of our submission, tries to avoid the situation occurring that you have outlined. That is one of the reasons we think that that is the way this particular convention ought to be approached.

Senator ABETZ—Are you aware of the number of reservations that have been lodged against this convention?

Mr Kaye—I understand that there are a substantial number of reservations. I believe something in the order of 40 of the 180-plus states who have been parties have lodged reservations to a range of different provisions. On the whole, I suspect that those reservations do not necessarily prevent the convention becoming what is known as customary international law, in which case it would create binding obligations on Australia in international law in any case. So from the international law point of view I do not think the reservations necessarily have a tremendous impact.

Senator ABETZ—That comment is interesting, given what you said earlier—that just because we have signed a treaty does not give us obligations. You are now saying that even having reservations on the treaty does not avoid the international obligations that arise from signing the treaty.

Mr Kaye—In the context of this particular convention, simply because in excess of 180 states have adopted it and those states have indicated a willingness to comply with its content that would create obligations within international law and a form of international custom. The fact that Australia may be under obligations in respect of international custom also does not have any impact upon the content of our domestic law.

International custom has things to say about ships'passage, and so forth, but nobody got terribly upset when Australia became a party to the law of the sea convention, for example. The fact that customary international law obligations may attract in relation to this particular convention, in addition to those we have accepted explicitly by becoming a party, will not have any direct impact upon our domestic law beyond what the High Court has indicated in Teoh's case.

CHAIRMAN—Just to take that a little further, irrespective of the fact that some countries have inserted reservations, on the other hand, others have not expressed reservations and have signed without reservation. For example, one or two of the Islamic countries have said, 'Yes, we have signed, we have ratified.' How do you reconcile that attitude with the moral and ethical dilemma that a number of these countries have where they practise female genital mutilation? It seemingly is inconsistent.

Mr Kaye—Certainly there are logical inconsistencies when one looks at it. Scholars from these countries have attempted to justify this in international law terms by referring to notions of cultural relativity, that different cultures interpret the same provisions of a convention such as this in different ways in a manner consistent with their cultural background. So they would argue that defending the rights of children, or perhaps treating male children in a different way from female children through their school system, and so on, was consistent with their cultural background.

A number of Western international lawyers have strongly repudiated that and suggested that it is a fallacious argument and ought not to be countenanced in any way. There is a debate going on in international scholarship whether that is so. Certainly the vagaries of the convention give some support to notions of cultural relativity. I personally find some of the extremes that it is taken to—and examples such as you have given would fall amongst those—are inappropriate and I would suggest that Australia should urge these states to reform their practices. But the behaviour of other states ought not to affect our own domestic obligations or the manner in which we go about implementing the convention.

Senator ABETZ—If nothing else, the stolen generation report has basically told us that do-gooders in public bureaucracies do not really know what is best for children, although they might have all the best theories of the time at their disposal, and that at the end of the day parents are the best equipped to look after the basic needs of their children because the bond of love will always outdo any bonds of sociology or something that people in a bureaucracy may have learnt about when they went through their studies.

It would be fair to say that in the community at large the major concern with this convention is its undermining, as it is seen, of parental rights. There are appropriate soothing statements in the introductory aspects of the convention that parental rights are a good and proper thing, but further into the convention there are basic rights that children have, for example, their right to associate and their right to freedom of expression. Article 33 deals with protection from drugs and article 34, sexual abuse. You have got them on page 20 of your submission.

What does a parent do who says, ‘I want my kids protected from drugs and therefore I’m telling them they are not allowed to mix with children of their own age group after school who do deal in drugs or practise drug taking,’ or, ‘I won’t allow them to search the Internet because there are bits and pieces, if they access it, that deal with child sex and things of that nature’? Parents ask how this convention stacks up when it preaches protection from drugs and sex abuse, but they, as the major carers of children, cannot say to them, ‘You’re not allowed to mix with these people of ill-repute or these people who might be wanting to deal in drugs.’ What message is in the convention for parents who are concerned about their rights and desires to bring up their children in an atmosphere free from drugs, sexual abuse and basically undesirable activities?

Mr Kaye—I believe the convention does not take quite so negative an outlook on this. Parents are still recognised as the principal caregivers of children and have the principal responsibility for raising children. The convention also indicates that there should be express protections against children being exposed to material of a sexual nature or protection from those attempting to provide them with narcotics, illicit drugs or psychotropic drugs. These are things which are to be encouraged and strengthened.

What tends to get lost in the wash are notions that children should be entitled to freedom of expression, ideas, religion and so on which are encouraging the sorts of things which are not alien to Australian society at all. We would all like our children to grow up in a society which encourages freedom of speech and which encourages children to read and to form their own ideas based upon knowledge that they acquire. Obviously some forms of knowledge and some forms of experience are not desirable. Parents ought to be able to ensure that their children are protected from those things and, where appropriate, the state should intervene to ensure that those sorts of experiences or materials are kept from children because they are not appropriate.

I do not believe the convention is saying these sorts of experiences and these sorts of materials are opened up for children to get access to. Those who would suggest that the convention is proceeding down that path are taking an interpretation which is not consistent with the overall principles under which the convention proceeds.

Senator ABETZ—The convention is pretty absolute in relation to freedom of expression, freedom of association and things of that nature, is it not? There is already feedback from parents in the community when they talk to social workers about their children mixing with other children that might smoke marijuana. The comment is that a lot of them are doing it, so you are an overprotective parent and you are trying to stultify the growth and development of your child. To those of us that are parents, that is pretty frightening stuff because we want the best for our kids. That, I think, is the major community reaction to this convention; that there are people who deem somehow a better knowledge of the individual children and how to bring them up than the parents themselves.

I would have thought the stolen generation report would have been a salutary lesson to all of us that, despite the theories of the day, chances are parents do know best. There does not seem to be any real support for that in the convention other than the feel good statement somewhere in the beginning about parental rights. But you will notice that quite a few of the reservations to the convention are an assertion of inalienable parental rights, which would seem to be of more importance than the rights that are given to the children.

CHAIRMAN—Was that a question?

Senator ABETZ—I would be interested to hear a comment on that.

Mr ADAMS—Does the convention prohibit the rights of a parent?

Mr Kaye—It is an area which, once again, is lacking in some degree of clarity. Obviously it would not be acceptable for the convention to state that a child has no right to freely express their ideas because to do so would infringe broader human rights that are applicable to all members of the community, regardless of their age. But, logically, children are not always in the best position to know what is in their best interest and parents have, as I have indicated and as the convention does state, the principal role in the care of children.

What the convention is principally about, however, is ensuring that certain rights that children do have are protected and that, in some circumstances, children whose parents are either unable or unwilling or who may not be present at all also need the protection of the warm and caring family environment we would hope that all children would have access to. The convention goes to some lengths to spell out the sorts of rights that children in all situations ought to have—including those children who do not have the sort of family environment that we would all wish for them. Accordingly, that has to be expressed in terms that do not refer to parents, because parents will not necessarily be present.

So, I would not say that the convention was hostile to family values or that, if such an interpretation were possible, such an interpretation ought to be supported. The importance of a strong family structure is recognised in the convention and is generally recognised as the most appropriate way to bring up children. If such a structure is not available, or if such a structure is not functioning properly, it is appropriate for the state to ensure that the rights of children being raised are protected as fully as possible. That is the interpretation of the convention which I would encourage and it is the one which I believe that different governments in different jurisdictions, including Tasmania, ought to adopt.

Mr BARTLETT—I would like to return for a moment to the question of vagueness of the convention. You referred to that as being possibly deliberately vague. Does not that, to a certain extent, make it meaningless to try and enact the convention into law, when almost any interpretation can be said to be being applied already? For instance, the issue of the rights of the unborn child is a fairly significant issue where you can argue on one hand that Tasmania's legislation already is consistent with the convention, yet in another state where abortion on demand is okay its law is also consistent with the convention. How then do we go about trying to enact legislation which ratifies the convention when we can be doing two totally opposite things and still be said to be in accord with the convention?

Mr Kaye—It does raise a problem, and it is not a problem for which I can direct the committee to a simple solution. Certainly, however, the difficulties of vagueness can be found already in our law. Take the notion in the common law, in terms of the law of negligence, of 'a reasonable person'. Exactly what a reasonable person is in any given

situation will vary, and it is not something that can be easily defined. I would argue that principles like acting in the best interests of the child present the same problems but also have the same advantages, in that they can be adapted in different situations.

That is cold comfort to legislators but, on the other hand, it means that the courts and those charged with the administration of departments of community services and so on have some degree of flexibility in dealing with particular problems. To tighten up definitions further would remove that flexibility, which would not necessarily be a good thing. On the other hand, while the definitions are vague we do have some degree of freedom of action. It is not satisfactory, but—

Mr BARTLETT—You have said that there is in Tasmania substantial compliance with the convention under Tasmanian law, and that that is what you would expect in a democratic and relatively free society with strong traditions in the provision of education and concern for the welfare of children. Given that statement and the vagueness of the convention itself, what do you see as the value of trying to go further and enact the convention in Tasmanian law or in Australian law?

Mr Kaye—Some of the principles within the convention have not been borne through entirely, and further steps could be taken, certainly in the context of broad ranging antidiscrimination legislation. That is presently lacking in Tasmania and is something that could be addressed. Further efforts can always be made. Exactly how far you go and what steps are appropriate are ultimately something for legislators and governments to determine. As an academic lawyer, I see my role as merely to point out where it would be possible to go further, and not necessarily that going further would be advisable or, in an overall sense, beneficial in terms of the budgetary strain that it might induce and its impact upon other areas of government responsibility.

Mr BARTLETT—Could you comment briefly on what you see those budgetary strains as being?

Mr Kaye—Obviously, implementing a convention to the nth degree would cost a lot of money. If you take that money from other areas where the government has responsibilities, those areas will suffer. If you put so much money into protecting one thing that you deprive another, the overall impact on society may well be negative. It is not a position for somebody like me to say.

I am looking at it in a rather blinkered sense and I recognise that by approaching these questions in that way, I am not in a position to say that this must be done, or that this approach is the way to go, because I am not in a position to comment on what other impacts or what flow-on effects that may determine. That is essentially the role of parliamentarians.

Mr BARTLETT—With regard to the two new pieces of legislation—the Children, Young Persons and Their Families Bill and the Youth Justice Bill—do you know whether

they have been framed with the convention in mind? Did they come out of the convention, or did they just come out of a perception of an area of need that had to be addressed?

Mr Kaye—I strongly suspect that they are influenced by the convention, although they make no direct reference to the convention anywhere within them, nor is there any mention of the convention in the appropriate minister's second reading speech in both cases. Certainly, from informal discussions I have had with members of the department who were involved in their preparation, I know that they were aware of the convention and were seeking to resolve some of the potential difficulties that compliance would attract. However, that has not been done expressly.

I do not know whether that lack of direct reference is as a result of Teoh, to ensure that Tasmanian administrators would not be burdened with the notion of having to give rise to legitimate expectations. Certainly, the structure of the two bills, and the direct reference to notions like the best interests of the child test, would suggest that the convention has played a role, but not one that is expressly acknowledged.

CHAIRMAN—In terms of that legitimate expectation in Teoh, as a lawyer and an academic, what is your reaction to what the federal government is now intending to do in the post-Teoh situation? I am referring to that international instruments bill.

Mr Kaye—I can certainly see why the federal government would wish to do that and why the previous government was also of a similar view. Potentially, it could create all sorts of unfortunate side effects in the administration of laws which were not designed to give effect to particular international obligations which Australia had accepted. On the other hand, I can also see why the High Court would suggest that it would be legitimate for decision makers to be aware of international obligations that Australia has accepted.

I think it is an interesting legal question as to whether or not the bill will ultimately succeed in its intended objective. I think it would also be frightfully interesting to know whether the executive statements that have been made would have a similar effect. I suspect that the bill would probably be successful, on balance, from my own personal point of view. As to whether or not it is appropriate, it would depend upon the particular circumstances. One would like to imagine that if Australia does accept an international obligation, it does so in accordance with the principle of pacta sunt servanda—that we accepted in good faith. If we do so, then we would expect our decision makers to be acting on that.

CHAIRMAN—But it does not necessarily avoid any future High Court testing of that piece of legislation?

Mr Kaye—I think any piece of legislation cannot avoid High Court scrutiny if somebody wishes to place that legislation before the court.

Senator ABETZ—That is a very important point. At the beginning you said that just signing up for an international treaty is of no consequence; that it is up to the government to accept it or not to accept it, and legislate for it. Now you are saying that even if the government were to legislate domestically to say that such and such a convention does not have an impact on our domestic law, the High Court could still decide, 'Blow you, parliament, we're going to interpret the effect of this international treaty as it impacts on the citizens of Australia.' I think what you have done, possibly inadvertently, is not to make anybody feel better, but to heighten the concerns of people in the community that in fact these international treaties do take on a life of their own, irrespective of the role that the domestic parliament takes in trying to implement them or, indeed, reject their implementation.

Mr Kaye—I suggest that it is important to recall that the direct impact of Teoh upon Australia's domestic law is rather small. Essentially, the court is saying in that case that, where a particular administrative official had to make a decision under an act, one of the considerations that that official would reasonably be expected to be cognisant of would be an international obligation Australia has accepted. That does not create an obligation on the official necessarily to act upon that legitimate expectation, to let it influence that official's reading of Australian law or to require the official to act in a manner which is in accordance with international law.

Certainly, if officials do not act in accordance with international law, that creates no ramifications within our domestic law and it does not alter the content of our domestic law. It may create ramifications in an international arena and may leave Australia potentially open to international litigation as a result of the actions of its officials. But I strongly suspect that most states would not really care sufficiently in relation to minor administrative matters, and I do not believe that the Teoh case necessarily alters the basic principle that the content of Australia's domestic law is still a matter which is essentially for Australian parliaments and Australian courts.

Mr TONY SMITH—You raised that question of the executive statement; wasn't it Mason and another judge who virtually invited the government to make an executive statement by some observations in the judgment? I think it was in the judgment of the chief justice. There was no executive statement about this, so immediately my predecessor in the federal seat I occupy and the Minister for Foreign Affairs produced an executive statement and then we followed it in February.

Mr Kaye—It is certainly not an unreasonable interpretation to say that the effect of Teoh was to create a situation whereby Australian administrators were obliged to be aware of international law and that it is possible to interpret that in such a way as to say that if the executive directs those administrators not to take into account such considerations then, as a purely administrative action, that is an entirely appropriate thing for the government of the day to do. Whether the majority of the High Court would concur with that at the present time would be idle speculation.

Mr TONY SMITH—Who would know? Turning to a couple of the opening points you made, first of all you said that there were misconceptions as to what the convention really was, or what it meant. Then you went on to say that the content of the convention needs to be married with the content of our domestic law which, if I may so—and you can comment on it later—seems to be restating the problem: a problem of interpretation. I will go straight to that question of interpretation. Do you agree with the proposition that Australia's obligations under the convention can only be properly understood by reference to the United Nations charter, the Universal Declaration of Human Rights 1948, the Declaration of the Rights of the Child 1959, and the International Covenant on Civil and Political Rights 1966?

Mr Kaye—Australia is a party to all of those international instruments you have referred to and it is arguable that the great bulk of them already form part of the content of customary international law. Obviously, in interpreting any item of international law, one must be cognisant of the environment in which the particular instrument exists and it may be of assistance in determining what particular rights mean by reference to broader principles. It has been argued, for example, in the context of the universal declaration, that it is beyond being part of customary international law; it represents principles which cannot be derogated from by any state, regardless of whatever obligations that state has accepted. On that basis, it would be difficult to interpret the Convention on the Rights of the Child in a manner inconsistent with those other instruments, but it would not necessarily follow that you would have to have a weather eye on all of those instruments every time you picked up the Convention on the Rights of the Child.

Mr TONY SMITH—That is having a bob each way, isn't it? Can I take you down the track a little further, because I have grave concerns about articles 12 to 16, but article 12 in particular. Let me put this proposition to you: in trying to interpret article 12, there is a debate on either side as to what article 12 means. There is a view that article 12 is undermining the fundamental family unit. There is another view that—and I have never heard the view expressed other than in purely looking at article 12; never by reference to other international instruments, by the way—it does not mean that, it just means that children have more rights, or words to that effect, without ever really clarifying it totally.

May I put this to you in the context of these other international instruments: article 16(3) of the Universal Declaration of Human Rights states inter alia that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state; article 26(3) of the same convention states that parents have a prior right to choose the kind of education that shall be given to their children; and in the International Covenant on Civil and Political Rights, elaborating on some of the rights listed in the universal declaration, article 18(4) compels states to 'have respect for the liberty of parents and, where applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions'.

Bearing all of that in mind, I now turn to a practical application of the

interpretation of article 12 by a committee of the United Nations, having regard to the fact that by articles 44 and 45 we, as both signatory to and ratifier of the convention, subject ourselves to that committee's interpretations of the convention. Although I make passing reference to that, I am not quite sure whether article 45 does that in fact, but it seems that the committee does try to interpret what the convention means, and I will give an actual example.In relation to a situation that occurred in England, a report by the United Nations committee stated:

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

Now therein, if I may say so, lies the problem. Arguably, having regard to the international instruments, that opinion really has absolutely no weight whatsoever in terms of being misdirected, I would have thought, in relation to the other articles of the convention, to make a statement like that about article 12. Isn't that really the nub of the problem—that when you look at the totality of those instruments you would say that that is totally inconsistent with that ruling on article 12?

Mr Kaye—It is certainly not always easy to reconcile particular points of view in the context of the application of this convention and, indeed, other elements of international law. Certainly, the particular article in question in the Convention on the Rights of the Child—article 12—says that you should take into account the views of children and they should have the right to be able to express those views.

In the context of Tasmanian law and the bill that is presently before the Tasmanian parliament, a court, in making rulings as to what is in the child's best interests, is obliged to take account of the child's view on what is in its best interests once the child has reached an age where it is potentially relevant for the child's views to be taken into account. The same thing is found, I believe, in the Family Law Act in terms of having regard to custody orders and so on.That sort of principle has to be expressed within the convention. If the child is of an age where they are able to make rational statements and understand what is going on around them, they should be able to make statements as to what they feel is in their best interests.

In stating that, the convention potentially leaves itself open to the sort of interpretation that you have indicated, that somebody can take this to an extreme. It is difficult in an international convention to avoid that problem because, to get the requisite international acceptance, the language has to be couched in very broad terms. By couching things in broad and vague terms, interpretations are left open which can result in extreme behaviour or extreme interpretation, or interpretation which appears to be inconsistent with other aspects of international law.

Essentially, because the convention itself does not form part of the fabric of Australian law directly in terms of creating binding obligations upon Australian citizens, it is up to the various parliaments to implement the convention as they feel appropriate. Since our parliaments are democratically elected and our parliamentarians pass laws with an eye to the views of the public, one would hope that in the circumstances such extreme interpretations would not flow here.

As to the impact of those committee resolutions on Australia, my understanding is that they can be transmitted in relation to Australia but they do not necessarily require Australia to take remedial action—they can recommend that particular things occur. So the committee can recommend all it likes on any particular subject, but it is still ultimately for an Australian parliament to determine the content of Australian law as it directly binds Australian nationals.

CHAIRMAN—Particularly in relation to the family law legislation, is the recent full bench decision in B and B consistent with what you are saying?

Mr Kaye—I am not a family lawyer by trade, so it would be inappropriate for me to comment on the precise content. I am aware that, in the context of the legislation currently before the House and taking into account the best interests of the child in the making of custody orders and so forth and taking into account who should be charged with the guardianship of a particular child, it is appropriate that once the child reaches a certain age that that be done. In the context of the Family Law Act, my understanding is that similar provisions already exist. Exactly how the Family Court has interpreted that is not in my area of expertise and it would be inappropriate for me to comment.

CHAIRMAN—Would you take that on notice?

Mr Kaye—I would be happy to take it on notice and provide an answer to the committee in the fullness of time.

CHAIRMAN—B and B was a case held three weeks ago by the full court of the Family Court.

Mr TONY SMITH—It seems that, in effect, your original proposition about the content of the convention needs to be married with the content of our domestic law. It effectively restates this problem of interpretation. The way it stands is that, because of the politics of the committee coming over here and saying that Australia is not observing its obligation under the convention and the politics that that creates within the community—and you can imagine what that means—you get back to saying, 'As a community, are we really quite uneducated on international instruments?'

From the way I read the observations which I have just quoted by the committee in England, it seems to me that the committee there has ignored its own instruments in

making such pronouncements and focused entirely on article 12 in the context of a particular situation and perhaps in the prevailing politics on the committee concerned. We, as legislators, have to legislate for the peace, order and good government of the community. As Jesse Helms said, are we not really opening a can of worms when we say that this convention needs to be married with the content of our domestic law when no-one will or can quite explain what that means?

Mr Kaye—The lack of precision does create problems but it also creates advantages. It ensures that our legislators are ultimately the persons who determine how this is directly addressed. That is not satisfactory if you want a direct answer but international law almost never gives you a direct answer and some degree of flexibility is not without its benefits.

Mr TONY SMITH—Of course, international law did not teach us about the paramount rights of the child. That was a common law evolution. I can recall cases going back to the late 19th century or earlier which talked about the paramount rights of the child. So what I am saying really is: do we need something that has the potential to create this divisiveness in the community when in fact our common law and our statute law are such that we respect all of these things in any event?

Mr Kaye—In those sorts of circumstances I would suggest that merely taking on board these sorts of principles in our international relations with other states should not create any problems for us. It should create problems for the sorts of states which do not respect the rights of children. Certainly, if Australia said, 'We comply with all these things; we look after our children but we have no interest in becoming a party to the Convention on the Rights of the Child,' it provides an opportunity for those states which do not respect the rights of children to continue treating children in an appalling way.

Mr TONY SMITH—The US has not signed or ratified this.

Mr Kaye—No, the United States often finds itself in a position where it is highly suspicious of international human rights instruments to an extent which, for international lawyers who are not American, is a little curious on occasions. Certainly, the United States in its international behaviour has more to consider in adopting or not adopting international conventions, because the ratification of a convention under American law creates binding obligations upon American citizens once the ratification has taken place, which is very different from what occurs in Australia.

Senator ABETZ—In every other country?

Mr Kaye—Not necessarily in every other country. Each country has its own approach to what impact international instruments have upon its domestic law.

Senator ABETZ—Yes, but which other country has that same strict regime which the United States has? I would think that if all the other countries had exactly the same

regime as the United States, then these conventions would be treated more seriously and you would not have all of these countries signing up in the hope that they will never actually be applied.

Mr Kaye—My understanding is that a significant number of civil law countries have similar provisions in relation to the adoption of international conventions; that the mere ratification is sufficient to create binding obligations within their law. It is not generally the case in common law countries, particularly countries in the Commonwealth tradition. The United States, even though it is essentially a common law country, is the exception to that, by virtue of the content of its constitution. Certainly, there are a significant number and most of those states have not found it too much of a problem.

I believe Russia is an example of one, although I am hesitant to advance it to the committee because their record in human rights legislation and their respect for human rights over time has not always been what one would wish.

Mr ADAMS—Neither has ours, has it? The history of this country, or of Wales, as my colleague Mr Smith quoted, is that it is only a century ago that we had children in coal mines. How long has it been since the United Nations started looking at the rights of the child? When did they start working on the convention and how long has it taken countries to become involved in signing up to it?

Mr Kaye—The genesis of the process can be traced back to the 1950s when negotiations were entered into towards the content of the Declaration on the Rights of the Child, which we have already been advised happened in l959. That was supposed to lead on to the formation of a full convention rather than simply a Declaration. That process took an inordinate amount of time, it received impetus in 1979 with the United Nations Year of the Child and subsequently it led to some rather unseemly hurry in the last few years before the conclusion of the decade on children that the UN initiated in 1979.

My understanding is that the reason they had to hurry in an unseemly fashion was they had indicated that only a small number of individuals were going to be part of the actual working group coming up with provisions and those individuals only met about once every 18 months for relatively short periods of time. Consequently, the volume of work they had to do in a short period meant that it took them rather longer than would have been the case if a larger group had sat down and hammered away at it consistently.

It is interesting to note that when the convention was opened for signature in 1989, it broke all sorts of records in terms of the number of states that became parties to it. In terms of overall adoption, it ranks as one of the top five conventions in the world in terms of the number of states which are full parties to it. So from that perspective, it does have a huge degree of international support, although that support is qualified—

CHAIRMAN—Again, you have to qualify it by looking at the record number of

reservations and the record number of signatures without reservations.

Mr ADAMS—With regard to the issue of child labour in India, the British never signed International Labour Organisation treaties for Hong Kong because of the child labour, in my opinion, that was going on there. Do you think this convention has been able to highlight throughout the world some of the abuses of children?

Mr Kaye—I think it is part of an overall effort by the United Nations for a great many years to look at ensuring that children are not exploited. You could make the same argument for an organisation such as UNICEF, which is looking to the interests of children. From the 1950s, when the Declaration on the Rights of the Child was first made, I think it has been an overall concern that children in some parts of the world have been exploited and that the overall world community finds that objectionable.

Mr ADAMS—So the philosophy behind the declaration and the convention in the first place is not to upstage parents in Australia from raising their children in the way that they see fit, but it is trying to improve the interests of children throughout the world?

Mr Kaye—I think part of what the convention is explicitly trying to do is improve the interests of children throughout the world. I think that some of the concerns about the negative impact that the convention could have on parents are more as a result of reading the convention and taking it to lengths which do not necessarily fit with the overall principles that it is purporting to espouse.

Mr TONY SMITH—Just as the UN committee did in England.

Mr Kaye—I think that some of the rulings of some United Nations committees are not necessarily what Australian parliaments should necessarily have a first eye upon when they are drafting legislation. Ultimately, we are the arbiters of our own law; we accept international obligations in good faith but the content of our law is still ultimately something for Australian parliaments. If these extremes are things which people are suggesting, then it is up to the various Australian parliaments to say, 'We have no truck with extremes; we wish to give effect to the convention in a manner which is consistent with the way Australians have generally behaved.'

Mr TONY SMITH—Following up Mr Adams's point, which is a good one, it also enjoins states parties to do something about child labour. It is a horrific practice and is still going on at epidemic levels, one would think, from the material I have read recently. Is that not a positive part of the convention and yet something on which we do not see too much action, unfortunately?

Mr Kaye—It is something which Australia is able to at least raise in international forums by being a party to the convention.

Mr TONY SMITH—What about trade matters? Should we not trade with

countries that are producing materials that are being made by children?

Mr Kaye—That would essentially be a question for the government of the Commonwealth of Australia. I might have personal views on it. Those views are worth no more than those of any other Australian who would wish to express their views in a free and open society.

Mr TONY SMITH—But as part of the operation of the convention, if it is going to mean anything, we have got to look at those horrendous conditions. You would think, as part of our obligations under the convention, that it enjoins us to examine that situation quite closely and see whether or not we are importing carpets, silverware or myriad other things from countries that are exploiting children to an absolutely disgraceful degree?

Mr Kaye—We are able to take such action within our obligations under conventions such as the General Agreement on Tariffs and Trade. Whether or not such action is appropriate is, once again, a matter for the executive. On a personal level, I find the notion of child labour and so forth as objectionable as I would imagine everybody here would. What action we take upon it is something which must be considered and debated within the national arena. The Convention on the Rights of the Child provides us with a bat with which to beat these states about the head and say, 'Not only are you behaving in a manner that we find objectionable, but you are in breach of international law,' and that can be a very persuasive weapon to use. It is not the only weapon we have at our disposal; we can resort to trade sanctions and so forth within our own international obligations.

Certainly, compliance with international law has a much underrated impact. States do not go to war to uphold things like the Convention on the Rights of the Child, but pointing to another state and saying, 'You are not behaving in a manner which international law requires of you,' has a surprising impact and can pull up states, particularly if it is not part of an overall policy that the state has that is quite close to its heart. If it is something to which they have not given careful consideration, an upbraiding from the international community based upon something like the Convention on the Rights of the Child can be most effective.

Mr BARTLETT—Could you give us a number of examples internationally where that sort of response to failure to comply with the convention has resulted in a positive transformation of practices in one or a number of countries? Perhaps you could take it on notice and give us a detailed response.

Mr Kaye—I can give an example that is not in the context of the Convention on the Rights of the Child but which relates to the International Covenant on Civil and Political Rights, if you like.

Mr BARTLETT—That would be helpful, but specific examples on this

convention would be very useful, if you could take it on notice.

Mr Kaye—I would have to take that on notice, I am afraid.

CHAIRMAN—We have run well over time, but I guess the interchange is indicative of the degree to which the submission has been received. If Sarah, as a student, produced this analysis, I congratulate her on her analysis. Is that what happened?

Mr Kaye—She acted as research assistant and a substantial portion of the submission that we made was as a result of her efforts, to the extent where it was certainly appropriate that she be listed as a full co-author. She is in her final year of law studies and I anticipate has every chance of graduating with high honours at the end of this year. So it was appropriate that she be here and her contribution, to our submission at least, be acknowledged expressly.

CHAIRMAN—That is good, Sarah, and we thank you for that. It was an exposition of various nuances of Tasmanian law and their compatibility with this convention. We thought it was a very good paper.

Miss Turner—Thank you.

CHAIRMAN—We would be grateful if you would take those couple of points on notice.

Mr Kaye—Certainly; I will write to the committee.

CHAIRMAN—Again, we would be grateful if you would do that as soon as is practicable.

Mr Kaye—Yes, certainly.

[2.36 p.m.]

DENMAN, Mrs Cheryl Ann, St Helens Christian Fellowship, 54 Cecilia Street, St Helens, Tasmania

DIMITRIOU, Mrs Judith Anne, 560 Pelverata Road, Kaoota, Tasmania 7150

KUIPERS, Mrs Annette, PO Box 317, St Helens, Tasmania 7216

KUIPERS, Mr Peter, PO Box 317, St Helens, Tasmania 7216

McLEAN, Mrs Joanne Alison, 6 Lindsay Parade, St Helens, Tasmania 7216

MARSHALL, Mrs Roslyn June, PO Box 14, St Helens, Tasmania 7216

RUBENACH, Miss Sarah Maree, PMB 2, St Marys, Tasmania 7215

RUBENACH, Mr Peter Maxwell, PMB 2, St Marys, Tasmania 7215

SMYTH, Mrs Eris Mary, Member, Tasmanian Branch, Australian Family Association, PO Box 191, Devonport, Tasmania, 7310

WELLS, Mrs Sylvia Margaret, RMB 3195, Tasman Highway, Orielton, Tasmania 7172

CHAIRMAN—I welcome you as participants in a round table discussion. We have received a series of submissions from some of you. Would any of you like to make an opening statement?

Mrs McLean—I would simply like to say that I am here purely as a mother. I have read information about the convention and various articles and I have some concerns about a few areas of it, which I have stated in my letter. Basically that is why I have appeared here today to answer any questions you have and perhaps to elaborate on my point of view.

CHAIRMAN—Are there other opening comments?

Mrs Denman—I am here representing St Helens Christian Fellowship, because Stuart Lumsden was unable to be here today. We are concerned about the enforcement of the convention and its interpretation. It seems to depend on states parties who would be influenced by their own personal prejudices. So apart from our own concerns about what is in there, we have a concern about how it would be enforced and the fact that we, as Australians, seem to be signing our rights over to the United Nations, rather than allowing our own elected government to make the laws.

CHAIRMAN—Okay. I will come back to that because I made some comments, before any of this group came in, when we opened the afternoon session.

Mrs Marshall—I have similar views to those already expressed.

Miss Rubenach—I came in place of my mother, so I am just listening in.

Mrs Wells—My views are similar to those already expressed.

Mrs Dimitriou—I have many concerns, but the paramount one would be the idea of what the role of government is for the individual. There are the original ideas that the constitution framers had. I think if they were here today they would see what cost it will be to society and what changes it will impose on us, right down to what goes on in our homes. I do not think the idea of government was ever meant to be so intrusive, especially being directed from outside of Australia. It is something that was never debated.

CHAIRMAN—Okay, we will cover that.

Mr Rubenach—I am here as a parent and as part of our nation. Our nation had good laws and I believe that within our nation we can continue those good laws. I do not see anything against the United Nations having a convention as such, but not for our nation to say that we must adopt that; what I see is only to hold that as something that sits on the side. If ever our nation was in the position where it could not cope, then it could adopt something like that, but I cannot see that happening. I think if our nation keeps looking back at our past we should be right.

Mrs Smyth—I represent the Australian Family Association and I understand it has made various submissions. Our submission from Tasmania is based on the main one which was put in, I believe, by the national body of the Australian Family Association. We are opposed to the Convention on the Rights of the Child mostly on the grounds of its imprecise language, which was detailed very clearly, I thought, in the earlier submissions. The second point is that it seems to destroy, in serious ways, the autonomy of the family.

The third point is that we think it is an attack on democracy, but we have not explored properly, or at least we have not put in our submission, the relationship involved in the adoption of the principles of the convention into Australian law. I understand from what I heard being said in evidence earlier that we still need to look at that when we are looking at how the good parts are taken out of the convention for Australian legislation. It looks just like the curate's egg—that is, that it is good in parts, but overall it needs close scrutiny.

CHAIRMAN—Okay. I will repeat what I said when we opened this afternoon's session, when I do not think any of you were here. First of all, let me give you an analogy that I have used over and over again in these hearings. It relates to the perceptions, which

all of you apparently have, that simply because Geneva and/or New York coughs, Australia will suffer some sort of treaty cold. That is untrue, although this is a good example of a convention, a treaty, a protocol—whatever you want to call it—where perhaps those perceptions were created by a lack of communication with those who were really required, and wanted, to make some input to the process. That goes back to the debate in 1988-89 and the subsequent ratification in December 1990 of this particular convention.

I do not want to get party political, other than to say that I think there is pretty strong evidence, even shared now by some within the federal opposition, that in fact that two-way communication process was inadequate and that in many ways this particular convention was done by executive government which, as you would know, constitutionally has the right to do that. What we in opposition said, and now have carried through into government, was that we understood those perceptions. We gave an undertaking that we would reverse that situation and we did that within a couple of months of coming into government. That is why this committee now exists and why it is now having put to it every convention, protocol and instrument after the signature process, which gives the moral intent, and before the ratification is completed. We have 15 sitting days in which to do that.

That still does not cover the UN Convention on the Rights of the Child because that was ratified in December 1990. But the resolution of both the House of Representatives and the Senate in the joint resolution in relation to the formation of this committee, which is the second largest committee of the parliament—a joint committee, of all parties, from both Houses—also said that those conventions that are extant, and this is one of nearly 1,000 extant, would be deemed to have been tabled. Therefore, we are able to review them. That is why we are having a look at this.

This committee, irrespective of what you have heard from members here this afternoon, has no agenda. There is no agenda. The government has no agenda. We are independent of the executive as parliamentary representatives of a wide cross-section of political views. Over the Christmas-New Year break the secretariat produced, at my request, a broad ranging paper which looked at this convention and highlighted the issues that I felt had to be raised, because I was heavily involved in this in 1988-89 in the public debate. As a result of that, this committee agreed unanimously, irrespective of party political differences, that we needed to explore it again. That is what we are all about.

Since then, we have had the Teoh case, of which you have heard. I do not know if any of you are lawyers, but that is a High Court case which has come up over and over again in the evidence before us and in the lead-up to this. The federal government has only recently introduced and has had go through the House of Representatives a piece of legislation called the Administrative Decisions (International Instruments) Bill 1997, which is now in the Senate but is yet to be debated there. This legislation in fact makes it very clear that, until such time as some of these things are part of Australian domestic law, that

is about it.

I want to correct that misconception. I am not being critical of any of you at all, because it is a very wide perception that the UN is dictating to us and that we have no power over it. That is not true. This committee is part of a process to make sure that, in the future, that does not happen.

The second point is in relation to reservations. I have seen in some of your submissions that we should insert another reservation in terms of this convention. We cannot do that. Once it is ratified—which it has been—the only way that we can get things changed is by giving notice, and it would be debated again through the UN bodies. It would then depend on a two-thirds majority of the member states to vary the thing. So we cannot put a further reservation in. The only reservation put in was in relation to the imprisonment of children with parents and, although it is important that when children are incarcerated that should be done in an appropriate way, it seems that that was relatively minor in the overall scheme of this convention.

At the extreme, as a committee, we can recommend to the government de-ratification or withdrawal from this whole convention, which can be done. But we need to get views like yours and views from people who are poles apart from your views, before we come up with some sort of general conclusion—if that is possible—and recommend to government. Of course, once again, it is then up to executive government—the cabinet—to make a final decision.

I wanted to correct a couple of those ideas before we started. Do not let anybody tell you that the UN dictates to us. That may be the perception but it is untrue. In terms of new treaty obligations, I can assure you that, through discussions with groups like yourselves, individuals, peak bodies, local and state governments, and officials, this committee will make sure that the appropriate consultation takes place. It is true that that consultation did not take place in relation to this convention—quite apart from points about imprecise language, which the Australian Family Association and many others have made about this convention. Do any other committee members want to make a comment on that before we go to questioning?

Senator ABETZ—If I may, with respect, I wish to disagree with you slightly on that.

CHAIRMAN—It is your prerogative, Eric.

Senator ABETZ—'The United Nations coughs and Australia catches a cold' is a myth and a misconception: that has been what we have been told for ever and a day. The Commonwealth government at the time was confident that the assertions being made in the Teoh case would not be upheld in the High Court. But the federal government of the day and all its legal advice were shown to be wrong.

When we enter into these conventions, it creates a legitimate expectation. Therefore, as soon as we have signed a treaty, Australians can then say that there is a legitimate expectation—no matter how vague the treaty may be—that they can ask that that be applied in the Australian domestic situation. Until the Teoh case, what our chairman said was the considered view of government, et cetera, around Australian legal circles. I think the Teoh decision has blown that out of the water to some extent.

We as Tasmanians also know about the United Nations decision which then led to the Human Rights Sexual Conduct Bill, which dealt with the Tasmanian criminal code on homosexuality. I do not want to deal with the rights or wrongs or that. Suffice it to say that we signed up on that convention. We have a federation clause or reservation on that convention which basically sees Australia as a federal state—and these matters are often dealt with by the various states. As soon as we got that UN ruling, the then Attorney-General as much as said that, because of the UN ruling, we were going to introduce this legislation.

People say that the UN has no influence and cannot force us to do things; but, if they cannot force us, it seems that we are very compliant. At the end of the day I am not sure that, in practical terms in Australian society, that makes much material difference; but I do not want people here to think that that is necessarily a view shared around this table.

CHAIRMAN—Let me come back on that. I do not think there is any inconsistency between what I said and what Senator Abetz said. The international instruments legislation—which, as I say, will be debated in the Senate when we return at the end of the month—makes the involvement very clear. There is one word that has been missing before, even in the previous government's equivalent legislation, and that is the word 'parliament'. Parliament will be heavily involved, and that is what this committee is all about. So, there is not really any inconsistency between what I said and what Senator Abetz said. It is just a question of an individual view. I think we might go to questions, and we will start with Tony Smith.

Mr TONY SMITH—Mrs McLean, I see in your letter that you made a comment about article 25 and home education.

Mrs McLean—It should be article 28.

Mr TONY SMITH—I was struggling away with article 25 and wondering what it had to do with that. In your case, you have two children and you have them at home. You and your husband educate them yourselves: is that an approved situation with the state government, or is that something you had to request, or what?

Mrs McLean—It is actually quite legal and it is approved by the state government. There is a government body called the Tasmanian Home Education Advisory Council, which liaises with the Christian Home Educators Association, and approval is sought

through them. They actually come and monitor and interview us, and it is all done in that way.

Mr TONY SMITH—You say that that article, if implemented to the letter, could in fact have some unfortunate repercussions for your situation, do you?

Mrs McLean—There is the possibility that perhaps our right of choice to educate our children at home may be undermined, if it is said that children have to attend a school. But what is the definition of 'school'? Do they actually have to attend a school? Or is it all right for them to be—

Mr TONY SMITH—What you would say perhaps would be that, when read with Article 12, a child is capable of forming his or her own views on any matter. So if the child said, 'I want to attend that school,' that child is considered old enough to be able to express those views. Then you reach the conflict situation when read with Article 28, where a parent says, 'No, I don't want you to go to the school,' and the child says, 'I want to go to the school,' we get the possibility of state interference and that is where they sharply hit against each other.

Mrs McLean—That would be the case with the two articles.

Mr TONY SMITH—You probably heard me reading out that committee report from England about parents withdrawing their children from certain classes in England and a United Nations committee ruling that this was in breach of Article 12, or failing to take account thereof. You would, I take it, be concerned about the impact of a committee making rulings like that, would you?

Mrs McLean—Definitely. The parent must have input into the things that their child is being exposed to, whether it be in a school situation or not.

Mr TONY SMITH—You probably heard my line of questioning where I was looking at other international instruments which seem to put in place, or seem to have in place, certain rights and responsibilities of parents in relation to children which predated the convention. If you read the convention with some of those other things that I referred to, would you be as concerned about it? If the legislature had to effectively take account of all of those matters before drafting legislation of a domestic kind, then would it weaken some of the objections to the convention, because you do have these prior rights of parents to what education they want for their children?

Mrs McLean—I do not directly remember. I did listen to you reading those before, but I cannot recall exactly what you did say at the time.

Mr TONY SMITH—Basically there was an article in the Universal Declaration of Human Rights that parents have a prior right to choose the kind of education that shall be

given to their children. I have read most of the letters that have been put in by the group of you. It seems to be, again from what we are hearing from all of the evidence, a question of interpretation and how you interpret things. Is that a general concern that you all have?

Mrs McLean—Yes.

Mr TONY SMITH—In the case of Mrs Dimitriou I noticed some reference to the question of a child being taken out of the family situation or supported out of the family situation by virtue of a social worker and so forth. That was an experience that you had, was it?

Mrs Dimitriou—Yes, a friend. Since then I have met a couple of other parents just through chance who relate, just as he mentioned in the excerpt that I put in there, very similar stories. You say that the UN coughs and we do not catch a cold. Perhaps the government does not but, at a grassroots level, that philosophy that is enshrined in the convention from seven years ago has infiltrated into certain cultures of youth and certain—

Mr TONY SMITH—Can you give some examples of that?

Mrs Dimitriou—When life becomes unbearable at home—and 'unbearable' can be no late nights and no drugs—

Mr TONY SMITH—No cigarettes, no alcohol.

Mrs Dimitriou—Yes, all those things that many youth crave and parents do not want for their kids because they have a different agenda—different insight; life becomes unbearable. So they can complain to their mentor or through the school eventually they find the legal network, it is pretty well known in youth circles how you go about it, and you get on the homeless allowance. What kind of generation are we going to have to cope with when they reach maturity?

It seems that it is quite a common thing. I was glancing through some of the submissions that I received. There are some from Queensland that make me cry, about what some counsellor had written, a detailed one, and another from the director of an abuse institution where they counselled and dealt with children who had been in protective custody. They cited instances of social workers being ill-equipped and ill-informed, with their own philosophy and agenda, and case workers changing constantly and having different approaches. That is very threatening.

Mr TONY SMITH—In your case you mention a five-minute conversation. That was the extent of the consultation that a social worker or whoever had with you, was that correct?

Mrs Dimitriou—It was nothing to do with me. A friend had heard I was interested in this issue and he had written this letter and sent it to me about an experience he had with his teenage daughter. His teenage daughter had left home because of the anti-smoking, anti-late night et cetera problems. She also apparently had some psychological problem she had been having treatment for. When he tried to contact his daughter to get some reconciliation he was told by the police that they were treating her as an adult and they did not have to divulge any information. The social worker contacted him because of his contact through the police and he stated to me that, after a five-minute phone consultation, the social worker deemed him not interested in his daughter and they cut all contact. He does not know where she is.

CHAIRMAN—Of course, that is five minutes more than some others we have heard of.

Senator ABETZ—That is right.

CHAIRMAN—The point you make is well made and it is accepted by the committee. I do not want to digress too much. We did have a very tragic piece of evidence in Perth which led in fact to a suicide and/or overdosing by the young person concerned.

Mrs Dimitriou—I had not wished to make that a major point in my submission, but I was asked.

CHAIRMAN—It is an important one.

Mrs Dimitriou—There are many things that I believe are of just as much concern.

Mr TONY SMITH—Virginia and Gerry de Groot are not here; does anyone know them at all?

Mrs Dimitriou—I know of them but I have not met them.

Mr TONY SMITH—I found their submission particularly useful. They are not here today, but they are people you are acquainted with or know of?

Mrs Dimitriou—I have only spoken on the phone.

Mr BARTLETT—I would like to ask a question of Mrs Smyth from the Australian Family Association. In the opening paragraph the submission says that the Convention on the Rights of the Child has many good points. Would you like to elaborate on that?

Mrs Smyth—I really only concentrated, just to be difficult, on the ones that I do

not like. They are, of course, the notorious 12 to 16, which have been mentioned again and again. I think some did deal with slavery and general exploitation; all of those are good.

As I said at the beginning, it is good in parts. Therefore, I was interested to see the translation from the convention to Australian law because I was under the impression that a lot of the things would at least influence judicial or administrative decisions, even if they were not required to. I think they have been made by Senator Eric Abetz and by the Chairman. There are good points in it and they should be endorsed and embraced.

The ones that we object to mostly are the undermining of parental authority and the destruction of that family influence on the growing child. Certainly, those five articles in it would undermine that. It gives a lot of autonomy to the child. I have worked for 25 years in a women's shelter, which Mr Adams is quite familiar with. One of the problems there is the lack of parental skills and there does not seem to be very much in this that would encourage parents to develop those; rather, it seems to concentrate more on giving the child a right. If you had seen a three-year-old child in charge of a family, you would realise that they are not up to it.

Mr BARTLETT—Would you be happy if, in an attempt to enact some of the convention in legislation or to set up an office for children or a commissioner for children or anything like that, there were to be in that legislation a specific reference to the rights of parents so that the rights of parents were guaranteed and balanced with the rights of a child?

Mrs Smyth—I cannot answer that straight out because I do not really know that the setting up of a commission for children would necessarily protect children to that extent. One of our problems is the creation of a bureaucratic structure which interferes with that intimate relationship within the family. It is not perfect within the family. Most states, as you well know, have laws to deal with cases—usually extreme cases—when that parental care of the child breaks down. I believe that should be looked at.

For example, there are a lot of good things in the new families bill in Tasmania, but I was amused to find that a family conference can take place without any member of the family being there. It seems to me that if you have got a family conference and everyone concerned with that child believes that within that family conference there are blood relatives who are at least present, then people feel a certain security in it. But when you look at the content of that legislation, you see that it need only be good meaning, well-disposed bureaucrats who are in attendance. I think we have learnt enough from the stolen children report to realise that good intentions and a so-called interest in the well-being of children does not always translate into what is best.

Mr BARTLETT—Quite a number of submissions that we have received have argued strongly for establishing a commissioner for children, an office for children or a

similar sort of role. Would anyone here accept that as a positive way ahead if it very specifically and explicitly listed the rights of the parents and responsibilities of the child as a balance to the rights of the child, or would you all disagree with that as a possible way ahead?

Mrs Smyth—I think the Australian Family Association would disapprove of that. We see good parenting as the way to go. Again, if an outside body dictates how that is to be done—

CHAIRMAN—With regard to the Family Association attitude, Mrs Francis made it very clear that the action by this committee should be to denounce or de-ratify. What you are saying is that there is a lot in this convention which is worthwhile. Twelve to 16 is the area that sticks with a lot of people—

Mrs Smyth—Yes, and it stems over. If I could point out another one, in the preamble—and I am not going into the rights or not of abortion—it says quite clearly that the child before birth should also be protected; yet, as a taxpayer, I fund abortions. Obviously, as was reported in the *Australian* a few weeks ago, I also fund late-term abortions. So what does it protect and what do you see it protecting if you are going to translate it? It seems to me to be a much more difficult job.

CHAIRMAN—Do you agree with your national body? It is an extreme view in some people's mind that we completely denounce this.

Mrs Smyth—I think they see it overall as not on, but you still cannot deny that some of its clauses are good.

Mr ADAMS—I think you are all concerned about the right of the parent; it is a matter of finding some counter or some way back to giving the parents a right to have some influence and some control over their children. I think that is a social issue as well as a legislative and administrative issue. I am interested in what age groups we are talking about. It is not simple. One of the submissions stated that one of the hardest things in the world today is to raise children. Having been a parent, I would say that it most probably is. I am sure it has never been easy, and I have had that experience.

I am interested in what you would say as to when a child should start to make their own decisions—at what age. If somebody in a family takes a different political position or a different religious position within a family that has very strict positions on those two areas, to what age group do we say, 'Yes, you've got some intellectual freedom'? Should that be at 18 years of age?

Mr Rubenach—If we, as parents, do not set an exact boundary for children and if we are not allowed to say that an international law for the child overrides what the parent says, then the parent has not set a boundary and the state will never be able to set a

boundary, either. You can never put a boundary; you cannot say whether it is at this age or that age because there will not be any boundaries. It will be an open playing field for them to do what they feel is right. They will feel they should be protected, whatever they want to do, if parents do not have any authority over them. I believe this convention would bring that down. The child would feel that they have authority over their parents. As Mrs Smyth said, three-year-olds will be telling parents what to do.

Mrs Smyth—I had better explain that. That was an alcoholic situation where the child actually had taken charge of the family and allocated to the mother how much money she could spend at the pub. That little boy was the only responsible person within that context. There was an older girl who was totally distraught. I just want to clarify that.

Mr ADAMS—Peter was saying that his experience was that children always push out to the edge; wherever the rule is, they push out. That was my experience as a parent. That is where the decisions have to come from. Would anybody else like to add to that or agree with Peter?

Mr Rubenach—I will comment a little more on that. We set boundaries in our family. They knew what would happen if they crossed those boundaries. We had problems, like any family. We have six children and we have really battled with one of them. We know that if we did not hold firm all the time, we would have lost him. He would have done what he wanted to do. Now he is starting to mature into a good young adult. He is 15 now and will soon be 16. He is starting to realise his role as an adult. He is starting to realise that, as parents, we were right. We were hard on him; we had to be extremely hard. He is happy about that now, I think. He wants to join in adult things and be part of that. But I know that if we had not held firm all the time, we would certainly have lost him.

Mr ADAMS—So your experience is that family discipline was important in getting him through certain stages of his development?

Mr Rubenach—Yes, definitely. I do not know where he would have been, or whether he would even have been alive today, because things out there could have wiped him out so quickly. We have home schooling, as most of the others here have, and we kept him away from influences that we feel would have destroyed him. My oldest daughter here was home schooled, except for two years of her schooling, and she is now doing a police studies course at TAFE. She can answer questions as a child because she recently was one. Now that she is an adult, she can answer whether we were right with our disciplinary actions. If you would like to ask her, I am sure she will comment on it.

Miss Rubenach—I found it really good. When I was young I was very naughty and if I had not had discipline, I do not know where I would be now.

Senator ABETZ—What would you have done, say, at age 13—five years ago—if

you had complained to a teacher and said, ‘Gee, dad’s tough’ and the teacher had said, ‘You’ve got rights and there is a youth allowance; if you find things too tough at home because he is not allowing you to express yourself freely, you want the right to associate with people with whom you want to associate or you want to read material that you want to read but dad is saying no, then this is being oppressive to your rights and we can make arrangements for you to enjoy all those rights outside the family unit’, would you, at that time, have been tempted to avail yourself?

Miss Rubenach—I would not have been, because my views are very similar to those of my parents.

Senator ABETZ—Could you imagine other children of your age being tempted?

Miss Rubenach—Yes, I think others would.

CHAIRMAN—Is that as a result of home schooling? I guess the common element with everybody here is home schooling—or is it not?

Mrs Kuipers—Yes.

CHAIRMAN—For example, if you had been subjected to the normal student situation in a school do you think the pressures would have been too much for you?

Miss Rubenach—Yes, I think I would definitely have left home then. I have been thinking about when I was eight years old, I was planning that way, then I got home schooling and I changed.

Mr ADAMS—Some of us left school at 15 and started work. We had a fair bit of pressure on us but we came through. Maybe we are where we are today because of the pressures that we had; I do not know. I am very interested in this age thing though.

Mrs Wells—I think as Eric Abetz said before, each child is different. It is not a rate that is set so that we can say, ‘16 is it for everybody.’ It is just not like that.

CHAIRMAN—It depends on the level of maturation.

Mrs Wells—That is right.

Mrs Dimitriou—There is such a variety of human types that the relationship between each parent and child is always very different, and that is the skill that we need as parents, the fine line we always walk. That is why I think legislation gets so dangerous: you cannot legislate relationships, morals and standards. Every family is different.

Mr ADAMS—But when does a government legislate for homeless youth to say,

'We will give you $110 for the week so that you have got somewhere to live so that you are not on a street?' They are the dilemmas that face legislators. That is when you leave it to welfare workers. I do not think you would agree to that but do you leave it to people in the field or do you set a age limit or whatever? That is what I am asking you basically.

Mr Rubenach—We believe that, as we train our children, as they mature more, we allow them more freedom to make their own decisions. We have found we could allow our children, at a young age, to make a decision because we believed that they were starting to think like adults. As long as we train them to think as an adult in situations so that they know what we would do. I suppose we are pointing back to ourselves all the time but we believe that, if we are law abiding, responsible citizens, there is nothing wrong in training them to be the same as we are.

Mr ADAMS—Right, what about parents that probably should not be parents, that do not train children to have any responsibility?

Mr Rubenach—That is where the whole of society should reflect and be there to back up and support those parents.

Mrs Wells—In relation to the convention, one of the points I made in my letter was that we already cover those things in our law now. Why do we need to add something that is vague and could mean something that we do not want it to mean, when we already cover those parents?

Mrs Dimitriou—I think your question is really important, and I think Mrs Smyth touched on it when she said that a lot of time, effort and money will need to go into trying to implement this convention, and also the problems it may throw in our paths. There are dire problems in Australia and some sectors out there now. We all know about the poverty, the homelessness, the bad parenting skills, the single families, the lack of support for teenage pregnancy, and it goes on and on. We should be directing our funds into doing something about these areas because they are really the needs of the child, rather than the rights. They have needs.

Mr ADAMS—I just want to make sure my position is clear, as it is slightly different from Eric's. I believe the men and women who formed this UN convention were of goodwill. They made a convention for the best interests of children in the world. In doing that, it was not to conspire against Australian families. I think what our chairman said at the beginning of this is quite true, that there was not enough input, but that it is very easy to look in hindsight at the difficulties that come up and people's input. The new government formed this committee, which I agree with, because there was not enough input on conventions so now we have that. This committee has to try to find some solutions to some of the issues and one of those is the parenting issue. At the end of your submission you basically say, 'Give us a lead on the rights of parents.' I think obligations would be a good way to get it through but I do not how to do that. Maybe the

considerations of this committee will find that. Your submissions are very welcome along those lines.

CHAIRMAN—Yes, I think we have heard a lot about the rights of parents, quite apart from the rights of children, but less about the responsibilities and obligations of parents and I think we have got to balance the two.

Mr ADAMS—I just wanted to get away from the conspiracy theory. I do not think there are any conspiracies. Some people like to push conspiracies but I am not one of them.

Senator ABETZ—Mr Adams indicated that he made the statement that he just made in contradistinction to my position. My position is not that there are conspiracy theories but that there were ministers in the government of which Mr Adams was a member, such as Senator Michael Tate, who said that he expected that Australia, in signing up to this convention, would put on a reservation in relation to parental rights. That was the view of a Labor government minister at the time that this was being discussed and, might I add, the Catholic church and the Holy See did that. I think the Swiss government also did that and a few others have seen the area of parental rights as being very important—nobody less than the former Senate ticket leader for the Labor Party in this state in Michael Tate. But, somehow, the convention did get signed up without that sort of a protection or acknowledgment of parental rights; although, it was within the public domain as a debating point.

Having said that, can I congratulate you all on your written submission because so often with these committees—I am sure all members would agree—we have taxpayer funded organisations coming to us, who have public advocates who appear before these sorts of committees day in and day out. It is always very encouraging to see the ordinary citizen, if I can classify you as such, coming forward with your handwritten letters, or from home typewriters, indicating your genuine concern about something. I have picked up on that concern for some time. So many people see the concept or possibility of appearing before a parliamentary committee as very scary and overawing and chances are you guys felt the same so I congratulate you on having the courage to come forward.

The theme that seems to be in all your submissions is that you believe the best case to bring up children is in the family home environment.

Mr Rubenach—Definitely.

Senator ABETZ—And that, in general terms, you would see parents, in the vast majority of cases, despite all their deficiencies, as all parents have, as being better equipped to cater for the needs of a child's maturation process, than some bureaucratic system?

Mr Rubenach—As a parent, we have that special bond, that special love that nobody else will be able to give. By the mother giving birth to that child, there is a bond there that nobody outside of that family unit could ever give. I believe that bond is solid and nobody can fill that role. Other people can stand in and help in that but nobody else could ever fill that role to that child or that child to the parent in that relationship. So that is a perfect place for a child to be.

Senator ABETZ—One of the organisations to come before us, the National Council of Women of Tasmania, had a very interesting little story entitled *My mean mother*. It starts:

I had the meanest mother in the world while other kids had lollies for breakfast I had to eat cereal . . .

It goes on:

She really raised a bunch of squares. None of us kids was ever arrested for shoplifting or busted for dope.

And who do we thank for this? You're right—our mean mother. Every day we hear cries from both our people and politicians about what our country really needs.

What our country needs—is more mothers like mine.

It is a very interesting story. There are just so many anecdotal stories, like Mrs Dimitriou's friend, as to what has happened with social welfare intervention in the family unit and how easy it is for children to make the move out. When you find out that, despite the youth allowance, 70 per cent of street kids are in fact wards of the state, it gives you a good indication as to how well equipped the state is to look after those children that it takes upon itself to look after because somehow the family unit has failed. One wonders whether they would be different street kids if instead of being wards of the state they still somehow lived at home, even for part of the time. But that is an area for further concern, I suppose. To summarise, articles 12 to 16 are your concern in relation to parental upbringing of children. Is that generally accepted?

Mr Rubenach—Yes.

Senator ABETZ—It seems to me that some of the social theorising that is taking place within this country is to say if we have a problem with some children, if there are kids that have fallen over the cliff, let us give them certain rights under this convention rather than putting a fence on the top of the cliff so they do not fall off. The fence on top of the cliff would be giving government support to the family unit so the children do not end up in this situation. It seems to me that we have got the bull by the horns on this one. We should be looking at ensuring that the family unit is supported and upheld as the fundamental unit of society in bringing up children. The more that was acknowledged and

accepted within the community the less there would be of children being in those underprivileged circumstances.

Mrs Dimitriou—This is something that came to me just now. I hope it is relevant. I grew up in an alcoholic home where there was violence and neglect, stepmother and stepchildren—the lot. There was no homeless allowance, and I knew of no right. There was no way I could ever have left home. I was totally powerless, and I was there until I was 18. I had wanted to leave home when I was 17. I had had enough. I was a young woman and I really wanted to go, but my father said no. I wanted to get a job and quit school—to just leave—and he said, 'No, you have to finish matric', so I had to stick in there. I had a lot of hardships, but I learnt a lot of stuff, too. When I look back, if I had been able to get out onto the streets or into a flat with other young people, I do not know what kind of young people I would have ended up with. I had to stay at home and life was tough, but there were some good things, too. There was support. There was always a bit of support from school and church, here and there, and we all got through, the three of us kids.

I am not recommending that lifestyle, or leaving children in those situations—not at all—but I am saying that even when it is really bad, it is not always as bad as it seems. I read that the statistics are that even among children that are highly abused, the majority want to stay at home, they just want the abuse to stop. That is real abuse, not spanking or shouting and restricting partying and drugs—the things that children can now be taken away for. It is really bad stuff. That should make us think very seriously about how we disrupt families.

Senator ABETZ—Thank you for sharing that experience and thank you all for your submissions.

CHAIRMAN—Concern on articles 12 and 16 is something that has come up right across Australia. Do you not feel that that should be read in the context of article 5 as well? Or do you feel that article 5 does not give due weight to the family? If you read 12 to 16 in isolation from that, there is a fairly strong argument; but does article 5 not provide some sort of balance? Or is it your view that it does not?

Mrs Smyth—I simply say that article 5 is not strong enough.

Mrs Dimitriou—Respect is just at the whim of the authorities, respect does not mean whatever they want. It is open to every abuse.

Senator ABETZ—Later on in article 5 it does say 'appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention', and therefore articles 12 to 16 have to take precedence over article 5; and that is where the government—

CHAIRMAN—That is what I was trying to tease out.

Mrs Denman—That article is what I was referring to before when I said that how they would intervene in articles 12 to 16 is really up to the interpretation of the states parties at the time.

CHAIRMAN—We are running a little over time, but it has been very valuable. As Senator Abetz said, we thank you very much for individual submissions and now your collective views. Are there any final comments or parting suggestions that you would like to make to us?

Mrs Dimitriou—I have an important question which I hope you can clear up, because I am sure we would all be agreed on this. As you discussed earlier, we cannot put a reservation on those clauses that are troubling—and I must admit that I believe there is a lot of good in it too, but I am very concerned about those—and, at the same time, I think you indicated that Australia is not bound to bow down to the UN. But we have legally ratified and signed that treaty, and so we are legally bound to that treaty in its entirety, are we not, unless we reject it?

CHAIRMAN—That is what the international instruments legislation in the parliament is all about, and Senator Abetz can reflect some of your views, undoubtedly, in his contribution to that debate in the Senate. That legislation is all about getting over the very difficulty that you have with it, to make it very clear that, until such time as not just the CROC but other instruments et cetera become part and parcel of domestic law, that is about where it stays.

There is a lot of legal argument about legitimate expectation, but that is the bottom line for the statutory solution—which the previous government introduced but which, with the proroguing of the parliament, died. It was then up to us to make a decision as to what we did. The Teoh judgment forced us, in many ways, into making a decision one way or the other. As a government, we have come down on the same side as the previous government but with what we think is a strengthening of the legislation by, as I indicated before, the inclusion of the word 'parliament'. Irrespective of the constitutional treaty making powers of the executive, it brings the parliament well and truly into the processes—and, therefore, this committee.

Senator ABETZ—Chair, I would quickly add that technically we could revoke our adherence to this convention. We have to give 12 months notice, and there would be nothing stopping us, after that 12 months has expired, to sign up again the very next day, with reservations—

CHAIRMAN—Exactly.

Senator ABETZ—in relation to Articles 12 to 16. In revoking it or giving notice

of revocation to the world community, there would be nothing stopping us from telling the world community that it is our intention to sign up again the very next day, but with reservations. I do not think we would necessarily attract the sort of odium from the world community that we otherwise might.

Another mechanism would be for the federal government to make a declaratory statement or executive statement and lodge it with the United Nations or just put it in the parliament, saying how the federal government interprets the convention; but, of course, that would be of no real international benefit. There are a number of mechanisms that all the committee members are exploring, and I do not think any of us has a final view yet as to what we ought to do.

CHAIRMAN—A number of nation states have already put down declaratory statements. Senator Abetz is right. My personal view is that that has limited impact. It is there, and some would say it is rhetoric more than anything else. Anyway, these are the sorts of things that we as a committee have to come to grips with in the coming months and make some sort of cogent recommendations on to government in what we table in the parliament. We thank you very much for your attendance today. You have been very helpful.

[3.36 p.m.]

CROCKFORD, Mr Robert, Secretary, Parents Rights and Support Group (Tas.) Inc., 3742 West Tamar Highway, Tasmania 7270

CROCKFORD, Mrs Shirin, Spokesperson, Parents Rights and Support Group (Tas.) Inc., 3742 West Tamar Highway, Tasmania 7270

CHAIR—Welcome. We have received your written submissions. Are there any amendments, errors or omissions that you want to correct in them before I invite you to make an opening statement?

Mr Crockford—No.

CHAIR—Would you like to make an opening statement? We do apologise for delaying you but, as you can see, it was a very valuable interchange. Maybe, as a result of that, you will really see where the committee is coming from.

Mrs Crockford—Instead of making an opening statement, I would like to say that we are here as parents, representing parents of Tasmania. We have two grown children of our own and we are foster parents. I have worked in high schools with children from all walks of life and of all abilities. We have a little of experience there, but nothing else.

Senator ABETZ—You have worked in a high school?

Mrs Crockford—Yes, I did.

Senator ABETZ—In what capacity?

Mrs Crockford—As a teacher's aide in special education, teaching children with problems. I had this supplementary submission printed up, and I hope you have a copy of it. Somebody once said to me that they did not know where I was coming from when I tried to talk to them about the problems that parents have and that sort of thing. If you read the supplementary submission, it will tell you where exactly I am coming from. It might explain a few things.

CHAIR—Yes; I think we have read the supplementary submission and, of course, it reflects anecdotal experiences.

Mrs Crockford—The first case that I talk about is our own case—our personal experience with our daughter.

CHAIR—Again, we have had similar evidence from other parts of the country. Let me ask you a basic question: what do you think would be achieved by formal

denunciation of the convention?

Mrs Crockford—It would get rid of all the complications in Australian law which have been brought about by having this convention included in our laws. All the states have their own child protection laws and have had for many years. That can be improved on by Australians for Australia, rather than adapting this, which is so vaguely written and complicates things to a great extent.

CHAIR—What is the chicken and what is the egg? Has Australia's ratification of this convention been the thing that has pushed things along and given, in your view, the wrong signals to the wrong people? Or is it something that would have happened anyway?

Mr Crockford—In terms of the ratification and the failure to pass appropriate legislation, which is required under article 7 of the convention to pass into domestic law, it allows very liberal interpretation of the various articles within the convention. We have picked out articles 12 to 16, as have the majority of other witnesses, but we feel that the vagueness of the terms of the articles allows social workers and other counsellors to further their own agenda in supporting the rights of the child rather than focusing on the welfare of the child. We talk about the best interests of the child, but I would talk about the rights of the child, which may not be in their best interests, or the welfare of the child.

Mr ADAMS—What is their agenda? You said 'their agenda,' with respect to the welfare officer or the counsellor.

Mr Crockford—There are a number of agendas, Mr Adams. It has come to our attention that a number of taxpayer funded groups can expand their horizons by attracting more young people through their doors. I think this boils down to purely fiscal expediency. The more children they can coax within their boundaries, the more funding they can attract.

Mrs Crockford—And the larger they grow.

Mr Crockford—I think that that is purely their agenda. It is not the welfare of the child; it is purely their own fiscal wellbeing.

Mr ADAMS—That is hard for me to accept but I will accept that that is your submission.

Mr Crockford—I accept your difference.

Mr ADAMS—It seems to me that there would be a management structure in the public sector that would, I would hope, prohibit that happening. In the last paragraph of your written submission—

Mr Crockford—Are you looking at the supplementary one?

Mr ADAMS—Yes, the supplementary one. With respect to the last sentence—the Orwellian road to state control of our children—do you feel that that is your experience?

Mrs Crockford—Yes, it definitely is. That is personal experience, not anecdotal experience.

Mr ADAMS—Well, they are your words. And you feel that this country is going down that road?

Mrs Crockford—Yes.

Senator ABETZ—Can you give us a bit of a handle on the Parents' Rights and Support Group (Tas) Inc? How many members are there? Have you guys started that up to get some other parents of like-minded views together?

Mr Crockford—We started in 1993. The group actually started in Devonport. We came into it a little later as a result of a newspaper article where we told the story about our daughter. The group expanded from there. We have members all over the state; it is a state-wide organisation. We have approximately 40 members at the moment.

Senator ABETZ—Are they people who have experienced similar situations themselves?

Mrs Crockford—Some support our aims, but the majority of them have joined our group as parents with this experience.

Senator ABETZ—The convention tells us about children's rights. Do you think that the convention could have been improved upon if statements were made as to children's obligations along the lines of, say, the family unit being the best way for children to be matured and socialised into society; that parents, in looking after children for well over a decade, and sometimes two decades, putting up with sleepless nights, going out to work to earn money to feed them, clothe them, ironing their clothes, that that is a huge commitment that the family unit makes, and is worthy of respect and support even if you do not necessarily agree with some of the directions that that family unit is trying to give to you?

Mr Crockford—As you stated earlier, it does give a cursory respect to the rights, responsibilities and duties of parents without actually defining what those qualities are. But also the fact that it appears before articles 12 to 16 negates that cursory respect for parents. Whatever they said in that to try and show respect for parents will, in effect, be negated by other articles. So you cannot cover all aspects of what they want to cover in the convention, but the vagueness of it and those five insidious articles create a plethora of

problems for parents, school teachers and even law enforcement officers.

Mrs Crockford—As I think we said in our submission, the more rights you define, the fewer rights you have. If you say what your rights are, you do not have any more rights than are said there, so you get fewer rights. Rather than saying it is a human right to have these things, if you define what the rights are, you are taking away some rights. By defining rights to some people or some groups in society, you are taking away the rights of others. We believe that, and that is what the rights of the child convention does with regard to parents—and with regard to children themselves, actually: being children, they have to be protected and cared for by adults. But, by giving them rights to do as they please, we are taking away our right to protect them and their right to protection, and that is a vital issue.

Mr ADAMS—Giving people basic rights has been a very good thing throughout the world. It may not, in your context, be working very well in giving the children here rights. Your basic argument that, by giving rights, you exclude other rights is not an argument that would stand up in a lot of parts of the world.

Mrs Crockford—Take the rights of the child: we have heard this afternoon that the majority of the countries in the world have signed it—except for the US, to name one of the main ones who has not signed it. But there is still child abuse and there is still poverty. Nothing has been fixed. The problems have not been cured and they have not even been addressed by some of the countries who have signed this treaty. In Australia, children on the whole were not abused. Every state has got laws to protect children, but they are now being abused: because children have got rights, they are abusing themselves and nobody can stop them. The law cannot stop them, the police cannot stop them, and teachers and parents cannot stop them.

Mr ADAMS—And you believe that that is the result of this convention?

Mrs Crockford—Well, it is the start of it.

Mr ADAMS—You believe there would not have been any difficulties—no drug taking and no running away from home—do you?

Mrs Crockford—There always have been and always will be, and you cannot stop that completely; the same as you cannot stop child abuse completely.

Mr ADAMS—That is right. So, you are saying the convention has increased it? Do you have an opinion on by how much?

Mrs Crockford—It has exacerbated their problems, perhaps by 100 percent.

Mr Crockford—I would not like to quantify it, but it has increased substantially.

Mr ADAMS—If we reject this convention—if the parliament actually sends it back and says that we will not have this or we will put some other qualifications on it—will that solve all the problems?

Mrs Crockford—No, it will not; because now the problems have got into our system, and it is going to take a long time to solve those problems because they are already there: it is like a cancer growing, and you cannot stop cancer very easily.

Mr ADAMS—I understand where you are coming from.

Mr TONY SMITH—Just quickly, one of the theories that is bandied about when child homeless allowances are handed out is that there was abuse at home, and it seems to me that that is never properly defined. All of us can quite clearly condemn any form of sexual interference with children: it amounts to criminal conduct. Unreasonable use of force involving children amounts to criminal conduct, and the state already has measures—and, usually, unreasonable force can be objectively seen. So, this area of child abuse that social workers are talking about is frequently in this grey area. What do you say about that? Do you say that that is one of the difficulties with the whole area of children's rights and so forth? Is there a problem of definition all the way through?

Mr Crockford—Whilst we abhor physical and sexual child abuse, this convention has broadened the horizons of the definition of child abuse. Articles 12 to 16, in terms of invasion of privacy, can be construed as child abuse. Restriction of freedom of association can be construed as child abuse, and it is by some social workers—I am not saying by all, but by some—and that can cause enormous problems, as I said, for parents, teachers and law enforcement officers.

Mr BARTLETT—You mention in point 12 of your submission that the convention concentrates on the rights of the child rather than on the welfare of the child. Would you like to elaborate on that?

Mr Crockford—Whilst the convention does mention the welfare of children and about acting in their best interests, in our statement we are showing how the convention and these articles are interpreted by counsellors and social workers, and we can vouch for that with our own experience. They concentrate not on the welfare of the child, but on the child's right to confidentiality. That is their interpretation of a right: 'I am looking after the welfare of the child.'

In the example that my wife spoke about regarding our daughter, the school counsellor was more concerned about the child's right to confidentiality, because we had the audacity to phone the school and ask her what the child was doing being allowed to roam the streets of Launceston rather than being at school. They formed a contractual pact with each other to leave us out of the equation.

Mrs Crockford—She was 15 years old, and we were concerned about the things that she was doing. We did not know exactly what she was doing. We assumed she was going to school every day but she got caught shoplifting, which was a terrible shock to us. I informed the school the very next day and said, 'This has happened; it is not like our daughter to do it. Why? Can you tell me if there are problems at school?' You cannot go into the school without going through the social workers, so it was one of them that I called. She called my daughter up and told her I was inquiring after her, and my daughter said, 'Mum will kill me if she knows what I'm really doing.' She is 22 now, and these were her words, she tells me.

They signed a contract with her not to tell me, and they classed her as 'at risk', which meant at risk of abuse from her mother if she found out what the child was doing. When we made inquiries and started making a little bit of noise, they said that we had family problems and that we needed to go and see social workers and counsellors. I told them what to do with all of that.

It was a hard battle. She is nearly 22 now and is at university for the second time. She started in Hobart and dropped out, and she is back in Launceston and living at home. We might have avoided a lot of this if that college had supported us in the first place, when she was 15 years old.

Senator ABETZ—And what is her view now of those social workers and the 'assistance' that they gave her at the time?

Mrs Crockford—They are still doing the same thing—

Senator ABETZ—No; what is her view?

Mrs Crockford—Her view? She admits openly that she used the system to get her own way.

Mr BARTLETT—But that system was not because of the Convention on the Rights of the Child: it was there anyway, presumably.

Mr Crockford—No; they used it.

Mr BARTLETT—They used the convention, did they, to justify that position?

Mrs Crockford—Yes; and we wrote letters to one government and then the other, to the education ministers in Tasmania. When they were in opposition, they supported us but, as soon as they came into government, they did not. All we wanted from the college was an apology for what had happened, because we said it was wrong. But, if they apologised, we could sue them, and so we did not get an apology from that school for what happened. But we have got reams and reams of letters written to all of the politicians

and what they had to say. It did not get us anywhere, because of the rights of the child convention, basically.

Mr BARTLETT—The school counsellor said that, because of the Convention on the Rights of the Child—

Mrs Crockford—That was school policy because of the rights of the child convention.

Mr BARTLETT—The school policy explicitly mentioned the Convention on the Rights of the Child?

Mrs Crockford—I could not prove that we had it in writing, but I am sure we do, and that is what they said.

Mr Crockford—They referred to the child's right to confidentiality.

Mrs Crockford—That is what they used, which is straight from the UN convention.

Senator ABETZ—If I can follow on from that, it is very interesting what you are saying—that the social worker, it would appear, who allegedly assisted your daughter does not now, a few years down the track, have the respect of your daughter—

Mrs Crockford—No.

Senator ABETZ—and that, rather, your daughter has been able to see through the nonsense and in fact use the social worker for her own ends.

Mrs Crockford—But it was soon after that that our daughter admitted to us that that was what she did. She was not quite 16, because we took her out of school, she got a job and went out to work for a couple of years. Then she went back and finished her matriculation and went off to university. And she blamed us, in as much as she said, 'Mum, you made it easy for us because you gave us everything and you allowed us to do this, and as soon as you tried to stop me doing something this is what I did because I had power to do it.'

Senator ABETZ—Really, I suppose, one of your concerns is the underlying philosophy of the convention which, even if not by the letter of the law, as in a bill of children's rights in Tasmania, has percolated down to the social workers and other people who are now instilling the philosophy into the minds—

Mrs Crockford—And they start in the primary schools.

Senator ABETZ—of the young children.

Mrs Crockford—Very young children are taught their rights—in grade 1.

Mr BARTLETT—Have you got evidence of schools where that is happening?

Mrs Crockford—I worked in the primary school last year and, yes, I know it was happening. I cannot prove it—I have not got it in writing—except to say that I do know it is happening. And if you talk to any parent, no matter what their philosophy is, they will say, 'Yes, it is happening.'

With regard to high schools, we have two foster sons, as I said, who are still in high school and they are being taught all this. With regard to wards of the state and being made homeless, our older foster son is now 16 and he is classed as a homeless youth. He has lived with us for nearly six years and he is still living with us, but it is his choice to live with us because now he gets the homeless allowance, which is not called the homeless allowance anymore.

Mr Crockford—It is the homeless rate of Austudy.

Mrs Crockford—That is what they call it. But it is now his choice, whereas up until 16 the state said he had to live with us or somebody else. Now he can walk out and live wherever he likes and do whatever he likes.

Mr Crockford—But he is officially classed as homeless.

Mrs Crockford—He is classed as homeless.

Senator ABETZ—That is very sad—

Mrs Crockford—It is sad.

Senator ABETZ—after six years of being looked after by you, and clearly he must still the home environment you provide as his home, because he is still living there.

Mrs Crockford—That is right, but it is his choice; and tomorrow, if something went wrong between him and us, he would walk out of there and there is nothing we can do to protect him even though he might do it in anger and want to come back the next day. He would be welcome back, I dare say—it depends on the circumstances—but it is the fact that he can do it now and we do not have the right to stop him.

Mr Crockford—The sad part of it is that there is no guarantee that his legal guardians would do anything to protect him either.

Senator ABETZ—Because you are not the legal guardians.

Mrs Crockford—No, we are not.

Senator ABETZ—It is the state department.

Mr ADAMS—I am interested in age limits on when youths can make decisions. I am interested in what age you think somebody has a right to take—

Mrs Crockford—You cannot put an age on it. As I said, I work in a high school. You can get two 14-year-olds and you might say that one has the capabilities of a 10-year-old and the other one of a 16-year-old. So how can you say that the 10-year-old has to be treated the same as the 16-year-old because they are both 14? It is not very easy.

Mr Crockford—That is where the convention comes in in mentioning the evolving capacities of the child. It is not just in the convention; it is from English common law—I believe it is the Gillick case where that phraseology was used. You cannot use it as a generality. You cannot say, 'We are going to legislate for 16 to be the age where they make decisions.' The parent really has to be the best person to decide when they are going to allow the child that much latitude because of their maturity.

Mr ADAMS—What about if the 16-year-old is working, like I was at 15 when I was raising my own income? Can I then make decisions for myself or should my parents have control over my income, and whatever?

Mrs Crockford—But then you are showing a certain amount of maturity by going out to work and getting a job in the first place. You have to get up and go to work every day. That is a different situation. Yet, because that person was still 15, the parents did have the rights and responsibilities of caring for that person even though they were out working. You might have chosen to leave home and your parents might have been happy about it, but if they were not they would have had a right to do something.

Mr ADAMS—Yes, but in ages gone past some people used to start work at a lot younger age.

Mrs Crockford—Yes, that is right.

Mr ADAMS—People go to school now for a longer period. People, through necessity, had to make some of those life decisions about where they lived, et cetera.

Mrs Crockford—Yes; but our children are soft compared with the way we were brought up. Life was a lot harder for us growing up than it is for our children, but they get to the age of 14 or 15 and all of a sudden they have this power. They do not have as much life experience as we had at the same age, but they have the power which we never

had at any age—even now as adults. As adults, we have responsibilities, but our children are given these rights and they are not expected to have any responsibilities. On the other hand, you cannot give responsibilities to a child, because you cannot expect a child—

Mr ADAMS—We talk about teaching our children civic rights and what the country is about, et cetera, and that as a citizen you have certain rights. That is the other dilemma, isn't it? You want your children to understand that there are rights in our country.

Mrs Crockford—Of course.

Mr ADAMS—There are rights under law, there are rights in the parliamentary process, in our democracy and our democratic structures and how they work.

Mrs Crockford—Yes. There is nothing wrong in saying that every child in this country has the right to an education, that every child in this country has the right to feel safe and protected, that every child has the right to have a warm bed to sleep in at night. Those are basic rights that children need and every child should have them, but not the right to associate with whom they wish because they are 14-or 15-years-old and they can go and meet the drug pusher down the road or the paedophile up the road. They will do it for the money, one way or the other—the experience of drugs and the experience they will get out it. In later life they might regret having done it, but it is too late.

Mr ADAMS—So by stopping them going out you are going to stop that?

Mrs Crockford—To a certain extent we can control it. You cannot stop everything and you cannot protect everyone.

Mr ADAMS—I do not believe in prohibition.

Mrs Crockford—Neither do I.

Mr ADAMS—What I am getting at is that it is very difficult to shield people from the dangers of life.

Mrs Crockford—It is. This makes it 100 times harder to shield our children.

Senator ABETZ—So Mr Adams would be agreeable to children being allowed to buy smokes at the age of eight because he does not agree with prohibition. Is that what you are saying? We do have different laws for children to protect them because we do not see them as fully grown adults. Putting the prohibitions on adults is a different kettle of fish, a different issue, than prohibition on kids.

Mrs Crockford—That is right.

Senator ABETZ—We have to make a differentiation.

Mr ADAMS—I want to make the point, Mr Chairman, that I am not going to be picked up by Senator Abetz on comments that I make. I would ask that it be noted that this committee does not normally work like that and I certainly hope it does not in the future.

Senator ABETZ—You did exactly the same to me earlier today.

CHAIRMAN—Okay. Let us get the issues out, rather than argue.

Mr ADAMS—I have finished my questions.

CHAIRMAN—As there are no more questions, thank you very much, Mr and Mrs Crockford.

Mrs Crockford—It has been our pleasure, and it was interesting to hear what the others had to say. I wish that the people from the university law faculty had stayed long enough to hear some of the others.

[4.06 p.m.]

COLEMAN, Mrs Jill Estelle, President, National Council of Women of Tasmania, 79 Mount Stuart Road, Mount Stuart, Tasmania 7000

GRANT, Mrs Linley, Honorary Secretary, National Council of Women of Tasmania, 79 Mount Stuart Road, Mount Stuart, Tasmania 7000

GRAY, Mrs Pamela Joan, Convener—Child and Family, National Council of Women of Tasmania, 79 Mount Stuart Road, Mount Stuart, Tasmania 7000

CHAIRMAN—Welcome. Do you have any comments to make on the capacity in which you appear?

Mrs Grant—I was president when we wrote the submission, and acting secretary. I am now the immediate past president and a life member.

CHAIRMAN—First of all let me apologise for the delays, but this has been a rather interesting day which, regrettably for you, has flowed over into the last half an hour. For that we apologise.

We have received your written submission. Are there any omissions or errors that you want to correct?

Mrs Grant—Yes, at page 7. In dot point 1, at the very top of the page, there is a double negative that should not have been included. It does not need the 'not' in there: it should be either 'of insufficient force' or 'not sufficient force'. Further down on page 7, in the fifth line, the word should be 'underfunded'. In the following line, after 'school care' there should have been a full stop and a capital P.

CHAIRMAN—Thank you very much. Would you like to make an opening statement, or would you like us to go straight to questions?

Mrs Grant—Just straight to questions, I think. We have said what we wanted to in our submission.

Mr BARTLETT—On page 2, talking about school discipline, you said that you consider that parental and school discipline has deteriorated because parents and teachers are constrained due to various interpretations of the UN Convention on the Rights of the Child. I suppose that raises a question similar to the one I asked the previous witness: had that process of deterioration not been occurring anyway, and what evidence is there that the convention has in fact exacerbated that deterioration?

Mrs Grant—We are quite aware that in schools in the south of the state—and

from, what other people say, in the north of the state—children are being taught about verbal abuse and physical abuse and so on. It probably comes into teaching relationships with their peers, but it flows over into their relationships at home, so they come home and say, ‘You can’t growl at me, Mummy. That’s verbal abuse.’ That is a simple one, and that happens at Brownies too. I have had Guides and Brownies now since 1959 and I can see the changes coming through. In the last few years it is increasingly difficult to have dear little girls in a Brownie unit because they are so undisciplined.

Mr BARTLETT—They are actually saying that to you, that you cannot speak to them that way because it is—

Mrs Grant—Yes—or not to me personally but their parents.

Mr BARTLETT—Have you had any cases of anyone saying that to you?

Mrs Grant—They say it to each other. They do not say it just as such in Brownies, because we have a different way of doing things, but their parents will say at parent meetings that that is what they are saying—that they cannot discipline them, they do not know how to.

I work in the hospital. We have parent after parent now whose children are injured because they do not discipline their children. They are frightened to. That is increasing because parents are confused.

Mr BARTLETT—I am aware that that trend has been going on for some time, and I have noticed it myself over the last couple of decades, but I am just wondering to what extent that is a result of an awareness of the convention rather than a change in the structure of society in so many ways, a breakdown of family or whatever.

Mrs Grant—It is partly the convention. That is an overlay. I was just thinking about cases that I know of, while we were waiting. A very recent example is a 13-year-old in the Taroona area. Her aunt works with me, and she was horrified because this girl and other children had been told by social workers there that she can do A, B, C and D—these are her rights—and she is letting her family have it to the limits. She is allowed to scream and yell at them and so forth but they are not allowed to discipline her. She is also going off with a crowd that is very difficult. That is just recently, and I can tell of another one a few years ago.

I can also tell you of a boy whose father died when he was 12. To help him, his mother started letting him go to sleep-overs in his peers’ families. He got in with two or three boys who were unruly, and started shoplifting and so on. Before long they had this grand idea, and he got hold of a shotgun and they held up a bank. He ended up in Risdon. His mother went time and again to the social workers at school and was told not to interfere. She went time and again to the police and said, ‘Help me.’ She was desperate

for that child. He was her only boy and she was desperate. She got this privacy thing thrown at her—'It is his right' and so forth—and that is where he ended up. He burnt himself at Risdon and so he ended up where I work in the hospital, and that is how I knew about it. This mother was very upset.

I can name another one, of a child who has got in with a religious sect and the parents have been told they cannot interfere or do anything. This child is only 14 and is completely out of control from the parents' point of view.

CHAIRMAN—Is all of that the direct result of this convention or just of an unfortunate erosion of our societal values?

Mrs Grant—No. In high schools, in particular, but in the primary schools too, children are being told about their rights. They were not being told about their rights a few years ago. Yes, I am aware of my Brownies telling me, 'These are our rights,' and they were not aware of them.

CHAIRMAN—And that is being taught by teachers in Tasmania, is it?

Mrs Grant—And social workers. It is empire building, I think.

Mr BARTLETT—In teacher training institutions in the states, is there an emphasis on instructing teachers to teach their classes about rights? Are you aware of anything like that?

Mrs Grant—As far as we know, it comes accidentally. Maybe it starts in teaching children conflict resolution but I am not sure where it starts. We have had quite a few cases of bullying in particular schools. People ring in to the National Council of Women phone—I have had two this week—wanting to know where they can get help on A, B or C, and I have had quite a number of phone calls on bullying. The parents have gone to the school because their child is being bullied, and the child has been sent to the guidance officers or the socialworkers and has been told not to talk to Mum and Dad about it because it is a privacy thing. The parents have been left out of it. The children who have done the bullying have not been disciplined at all. The child has been told that they are the one with the problem and it has really undermined that child's confidence. It is the guidance officers and so on seeing things from their point of view, with a particular mental set, and not seeing the overview that we, as outsiders, see.

CHAIRMAN—I notice that in your summary at the end of the paper you talk about various administrative and other measures that need to be taken. In terms of amending or further reservations—you were not here when we talked about this before—there is a constraint to that built in, unfortunately, to the convention. Are you suggesting that we should denounce this and withdraw? Is that the bottom line to what the National Council of Women is saying?

Mrs Grant—We heard you saying before that, yes, maybe there should be a temporary withdrawal. Other than that, Australia can sit down, as we have suggested, with the model criminal code people and put some legislation in place which makes Australia's position and parents' rights and responsibilities very clear in relation to the convention.

CHAIRMAN—There has been some fairly draconian information put around about the criminal code particularly about the age of consent and all that sort of stuff some of which, to be fair, has been put by various Christian coalitions—and one in particular—which was way off the beam. It was just terrible stuff.

Mrs Grant—We have rejected all of that.

CHAIRMAN—Yes, terrible stuff. But, nevertheless, there are some genuine concerns. So the bottom line for your group is that you would like to see us de-ratify?

Mrs Grant—Not really. We think it is important to strengthen it rather than destroy it. Australia needs to clarify these anomalies and these positions, particularly 12 to 16, where there are all these problems in interpretation in this country, and build into our own legislation clear guidelines so that everybody is aware of how it is to be interpreted.

CHAIRMAN—Bear in mind that we have put down one reservation and that we have ratified. Therefore, as a nation state, we cannot put down another reservation. We can react to other reservations so that is the first point. The second point is that we can make a declaratory statement, which perhaps is what you are suggesting, or we can put it back into the UN machinery as a formal amendment. I think you used the word amendment in your paper but under the UN machinery that requires that that be accepted by a two-thirds majority. That makes it very slow and maybe impossible. Once you ratify them it is very difficult to change it. Yes, we have the extreme option of withdrawing, with the appropriate time scale, but that has the question mark about what that means in diplomatic terms.

Are you really saying that your desirable solution is to make some sort of declaratory statement in terms of the other nation?

Senator ABETZ—Mr Chairman, can we also put the other option to them and that is that to withdraw you have to give twelve months notice of our intention to withdraw, saying to them that our purpose of withdrawing is not to denounce the basic principles of it but to re-sign again the very next day but stating some reservations in relation to articles 12 to 16, which are causing the most concern within the community. That way, we would be saying that we agree with the principles but we think it got out of kilter a bit in relation to articles 12 and 16 so that is another option.

Mrs Grant—In relation to the opening statement in the convention, we think that needs modifying more than anything else.

CHAIRMAN—The preamble.

Mrs Grant—The responsibility of parents as stated in the Preamble needs to be reiterated in articles 12 to 16 so that people are in no doubt that parents have that responsibility to protect their children.

CHAIRMAN—You have listened to the previous group and I am sure that you have contact with some members of that group. You share their particular concerns about articles 12 to 16. Is that what you are saying?

Mrs Grant—No, not particularly. It is not really a problem at the UN; it is a problem in Australia, and this is where we have to make the changes, in our own laws. I think the principles, in essence, are there because there are these problems with children worldwide. I would see some very big problems at the UN because they are not being interpreted in other countries in a way perhaps that was intended. In a way the UN does have to look at them all again because of how they have been interpreted in India, in the African countries, in Muslim countries and so forth, where there is child abuse of different forms and so on. There are different forms of child abuse that are not mentioned in this.

CHAIRMAN—The one that comes up, and we talked about it briefly earlier in the day, is that of the Muslim countries that have ratified without reservation and yet some of those countries practise female genital mutilation. It does raise some serious questions about the moral and ethical intent of the ratification process, does not it?

Mrs Grant—It does and this is why, in some ways, it would be good to sit down and say, 'This is child abuse and that isn't.' That is what we have tried to say for Australia. So we have extremes of interpretation and this is why we think the whole thing has to be clarified. It would be good at the UN level but whether it is best to pull out I do not know.

CHAIRMAN—Are you aware of the Australian official report? Albeit, it was very late but there was a requirement to report. There was also the report from the non-government organisations. Were you involved in the input to the NGO alternate report, as a group?

Mrs Grant—I think our national group was but I am not sure.

CHAIRMAN—Could you take that on notice and maybe refer it to the national council and find out whether they were consulted on the official report, and the alternative report and whether they have some views on this particular matter?

Senator ABETZ—That would be very helpful.

CHAIRMAN—The secretary tells me that this the only state council of this group that we have had, so I think it is appropriate that it is an internal matter for you. We

would like to hear what your national peak body has to say on some of these issues.

Mrs Grant—How long would they have to do it?

CHAIRMAN—We would like it in the next six weeks, if that is possible.

Mrs Coleman—We have a conference in October.

Mrs Grant—A national conference; is that too late?

CHAIRMAN—We will see how it goes. How about you see whether you can push it? Maybe they could give us some sort of interim comment, even if it is with a caveat, subject to confirmation.

Senator ABETZ—As to whether they were consulted—

CHAIRMAN—That is right. The consultation is the important thing. I think we have seen, with the alternative report, a lot of criticism of the official report. But I, for one, have some reservations about some aspects of the alternative report. It seems to me yet another barrow being pushed for philosophical, ideological reasons. That might be just a personal reaction. I do not know. Do you understand?

Mrs Grant—I do, yes.

CHAIRMAN—If you could do that for us, we would be most appreciative.

Mrs Coleman—I think one of the things that has had such an impetus on the whole issue is the publicising of these rights of the children. Now abuse can be as simple as 'I don't want to do my homework tonight.' The parents say, 'I would like you to do your homework', and they say, 'I don't want to' and then they walk out the door. From the minute they walk out the door, the parents do not have any more rights. That is termed as abuse.

Senator ABETZ—Mrs Coleman, on page 16 of your submission there is the presentation by Mrs Nell Ames, who is well-known to me and for whom I have a very high regard. She recounted the story of her eight-year-old grandson, who comes from a loving, well-disciplined family. He told his mother that she could not discipline him because it was verbal harassment. His teacher had taught him that. She then goes on to ask how parents can retain their authority when children are being taught this. Now, when an eight-year-old comes home and says to his or her parents, 'You can't tell me off, that is verbal harassment' then—

Mrs Grant—Things have gone too far.

Senator ABETZ—Things have gone far too far. I think one of these days somebody—one of these children—is going to sue the government, or education department, for negligence in allowing that sort of nonsense to be taught to them, which then allowed their lives to go off the rails. Amazingly, a lot of these kids, when they are 22 or whatever, when they are older, realise the stupidity of the advice they were given by these social welfare officers at the time and are very upset by it.

Chair, may I just make one very interesting observation? The National Council of Women seems to be a very broadly based organisation, with a lot of organisations being represented, but I think that they are—correct me if I am wrong, Chair—the first organisation that has come forward to us with an honest and, if I might say, open and objective assessment of the convention from the standpoint of having initially been in full support of it. I found that very interesting.

You say under the heading 'Background' that initially you were in favour of it, undoubtedly because of the feel-good nature of it, and that now when you have seen it in practice you realise some of its horrific consequences and, therefore, you have reviewed your assessment of it. I, for one, found that a very interesting analysis.

Much as I would like to think I am a dearly devoted father, when it comes to kids women in particular usually have got their finger on the pulse more so than the men. For this very broad and representative group to make such an assessment of the convention, I just found very interesting and very illuminating. Especially when you have got some of those real life experiences such as Mrs Ames pointed out, it indicates that, whilst we may have entered the convention with good intentions, its practical outcomes are such that this convention deserves revisiting.

CHAIRMAN—You were not here when I made the point earlier this afternoon, but I should say to you that this committee does not have an agenda either. It is not a mouthpiece for government. The reason and the rationale for revisiting this convention, which we can do under a joint resolution of both houses, is really to see if we can differentiate the wheat from the chaff, albeit nearly seven years after ratification. That in itself makes for some basic difficulties. Nevertheless, that should not stop us from revisiting a lot of these areas and making the appropriate recommendations to government. Some of us may have changed our minds too over the last six or seven years in some of these things, but we will sit down in due course, once we have received all the evidence, and make some of these judgements—which are going to be quite difficult, as you would imagine.

Mrs Gray, you have been sitting there looking very thoughtful but you have not said anything. Would you like to give us a final comment before we finish after a very long day?

Mrs Gray—Mrs Gray has only been doing this convenership for child and family

for about two months!

CHAIRMAN—So you are in the learning curve, are you?

Mrs Gray—Yes. I have consulted with both my friends here and I agree wholeheartedly with everything that they have said. I am learning very fast, I might add.

Senator ABETZ—Even in that short period that you picked up on the concerns that Mrs Grant indicated about parents or mothers not knowing how far they are allowed to go, even verbally, in disciplining their children?

Mrs Gray—Most certainly, because I have a daughter here and two grandchildren, seven and 10. Both are very bright and both will pick up anything that is to their advantage. It takes an awful lot for a mum and a dad to keep with them the whole time and explain, even going back to their school days, that this is the way it happened and that sort of thing. We think it is better. I know that Mrs Grant had experiences of bullying and I have heard of this from the school that my grandchildren attend, that the child who is being bullied is almost made to feel as if there is something the matter with her.

Senator ABETZ—And that is part of the quite strange outcomes of this sort of philosophy: you would have thought that, if anything, the convention ought to be insisting that children learn about their obligations to each other and that things like schoolyard bullying are just out of the question, rather than saying, 'Mum and Dad aren't allowed to tell you off to make you do your homework.' That is what makes me and a lot of other parents in the wider community wonder at the ideology that is motivating some of these social welfare 'advances' that are promoting these quite bizarre outcomes that mum is not allowed to tell the child off but other kids are allowed to bully each other in the playground. It just seems quite bizarre.

Mrs Grant—I think the epitome of that is that truancy report and the process that goes on now where children are excluded. I think it is this same philosophy coming through. It is not the rights of the child convention; that is just the icing on the cake. In other words, it is being used and abused for particular purposes. We are not protecting our children. I have a friend whose two elder sons are fine and have gone through university with flying colours and exhibition prizes and so forth. Her third son is an absolute tinker at the moment. He is testing the family to the limits; he has been excluded from one school and now he is being excluded from another. He is in with a crowd that just keep telling him his rights, and he keeps screaming and yelling at his family for his rights.

Senator ABETZ—But there are no other directional mechanisms, really, to assist that child, because a verbal dressing-down or a physical dressing-down or being grounded, et cetera, all those things that in the past used to be the steps prior to exclusion from a school, can no longer be used as part of the disciplining or guiding portfolio of options. Therefore, either you are in school full time or you are excluded.

Mrs Grant—It is easier to legislate. Sue Napier said no, it is not used. It is used with great reservation, but it is still happening too much. This child—this is only last week's episode—is in the middle of beginning his matric year. He was at one school and they got his uniform, and he went to a private school and they got all his uniform and all the rest of it and got him organised there. Now he has been excluded from there and they have got to turn around mid-year—his mum has got to leave her work to try and discipline him and stay at home with him, because he is excluded and so on. Some of these policies really need to be looked at very carefully in the way they are being interpreted here.

Senator ABETZ—I have found your evidence quite interesting and refreshing, to a certain extent, because it would be fair to say that a lot of people have come before this committee having supported the convention from the outset or opposed the convention from the outset. They have not changed their mind over the seven years; they are in their ideological positions and are not willing to shift, no matter what the evidence. It was interesting to see you people who, without an ideological barrow, were willing to support the convention and are now reviewing its effects to come to a different persuasion. So from my point of view this discussion has been very interesting.

CHAIRMAN—We have held you long enough, and for that again I apologise. Thank you very much indeed for your evidence. We look forward to taking something from that submission and injecting it into our report to the parliament. I thank Hansard also.

Resolved (on motion by Senator Abetz):

That this committee authorises publication of the evidence given before it at public hearing today.

Committee adjourned at 4.35 p.m.