COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

SYDNEY

Tuesday, 5 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:

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

WITNESSES

ALLEN, Ms Shirley Patricia, General Secretary, New South Wales Federation of School Community Organisations, c/- Bourke Street PS, 590 Bourke Street, Surry Hills, New South Wales 2010 1239

ANTRUM, Mr Michael David, Director and Principal Solicitor, National Children's and Youth Law Centre, University of New South Wales, Sydney, New South Wales 1137

BESSANT, Ms Catherine, Youth Development Worker, Dundas Area Neighbourhood Centre; Youth Action and Policy Association Representative, Parramatta Youth Services Network, PO Box 699, Parramatta, New South Wales 2124 1251

BOLAND, Mrs Jennifer Margaret, Chairperson, Family Law Council, Level 3, 50 Blackall Street, Barton, Australian Capital Territory, 2600 1272

BURDEKIN, Mr Brian Edwin, Chairman, Australian Youth Foundation, Suite 302/134 William Street, East Sydney, New South Wales 2011 1282

CRONIN, Dr Kathryn, Commissioner, Australian Law Reform Commission, Level 10, 133 Castlereagh Street, Sydney, New South Wales 2000 1167

D'SOUZA, Ms Vanessa Ann, Youth Development Worker, Karabi Community and Development Services Inc; Chairperson, Parramatta Youth Services Network, PO Box 699, Parramatta, New South Wales 2124 . . . 1251

FINLASON, Ms Judith, Coordinator, Network of Community Activities, 66 Albion Street, Surry Hills, New South Wales 2010 1266

GINN, Mr Colin, Board Member, Child Abuse Prevention Service Inc., 13 Norton Street, Ashfield, New South Wales 2131 1229

GINN, Mrs Dorothy, Director, Child Abuse Prevention Service Inc., 13 Norton Street, Ashfield, New South Wales 2131 1229

HOWARD, Mr Grant David, Coordinator, Parramatta Youth Project, Anglicare; Member, Parramatta Youth Services Network, PO Box H113, Harris Park, New South Wales 2150 1251

JONES, Mr Jeremy Sean, Executive Vice-President, Executive Council of Australian Jewry, 146 Darlinghurst Road, Darlinghurst, New South Wales 2010 1219

JONES, Ms Melinda 1197

KINLEY, Dr David, Legal Specialist, Australian Law Reform Commission, Level 10, 133 Castlereagh Street, Sydney, New South Wales 2000 1167

LONNON, Mrs Gail, President, New South Wales Federation of School Community Organisations, c/- Bourke Street PS, 590 Bourke Street, Surry Hills, New South Wales 2010 1239

MOYLE, Ms Sally, Team Leader on Children in the Legal Process Inquiry, Australian Law Reform Commission, Level 10, 133 Castlereagh Street, Sydney, New South Wales 2000 1167

NILE, Reverend Hon. Frederick John, National President, Call to Australia, GPO Box 141, Sydney 2001 1209

SIDOTI, Mr Christopher Dominic, Human Rights Commissioner, Human Rights and Equal Opportunity Commission, 133 Castlereagh Street, Sydney, New South Wales 1167

TOBIN, Dr Bernadette Margaret, Director, John Plunkett Centre for Ethics in Health Care, St Vincent's Hospital, Victoria Street, Darlinghurst, New South Wales 2010 1159

WHITTINGTON, Ms Vanessa, Research Officer, Streetz Subcommittee, Parramatta Youth Services Network, PO Box 699, Parramatta, New South Wales 2124 1251

JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

SYDNEY

Tuesday, 5 August 1997

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Bartlett
Senator Bourne	Mr McClelland
Senator Cooney	Mr Tony Smith

The committee met at 8.53 a.m.

Mr Taylor took the chair

CHAIRMAN—I open this morning's second hearing in Sydney. This is the second round that we have had in this city, after visiting most other capital cities. Tomorrow we return to Brisbane for the second time. We have at this stage received something like 400 written submissions and we have information requests from about 1,300 individuals or organisations. As a result, we have very diverse views, very diverse written and oral evidence given so far to the committee.

Today's program is a very full one and I will just ask Mr Antrum in a moment if you could keep your opening statement as short as possible because we are on a very tight timetable. But just before we formally call you as a witness, if my colleagues could agree to authorise the publication of the submissions being dealt with today, Nos 153, 170, 178, 179, 321 and 302. So be it.

ANTRUM, Mr Michael David, Director and Principal Solicitor, National Children's and Youth Law Centre, University of New South Wales, Sydney, New South Wales

CHAIRMAN—Thank you very much. We have received your written submission. Just before I invite you to make a short opening statement, are there any errors, omissions or amendments to the written submission?

Mr Antrum—Yes, there are, Mr Chair. On page 3 of the opening submission, about paragraph 5, under 'Legislation portraying young Australians', the final sentence says 'but Australia has reserved ratification of this article'. That is incorrect and I would ask the committee if they would delete that phrase from 'but Australia has reserved ratification of this article'.

CHAIRMAN—The sentence completes 'It is also a flagrant breach of article 40'—full stop?

Mr Antrum—Full stop. Thank you.

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

Mr Antrum—Yes, I would, Mr Chair, really just to encapsulate our submission. I appreciate it is a bulky submission. The majority of it is in response to the UN committee questions. The thrust of our submission is that we regret that some sections of the community find the convention controversial. We believe and submit that the Convention on the Rights of the Child is in fact a document that provides a grounding for family life, provides a grounding for proper protection of children and provides a grounding for the protection of the rights of children.

Those rights are not anything that are in themselves outstanding or in themselves exceptional. They are rights, we would submit, that have been accepted by communities for a very, very long time as being necessary and that recognise the developmental needs of children and that recognise the immaturity of children and allow them, however, to play an important part in the community. Our submission is really trying to defuse that controversy and say that this is not something that other groups in the community should find difficult to deal with.

We have listed a number of the articles which celebrate the family and in fact recognise the family as the proper place and the best place to raise a child. The convention acknowledges that and its articles attempt to promote that environment.

Mr Chair, we have also indicated that where we are lacking as a nation is in the promotion and implementation of the convention. I think that the first step there is to promote the convention. That must be the first step. I think that the controversy that this

committee undoubtedly has seen—and, Mr Chair, you have just mentioned you have had something like 1,300 inquiries. I would agree that the release of this inquiry has generated a great deal of public interest. If we were to promote the articles and to give the public some understanding of what the convention is about, I think the fear and the anxiety that it generates in some sections would diminish.

It would be a very useful first step to come out of this inquiry to run some sort of public education campaign, to use the number of groups—and there is a great deal of goodwill out there amongst the children's sector and the youth sector towards the convention. They would be happy to work with the government to promote the convention and to give the public a real understanding of what it is about. It is not about dividing families. It is not about making children into solitary soapbox rights activists in every single classroom. It is not about any of that. It is simply about ensuring that we give children the dignity that is theirs inherently as human beings.

Just by way of a very quick example—and I will keep these statements very brief—of implementing the Convention on the Rights of the Child, I read the other day that in Lucerne in Switzerland they have established a children's parliament. It is not a mickey mouse tribunal. Essentially, children are brought in as representatives of various parts of the children's community and they have a real say in factors that affect them.

For example, they have consulted on playground design, they have consulted on the way in which school timetables are drawn up. These are things that kids face every single day and can have a very beneficial input into. Anyone who has had anything to do with children will know that yes, they do have good ideas sometimes and it is a resource that we could use. The convention recognised that a long time ago and I would hope again that this committee could assist the process of defusing the unnecessary controversy.

Our submission from the National Children's and Youth Law Centre touches on a number of other aspects. We are concerned that Australia still has a reservation to the convention, article 37(c). There is no reason why that reservation should be in place. We are a First World nation, we are an industrialised nation, and I believe that we are still a compassionate and fair-go society. Why children should be placed with adult offenders when every bit of research demonstrates that that is the worst thing you can possibly do at the beginning of a custody situation. I have worked in the country as a solicitor and as a general practitioner, and I understand the difficulties that isolated communities have in accommodation, and I understand the difficulties police have, but they are not insurmountable.

This country should be able to do something about keeping juvenile offenders or alleged offenders away from the adult population. Again, the National Children's and Youth Law Centre respectfully urges the committee to make that one of its recommendations—that we remove our reservation. I think that would be a very good signal from Australia to the international human rights community that we are moving

forward on the convention.

Finally, just touching on that point, Australia can and must take a lead on the Convention on the Rights of the Child. We are in a developing region. I am not one of the doomsayers about Australia and the nation, I think we still can hold our head up, but we are losing ground and I think that these are the steps forward that we can take. Let us stand up and say we reaffirm the Convention on the Rights of the Child, we remove the reservation, and this is what we are going to do to promote and implement the convention. If that comes out of this committee that is, I think, going to be a fabulous signal and is going to restore a lot of confidence out there in the youth sector. Those are just my additional submissions and I thank the committee for my appearance here today.

CHAIRMAN—Thank you. I will open with some questions on controversies but before I do that, could we have a brochure or something which outlines what the National Children's and Youth Law Centre is all about?

Mr Antrum—Certainly, yes.

CHAIRMAN—Just to give us a feel for who you are and what you do.

Mr Antrum—Yes, I will have the office forward that to Ms Scarlett. I just indicate that we are funded primarily by the Commonwealth Attorney-General. We are a community legal centre and we have been established since 1993. The former director was Robert Ludbrook and I guess the Convention on the Rights of the Child has always been the benchmark document for our operation.

CHAIRMAN—We need just to make sure, and reinforce that CLC approach.

Mr Antrum—Certainly.

CHAIRMAN—On controversy, yes, it would be fair to say that the evidence given to us thus far reflects the sort of anecdotal information that was around back in 1988-89 in the lead-up to the ratification. Those who argue against views that this is some sort of anti-family document would draw on article 5, as indeed you have in your written submission.

Mr Antrum—Yes.

CHAIRMAN—Others who take an opposing view draw particularly on articles 12 to 16, which are the ones that keep on emerging as difficult ones for a lot of people. When you refer them to article 5 they in fact highlight those words at the end of article 5 'recognised in the present convention'. Do you think that article 5 is very clear, or do you acknowledge that there remains a degree of controversy about interpretation of the convention?

Mr Antrum—I acknowledge that much of the controversy arises from either misinterpretation or unclear drafting perhaps, and I think that is one of the inherent difficulties of many UN instruments; they are written I guess to straddle the nations of the world and sometimes they may appear clumsily drafted. However, I do not accept that article 5—and I will just make sure I am referring to the correct one.

CHAIRMAN—The last few words of article 5 are the ones.

Mr Antrum—The evolving capacities of the child is something that is not given enough credence, if you like, by those who oppose the wording of article 5. Evolving capacities of the child is very similar to the Gillick principle in family law where we talk about the emerging intellectual and emotional maturity of a child to make decisions in their best interests.

The convention there is saying that there is a very real role for adults, carers and parents to gauge what is the capacity of their child to make decisions. Consistent with the evolving capacities of the child, there is that safeguard, if you like. We are not saying to five-year-olds, 'You choose how you cross the road' or 'You choose which school you go to.'

The convention has been careful to ensure that the supervisory role, the traditional carer role, is very entrenched in the convention. Again, I would say that in the promotion of it and in public education, if we said, 'Here it is. It is not all child's rights.' I have read many of the submissions that have been released by the committee and they make that fundamental error: they think that it is simply a document that gives more rights to children than they would perhaps otherwise have. It is not about that; it is recognising the rights that children have as well as saying, 'This is the role that a family and parents can take.'

CHAIRMAN—We will take on board the withdrawal of article 37(c). I think your point is well made. That is something for the committee to consider in due course. Just going back again to misinterpretation, controversy, et cetera: how would you react to some sort of proposal for a domestic declaratory statement to attempt to clarify the situation? As you know, that can be done and has been done prior to and at the time of ratification by the countries. Australia can do that subsequent to the ratification. Do you think that would be a step forward?

Mr Antrum—Yes, I do. I think that the recent difficulties we have had with Teoh have rammed that home. I would like to see Australia wholeheartedly embrace the convention. I do not see, for example, the difficulties that we have had with Teoh necessarily create the black hole that some people feel that it will create.

At any stage this is a developmental document. It is not something that we have to be able to implement immediately, but we have to be making real steps towards it.

Australia, by being up-front and playing that role can self-analyse and be self-critical. We are big enough to do that. If we were to say, 'This is where the convention stands. This is how far we have got. We know we have a long way to go, but we are doing pretty well because we have achieved these steps.' Putting our heads in the sand—I am not saying that all members of the government or the opposition do this—and saying, 'Look, it is okay. We are doing pretty well. This is what we have done' is not really serving Australian children; it is not really doing the job.

Again, if people understand what the convention is about and can see that it is not going to destroy our traditional way of life immediately, that it is not that sort of document, I think we will be moving ahead a lot more quickly. For example, I do not think it is just the government's responsibility. One of the things that the centre has been working on is getting business to shoulder some of the responsibility as well. When business make decisions, they should be considering the impact that their decisions have on children. The media needs to be much more careful about its portrayal of young people. The government needs to play that guidance role, that leading from the front role. That is what we want to see. I think that this government has spoken a lot about strong leadership. Let us have that strong leadership for children and lead by example.

Mr McCLELLAND—The point in article 5 is strengthened in article 18. The second sentence is: 'Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child.'

Mr Antrum—Absolutely.

Mr McCLELLAND—You are saying that there has been a lot of misunderstanding of what the convention is about. If and when Australia implements it—by way of legislation or even by establishing a children's commissioner; something of that nature—they can clarify the position, I think your evidence was, by the very nature of the legislation or the regime that is set up in Australia.

Mr Antrum—Yes.

Mr McCLELLAND—So, even if there is ambiguity in the terms of the document, Australia can overcome that by their own legislative framework?

Mr Antrum—Exactly—or through a declaratory statement. Simply using the convention itself—not trying to come up with arguments on the backfoot—to quell those fears. I just very quickly might say that the other fundamental error I think opponents of the convention have made is that this is not a convention on the rights of the parent. There are other documents, other laws, other precepts, other social mores, that say that parents or carers have these roles. This is a convention on the rights of the child. If they want to look at conventions on the rights of the parent or the civil and political rights, they exist.

This convention was drafted, I would suggest, because children are particularly vulnerable. While they are certainly included within the human community, generally when we are looking at the other civil and political rights, covenants and the human rights documents, they really have been drafted in a way that assumes a certain maturity and a certain level of development to be able to access legal representation, government resources and services. This is a convention to try to close the gap a bit. To give a child a right does not mean you necessarily take it away from a parent.

Mr BARTLETT—To argue that the rights of parents and families are covered in social mores, as you said, and in other conventions, in other pieces of legislation, and that this convention needs to concentrate on the rights of the child, is that not looking at the role of children somewhat in a vacuum? There seems to be an assumption in what you are saying that the rights of the child can be looked at in a vacuum out of the context of the family. Surely it needs to be recognised that the rights of the child are protected most and enhanced most within the context of the family.

Mr Antrum—I think the convention acknowledges that, and I would say that the convention does acknowledge that: the best environment for the child is with the child's parents. That is the first step. Trying to give sectors of the community certain rights in this package and then looking at the intellectually disabled people in this package, I would acknowledge is a problematic approach, but it is the one that we are stuck with at the moment. To have to go back to the beginning and say, 'We are now going to look at the community rights document,' I think would probably be a task that would take us a number of centuries. This is a document, as I understand it, to fill that gap because that has been the way that rights have been, if you like, apportioned or presented.

Mr BARTLETT—I put it to you though that that is part of the problem: this has been worded without sufficient reference to the role of the family in the whole thing. If the rights of the family as such had been incorporated in this, then the controversy or the fear and anxiety that you spoke about earlier might not necessarily be there.

Can I just follow up on the question of the 'misunderstanding, the fear and anxiety', to use your phrase. Those fears have been expressed most in relation to articles 12 to 16. Just looking at article 13, for instance, it has been put to us in many submissions that a number of parents have interpreted that as meaning that the parents do not have any right to interfere with the child's right to seek information, be it through magazines, the Internet or other avenues that the parent feels are unacceptable. How do you respond to that fear or anxiety of a parent?

Mr Antrum—I can understand that fear and anxiety. I am a parent myself. However, with the Internet, whether we are talking about children, about adults or about senior citizens, there is information on the Internet that we would not want anybody to see. The government, the legislators, the lawyers, the prosecutors and the Australian Federal Police are flat out trying to find ways of locking it down and stopping access to

those cyber nasties, if you like. We could say to the kids, 'We cannot give you any rights because we have to stop you from doing something,' but the better thing to do would be to use the role that is given in the convention to the community, to be teachers, to guide children and to say, 'Look, here is an exciting area that you can look at'—to provide some sort of guidance.

Mr BARTLETT—That might be true, but that does not answer the question. To what extent does article 13 prevent a parent interfering, if you like, to close off access to some parts of information through the Internet or any other avenue that they see as unacceptable for their children?

Mr Antrum—I would cross-reference it, I suppose, back to article 5 and to a lesser extent article 18, in which parents have the role and the duty—the obligation—to assess their child's developing maturity and in doing so can exercise their discretion. I do not think that article 13 should be read as saying, 'This is a free for all.'

Mr BARTLETT—Can you see any situation where that could be used to prevent the parents regulating what their children access?

Mr Antrum—Only in semantics, I would suggest. In this community, I do not think that the majority of the community, the majority of children's organisations and those who adamantly support the convention would suggest that that just means it is open slather for kids. I think that when a child reaches 13 or 14 they are getting very close to being able to make their own decisions about things. Just as a 21-year-old or a 25- or a 30-year-old might be adversely impacted by terrible stuff on the Internet, so would the 13- or 14-year-old. But that is not an argument to deny one sector, the most vulnerable sector of the community, access to information. It is better that they have that access.

Mr BARTLETT—But it is an argument to give parents the right to have some input in that process.

Mr Antrum—Certainly, and I would accept that right. All documents I believe must be viewed as a whole, and the convention and part of the promotion of it is to say, 'When you are interpreting the Convention on the Rights of the Child you must interpret the document as a whole, not necessarily article by article viewed in isolation because it does not make any sense then.'

Mr BARTLETT—But, with respect, the article as a whole is ambiguous because of the vagueness of some of the terminology and because of the apparent contradictions within it, and thus the fear and anxiety within some sections of the community.

Mr Antrum—I accept that, but I think that Australia can move forward on the convention. When we do so—either by legislation, a statement or whatever—we can say,

'This is how we view it. This is our interpretation of the document,' and perhaps the concerns in relation to article 13—and there will be others as well—can be put into some sort of hierarchy there.

Senator BOURNE—Can I just ask one question on article 37(c) and the regulation. Do you have any lateral or innovative ideas on how we could go about separating juveniles, particularly as you say in isolated areas which is where everyone has identified the problem. Are there ways that we could perhaps recommend, or look at recommending, of separating out juveniles in those areas so that it would be possible to get rid of that regulation?

Mr Antrum—Yes, I think that there are. It requires a deal of coordination at the local level, and it is something that I was speaking with the New South Wales Attorney-General about yesterday. I practised in Narrabri for two years, and that included places like Peak Hill with tiny little courthouses and tiny little police cells.

If I had a child who, with all the best intentions of the sergeant there, was sitting in a cell with a number of adult offenders I would ask, 'Can we make some other arrangement for this child?' In every single case when the request was made, it could be done. The child could have been placed in another cell, in one of the bail sergeant areas, in the dock for the short time it takes to do the statement or the Salvation Army may have been able to send across a fairly burly bloke to look after the child for a while. These things can be done.

If the child is intoxicated or has some drug affectation then, again, the cell is not the best place for them anyway because they require very close supervision. The police would generally support it because they do not want the situation themselves. It means that they are removed from the streets. They have to keep a very close eye on a child who is placed with an adult population. So you will have the support from the police. I think that in any local community you will find the networks are already there to meet that accommodation problem.

Mr TONY SMITH—Without wanting to sound smart, I just wanted to correct your misstatement of law. On page 4, the bottom paragraph, you talk about the 11-year-old boy who was the victim of the legislation. If the facts are as stated, you cannot be guilty of an offence of burglary if you do not know what is going on inside. I secured an acquittal on that basis myself. I do not think that is a correct statement of law. If he has pleaded guilty to that he was badly advised.

Mr Antrum—That may well be the case. That is an extract from Judge Hal Jackson of the Western Australian District Court.

Mr TONY SMITH—We have had him as a witness. Can I just take you to what seems to be the nub of the problem. You talk about public education being essential. You

would, of course, concede that that process would involve both sides of the debate?

Mr Antrum—Yes, it would.

Mr TONY SMITH—I just want to put a series of propositions to you. Do you agree with the proposition—I think you have already said that you do—that you do not look at the Convention on the Rights of the Child in isolation, you look at a number of other international instruments in order to gather them together, as it were, and come up with a finite whole, if you like, if that is possible. All are interpreted consistently. Do you agree generally with that?

Mr Antrum—When I was speaking earlier about looking at it as a whole, I was talking about the convention as a whole, but I was acknowledging that—

Mr TONY SMITH—You mentioned others—

Mr Antrum—Other sectors of the community would have regard to other conventions or other—

Mr TONY SMITH—Right. Would you agree that that is appropriate? For example, would you agree that you would in considering the convention look at article 16.3 of the Universal Declaration of Human Rights, which establishes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state?

Mr Antrum—Yes.

Mr TONY SMITH—And that parents have a prior right to choose the kind of education that shall be given to their children.

Mr Antrum—Yes.

Mr TONY SMITH—All right. And you would also agree, in the context of that interpretation, I take it, with article 18.4 of the Universal Declaration of Human Rights, inter alia:

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.

Mr Antrum—Yes.

Mr TONY SMITH—Are you aware of some of the rulings that have been made by the UN committee established under the convention from which we receive reviews from time to time, as do other signatory countries?

Mr Antrum—Not in any great detail. I do read them, but I would not profess to be—

Mr TONY SMITH—I will read you a particular ruling of the UN committee made several years ago—not too many years ago; three or four, I think:

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.

Do you find that ruling somewhat at odds with some of the matters to which I have referred, and also the convention as a whole?

Mr Antrum—Not at all, because what it is saying is 'Give the child a voice, give it due weight,' but that does not mean that the child makes the decision necessarily.

Mr TONY SMITH—So what you are saying is that, if the child said, 'I want to go to sex education classes,' and the parents said, 'I don't want you to go to sex education classes,' that that child has a right, enforceable at law because of article 12.2, to overcome the resistance of the parent?

Mr Antrum—I would say that the first step is to determine what is the intellectual maturity of the child.

Mr TONY SMITH—And who determines that?

Mr Antrum—It is a difficult job, but it is something that perhaps the parents determine at the first step.

Mr TONY SMITH—So if the parents determine that the child is not mature enough, that is the end of the matter?

Mr Antrum—This is probably difficult territory, because the Family Court, of course, has had the same difficulties for many years. There is no black and white line where a child suddenly moves into an area where they can make decisions on their own, but the weight that you give their decision increases as their maturity increases.

Mr TONY SMITH—What you are suggesting though in effect, because of that grey line, is that parents are not the best equipped to determine that in that very difficult grey area, and therefore where you do have this head-on conflict—parents saying, 'You're not mature,' children saying, 'We are mature enough'—some outside influence is needed to make a determination on that question?

Mr Antrum—No, I think there would be a further process, if we were to endorse the convention wholeheartedly, where we might set up some benchmarks there. But let me give an example: if it was a 15-year-old who was articulate, who was doing well at school, who was quite well socially interacting—all of those indicators—and they had expressed a strong desire that they not attend, say, Islamic education at their school, religious education, and their parents believed that they should, then I would say that perhaps that child should have a right of appeal. But I am not putting it necessarily in a judicial sense because one thing that we are always trying to do at the centre is keep kids out of courts.

Mr TONY SMITH—In an administrative sense you are saying, are you?

Mr Antrum—Yes.

Mr TONY SMITH—So there would need necessarily to be determinations of fact on that issue. They would have to be made by an independent so-called arbiter or tribunal. At the end of the day you would say that, all other things being equal, provided both parties accepted (I am even qualifying my own precepts there) the simple matter is that in those hard cases—and these are the cases that we must be all concerned with because, as you know as a lawyer, you can do anything with words once you have to formulate an argument—we could have an Islamic family being overruled by the arbiter in relation to their 15-year-old? There could then be an appeal process because, although you could have an administrative decision that was not subject to appeal, you get into questions of error of law and all those sorts of things that can apply—administrative decision and judicial review acts and all those sorts of things. At the end of the day can you see the metamorphosis that we are treading into here?

Mr Antrum—I think what you enunciated there is one of the very hard cases and would be exceptional. Certainly they would arise, but that is the stuff, regrettably, that forms the media coverage of the Convention on the Rights of the Child. They will arise, but if we are going to be saying the children do have rights, an evolving framework of rights, then perhaps they are the hard decisions that we have to make.

Senator ABETZ—But who ought to make those hard decisions—the parents, or do-gooders in some social bureaucracy of society that have never lived with a child and do not know the child's idiosyncrasies? Ultimately who is best placed to make those sorts of tough decisions?

Mr Antrum—Those decisions are made already. By way of quick example, we had a 15-year-old student in South Australia who contacted the National Children's and Youth Law Centre. Our rule there is that, if a child contacts us, we will always act, because it is very rare to have children actually accessing legal representation on their own. He did not want to wear a uniform, for one reason or another. The school in fact had within its charter or set of guidelines that it was not compulsory to wear a uniform.

However, the practice was that all students wore a uniform. He was a very gifted young boy, had very strong views on the world, and did not want to wear a uniform. However, in every other aspect he was an exemplary student, was respectful of his teachers, et cetera. We negotiated with the school on his behalf that he wore a type of uniform, but it still allowed him to express his view of individuality. The school was happy; he got on with his studies and he was happy, and he was able to continue.

That was a decision where a child said, 'I don't want to do what adults are telling me to do,' and it was negotiated and it was determined. It did not go to a court. The Department of School Education got involved as a bit of a sideline party, but we were able to work it out. That child, no doubt, learned some very valuable lessons about negotiation and probably will be an important contributor to the community in the future.

Senator COONEY—Throughout your submission you have referred, in an anecdotal way, to some very worrying matters in the juvenile justice system. Have you got any figures you can give us in terms of how children are being affected? I suppose New South Wales is the one you would know most about?

Mr Antrum—Yes, it is. However, I wouldn't be able to give them to you at this stage. If I could undertake to the committee to provide some further statistical information on juvenile—

Senator COONEY—At the moment you have some very alarming examples. Could you just write a passage saying this is how things are in New South Wales?

Mr Antrum—Certainly.

Senator COONEY—On page 11 in this book you say that Victoria has also caught the virus and has introduced a range of mandatory sentences. Are there mandatory sentences in Victoria for juvenile offenders?

Mr Antrum—I will have to—

Senator COONEY—Can you check that?

Mr Antrum—I will have to tread carefully here. At the time of writing, as I recall, there were a number of offences, which included homicide, unlawful death and a number of serious motor vehicle matters, juvenile or adult, where mandatory sentencing was proposed. I think they would be very much on the books now, but I can provide the actual sections.

Senator COONEY—You have provided the section in the Young Offenders Act in Western Australia and I think you have elsewhere. If you could do that, that would be good.

Mr Antrum—Certainly.

Senator COONEY—And although it is a bit unfair to ask you, could you get some details about the Northern Territory? If you cannot, do not.

Mr Antrum—Yes, I can.

Senator COONEY—All right. And you say here:

In New South Wales the Carr government has sought to extend the operation of the Children's Parental Responsibility Act 1994 to areas other than those in which the act was trialled.

Mr Antrum—Yes.

Senator COONEY—Has that been realised? In other words, they have done that, have they?

Mr Antrum—They have.

Senator COONEY—Can you give us some examples later on?

Mr Antrum—Yes.

Senator COONEY—Samples and some statistical factors.

Mr Antrum—On the impact of that act.

Senator COONEY—Yes.

Mr Antrum—At the moment it will probably be more prospective because it has only just come into play.

Senator COONEY—What justification was there for that? Was that a political justification or were there some real problems there?

Mr Antrum—I have to say that I do not really understand except that the last state election in New South Wales was fought very much on a law and order basis. We had the very unedifying spectacle of both parties trying to outdo each other on law and order, and the big losers were the young people. I think that the legislation has been softened because now it also requires a crime prevention strategy to be put in place. One of the things that I have been asking our elected representatives to do right around the country is to have a compact among all political parties that six months prior to an election we not discuss juvenile justice, or at least try to—

Mr TONY SMITH—Tell that to the electorate.

Mr Antrum—Well, to announce new legislation, because what happens is that we have an increasing—an ascending—hostility, if you like, or aggression towards juvenile offenders that is not reflected in the criminal statistics. They are not reflected. Don Weatherburn would come here and say, 'There is no youth crimewave.'

Mr TONY SMITH—You really need to get out in places to say that, and I can tell you now that you would be greeted with enormous hostility in my electorate if you said that.

Mr Antrum—Well, I have been—

Senator COONEY—Mr Smith might be able to give us the statistics from his electorate, but I want you to do that.

Mr Antrum—Certainly.

Senator COONEY—From those areas where you can. Then there is a sentence here towards the end that says:

Even if it was suddenly shown to be a deterrent to criminal acts, proponents of the Gulag juvenile justice system fail to consider the human product of that system.

Could you give us some examples of what you mean by 'the product' and some statistics as well?

Mr Antrum—Certainly.

Senator COONEY—Now, that is a fair few things I have asked for there, but it would be helpful for me in any event if you could do that.

Mr Antrum—No, we can certainly provide some more information there.

Senator COONEY—Thank you.

Mr Antrum—We would be happy to do so.

CHAIRMAN—Mr Antrum, thank you very much. We appreciate all that evidence. Could you also take those questions on notice and provide the appropriate information.

Mr Antrum—Yes. Thank you very much.

[9.39 a.m.]

SCOTT, Mr Eric McEwan, Manager, Association of Children's Welfare Agencies, New South Wales, 323 Castlereagh St Sydney 2000

CHAIRMAN—We have received your written submission dated 24 June. Are there any amendments, omissions or errors in that written submission that you want to draw to the committee's attention?

Mr Scott—To my chagrin, there is one typing error in the third paragraph, but I don't think it detracts from the meaning. In the third paragraph, it should read 'developing and evaluating' rather than 'developing and evaluation'.

CHAIR—Would you like to make an opening statement?

Mr Scott—Yes. I do not come here as a lawyer but as somebody who has practised in the area of child welfare for over 20 years. I think the important thing about the convention is the way in which being part of the convention can give a message to the society in Australia and to the rest of the world that we value children. The next stage is to take it beyond that and look at strategies that we as a country can implement the detail of and ideology behind the convention, which seeks not only to protect children but also to promote their well-being and ensure that they have a place in society.

So what I have said, although limited, does seek to support a number of other submissions that you would have had looking at things like a national agenda, a children's commissioner, and ways by which the federal government, with its role, can set a framework for states to follow to set up systems whereby compliance at state level can be evaluated, whereby advocacy for children can be implemented and whereby complaints of failure to comply can be taken up.

But underlying it all, I always caution against an excessively judicial approach to this. If one could pass laws and make society and people change, then we might be living in a different world. We have to deal with social values and attitudes and community education, and this is a slow process which must bring people on-side to say that we care about children and we want to do the right thing by children. Governments could pass laws tomorrow that would not necessarily make child abuse or maltreatment of children disappear. It has to be dealt with through the very values and attitudes of our society towards children.

CHAIRMAN—Could we start with your concept of the commissioner for children. From what you have just said, it would seem you are suggesting a national commissioner for children.

Mr Scott—Yes.

CHAIRMAN—And how does that commissioner relate to some of the states? Queensland at the moment is the only state with one. There is legislation before the Tasmanian parliament at the moment which would establish one. How do they relate with your national concept and what is the remit for that commissioner?

Mr Scott—Because juvenile justice and child welfare legislation operates at a state level, any national framework does not obviate the need for something happening at a state level, so I would see the jurisdiction of state commissioners to oversight operation of the state legislation.

A national commissioner for children would be doing, I think, three things. It would be advising the government on ways in which specific programs and, where necessary, legislation could be put in place to put into practice Australia's commitments to the UN Convention on the Rights of the Child; secondly, to act as an advocate by taking up issues on request of individuals or groups with government where there would seem to be some action or inaction that appeared to breach the convention; and, thirdly, to act as an adviser and be available to interact with the states to ensure that their legislation was in compliance.

I would not see a federal commissioner necessarily dealing with a lot of individual cases or a lot of individual legislation, but rather setting a framework, conducting inquiries, advising the government, having referrals from government on proposed legislation or things that could be happening at the national level, so that they were the federal government's key adviser on children. And they would be accessible to individual children and children's groups so that they could take up and bring to attention government areas where action was required or perhaps where action should be stopped if it was going to be harmful.

At the state level, similarly many states do not have an adequate system whereby there is advocacy and representation for children outside the care system. Ministers for child welfare or community services, whatever they are called in the various states, are guardians of children, and yet they are also service providers. Some states have legislation which attempts to set up some degree of independence. In New South Wales there is the Community Services Appeal Tribunal and there is a Community Services Commissioner. Both of these avenues still come under the Minister for Community Services, who is in turn the guardian of children, whose officers provide services to children and who funds non-government agencies to provide services. But is that not stepping aside?

So some kind of independent advocate answerable directly to parliament at state level would give more confidence that there was a separation between the provider and the advocate. The role of a federal commissioner, provided the federal government is going to remain one step removed from the detail of this legislation which operates at state level, would be to draw up a national framework based strongly on community consultation and to advise the government on ways in which they could seek greater state compliance.

CHAIRMAN—So at the federal level he or she would not be independent, but would be part of an office?

Mr Scott—I think I agree with other submissions that they might be well placed in the Human Rights and Equal Opportunity Commission.

Senator ABETZ—We heard some evidence yesterday, and I would be interested to get your feedback on this, that parents had the experience of young children leaving home, being given the support of child welfare type agencies and shamelessly using those agencies for their purposes, and then six months, 12 months, even 24 months, later returning home without having any real regard or respect for the welfare agencies that took the stories they presented at face value, not bothering to check out with mum and dad whether the allegations being made were true, correct, sustainable or capable of being worked through. We heard evidence about a 22-year-old who looks back on those welfare people, albeit in the state of Tasmania, with not the degree of respect that the agencies you represent would undoubtedly hope that they would have attracted from those people whom they thought they were helping.

Do you have any comment on that? Do you say that that is just a very rare example, or do you say that that happens too often? If that is the case, is there something that the child welfare agencies can learn from that anecdotal evidence in involving the families and the mums and dads a lot more in these situations?

Mr Scott—I would not sit here and say that that situation does not arise. I am not aware of an evaluation which looks at the rights or the wrongs or the processes of children leaving home to say whether that is a small minority or a substantial minority. All I can say is that I am sure it happens from time to time. In my experience, it was not a major issue. There are many parents who feel aggrieved that when the children leave home they can receive some kind of support and assistance, and they might take that as some kind of undermining of their parental authority or some kind of taking the child's side.

I think it is important that these services are available, certainly at the crisis level, so that a careful and considered look can be taken at the situation, because one would not want to err on the side of always sending a child back to what might be a quite unsatisfactory situation. Probably if the evidence involved a 22-year-old, I would like to think that things have moved along. Certainly when I was operating as a supervisor in field work in the mid-1980s, a major conflict was the difficulty of workers appearing to take sides and accepting the child's version of things.

Senator ABETZ—This child's involvement was at age 15, so it was 1990.

Mr Scott—Yes. So the challenge for workers is to say to the child, 'I hear you, I care about you, we will try and help you, but you're part of a family. We have to operate within that context.' There are guidelines in New South Wales, for example, between

refuges and the Department of Community Services to ensure that parents cannot be completely frozen out of the situation; they have to be informed that the child is safe. The context of working with the child has to, wherever possible, involve the family. The only time that can be absolutely excluded is where there are grounds to believe that the child would be in physical danger, and I just do not mean that the child may not relish going home, but there is some imminent danger on the child's return.

The effort is being focused a lot on mediation and conciliation, and not always to get the child back, particularly where you have an older child who has got strong views and the capacity to vote with their feet. Even if the long-term likelihood was that the child would not be returning to live in the family household, the aim would always be to reconcile the differences so that they could maintain the links with their family. And it is much better, if the child is away from home, that they are friendly with their parents and call around every weekend to see them than if they are away from home and they do not speak to each other, because the hurt that causes in later life is well-known and it is best to have the lines of communication open.

The process of involving parents does require some movement on both sides and just as one would be concerned about workers freezing out parents by taking an absolute view that everything the child says has to be taken without reference to the parents, similarly it would be, I think, inappropriate in human and social terms to say to a child, 'You're 14, you must return home and therefore we don't care what you've got to say. Off you go.' That is where the skill and resourcing of family support services, mediation counsellors and youth workers come into it, because if a child does not wish to return home and they are sent home, you then risk an escalation. If they go home and leave again, if one starts to bring in Children's Court orders, and if they leave again, they are in breach of the orders; and you could end up with a child being kept in some kind of custodial or detention situation because of arguments with the parents.

New South Wales got rid in 1987 of legislation that allowed children to be locked up as uncontrollable and children should not be held in detention for anything other than a criminal offence. So one would not want to escalate it by trying to take a simplistic view that one could tell a 15-year-old to go home and stay there.

Senator ABETZ—For certain. I hear what you are saying on the extreme, but could you imagine that there are situations in society where a child, because it is grounded, because, let us say, it is not allowed to smoke or not allowed to watch a TV program or something, says, 'I don't have to put up with this. There's such a thing as a homeless youth allowance', or whatever it is called nowadays, and off they go; whereas if those sorts of things were not in existence, they would be more than happy to stay at home? Basically what we have done is bent over too far and caused other social problems in trying to address that little niche that you have just been identifying.

Mr Scott—I can't debate statistics with you, but my view would be that the

scenario you are alluding to would be the minority. I don't think many children would consciously form the view that they could go and have a good time in a refuge or on benefits. Access to benefits has been subject to considerable ministerial tightening over recent years. Any children that felt they could live the high life away from home on Commonwealth benefits and in refuges would soon find that was far from the high life. Secondly, life in refuges and on the streets is not pleasant. I can't say that from having lived on them, but from having visited situations. I hesitate to say this, but the only ones I have seen adopt that view you are talking about have been highly educated, privileged middle-classies doing it as a social protest—the kind of 1990s version of 1960s drop-outs.

For children who have less access to information and who respond more reactively to situations, they do not know that there is a refuge up the street and they do not know anything about Commonwealth benefits. They leave because they do not like the situation. If youth workers and family counsellors cannot provide some early repair, then that gap with the parents is going to increase. There is certainly only anecdotal evidence at both ends.

Senator ABETZ—But there is a lot of anecdotal evidence to suggest, for example, that the right to privacy of the child is used by school welfare workers and others to say to the parents, 'Look, your child has told us they don't want us to tell you what they are up to, what is happening, and we are going to respect that child's privacy. All we are telling you'—as you said earlier—'is that the child is safe and well looked after.' They have no idea where the child is living or what else is happening. The number of anecdotal stories that have come through my electoral office, presented to us by the National Council of Women yesterday, is now building up in my mind to be a very sad reflection on the system.

Mr Scott—It is a matter of conjecture as to whether, if one were to round up older kids who are away from home and living rough because of parental abuse, their anecdotes might outnumber the others. I think it is to some extent a reflection of the access in which the groups with the parental anecdotes are able to access social systems, parliamentary systems and committees like this. I do not offer this as anything other than an opinion: there are many children out there who could tell a different story but they tend not to be lining up to give evidence to parliamentary committees. I am not saying that to seek to resolve who is right and who is wrong so I will move on to your other point.

It would be irresponsible of any worker to say to parents, 'There is something I am not telling you and which you will never find out. Johnny's away, and that's the end of it.' If it is important enough to support a child's departure from the family for the child's safety, then it is important enough to have it looked into. As soon as you are going to look into it the parents have a right to know what is being said. A lot of my belief about the wellbeing of children is based upon natural justice, and that extends to parents.

I have spent many years investigating child abuse and at no point could I ever

sustain the belief that parents could not be told what it was we were investigating. If you apply natural justice principles, you cannot investigate something without telling somebody what is being investigated. Similarly, the agreements between non-government crisis accommodation services and the Department of Community Services in New South Wales require that parents are informed and that every step is taken to renew contact with the parent. If a child is saying, 'I do not want to stay home because dad will not let me smoke,' then I would not support that as being something so secret that the parents could not be told. If the child was saying, 'I do not want to go home'—

Senator ABETZ—Yes, but, as has been reported to me, a girl who left home basically for that reason then goes off to welfare and gives another reason, which is then accepted. The mother, despite her desperate attempts, just could not find out what the allegations were. Six months later the parents had their daughter sobbing on their doorstep again basically asking for forgiveness and whether she would be allowed back into the family. In that particular case, the welfare department treated the parents badly and did a great disservice to the young girl involved. I was very concerned about those developments and, for what it is worth, I thought I would air them with you.

Mr Scott—It is difficult to legislate for good practice, but certainly if it is important enough to intervene and support a young person living away from home, it has to be important enough to deal with that with the parents. That can be quite confronting. When I was working on a crisis telephone line we would get calls from children saying, 'I want you to do something but I do not want you to tell my parents.' That was almost asking the impossible. I think that gets back to the skill and resources of the workers to be able to take up these issues and try to work them through. That takes time.

Traditionally, crisis support and work with homeless children are not highly resourced at a casework level. Much of the funding revolves around providing a bed. It is not resourced to the point where there are sufficient family mediators and counsellors. I am not disagreeing with you that that is an unsatisfactory situation. I would certainly not support secrets getting in the way of family communication. If there are things that support a child being away from home, these need to be dealt with with the parents or they will fester and cause long-term damage in the parent-child relationship.

Mr McCLELLAND—You have indicated that from your point of view natural justice is important when dealing with the interests of not only the child but the parents. In any administrative decision making process natural justice is always important. Is there anything in the convention to your knowledge that restricts, prevents or diminishes in any way whatsoever the principle that parents should be afforded natural justice in the situations referred to by Senator Abetz?

Mr Scott—I do not know whether this is a test and I am supposed to think of a particular article that you have in mind or whether it is a—

Mr McCLELLAND—I must say I know of no such article.

Mr Scott—Any right takes with it responsibilities. One gets into difficult ground where one person's absolute right impinges on another person's belief as to what their rights might be. This applies whether one is driving on the road or interacting with one's family. If people believe that their rights override other people's wellbeing and rights, then conflict is going to arise. A child, subject to their age and maturity, of course has the right to privacy. I would not knock going into the bedroom of my two-year-old but I would knock going into the bedroom of my 16-year-old. If I was told I was not allowed in, I might assume there was something that I might find that I would not like. If it is something I would not like I would want to know about it, and I would attempt to work this through with the child.

I do not know of any child who, suddenly at the age of 14, has decided, 'There's nothing on telly tonight so I might leave home.' Often when welfare authorities are criticised by parents for not providing enough help it is because the welfare authorities or the counsellors have been called in at the difficult teenage years and expected to address a situation which had been going on for the last 13, 14 or 15 years. That is not to say that one attaches blame to the parents absolutely, but to say that it is rather overoptimistic to assume that somebody with a legislative base behind them or qualifications in counselling can suddenly undo damage that has been going on for some time. Often in the tabloid media parents will say, 'So-and-so ran away from home. I called in the welfare and they did nothing.' In my experience, very few children would suddenly decide to run away unless things had been going wrong for some time.

I do not believe parents have access to support services early enough. The resources are so stretched that, unless the child has run away, unless the child has been abused, it is very difficult to get services. Secondly, there is an ethos that makes it difficult for parents to seek help.

Parenting is not a highly skilled, specialised area like genetic engineering where there is a select few who know all about it. We are all expected to know about it and to say that we do not is to some extent an admission of failure. So we stumble on and do not want to admit that things are going wrong and do not want to seek help either because of our own ego as parents or because help is not necessarily readily available. It is only when the child is actually out the door that services are called in, and that is when problems arise, such as Senator Abetz referred to: welfare authorities acting peremptorily that might be against the interests of the parents, parents assuming that welfare authorities can fix it, the child simplifying the matter by talking about the issue that happened last night rather than things that have been happening for years. So it is something that requires good services, ready services, strong social attitudes about the wellbeing of children in families, a culture that says being a parent is not easy but it should never be so difficult that you cannot get help. It is those kinds of attitudes that we have to work on to come together instead of sending children and parents apart.

CHAIRMAN—Thank you, Mr Scott, that is very good.

Mr Scott—Thank you.

[10.07 a.m.]

TOBIN, Dr Bernadette Margaret, Director, John Plunkett Centre for Ethics in Health Care, St Vincent's Hospital, Victoria Street, Darlinghurst, New South Wales 2010

CHAIRMAN—We thank you for your written submission dated 2 May. Are there any amendments, omissions or errors in that written submission?

Dr Tobin—Not that I am aware of now.

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

Dr Tobin—Thank you. My submission to the committee is a very small and particular submission. I make in my submission just two points to the committee, and they address the question of the status of the UN Convention on the Rights of the Child. So I really do not want to enter into any discussion, nor make any submissions to you, about the content per se. I simply want to address the question of the status of our ratification of that convention.

The two points are these: first of all, we should not treat UN conventions, international conventions, any conventions, no matter what we think of their content, as repositories of law capable of overriding laws that Australians create. We should not do that for obvious democratic reasons. As an individual Australian, I have got absolutely no chance of making any difference to what goes into an international convention, but in principle I have got some tiny, minor chance of making some difference to what goes into an Australian law. So that is the first point—that we should not treat them as though they are instruments of international law per se capable of overriding the content of Australian law.

The second point is this: if that is the case, if you were to accept that, then you might ask the question, 'Do international conventions such as this one have any value at all?' and my answer to that is, 'Yes, they do.' They have the possibility of marking out significant moral truths, reminding us of moral truths that we have forgotten, clarifying moral realities that we were not very clear on, marking out moral progress for us. That is their possibility. Whether in fact they do that will depend on the details of what is actually in those conventions. My assumption in going to any international convention will be, as I begin to read it, that it is likely that it will get some things right but it will be surprising if everything in it is right. You need to go to the detail and see what is actually said and think it out for yourself to see whether what it says is true, whether it is expressing moral truths.

To make that point, I simply want to draw your attention to two places in this convention. In the first place, it gives sound advice and it is something that is worth

Australian legislators taking on. The second example I want to give you is of where the convention gives unsound advice and I think that we simply should ignore it—not just dismiss it but argue that it is wrong, if necessary. Similarly with the first one—argue that it is right. But whether or not we take it on board is a matter for us to work out for ourselves.

The first example of some sound advice is in article 8. If I can just draw your attention to it, that article says, amongst other things:

States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without lawful interference.

It seems to me that that article rightly recognises a child's need for a sense of its own identity. It rightly recognises that this is a universal human need, and it is the case that in a number of ways Australian laws and other semi-legal provisions do not recognise that right. So I am delighted to see that it is there in the UN Convention on the Rights of the Child, and that gives me and others a resource for arguing that some parts of Australian laws need to be improved to recognise that right.

The anonymous donation of gametes, of sperm and ova, is a practice which ignores the rights of any children born of reproductive technology. It ignores their right to a sense of their own identity, to the ingredients of their identity. In some states the legislation requires the keeping of information. In other states there is no legislation at all. I am delighted to say that the new National Health and Medical Research Council guidelines on this matter recognise that right of a child to knowledge of its own identity, knowledge of its own biological parents. So there is an example of where what the convention says is something that is sound.

But I draw your attention to one part of article 8:

The child shall have a right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of the child's choice.

It goes on to say that the exercise of this right may be subject to certain restrictions, but you will note that they are only those that are necessary for the respect of the rights and reputations of others and for the protection of national security or of public order or public health and morals.

It seems to me that if you take that article literally you could use it to prevent Australian schools and Australian school systems from determining their own curriculums, determining their own extracurricular activities and, indeed, from moulding their own distinctive cultures and ethos.

I could go on and show you pieces where I think this convention has got it right

and articles where I think the convention has got it wrong, but I hope that by giving you just one example of each I have made the point that the value of these conventions is, I think, potentially to mark out significant moral truths. But whether in fact they do that or not will be a matter of the detail of what they say.

It follows from what I am saying that, from the mere fact that something is in this convention, it ought not to be treated as though it is gospel truth. It ought not to be treated as though it is written on a tablet and handed down to us. The fact that it is in a convention means it deserves our serious respect, but having given it serious respect the appropriate thing might be to ignore it or to reject it.

CHAIRMAN—Thank you very much. You made your first point about not having any input to conventions and I think that may have been so in the past, but that is what this committee is all about. As an individual, whether you represent a group or whether you represent Dr Tobin, under the new machinery you have an input like anybody else. It is a point to make to you that the situation is changing, and should change; that people at the private level should have an input to conventions like this, and that is what this committee is all about. That is the rationale for its establishment.

In your submission—and you have spoken a bit about this in your opening statement—you said:

The UN Convention on the Rights of the Child is a mixed bag. It contains unwise and wise social policies in relation to the upbringing and care of children. Nothing in that convention ought to be adopted by Australian institutions or legislatures simply on the grounds that the idea is found in this convention.

What is the bottom line for you in relation to this convention? Do you think that if it were to be de-ratified it would throw out the baby with the bathwater, or do you think we should have some sort of declaratory statement to clarify the situation? Clearly there is a mixed bag of interpretation in terms of this convention. What do you see as the way ahead in relation to this convention domestically?

Dr Tobin—Can I respond to the first thing and then answer the second question, if I can manage to remember both. My first point—perhaps I was misunderstood—is that your reflections on this committee cannot have any effect on the content of that convention, that they address the ratification, the issue of the status of that convention in relation to our own arrangements here in Australia. So nothing that you can do or that I can do can change the content, the wording, the substance of that convention.

Mr McCLELLAND—Although we can recommend renunciation of the treaty in total.

Dr Tobin—I see.

CHAIRMAN—I am sorry to interrupt you again. That is the big difference between this convention and dealing in this committee with the Convention on the Rights of the Child, which has already been ratified, and the established machinery last year of looking at treaties before they were ratified. There is a big difference. As Mr McClelland said, what we are trying to do is pick up the loose ends 6½ years later and highlight some of those. That is where your personal input is so important, even in picking up the threads.

Dr Tobin—I do want to restate my first point, that I do not think we should treat international conventions as though they were repositories of law. I think we should work out our own law ourselves and we use the resources of international conventions where we think they have got things right, but we should ignore them where we think they have got them wrong.

As to what I think the final recommendation should be, I think that it ought to be one which says that there are some good things in this convention which ought to be incorporated into Australian law and there are some things in this convention that ought not to be incorporated into Australian law. That would be my response.

Senator BOURNE—I was fascinated by the statement you made about anonymous donation of gametes, which I did not even realise was possible under Australian law. Do you think that is something that is being recognised and is being looked at in all the different states?

Dr Tobin—It is a state matter, is it not?

Senator BOURNE—Yes.

Dr Tobin—I am no expert on this, but as I understand it in three states there are laws on the matter. Certainly in my home state—New South Wales—there are no laws on the matter and the arrangements that are entered into are a matter for individual clinics. Individual clinics will sometimes be associated with a university in which case their arrangements will have to go through an institution ethics committee, but that is not necessarily the case. Here in New South Wales at least some of the providers of the technologies are very publicly opposed to any change in that regime—very publicly opposed, for whatever reason. Some of them are very publicly opposed to any regulation and monitoring of these activities in New South Wales.

It seems to me to be a terrible injustice to any child who may be born that those essential ingredients of identity are in principle inaccessible to it for the rest of its life, and, as I say, I am delighted the NHMRC guidelines require that that information be kept. But you have got to remember that the only people who have to abide by those guidelines are people going for research funds from the NHMRC or the ARC. Some of these clinics say, 'Voluntarily we abide by these guidelines.' Maybe they do, maybe they do not. You would not know.

Mr TONY SMITH—Just in relation to one of the points you make about the question of sovereignty—which if I might say so, with respect, is well made—are you aware of the activities of the United Nations committee that goes around and makes particular pronouncements in various countries on whether particular signatory countries are complying with the convention? I am a little bit mystified as to whether under the convention it has power to make interpretative statements. It is arguable perhaps, but I think it is strongly arguable that it does not. Have you considered that in making the statement about sovereignty? If I can just put it rhetorically, it seems to me that that is part of the sovereignty dilution process; that a committee can come along and say, 'Look, you're carrying out this particular practice but we say that that is inconsistent with the convention.' There is an additional dilution of sovereignty. Were you aware of that?

Dr Tobin—No, I am not aware of that activity, but my reaction to that would be informed by the kinds of things that I have already said. My instinctive reaction would be 'Who are they to inquire as to what we are doing?' If it happens and in New South Wales, to use the example that has come up with the anonymous donation of gametes, the UN committee comes and points this out, whether that is a good or a bad thing is then open for discussion, but it is not made bad or immoral by a UN committee coming and pointing out that we are not coming up to scratch there. We need to have a look at that ourselves and see whether we think that that practice is one that Australians ought to engage in or not. It may be that that expert committee has done a lot of thinking in that area and so it really would be worth listening to. But the substance of the issue is a matter for Australians ourselves, nutting it out for ourselves.

Mr TONY SMITH—And even arguably it is one thing to make, shall we say, a statement of fact which does not necessarily say, 'This is not correct in accordance with the convention;' it may well be saying, 'Well, this is a practice that should be looked at' rather than, 'We think in terms of article so and so that this particular practice is inconsistent.' So there are two different points there.

Dr Tobin—Yes. I think when the UN convention on human rights stated unambiguously and simply that every human being had inalienable rights, that was a very valuable thing for all of us, not just Australians—to have it stated so simply and so clearly, and it was so easy for us to refer back to. But that moral reality was not made, was not created, by a group of people writing it in the convention. They expressed what most people knew already although some did not know. They expressed it very clearly, so they clarified people's understanding of it, but, as it were, did no more than that.

If I can give you an example: I am just on the periphery of a little incident at the moment, the circumstances of which I do not want to divulge at all, but one party to this disagreement is strengthening her claim by saying, 'And that is against provision such and such of the UN Convention on the Rights of the Child.' My reaction to that is: let us go and see what is in article such and such of the UN Convention on the Rights of the Child and see whether what is contained there is sound or not. If it is sound, it strengthens her

case; if it is not sound, it adds nothing. But I take it the fact that it is in a UN convention adds nothing one way or the other.

Senator ABETZ—That is one of the problems—that the media and social commentators tell us, sycophantically, that if it is merely in an international convention it is right by simple virtue of its being in an international convention, and therefore we do not have to exercise an independent mind as to whether it is a good or bad thing that is actually in this convention. It is very refreshing to hear you speak on that and also the intellectual rigour with which you have argued your case before us.

Dr Tobin—Can I put it to you that that view is wrong as a matter of political philosophy for democratic principles reasons, and it is wrong as a matter of moral philosophy too.

Senator COONEY—Is it the John Plunkett Centre's position that the international convention, and in particular the Convention on the Rights of the Child, simply forms a reservoir that any particular nation can go to as a basis for its law, but beyond that it should not have any effect? What I was going to put to you, for example, say with the one-child policy in China, is that it is a matter that you would not measure against the convention and simply say, 'Well, that's a matter for China' or with other problems with children in Romania and what have you. Is that the position of the John Plunkett Centre?

Dr Tobin—I think it is a good way of testing the point that I am making. Say you take the one-child policy in China. The challenge is to work out whether or not that is a sound social policy.

Senator COONEY—Is that up to China to work out or for Australia to work out?

Dr Tobin—No, I would say exactly the same thing, I would make exactly the same meta-ethical point, about the one-child policy as I would about policies articulated in this convention: whether or not that is sound social policy is not a matter of whether it is in the convention, whether any convention endorses it or disendorses it; nor is it settled by what the Chinese authorities think. It is a matter for people, individuals and nations, to get as right as they can. Just as an international convention can get things wrong, so a national grouping can get things wrong.

Senator COONEY—I understood from this submission that it was up to each nation to decide for itself what was right and what was wrong—whether a particular nation's female circumcision is right, whether the one-child policy is right or wrong. What I am trying to get from the John Plunkett Centre is whether or not that is the position. What these conventions do is simply provide—when I say 'simply' it is an important function it performs—an area it might go to to look at what is right and what is wrong. It is very much a matter for each nation to decide how it should conduct its own affairs. Another one might be child labour. That is a matter for each nation to decide. Is that what

the John Plunkett Centre is deciding?

Dr Tobin—The John Plunkett Centre is saying two things: firstly, individual nations make their own laws—and it follows from that that individual nations might even make terrible laws for instance: that it is permissible to engage in female genital mutilation and, secondly, whether female genital mutilation is a sound social policy or not is a matter for people to work out for themselves.

Senator COONEY—Within the nation.

Dr Tobin—Within the nation. The fact that it is in an international convention does not mean it is permissible. The fact that an individual nation adopts it as a social practice does not make it morally permissible either.

Senator COONEY—I understand. But it is not for any other nation to either criticise or object to that.

Dr Tobin—No. My point does not go that far. Of course, it is open for one grouping of people to criticise and to evaluate what goes on in another grouping or nation. Individual nations have to make up their own laws, but their challenge is to make morally sound laws. Where they do not—as in the case of endorsing female genital mutilation—it is perfectly appropriate for one country to evaluate, including criticise, what another country does.

Senator COONEY—When one nation is criticising another nation, is it the John Plunkett position that they can appeal to what is set out in United Nations conventions or is it not?

Dr Tobin—Only to the extent that what is in the convention is sound.

Senator COONEY—Sound in terms of the people making the criticism?

Dr Tobin—Yes, sure.

Senator COONEY—So it is a matter of how each individual interprets the convention in his or her use of that convention against another nation? When I say 'against another nation'—in criticising the moral conduct of that other nation.

Dr Tobin—There is no way that one can avoid working out for oneself as an individual or as a country whether female genital mutilation is permissible or not. If an international convention were to say it is permissible, that would not make it permissible. But if it were to say something which ruled it out, then in criticising another country for endorsing it it could well be appropriate to say, 'Not only is that wrong in our own eyes, but can we remind you of what is in the international convention on that subject matter.'

Senator COONEY—Where do people draw the basis of their moral evaluations from if they are not using the conventions?

Dr Tobin—You are going to give me 1½ hours on that one, aren't you?

Senator COONEY—All right, but you cannot—

Dr Tobin—I will give you a one sentence answer.

Senator COONEY—Could you take that on notice and give us an exposition.

Dr Tobin—Sure.

CHAIR—There being no further questions of Dr Tobin, we thank you very much.

[10.34 a.m.]

CRONIN, Dr Kathryn, Commissioner, Australian Law Reform Commission, Level 10, 133 Castlereagh Street, Sydney, New South Wales 2000

KINLEY, Dr David, Legal Specialist, Australian Law Reform Commission, Level 10, 133 Castlereagh Street, Sydney, New South Wales 2000

MOYLE, Ms Sally, Team Leader on Children in the Legal Process Inquiry, Australian Law Reform Commission, Level 10, 133 Castlereagh Street, Sydney, New South Wales 2000

SIDOTI, Mr Christopher Dominic, Human Rights Commissioner, Human Rights and Equal Opportunity Commission, 133 Castlereagh Street, Sydney, New South Wales

CHAIR—Are there any errors of fact or any omissions that have to be made to your written submissions?

Dr Cronin—No, sir, not to my knowledge.

CHAIR—Are we going to have two short opening statements or are we going to have one?

Mr Sidoti—Two short ones.

Dr Cronin—Mr Chair, we are very grateful for this opportunity to come before you and to give evidence before this committee. You have seen our submission. I would only make two or three very brief comments on it. First of all, the observations that pertain to the situation of children in Australia derive from findings that have been the result of a very intensive and wide-ranging inquiry of both commissions into the situation of children who come into legal processes. We are not talking at all about all children in Australia, but a particular group of children who are arguably singularly disadvantaged, and that is reflected by the fact that they are in the legal process.

We have also made some observations to you concerning how the Convention on the Rights of the Child might be incorporated into Australian law. I should say that in our final report, which is dealing with legal process matters, we will not be addressing such matters because it is essentially outside the terms of reference of our inquiry, but we have made observations to you in our submission about how that might be obtained.

We would also say that in so far as we have made reference in our submission to recommendations, at this stage they are draft recommendations. We have published an issues paper, a draft recommendations paper, and our final report is set to be sent to the federal Attorney-General on 30 September. Our views may change, because we are still consulting on some of those recommendations, but they represent our views as of today.

Mr Sidoti—First I would like to apologise to the committee for the lateness of our submission. I realise it is a lengthy submission and it will have been very difficult for committee members to have digested it in the short time that you have had. It is late because it is lengthy, I must say, as much as it is late because of other workloads we have had at the commission. Because it is late, if the committee has further issues that it wishes to raise, either orally or in writing, we would be prepared very willingly to seek to respond to those as best we can and as quickly as we can after the inquiry is sent to us.

Second, and perhaps more broadly, our submission deals primarily with an assessment of Australia's performance in relation to the convention. I thought it perhaps useful in my opening comments just to say a word or two that places the convention within the broader context of international human rights law. That law owes its development to the starting point of the Universal Declaration of Human Rights, which was adopted 50 years ago next year. The universal declaration in its own terms describes itself as 'a common standard of achievement for all nations and all peoples'.

Within the framework of human rights law established by the universal declaration many different conventions and other forms of international instruments have been developed. Some, like the International Covenant on Economic, Social and Cultural Rights, provide that the rights prescribed in that covenant should be attained gradually. There is a recognition of limitations on resources and the difficulties that states face in meeting the obligations under that covenant.

Others, like the International Covenant on Civil and Political Rights, provide for immediately binding obligations on states. For example, it is never permissible to torture anybody, no matter what the circumstances may be. The Convention on the Rights of the Child falls within that broader framework of human rights law that commenced with the universal declaration, and again provides those common standards of achievement for all peoples and all nations. It seeks to set out the provisions to which children are entitled, consistent with other human rights provisions, but taking into account the special need for care and protection because of their particular vulnerability arising from the fact that they are children.

The thing about this convention, this international treaty, is that the standards that are set in it are reasonable, practical standards that are easy to meet. In many respects Australian law, when we ratified the convention, already exceeded a number of the standards contained within it. To that extent we were committing ourselves to maintaining that level of performance. We were not committing ourselves to dropping back to a lower standard that the convention itself may prescribe. But in other ways, in so many respects, the convention provides standards that are attainable quite reasonably within the resources and within the legal capacity of a country like Australia, and in fact where we are deviating from our commitment to Australia's children under the convention our deviations are arising not because of any lack of resources or particular economic circumstances but rather because of the conscious decision by governments to move in

opposite directions from those to which we have committed ourselves.

My opening comment is very much to place before the committee the view of our commission that this convention is attainable, that it is not pie in the sky, that it is not beyond the resources or the capacity of Australians and of the Australian legal system to meet the commitments that we have made. These are commitments which are made to Australia's children first and foremost and it is in that context that the convention needs to be examined.

CHAIR—It would be fair to say that going back to 1988-89, prior to the ratification, there was a lot of emotion and some uninformed comment—and some very informed comment—on the convention. This committee has found in the last few months that a lot of those perceptions still abound. It would be fair, and I would hope you would agree with me and agree with this committee, that this convention in very large part is all about perceptions, it is all about interpretation. I have to say that there is a wide spectrum of interpretation, and in that lies a very basic difficulty. I come back to what Dr Cronin said about what might or might not be recommended in terms of the legislative solution. How feasible is it to convert at the federal level into some sort of umbrella legislation something that means different things to different people?

Dr Cronin—I would probably start with the proposition that the convention is certainly an achievable standard but it is not written in a form that is very directly amenable to changing into legislation. For example, if you take article 12, as to what is a matter affecting a child, arguably a large number of matters affect a child and almost anything directly relating to a parent would affect a child, so for you to simply put that provision directly into legislation is to misunderstand, in my submission, the difference between a treaty and a piece of legislation. Any adoption of some of the provisions of the treaties would require a new language construction to make them amenable to the impact that they would then have if they became part of our domestic law and something that was alright, that was justiciable before courts. Treaties are not necessarily directly translatable into legislation, and one would have to recraft them.

CHAIR—Again, you could not do it with a piece of umbrella legislation, whether it is welfare legislation or whatever. So you are not suggesting an umbrella legislative approach either at the federal or the state level. At the federal level it is suggested that because of this confusion, because of this varying degree of interpretation, some sort of declaratory statement might be a solution, which a lot of other countries, as you would know, have exercised in ratifying this convention. Do you think that is a feasible way ahead, for the federal government to make some sort of declaratory statement of intention—which it can do—subsequent to ratification?

Dr Cronin—I will leave perhaps to Commissioner Sidoti those substantive matters, because the commission comes into it I suspect by a rather more indirect route, in that we have been looking at process. But certainly if I can answer it this way, I would say it is a

consistent theme that has run through almost every one of our consultations around Australia that what is needed at a federal level is some guidance federally as to what the rights and entitlements of children might be and how you would translate those into practice.

Mostly that is presented to us in this way: that you have numbers of different competing legislatures who are defining the issues for children, you have a variety of different administrative agencies who are dealing directly with children, and there is no consistent overarching assumptions about what you, as a child, could anticipate would be delivered to you in terms of rights and status in Australia.

I would say it would certainly be of assistance, and many of our draft recommendations have been crafted in a way—and I would say almost all of these professionals who are dealing with children are saying to us—to say, look, given that the federal government doesn't have the direct dealing with children, the federal government has to be in there in some overarching policy guidance sense of either having a role of coordinating policy, giving best standards and best practices that will ultimately impact on children, and certainly giving some national leadership in the way that matters translate then directly into rights and entitlements to children.

CHAIRMAN—Did you want to add to that?

Mr Sidoti—My view is essentially the same. Certainly the convention is inappropriate in its current form for direct enactment in Australian law. That is perhaps a reflection that different legal systems have different approaches to law. In many legal systems law is basically an expression of general principles and it is left to others—more often the executive than the judiciary, I have to say—to seek to apply those general principles in a day-to-day way. Our legal system has a much more prescriptive approach to law, where our laws seek to be detailed and we give a great degree of discretion to the courts in the application of those detailed laws.

For that reason although some countries may appropriately enact the convention as it stands, it represents such a fundamentally different approach to law-making that pure enactment in Australian law I do not see as being an appropriate or for that matter a possible way to go.

The role of the federal level of government then lies much more in establishing the framework under which the convention will operate in a number of different areas. I think it does need to be taken on an area-by-area basis. There is a need, for example, which is referred to in our draft recommendations paper and which we at the Human Rights Commission have referred to regularly, for national standards in juvenile justice, because we have in this area where the law affects children very dramatically so much variation in practices across the states and territories that it is very true to say that the human rights of children differ according to the accident of birth and residence.

The same applies when we look at the child protection or the child welfare system. There is variation right across the country in respect to the rights of children. Under those circumstances, the provision of a truly national set of standards that are detailed, consistent with the convention and applicable across the country—standards negotiated by Commonwealth, state, territory and other organisations—is a more appropriate approach to the implementation of the convention than its mere enactment in law as it stands.

CHAIRMAN—Before I hand over to Mr McClelland for the next question, just from both of you, is what the federal government is doing at the moment in terms of the international instruments legislation in your view a step forwards or is it a step backwards?

Mr Sidoti—This the so-called anti-Teoh bill?

CHAIR—Yes.

Mr Sidoti—It is a step backwards without doubt.

CHAIR—Why?

Mr Sidoti—It is a step backwards because the Teoh decision in the first place was—as you have described this convention—a decision that was greeted with a great deal of emotion and different perceptions and misunderstanding. From my perspective it was a very modest decision that the High Court took. It did not bind the executive to comply with international treaties, although I think there is a strong case to be made that the executive should be bound. But it did not do that.

It certainly did not provide that the executive in its actions can overrule the parliament. The parliament remains fully vested with law-making powers and the executive must always act consistently with Australian law. But in a situation where the executive is entering into treaties I cannot see any strong reason why we should say that the executive does not have some measure of accountability, provided it is consistent with law, for the performance of treaties.

All the High Court said, though, was that the executive should take into account international treaty obligations and give those who are affected by executive decision-making the opportunity of commenting if there is a proposal not to comply with the treaty in executive action. They were comments that the commission made in 1995 with the first bill that was produced in response to the Teoh decision. We said then that not only was it unnecessary to so legislate but that, in fact, the Teoh decision and its impact upon executive action had been greatly exaggerated.

I would submit that two years down the track what we argued before the Senate committee on that occasion has been vindicated. The Teoh decision has not brought executive action to a standstill in this country. It has not caused chaos and confusion

amongst those in the Public Service who are charged with exercising discretions under law. In fact, it seems to have had some impact in that some public servants are taking greater account of the obligations that their governments have entered, but it is certainly not significantly changing the way in which the executive goes about its business, except for taking greater account of these commitments.

So the experience over the last two years certainly gives no support whatsoever to the view that legislation such as that proposed is necessary.

Dr Cronin—If I might add, I would certainly endorse those comments. I have a particular research interest in immigration law and so I have certainly followed up the Teoh case closely because immigration law is likely to be the one area where, if it was to have a continuing impact, that is where it would be felt, federally. It is fair to say that of the 200 or so cases that six months ago I looked at who were on the databases as citing Teoh, I think, with the exception of two of them, every single one was citing the Teoh case as authority for the proposition that conventions are not law and therefore do not need to be followed.

It certainly has not been a case that has produced a direct incorporation of anything in a convention. Indeed, the Federal Court has gone on to say in cases very similar to Teoh—which are deportation cases involving the deportation of parents who have children in Australia—that the whole question of there being a legitimate expectation, which is the abiding assumption in Teoh, is met by having a review right. Of course Teoh was a pre-1989 case when there was not a review right, and once you have the wholesale legislative amendment in 1989 the mischief that was followed through in Teoh was cured by the review system.

Certainly in so far as that legislation is a response to that particular case, our view would be most emphatically that the case does not warrant it; and in so far as it is a statement of principle, it would appear internationally that it is an inappropriate principle to establish, having ratified these various conventions.

CHAIRMAN—That is arguable, and of course in the second reading speech by the federal Attorney-General he did throw up some of these statistics which seems to fly in the face of what you are saying. I agree with Mr Sidoti that in fact the previous Attorney-General, Mr Lavarch, initially made those points about the bureaucracy, and that those initial reactions to what might happen bureaucratically have not been borne through. But the second point he made in reinforcing the wisdom of that legislative solution was the political dimension to it—perceptions in the public in particular—and that of course has been reinforced by my government in terms of that. Now, you obviously do not agree with that.

Do you see, for example, assuming that that legislation—it is in the Senate now and it will be debated in the next session—goes through as is or even with slight

amendments, that in fact that is the end of it in terms of appeal? Do you see it as putting a final cap on it as a result of that legislative solution? Or do you still see it being subject to legal appeal or whatever?

Dr Cronin—The legislation itself?

CHAIRMAN—Yes.

Dr Cronin—I would not want to anticipate whether it would be challenged.

CHAIRMAN—I think I read something, and I think Mr Sidoti made a comment on this some weeks ago saying you thought that it could be still questionable or something?

Mr Sidoti—I do not recall that, Mr Taylor. I certainly made a comment that I felt that the executive decision was still to be examined, and there certainly have been some academic arguments. My answer to your question would be, lawyers being lawyers, no doubt as soon as it is passed someone will be looking at a way to challenge it in some case.

CHAIRMAN—Yes.

Mr Sidoti—I remain much less confident than that as to whether such a challenge would be successful, I have to say. It would be legislation. One area of argument in some academic criticism is whether or not it is possible to apply it retrospectively to treaties that have already been ratified. I am afraid I do not have the expertise to be able to answer that argument, although I am aware of it and certainly happy to bring it to the committee's attention. But I am confident there will be some lawyer somewhere in this country who will decide that it is worth a go.

Dr Kinley—I wonder if I could make a comment on the previous question actually, and indeed the last comments that you made with respect to perceptions of the anti-Teoh bill, as I suppose it is referred to. The fact is that the perception of the same body, the executive, going out into the international legal arena and binding itself in international law—albeit we are accepting that international law is very different from domestic law in this country—the fact is that we did bind ourselves, and bind the executive expressly, at the international law level. To come back then into the domestic level and say that that single organ, the executive, is exempting itself from necessarily following the provisions of that international legal obligation is, at the very least, inconsistent and perhaps illegal—certainly illegal at the international law level.

With respect to whether or not that is avoiding a politically and administratively onerous task, we can take stock from the New Zealand experience where the Human Rights Commission there has set up a unit, which you may or may not be aware of, called

Consistency 2000. The person in charge of that spent some time with Mr Sidoti at his office, and its aim is to look at all New Zealand legislation to ensure it complies with all New Zealand's international human rights obligations, not just one particular convention. That's a far broader and bigger task than the task that might be perceived as coming out of the Teoh case.

Mr McCLELLAND—Yes. I think the thrust from both organisations is that the very nature of international treaties is such that they are inappropriate instruments for Australian domestic law. The Chairman also mentioned that we have received evidence from some quarters at least which do indicate the emotive anxiety, in particular with clauses 12 to 16. I think one of the organisations—the Festival of Light in South Australia—indicated problems with 19. It is possible however, is it not, that in introducing an Australian legislative framework, even if it is as simple as establishing a children's commissioner, those ambiguities giving rise to anxiety could easily be overcome?

Dr Cronin—Yes. I do think there is a lot of heat and light generated here and, indeed, going back to Teoh I suspect most of the heat and light generated by the Teoh case is from those who would have taken a different value judgment about the decision in Teoh, so these matters are essentially very emotive ones. In terms of whether or not, as I understand your question, if you set up a children's commissioner, it would take some of that heat and light out of it—

Mr McCLELLAND—I should clarify, in setting up any legislative response federally, whether it is at the smaller spectrum to establish a children's commissioner, or at a broader spectrum to establish something akin to the Companies Code—whatever legislative response is adopted—the Australian parliament could clarify any ambiguities and take away the ambiguities giving rise to the anxiety. It would be a relatively simple thing to do.

Dr Cronin—Yes, absolutely.

Mr Sidoti—Yes, I would agree with that. If I could comment, firstly, Mr McClelland, on your opening point: some international treaties are appropriate for incorporation into domestic law.

Mr McCLELLAND—Yes, sure.

Mr Sidoti—Certainly not all, but subject to my opening comments—and I think this one is of a different genre than many others.

Mr McCLELLAND—Yes.

Mr Sidoti—Certainly the approach that could be taken would be a varied approach. The Human Rights Commission itself is an example of a particular approach

that Australia and a small number of other countries have adopted, where we do not have a constitutional bill of rights but we entrust the courts with the interpreting and implying. There have been proposals here in the past for a statutory bill of rights but they have not been successful. Here we have said we will have a body established with more general powers and responsibilities including in relation to education and policy-making, or policy proposals, policy development, rather than the application of a strict bill of rights in a constitutional framework.

In this way a commissioner for children could play the same kind of role; a role of education, of policy development consistently with the convention, without it being something that becomes a means by which laws are struck down or executive action is challenged. So, yes, it is an entirely appropriate way, consistent with others that have been adopted in Australia towards the application of human rights commitments to the domestic situation.

Senator ABETZ—In the introduction to the Human Rights Commission submission to us the first words are:

> Full compliance with Australia's commitments in the Convention on the Rights of the Child is both realistic and attainable.

Undoubtedly, you would wish the full import and meaning of the convention to be somehow enacted in Australian law. Can I ask you, do you believe that all aspects of the convention are worthy of being incorporated into our law? Do you have reservations about certain aspects or do you give it 100 out of 100?

Mr Sidoti—If I may clarify, Senator Abetz, by saying 'full compliance' we are not necessarily saying that it should be incorporated into Australian law. Compliance requires administrative action and not just legislative action, and legislative action only where appropriate. We are certainly looking across the whole gamut of ways by which government—

Senator ABETZ—Yes, or by legislation, administrative action and every other way that you see the convention as being 100 out of 100. There are not any aspects which you think go a bit too far or are a bit over the top or are ill-considered?

Mr Sidoti—I would not give it 100 out of 100 because in a couple of areas I think the standard set by the convention is not high enough.

Senator ABETZ—Is not high enough?

Mr Sidoti—For example, in relation to the best interests of children only being 'a paramount consideration' instead of 'the paramount consideration'and the provisions dealing with the age of recruitment for military service—those two in particular are clearly

not up to scratch.

Senator ABETZ—So do you accept that a child ought be considered as being a child before it is born? That became one of the most difficult issues that was argued during the course of the negotiation of the convention and, ultimately, the convention itself is silent on the point, leaving it to individual states to determine where childhood begins. It sets a maximum age and that is 15 unless the age of majority is less than under domestic law. It does not set a commencement age.

Senator ABETZ—Why do you tell us that it is silent—and I am no expert—when in the preamble it says:

> *Bearing in mind* that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. . .

I would have thought that to anybody that is pretty clear that a child for the purposes of this convention is to be considered a child before as well as after birth. Are you saying there is some ambiguity about that wording?

Mr Sidoti—Regardless of my personal views on the individual issue, I have to revert back to the debates that took place in the negotiation of the convention and actions that have been taken by States since then and say that there is not ambiguity in the wording but there is certainly ambiguity as to what the nature of protection before birth may be.

Senator ABETZ—Or if we judge it on the basis of action taken by states, female genital mutilation is still allowed. Given that certain states still allow that, we can judge that as being allowable under this convention. I would have thought the actions of the states are, with respect, completely irrelevant in judging the wording of this convention. Surely it has to stand on its own and be judged on its own, not as to whether it is complied with or ignored.

Mr Sidoti—It stands on its own, but like any document, and particularly one—this goes back to my earlier comment, that this is the kind of legal document that is not appropriate for incorporation into Australian law because it is so broad in its terms. In this one it is necessary to look at interpretive aids.

Senator ABETZ—That is where I suggest the whole argument about full compliance and incorporating it into Australian law falls apart, because really it is that vague that if you want to take a, let us say, right to life attitude, you can read this very clearly as saying legal protection before as well as after birth, then you look at article 6.1:

> States Parties recognize that every child has the inherent right to life.

Right? And 'child' has been defined earlier on in the preamble as before and after birth.

So I would have thought that that is pretty clear. But people who are opposed to any restrictions on abortion say, 'No, no, no, you don't interpret the convention in this way, you interpret it in another way.' You have the convention in relation to physical harm to children and people will assert—and the non-government organisations put in their submission to the UN—that we still allow corporal punishment, and therefore that is a breach of the convention. The former Attorney-General, Michael Lavarch, told us, 'No, no, no, that's not the way to interpret the convention.' So how on earth can a government or anybody really try to incorporate such a vague document?

It interests me that the Human Rights Commission, with respect, has not addressed for example the right of children to know who their parents are in relation to the sort of evidence that Dr Tobin gave to us this morning. I would have thought that is a fairly fundamental right under this convention, that kids ought to be allowed to know who their mums and dads are, and with the anonymous donation of eggs and sperm that is not possible. Are you saying we should not read the convention like that, and that anonymous donation of eggs and sperm ought to be allowed?

Mr Sidoti—Senator, there are about six or seven different issues there. If I may take them serially; first, the child is defined in article 1, not in the preamble. Article 1 defines the child as:

. . . every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Senator ABETZ—So would you agree with me that a child before birth is by definition under the age of 18?

Mr Sidoti—Certainly it is by definition under the age of 18.

Senator ABETZ—Of course it is.

Mr Sidoti—But whether or not the child is a human being for the purposes of article 1 is a different issue.

Senator ABETZ—But we have been told we have to read the whole convention together.

Mr Sidoti—I know, but, excuse me, Senator, may I go through serially the points that you made. The preambular paragraph that you read was a preambular paragraph that required an enormous amount of debate. What it does, if you look at it, is in fact quote another document—that is the declaration of 1959—and it says 'Bearing in mind' that other document. There was a deliberate decision taken not to say 'affirming' that provision in the declaration of 1959, but rather to bear it in mind. That was part of the preparatory debates about this convention where it was decided that it was appropriate to refer to that

particular provision.

But explicitly the negotiators of this convention, rightly or wrongly—I am not commenting on whether it is right or wrong, but rather saying what was done—did not define a starting point either for 'human being', which is the phrase used in article 1, or for 'child' which 'human being' is used in the definition of in article 1.

It bears in mind the provision in the declaration of 1959 requiring that protection before as well as after birth; it also provides elsewhere particularly for appropriate medical care and protection before birth. But if you look at the convention itself the only references to protection before birth relate to appropriate medical treatment. Whether you like it or not, whether I like it or not, that is the point that they reached. So far as that is concerned, therefore—

Senator ABETZ—Which can include killing it. That is appropriate medical treatment—to kill it.

Mr Sidoti—I am not saying that at all, Senator. You may perhaps be surprised at my personal views on this subject, but they are not particularly relevant to the debate we are having which is a debate about the nature of the law.

The consideration, therefore, of whether or not we extend the interpretation of the treaty in that way is a perfectly appropriate debate. There are a number of provisions of this convention which are open to debate. It is not a closed, tightly-developed legal document such as we would find in some acts of the Australian parliament which run to 200 or 300 pages. I consider this matter to be a matter that is properly open to debate, although as I say the negotiations of the treaty left it to states to determine that issue. The negotiators were unable to reach agreement.

One of the things about the discussions of all international human rights treaties—and this is perhaps where I differ from the closing comments of Dr Tobin that I heard beforehand. Dr Tobin's comments moved away from the law and talked about moral relativism. This is an attempt in the Convention on the Rights of the Child, as in human rights treaties, to find—however unsatisfactory it may be—where we can reach agreement, coming from all the variety of different political, economic, social, religious, cultural and other traditions in our countries. For that reason I see these kinds of documents as great achievements because there is so much that divides humanity, and the fact that we can reach agreement on so much, to me, is an achievement of the human person and the human system in this day and age.

But we cannot reach agreement on everything, and one of the issues that was most vexed in the negotiation of the convention, and on which ultimately no agreement could be reached, was this very difficult question that you raised about where we consider human life to begin. The convention does not take a final position on that, and leaves it to

states to decide the issue.

I think the last matter that you raised was the question of access to information about semen donors. I am on the public record as saying that I do consider that to be a human right, and that I consider that laws which do not permit access to that identifying information in my view are in breach of the convention.

You are right, we do not deal with it here. It is not a subject on which the commission, for resource reasons, has been able to undertake a great deal of work. I would like to do so but with the government cutting our budget by 43 per cent over three years—as I explained a fortnight ago, when I met groups that are lobbying for better identifying information. I had a lengthy meeting with them to discuss these issues and I said, as I had told them six months previously, 'I would dearly love to do some work on this but I cannot see us being able to do so in the near future.' But nonetheless I have taken the public position that I consider access to identifying information a right of the children concerned.

Senator ABETZ—And corporal punishment? I raised that as well. Is that allowed or not allowed under the convention?

Mr Sidoti—The convention prohibits cruel and abusive treatment. It prohibits child abuse.

Senator ABETZ—No, it says 'physical'. It says 'physical harm'.

Mr Sidoti—Physical harm?

Senator ABETZ—Yes, there is no comment about 'cruel' and the other adjectives you used.

Mr Sidoti—There is a bit about cruel, inhuman and degrading treatment.

Senator ABETZ—Sorry, there is, yes.

Mr Sidoti—There is prohibition on physical harm. My view would be that corporal punishment which causes physical harm is prohibited. Where we would draw the line on that, therefore, becomes a matter of what actually causes physical harm. I am aware of the bill which a member of the upper house of this parliament has introduced into the state parliament, and I would consider that to be a reasonable attempt to define what is physical harm for the purposes of domestic law, that is consistent with the convention.

Dr Cronin—Can I just interpose one matter. In terms of how one seeks to interpret treaties, some guidance for the committee may very well derive from the recent

High Court case of A and B, the Chinese one-child family cases, where certainly each of the judges took pains to explain how it is that treaties ought to be interpreted, and laid considerable stress there on looking at the debates that surrounded the making of the treaty as a guide, as an aid, to understanding what it is that the framers of the convention might have intended by the particular phrase they used.

Dr Kinley—May I just very quickly respond to Senator Abetz as well. I actually think your questioning opens up for us what is the real essence of what we are presented with whenever we sign a convention like the CROC. Because it is so open-ended, as you point out, it is in my submission quite consistent for you to have that view and yet for the Human Rights Commission to say that they seek full compliance. If you have different views from the Human Rights Commission or from me or from anyone else, that's fine. The very fact that we have to implement this by means of more detailed legislation in our legal system means that we open up the issue to debate and to discourse.

Ultimately the legislation that comes out of the two houses of the parliament—whichever parliaments are empowered to implement this—will be more definitive. It probably will still be open to interpretation but at least more definitive. That may or may not tally with what the international view, or indeed any other view, of what the CROC implies or obliges us to do, but the fact is that that does not deny or preclude someone from saying that they believe that the way in which it is presented at the moment is fully capable of being implemented, but it just requires the detail. The discourse, the debate, is the very thing that it encourages, so to present that as an opposition to the implementation is, I think, incorrect.

Senator ABETZ—What unfortunately happens is—and I will conclude my comments on this, Mr Chairman—that people go overseas and bag this nation as being in breach of international conventions when, as you have just said, the interpretation of it is so wide and open that to make those sorts of assertions against your own country overseas is simply one of assertion and not one of fact.

Dr Kinley—Fine. It is their prerogative. What is the difficulty with that?

Senator ABETZ—Just so long as they present it as their assertion, and not as a fact.

Senator BOURNE—Can I ask about our reservation on 37(c), because I know you are looking into the juvenile justice system. Do you believe that it would be possible in the near future to remove that reservation, or do you think that the situation, particularly in rural and remote areas, is such that it is still impossible to incarcerate, even for a short time, juvenile alleged offenders separately from adults?

Mr Sidoti—Perhaps if I respond from my end first: I think it is possible to remove the reservation because of the very wording of article 37(c). Article 37(c) only requires

separation unless it is considered in the child's best interests not to do so. Clearly, where it is not in the interests of the child to separate, then the child need not be separated, and in most rural and isolated areas, to remove the child for very short periods thousands of kilometres from the child's family and community is clearly not in the child's best interests. So I think the reservation, although addressing a particular domestic situation, is really not necessary if you look at the actual words of 37(c).

Senator BOURNE—Right. So it may be that if we have clarifying legislation we could just get rid of that because it would be quite simple and quite obvious from the legislation.

Mr Sidoti—I think that is right, or alternatively we could remove the legislation, and at the same time say that we are removing it because we are aware of the requirement for considering the child's best interests and we consider that we can do so without having a reservation on, within the terms of the article as drafted.

Senator BOURNE—Thanks.

CHAIRMAN—But that can be done with a declaratory statement rather than legislation.

Mr Sidoti—Yes.

Dr Cronin—I was only going to say that certainly the evidence we heard was that these decisions are taken very carefully, and generally only with regard to the particular circumstances of the child and why that child is in a situation where adults are close by. We did not receive any evidence that the practice belied the spirit of this article of the convention.

Ms Moyle—Can I just point out as well though that in some legislation the child, for the purposes of juvenile justice legislation, is defined up until the age of 17, so in a sense that reservation allows some legislatures to treat children who are 17 years old as adults for the purposes of criminal justice, so in one sense it does perhaps more harm than good.

Senator BOURNE—Because this only goes up to 15.

Ms Moyle—It goes to 18.

CHAIRMAN—But what we are saying is, and we heard evidence from Tasmania and elsewhere yesterday about this, that it would not be legally advisable nor would it be socially responsible to have one set age. It would vary according to whether it is a criminal law aspect, whether it is child welfare, or whatever. Is that what you are saying?

Ms Moyle—I am saying that for the purposes of juvenile justice legislation some young people who are still considered under the convention as being children are treated as adults, and in many cases that is inappropriate. While we recognise that there is a degree of flexibility in relation to offending ages, nevertheless CROC clearly states that a child is a person under the age of 18 and, for the purpose of juvenile justice legislation, we would argue that they should be treated as such until 18.

CHAIRMAN—Yes, I understand.

Dr Cronin—I would add there that various of the people in the detention centres indicated to us that they would like to see it perhaps going over 18—essentially the juvenile population, the offending population, for males in particular, goes into their early 20s, and some of these young people who may well be over 18 would still benefit enormously from the sort of rather intensive education regimes and so forth that are available to them in juvenile justice centres.

So we would always say it should not be lowered, so you should not be cutting off that facility for 17-year-olds, if anything, perhaps there is an argument in the best interests of some young people that you might extend it over the 18-year-old threshold because many of these young people begin an education program and then have to be transferred to an adult detention centre because they have come to the age of 18.

CHAIRMAN—Yes, understood.

Mr BARTLETT—At page 5 of the submission you state unequivocally that:

CROC imposes obligations on governments and in no way affects the relations between parents and children.

This is obviously at the heart of the concern of a lot of groups in the community, but not just parent groups. For instance, Dr Hafen, who is an academic lawyer, has given a fairly detailed submission as well, and his opinion was that it moved the whole issue of rights from the area of rights of protection to rights of autonomy, and as such did clearly affect the relations between parents and children by increasing the area of rights of autonomy of children, particularly in relation to articles 12 to 16. Would you like to comment on that view?

Dr Cronin—In the submission that we have put in as a joint submission from both commissions the point there says that:

CROC imposes obligations on governments and does not adversely affect the relations between parents and children.

Mr BARTLETT—That is not what I have in front of me. It says 'in no way affects the relations between'—

Dr Cronin—You may have the Human Rights Commission—

Mr BARTLETT—No, this was the joint submission—I am reading from the second-last paragraph on page 41.

Dr Cronin—I am sorry. I am reading from a different document.

Mr BARTLETT—Which is page 5 of the joint submission.

Dr Cronin—My own view would be that it is probably going too far to say that it 'in no way affects', but I would say quite confidently that it does not adversely affect. I think if one is talking about the relations it is seeking to define in many of those instances where the parameters of self-determination might lie—and in any particular family situation one can see there might be disputes about those parameters of self-determination—it is seeking to give a generalised intimation of the points of self-determination, but I certainly very confidently say from my own view—I may have a different view to Commissioner Sidoti—that it does not adversely affect it.

I would also say that in terms of those points of self-determination, leaving aside what is in the convention, that we actually have in the common law now in Australia—and certainly the common law is derived from the United Kingdom—some guidance as to where, if courts are looking at these points of engagement between parents and children, what is often called the Gillick test of evolving maturity is applied, and certainly I would say the Gillick formulation is very much in keeping with the text of those various articles in the convention where they are seeking to define that there are points of evolving self-determination with respect to children.

Mr BARTLETT—Clearly that is a case that those areas of dispute change as a child ages and matures.

Dr Cronin—Yes.

Mr BARTLETT—Do you think, though, where there are areas of potential conflict that that ought to be resolved between the parent and the child without outside interference?

Dr Cronin—I think that is preferable and, interestingly, what we have discovered from the legal system is that you are getting a recognition of that in the way in which legal processes are adapting, so for example you have numbers of conferencing models that are now put on the edges of our litigation system, which are seeking to do exactly that—to get the parties in some appropriately positive and engaged way to try and determine themselves what it is that they consider about their relationship, and that is now being also trialled in the care and protection system where you have got a breakdown between adolescents and parents. So we would see that as a very positive move generally

in the litigation system. It may mean that those relationships are sufficiently strained that the state has to offer some sort of assistance to the parties to have some sort of mechanism for resolving the dispute, but clearly it is preferable if the dispute can be resolved by the parties themselves.

Mr BARTLETT—How would you respond to submissions that we received, including yesterday, for instance, that those articles have been used basically to tell parents to mind their own business, that they could not have access to their teenage children and that that was invasion of their privacy?

Dr Cronin—Who can know what people are saying, in the sense that—

Mr BARTLETT—Let me rephrase that. Can you see the possibility—and it happened in the case that was quoted yesterday—of those articles being used by a government authority or department to prevent access to information about one's child?

Dr Cronin—I suppose where you start the notion of privacy for children is a very important factor. I have not seen any legislation on notions of privacy with respect to children where a point of privacy might arise.

Mr BARTLETT—But you could see a government authority or school council or a teacher or someone else quoting the convention and using articles 12 to 13 as a justification for denying parents access to information about their children, their child's performance, their child's whereabouts—things like that?

Dr Cronin—No, I cannot see that. It does not surprise me that people might say it. It surprises me that anyone could see the convention as justifying that because it does not—

Mr BARTLETT—There was a case quoted to us yesterday where that is being used. So you are saying that the convention might be used in that way but illegally?

Dr Cronin—Yes. If one looks at, for example, article 13 about the right to receive and impart information, that is a right given to the child. It is not a right denied to a parent. So if people are construing these articles as taking away the rights of a parent then they are reading them most incorrectly because they do not, even in their own terms, purport to do anything even remotely like that.

Mr BARTLETT—So the problem is that they are not only being misconstrued and misused by parents in terms of their misunderstanding leading to anxiety and fear about the convention but being used by government authorities or workers or counsellors in a way that is not intended?

Dr Cronin—That may be, but can I say that we certainly see and make draft

recommendations to this effect, that there is a great deal to be done in terms of appropriate information about the convention, and that is to all of the interested parties. So I think there is a certain anxiety or even mischief that attends these matters, and certainly we would all be assisted if appropriate information was given as to the text of the convention.

There is one matter I think that is very important in that we have had a very wide-ranging investigation into the position of children in Australia, and more often than not from all of the interested professionals who are very committed in many instances to the children whom they are working for and really seeking to do the right thing by them I think there was a very common theme that children do not have enough information and that they are most frequently not consulted about matters that are terribly important.

Just to give you one example that I think is a very significant one, in the care and protection system we were told consistently that social workers would attend at the home of a foster parent and talk to the foster parent but not take the opportunity to speak privately and directly to the child. So, if there is something going wrong for that child in their lives, or particularly in their relationships with the foster parents, that has not been communicated by the child in any private way to the social worker.

So, in a sense, these particular articles are taken out of context, and what the convention is seeking to have is really a very strong protective function. Where it is failing is in not setting barriers between parents and children but giving the opportunity for these very disadvantaged children to have just a meaningful dialogue with interested adults who have their welfare at heart.

Mr Sidoti—Could I make some general comments, Mr Bartlett, just in response to each of the parts of that. Firstly, I must say I do not see this convention or any other human rights treaty as establishing a model of autonomy of individuals. On the contrary, I see them all very firmly locating the individual within a community, more broadly the community of the nation, and setting out bases of rights and responsibilities, mutual obligation, that exist between members of communities—particularly when we look at the Convention on the Rights of the Child which, in its very terms, has a very strong element on the role of the child and the position of the child within a community. I do not think we can suggest that it sets up a model of autonomy.

Mr BARTLETT—Just before you go on, does it actually elaborate anywhere the obligations of the child within the family?

Mr Sidoti—No, not the obligations of the child within the family. The nature of legal treaties such as this convention is an agreement in legal terms between governments. So what they are about are the responsibilities and the obligations of government. So not only does it not deal with the responsibilities or obligations of the child within the family but it does not deal with the responsibilities or obligations of parents towards their children.

It does provide, though, explicitly in article 5 that governments have a responsibility or an obligation—because governments are the actors for the purposes of the treaty—to respect the responsibilities, rights and duties of parents and support them, including in providing guidance to children in the exercise of all rights contained in the convention. The preambular paragraphs 5 and 6 affirm very strongly the position of the family, but article 5 moves beyond the preamble into the body of the convention and requires governments to respect the roles of parents.

Then, although it is not necessary, there is an explicit mention in article 14 dealing with freedom of religion, beliefs and so forth of respect for the rights of parents. That is tautologous. It is not necessary because article 5 is already there, but from more abundant caution it was decided to include those words again in relation to that explicit article of the convention.

It deals with the responsibility of governments and it locates that responsibility firmly on the basis that the vast majority of children are best served wherever possible under the care, guidance and protection of their families. I can conceive of circumstances where it would be necessary to withhold information from parents, to take the example of extreme cases of sexual abuse of a child. These, I would think, are incontrovertible. Whether or not that is being abused is another matter.

The case that you refer to I have no knowledge of at all. It is possible that public servants in the execution of their duties are misusing the terms of the convention. It is possible for the devil to quote Scripture. That does not make Scripture deficient.

The fact that this is being misused by people under some circumstances conceivably does not mean that the problem lies with the convention. It may, as Dr Cronin has said, mean that we do not have enough education about it. I remember when this convention was being debated in the first place it was seriously being argued that it would stop parents from removing smelly socks and rotten apples from children's school bags. It is just a nonsense.

Our commission was given responsibility for certain areas of this convention under Australian law. When we were given that responsibility by the former government we were not given any resources in which to exercise that responsibility. So, if there are situations of misinformation and people are still not understanding how it applies both at the level of community people and parents and at the level of bureaucrats who are trying to carry out public policy, perhaps we have to go to the fact that it has not been taken seriously enough in providing accurate information by governments in ratifying the thing in the first place.

Senator COONEY—I just want to ask you how you characterise this convention. Just as background to that question, taking one of the earlier declarations of rights, the Ten Commandments, at one end right down to, say, the road traffic regulations which we

have in Victoria—I do not know whether you have a Road Traffic Act up here, but we have strict liability—I think there is a danger that if you confuse the two you get bad results. If you try to apply strict liability to the Ten Commandments, you are going to get yourself into some difficulty. But where do you put this document in that range of guides to human behaviour? Is it towards the strict liability one where it should be interpreted in strict accordance with its words or more towards the Ten Commandments, taking it that you do believe in the Ten Commandments and taking it that the Ten Commandments were a document. But I think they were originally written on stone—a stone writings document. But for the purpose of this argument, say it is.

Mr Sidoti—I would respond like a lawyer by giving you a much more complicated answer than your question requires. The convention itself, being a statement of commitments that the Australian government has voluntarily made as part of its exercise in national sovereignty on behalf of the Australian nation, being a convention dealing with human rights—which means it is much more concerned about promises to the people of our own country rather than promises to anybody else—is a statement of commitment and there is an obligation to honour it.

Within the terms of the convention, as we have discussed, the terms themselves are often very broad. There is a margin of appreciation, it is called—scope for interpretation and application—that properly is within the domain of governments and parliaments and everybody else, even within the terms of compliance with the convention. It is not prescriptive to provide a ready-made answer to every situation—any more than the Ten Commandments are, I might add. In both cases there is a margin for application to the particular circumstances of particular individuals and particular times, and it is there that government has its appropriate and proper role.

But it can be said that what this represents is a promise that we have made to the people of Australia, and that provides the framework, I would argue, within which that margin of interpretation, that scope for executive and legislative action, falls.

Senator COONEY—There is one other issue I would like to raise with you. I do not know whether you have investigated how far the adversarial system makes this a problem. You have obviously gathered from the questions you have been asked by this committee, not only today but on other days, the difficulty that people feel with the convention. Would you have the same difficulty in a country that did not have an adversarial judicial system? In other words, do you think that the legal system we have tends to encourage a way of thinking that makes it difficult to look at conventions in the broad?

Dr Cronin—I am not sure, Senator, but I can say that certainly we were told—again fairly consistently—that people saw the adversarial system as an inappropriate one for dealing with matters relating to children. Where it does actually get to litigation, it was consistently said to us, for example, that the Family Court was too adversarial and too

parent-centred, and that it would be a far better system if they took a more proactive investigative role on matters relating to children and were not so content to sit back and let the parents wage war between themselves. I think that is probably a fairly general assessment of the deficiencies that our adversarial system can very often present for children.

But having said that, I think that it is also a very important facet of the adversarial system that it has some inbuilt protections for the participating parties, and we would say that in many instances children should be recognised as a participating party. That does not mean they go to court and attend, but that their interests should be appropriately represented. So I think the adversarial system is one that has good and bad attaching to it. Certainly in some of those family contests where children are the subject, but are not necessarily the participating party, I think a very general assessment was that the adversarial method of leaving it to parties to define and wage war between themselves is not a good way of finding out what it is that is important for the child in that contest.

Mr TONY SMITH—Just following up a little about what has been said about abortion, it strikes me as extraordinary that in the extensive submissions that you have done—I think something like 80 pages—you do not touch upon that issue, and particularly having regard to the recent publicity about late-term abortions in the *Australian*. Does that reflect that we cannot even have a debate about this—it is just too touchy for the Human Rights Commission—or is it just that those who are proponents of the abortion debate just hold too much sway? Why are we not having a discussion about that? In all of these things you talk about homosexual children, you talk about every conceivable thing, except 80,000 to 100,000 lives being exterminated every year.

Mr Sidoti—Mr Smith, as I mentioned earlier, I see the debates and the words of the convention itself as leaving it completely open and not prescribing a position one way or the other.

Mr TONY SMITH—But it is an arguable position, is it not? As Senator Abetz said, it is arguable, and therefore as a public body charged with the responsibility of raising debate, surely when it is arguable it should be put in the public domain so that the public can have a discussion about it.

Mr Sidoti—I think that the way in which these provisions apply is arguable, and I also know that the Australian parliaments have argued time and time again about it. With the greatest of respect, if you cannot solve the problem, I do not think I can.

Mr TONY SMITH—You want to solve a lot of other problems that touch on human relationships. Why do you not want to address this one?

Mr Sidoti—Because the other problems are more clearly set out for guidance within the terms of the convention itself.

Mr TONY SMITH—That is again a question of interpretation I suppose, is it not?

Mr Sidoti—Some would be questions of interpretation, but I would argue that the majority of them would not be within our community.

Mr TONY SMITH—What are and what are not?

Mr Sidoti—What, going through it piece by piece?

Mr TONY SMITH—What would you say—

Mr Sidoti—I think for example there is no argument at all that mandatory juvenile justice sentencing laws are clearly in breach of the convention.

Mr TONY SMITH—Let us take that one for example. You said something before about children being removed—did you say hundreds of kilometres away from their parents?

Mr Sidoti—Yes.

Mr TONY SMITH—Were you speaking of a specific case, or what?

Mr Sidoti—No, but I am speaking of the situation in Western Australia, for example, where there is a juvenile justice detention centre in Perth and very few other juvenile facilities in the state, so that you can have situations there where literally children are removed thousands of kilometres.

Mr TONY SMITH—Thousands?

Mr Sidoti—Well, however long Western Australia is—2,000 kilometres or something? We have the same situation in the Northern Territory where there is a centre in Darwin and no centre anywhere else in the territory.

Mr TONY SMITH—Do you draw the geographical line at any point? Is, say, 200 kilometres too far to separate a child if the child has been a repetitive offender?

Mr Sidoti—In some countries that may be the case.

Mr TONY SMITH—No, sorry, here.

Mr Sidoti—I would say 200 kilometres is probably not too far, unless we are talking about communities that are so impoverished that they do not have access to the normal transport means that most Australians have access to.

Mr TONY SMITH—I am saying that. In a case recently in the Children's Court Judge McGuire, the President, actually sentenced Aboriginal boys to Piabun, which is a farm at Kenilworth, and their families were located variously at Dalby and Cherbourg. It was thought by all concerned in the sentencing process—including ex-Senator Neville Bonner who was sitting on the bench with the judge—that that was in the best interests of the children concerned. I am almost certain that the parent of at least one of those boys would have absolutely no chance at all of visiting her child. So you would say that that would be a technical breach.

Mr Sidoti—I would say that the question cannot be decided by any particular number of kilometres arbitrarily set. You would have to look at the particular circumstances. Under article 37(c) that Senator Bourne referred to earlier there is a right to maintain contact with his or her family 'through correspondence and visits'. Now, if that kind of practical contact is not possible then—to refer again to 37(c)—unless it is in the best interests of the child, then yes, there would be a technical breach. But the best interests of the child may in some circumstances require it. That is why it really is necessary in those kinds of cases to look at the circumstances of the individual child. That is why I object to the mandatory sentencing laws too, because they do not allow consideration of the individual circumstances of the individual child.

Mr TONY SMITH—I do not have any disagreement with you on that at all, I might say. But I do ask you a question in relation to Dr Cronin's comment, which seemed to conflict with what is said in the joint submission which speaks of the point that is raised by Mr Bartlett of not affecting the relations between parents and children.He said that CROC imposes obligations on governments and 'in no way affects the relations between parents and children'. Dr Cronin, I think, said 'doesn't adversely affect', which to me is different. So what is the position on this? Is there a disagreement?

Mr Sidoti—No, I think it is a matter of words. An earlier draft said 'adversely affect'. It may have been removed, in fact, at my suggestion because I was interpreting this as relating to putting obligations on. There are obligations on governments under these conventions because states are parties. There are no obligations imposed by the convention on parents. Dr Cronin is right in looking at the way in which it actually applies. It does not apply adversely to the relationship between parents and children, but it would seem to me that in the nature of the sentence itself there are no obligations that are placed on parents or on children under the convention itself. It is an obligation placed on governments.

Mr TONY SMITH—How can a government exercise responsibility towards children without trespassing into that delicate area of the relationship between parents and children?

Dr Cronin—With respect, it always has.

Mr Sidoti—Yes. It cannot—and it has to under some circumstances.

Mr TONY SMITH—So that qualifies it. What I am concerned about is the stridency of your language. It really needs qualification, if I might say so with respect, because it is the stridency of the language that unfortunately has the other side of the debate saying, 'Well, they're saying this and we're saying that.' Do you see what I am saying? We need to qualify these things, do we not? What it all gets down to is really questions of interpretation, and I suppose this is where I come to what I think one of the key issues seems to be in this argument.

In your paper, and in what you have said here, you speak of corporal punishment being in breach of the convention. When you say that in the public community, that sends a message to all children out there who are keen enough to listen to it that really it is wrong for children to be disciplined in a physical manner. That must, necessarily, would you not agree, affect in some way their thoughts about that topic in relation to what goes on in the home? Would you agree with that?

Mr Sidoti—I have not found it so.

Mr TONY SMITH—But would you agree it is capable of doing so?

Mr Sidoti—It may be capable of doing so. If any kids are going to quote their rights to their parent it is going to be my kids, and they do not. If there are conflicts between parents and children, let us look at what is going on in the household rather than blaming it on the Convention on the Rights of the Child, which deals with the responsibilities of government.

Mr TONY SMITH—What I am saying is that if you are determining that corporal punishment is wrong or that children need rights education classes, as I think you said in one of your papers, parents might argue, 'Frankly that's not what I want for my children. I don't want rights education classes because that imposes values which I may not agree with,' so therefore necessarily you are infringing on the relationship between parents and children and, therefore, you are contradicting what you are saying in your statement about the inter se relationship between the state, parents and children.

Mr Sidoti—My response, Mr Smith, would be first to reiterate that the convention imposes obligations only on governments. Every day the relationship between parents and children is affected by an external influence, except for the small number of families that live in total isolation.

Mr TONY SMITH—Do we want more by the use of the convention?

Mr Sidoti—On the contrary, I think in many instances we want much less. The convention, as I have indicated, in fact requires governments as an obligation to respect

the rights, responsibilities and duties of parents. It requires governments to support families and parents in exercising those rights, duties and obligations. To go back to the example that Mr Bartlett gave earlier, it provides a basis upon which improper action by governments should be able to be challenged. Often under our law that is not possible, but it should be able to be challenged on the basis that governments are not acting either in the best interests of the child or in ways to support parents in exercising their rights, duties and responsibilities.

This document should be seen, as I see it, as being a fundamentally pro-family document, if you want to use that language. It is about supporting families and children and ensuring that governments honour their obligations towards families and children.

Mr TONY SMITH—But you understand the argument that others equally well intentioned and equally intelligent and equally forceful would say the contrary. Do you understand that argument?

Mr Sidoti—I am certainly very well aware that they have been doing that for the better part of 10 years. I still fail, when I look at the document, when I read what they say, to find any correlation between the two.

Mr TONY SMITH—Let us read what the United Nations committee said about a particular situation in England and see if you can support that. We are bound by signing the convention to consider what that United Nations committee does and comments upon. It made this comment:

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.

The question that surely follows is: is that not a direct invasion into the relationship between parents and children in a way that is antisocial and anti-family?

Dr Cronin—If it was litigated before a court, under the Gillick principle it would certainly arrive at the same conclusion.

Mr TONY SMITH—Sorry, just stopping you there, if it was litigated before the court?

Dr Cronin—Yes.

Mr TONY SMITH—Under article 12 it is capable of being litigated arguably, is it not?

Dr Cronin—If you had a similar case, as you could get in Australia, where a parent sought a declaration from the court to prevent their child being subjected to, in that case, sex education classes, as opposed to given contraception, you could certainly have a parent seeking a declaration on that matter, so taking it to the court. The answer that you would get from the court is arguably an answer that is very similar to the one that the United Nations committee would come up with depending on the evolving capacities of the child. You may very well get a case where the parent thinks something and a mature minor thinks something else, and the court would support the mature minor.

Mr TONY SMITH—Yes.

Dr Cronin—We have it whether we have the convention or not. I think the courts are increasingly saying that there is a point, and it is certainly before 18, that a child can have a different view from a parent and it can affect their substantive rights.

CHAIRMAN—Has that not been reinforced recently in B and B?

Dr Cronin—I am not sure how far reinforced, but I would certainly say that that principle is very much now a part of Australian common law. There are some parents who will not like those decisions. Mrs Gillick was not a happy woman at the end of taking her case through to the House of Lords. But it is very likely that courts, when faced with it, are going to say, 'You know, this is an evolving matter and in any particular case we may arrive at a decision that is contrary to the view of a parent.' So in particular cases one can certainly, whether you have a convention or not—

Mr TONY SMITH—Again article 12.2 clearly sets out guidelines. It is a mandatory provision which says that the child shall be provided with the opportunity to be heard. At common law—I have not read Gillick lately—I would have some doubts about the locus standi situation of the child in circumstances like that and its capacity to get declaratory relief. But that is an argument that need not be discussed here.

But here it is clearly set out that the child shall be provided with the opportunity to be heard, and that means what it says. In an administrative proceeding where you have a decision maker, for example, who says, 'On balance I find the child is mature enough or the child's evolving capacities are significantly apparent and demonstrable'—notwithstanding the evidence of the parents who have brought the child up for the previous 12, 13 or 14 years or whatever—'and I find that in those circumstances I order such and such,' which then brings into play certain other things such as appeals rights and so forth.

So here we have a situation that directly and potentially involves a conflict between parents and children which could be litigated all the way, starting from the decision-maker at the administrative level right through to the High Court. So I get back to the original point: surely we are opening a can of worms that really ought not to be

opened in such circumstances.

Dr Kinley—Is it not the case though that you are assuming that this is going to be already in litigation. The vast majority of cases in which there will be the consultation procedure, the opinions sought from the child, will be at the point of the decision originally being made between school, parent and child, not in the court. It is only if they then believe that they have not had their opportunity to have their view put forward as to whether they have sex education that it gets into the court. So the vast majority of cases will be at the first level.

Mr TONY SMITH—I understand that but law is always about the vast minority of cases because it is only the vast minority of cases that even get to court in any situation.

Dr Kinley—The view here is that it is good parenting to simply ensure that the voice of the child is heard. If you then decide that in this particular case you do not wish your child, no matter what they say, to have sex education then it proceeds into the court. But all the convention is doing is seeking that you do ensure that dialogue is there. That is a view of good parenting. You may disagree with it but that is the view that has been put forward.

Mr TONY SMITH—But that is the view of the committee—

Mr Sidoti—I am not sure, Mr Smith—is it the rights of the child committee or another committee and in what case—

Mr TONY SMITH—The UN Committee.

Mr Sidoti—Which one?

Mr TONY SMITH—On the rights of the child.

Mr Sidoti—I am not aware.

Mr TONY SMITH—There are other examples.

Mr Sidoti—I have not read that particular opinion. The question that I would immediately ask, I must say, is what was the stage of development of the particular child?

Senator COONEY—What about if it had gone to the European Commission first?

Mr Sidoti—If it had gone to the European Commission on Human Rights, of course, it could have been a different way around.

CHAIRMAN—I think we are running out of time, regrettably, because the exchange has been very informative and very beneficial as far as the committee is concerned. We are going to have the opportunity very shortly to have the committee appear before us in Canberra. We are negotiating with that at the moment. So we can pick up some of these issues then. I think it is pretty clear this morning that we will probably have to revisit on a joint basis both the Human Rights and Law Reform Commission. I think we would like to put you on notice that we will almost certainly get you back for some further discussions.

Senator COONEY—Could I ask you to do one thing on notice. You have been asked a lot about how this convention affects the judiciary and the executive. Could you give us a few thoughts on what material it might properly provide for parliament to do things.

CHAIRMAN—Perhaps the Law Reform Commission could give us something a little more specific. There has been a lot of discussion today about the preambular content and the article content of this convention. Is it possible to give us some sort of view as to the various weights on the preambular—generally speaking, preambular is just that, but it is creating a lot of discussion, a lot of varying interpretation. So would it be possible for the Law Reform Commission to give us something on that?

Dr Cronin—Yes, certainly.

Dr Kinley—May I just clarify what Senator Cooney was saying there? Do you mean—

Senator COONEY—We are saying 'Look, this is going to affect the courts this way. People are going to take their children off to the courts. Is it going to allow government to do this or do that?' I think there was some evidence before about how Teoh, for example, affects the way government goes about it. We have not had all that much discussion, I do not think, about how this may or may not provide a useful source for parliament itself to legislate so that when they are looking at legislation they might say, 'This conforms with the convention on the child' or 'It does not conform with the convention on the child. This is a good idea we might legislate about.'

Dr Kinley—We have a little bit in here on the prelegislative scrutiny and what scrutiny—

Senator COONEY—That is right but—

Dr Kinley—But you want an extension of that?

Senator COONEY—Yes, an extension of that and particularly with, I suppose, state parliaments.

CHAIRMAN—You talk about the revised machinery of which we are hopefully an important part, but what your submission does not address is whether in fact, had we had this sort of machinery prior to ratification of CROC, it would have actually been ratified in the sense that it was. So maybe you might like to make some comments about that as well. I know it is a hypothetical situation.

Senator ABETZ—Can I just say that would be very helpful. For example, Senator Tate, who was a minister in the government at the time, said that he expected Australia to sign up with the same reservations as the Vatican. Mr Lindsay, the former Labor member for Herbert, was also very critical of it, so there was a fair degree of cross-party concern about this convention before it was ratified.

CHAIRMAN—As indeed there is in this commission, in fact, after the ratification process.

Mr TONY SMITH—Dr Cronin, you said the convention is not law and the High Court obviously has made comments about that but also is it not the old principle that they always add as a corollary that where there is an ambiguity in domestic law resort can be had to the convention where there is a need to resolve the ambiguity in a manner consistent with the convention? Is that not the principle?

Dr Cronin—Absolutely.

CHAIRMAN—There is only one thing worse than having a lot of lawyers on a committee like this, and that is having a lot of economists. Thank you very much. I know you are very busy people but I think we would like to get you back sooner rather than later. That may be physically quite difficult but we will work towards that end.

Mr Sidoti—Having done the hard work on getting the submissions done, to actually find the time to appear before you is much, much easier.

CHAIRMAN—Thank you very much.

[12.09 p.m.]

JONES, Ms Melinda

CHAIRMAN—Welcome. For the benefit of the *Hansard* record would you please state your full name and the capacity in which you are appearing before the committee.

Ms Jones—My name is Melinda Jones and I appear in a personal capacity, representing myself and my colleague, Lee Ann Marks, from Latrobe University. I am in the faculty of law at the University of New South Wales.

CHAIRMAN—Thank you very much. We have your written submission received on 9 April. Are there any amendments, omissions, or errors of fact that are in the written submission?

Ms Jones—No, there are not.

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

Ms Jones—Yes, I would if that is okay. I wanted to begin by saying a little bit about where we come from. Lee Ann and I are both parents of children. Lee Ann and her husband have three children, I have with my husband five children, so we are coming to this topic as parents dealing with the issue of children, young children, adolescent children, children with a whole range of issues confronting them and us, and also as scholars who have been working in the area of the rights of the child, looking at the relationship between the rights of parents and the rights of children, and also doing considerable work on the rights of children with disabilities in particular.

One of our concerns in reading through the four volumes of submissions that we have received so far was what we saw to be enormous fear that was generated about the convention, and we think that this fear is very much generated by ignorance. The convention on its terms does not in any way deny the rights of the parent. In fact critics of the convention say that the problem with the convention is that it actually gives much too much scope to the rights of parents and the role of families, and much too little to the rights of the child. So the convention, read as a legal document and looking at its terms, is about the rights of the child in the context of the family, and this really leads us to the very, I think, significant issue about the education of the community about the convention.

There is an obligation under article 42, I think it is, of the convention that the Australian government would actually provide information and training both to parents and to children and to the community at large, and there is obviously an enormous amount of work that needs to be done in that regard.

I may just point you to a few places in the submission where I think there are

matters that maybe we should begin with. I suppose the first is the issue of the problems confronting Australia's children, and in the other submissions as well there were a lot of matters referred to. We have referred to this in our comment on term of reference 6, in particular the severe shortage of child protection services, of child refuges, of substitute care, mental health services, child advocacy and legal representation, and the fact that there have been no effective measures designed to redress the institutional and structural disadvantage confronting indigenous children.

On top of that, because of our particular focus on children with disabilities, we are very concerned about the situation in which many children with disabilities find themselves, and we have again listed some of those: the situation where some children are being denied education at all; they are not only being excluded from the mainstream schools but they are also being excluded from special schools in Queensland—we have a number of cases in that situation; children with disabilities living in substandard accommodation where there is ongoing abuse in the situation in which they live; the reports of sexual and other abuse of children with disabilities in and out of institutions; the fact that adults very often are able to access communication aids, that these same aids are not available to children; and, very importantly I think, the fact that there is still major invasive surgery in the form of sterilisation being conducted on young girls with disabilities for no other reason than the existence of their disability.

From there I think it is appropriate just to move to the issue of the resourcing question in your term of reference 7 about the adequacy of programs and services of special importance to children. Again, while there has been some resourcing, the resourcing is clearly inadequate to meet the needs of children, particularly when we look at children from disadvantaged and minority groups, indigenous children, children from non-English speaking backgrounds and children with disabilities.

In particular, in terms of disability again, the provision of clean water and adequate nutrition and prenatal maternal health care are very important in terms of preventing disabilities from happening in the first place, and we have communities in Australia that still are not serviced appropriately in that regard. Early intervention services are underserviced, under-resourced and only reach a very small percentage of children who need them. Support for inclusion of children in mainstream education is inadequate, and the list could go on. So when we come to resourcing, there are obviously a lot of issues that need to be addressed.

We took to be the major focus of our submission, though, the practical measures really in legislative or other terms that could be brought about to implement the convention and which could improve the situation for children, so we actually focused on four different bodies potentially that could be created. The first we have referred to with respect to term of reference 5, which is a proposal to establish a children's research institute. One of the problems that I see coming through the submissions that you have received, and one of the problems if you try and teach in this area, is the lack of

information about really the situation in many, many areas. There needs to be an enormous amount of research and commitment—research to actually establish what the situation is in many areas.

There is the Family Law Council, there is the Australian Institute of Family Studies. Neither of these are resourced or have as part of their terms of reference children per se. An independent body could be established which could review the situation for children and maybe also monitor any changes that are made, and that could be using one of those models, or alternatively one of those other organisations could perhaps be given jurisdiction with respect to children.

With respect to having a coordinated approach to the convention, we propose that a ministerial council on children should be established—a ministerial council along the lines that is operating with respect to corporations law. It seems to work very well. In that way we can then have a national and intergovernment, whole-of-government approach to the problem, whatever the problems happen to be that need to be dealt with with respect to children. We have also proposed, along with many other people, that at a pre-legislative stage there should be child impact statements being mandated, very much like there are environmental impact statements in areas affecting the environment, and that idea I think has been worked through by quite a number of people who have appeared before you or written to you.

Finally, we support the idea of a children's commissioner being established. This commissioner could be part of or head of the Children's Research Institute, or could be a separate body. Again, there has been considerable work about what sort of functions a children's commissioner could have and what sort of resourcing—which I think is ultimately the question—would be needed to make such a body a worthwhile body to establish. So that has more or less taken you through where we have come from.

CHAIRMAN—Thank you very much. I know we are dealing with the Convention on the Rights of the Child, but if you take some of your suggestions further, why not a centre or a commissioner for the family or why not an office of the family, rather than children? Why just children?

Ms Jones—I think we would see those ideas as not incompatible, and it would be very much the terms of reference that were given to the office that would meet or not meet our interests. As I said at the beginning, the convention is concerned about the rights of children in the context of families but, in the context of what the Family Law Council and the Institute of Family Studies do, both those organisations, while they look at children, do not really focus or give priority to the interests of children in their research. Again that could be addressed by the terms of reference that they are given and the resourcing that they would need to be given, but it is a slightly different focus. I suppose it is a question of what the agenda is. If you are looking at children, ultimately you want children to be able to grow up within the community, and that involves growing up within

families.

CHAIRMAN—You were here, I think, and would have heard both the Law Reform Commission and the Human Rights and Equal Opportunity Commission representatives discussing the various interpretations of this convention and in fact agreeing that it would be very difficult, maybe even impossible, to have some sort of umbrella legislation. At the federal level anyhow, do you agree with that? Do you think it would be impossible to have some sort of umbrella legislation at the federal level?

Ms Jones—If we are talking about legislation in the nature of a bill of rights for children, then probably yes, I do not think it would have any impact. Again it depends on the nature of the legislation. I do not think a piece of legislation at the federal level is going to actually resolve or really address the issues that we are talking about. They are much more complex than that. I suppose I have not had enough experience in drafting laws to know if I could imagine one that would work.

CHAIRMAN—Something we have discussed on a number of occasions in this committee is, because of the inconsistencies, the various interpretations of the conventions, to have some sort of declaratory statement made which would make it clear from a governmental point of view exactly what this convention meant in a domestic sense.

Ms Jones—I do not think that would be in any way harmful. I think that could be very helpful, but in the same way we will potentially need that with respect to other international human rights obligations, because we really need to look at children in the context of what a rights bearer is, what it means to say that members of society should be treated with equal concern and respect, and that includes not only children but adults, and it includes children in all their manifestations.

One of our concerns is that very often you will have a statement that says, 'Children must have X' or 'People must have X,' but you do not actually look to see what that means for particular groups. So to say we have a right to freedom of speech is not a very useful thing to say if you are not able to speak, unless you then say that for that particular group you have to facilitate it in some way. So my concern would be that you would actually have to make sure that the intersections between the different groups are actually articulated in such a document or declaration.

Senator BOURNE—Can I just ask a very narrow question about that freedom of speech. You have mentioned that in Victoria adults are able to access government funding to get communication aids but children are not. Is that the case around Australia or just Victoria, do you know?

Ms Jones—I only know about Victoria because of a particular case where someone was denied access to it. I actually suspect that adults in other states do not get access to this equipment. It is certainly not equipment that is freely available to anyone

who needs it across Australia, but I do not know the particular relationships in different jurisdictions.

Senator BOURNE—But it could be the same in other states?

Ms Jones—It could be the same.

Senator BOURNE—Is there any other area besides communication aids that you know of where children with disabilities are treated differently from adults with the same disabilities?

Ms Jones—With respect to mental health services, I would say that there is probably a very big difference in the treatment and certainly in what children can get access to. There are insufficient services at both levels. Very often it is not that there are completely different treatment strategies but just that the resourcing is different in the two areas, and children obviously have different sorts of levels of access to facilities. For example, if a parent had a mental illness that is not being addressed, the rights of the child in the context of the family are very seriously affected. So that comparison may or may not hold, but it would be a matter of particular instances.

Mr McCLELLAND—The issue of children with disabilities is interesting, is it not, because parents may make a decision which they believe is in the best interests of the child, such as institutionalising a disabled child? In those circumstances, do you think it is imperative that the rights of that child be represented in any judicial proceedings regarding the destiny of that child?

Ms Jones—One of the problems for parents of children with disabilities is that they are emotionally caught up in the issue and obviously are very concerned for their child, but also they are often not able to separate out management issues and support issues and the issue of what really is in the best interests of the child.

A very interesting bit of research has been done—not quite on that point, but I will come back to it in a minute if you do not mind—about the sterilisation of girls with intellectual disabilities. Sue Brady in Queensland did research about when there was intervention, and they said to the family, 'Rather than sterilising your daughter consider doing these things,' and the things included the provision of adequate respite care so the child could stay in the family but the parents had a bit of relief from having 24-hour a day care for the child. They included some educational training strategies for the child. They included quite a lot of resourcing. When that happened there was not one person who went back to the Family Court or to the Guardianship Board to request sterilisation.

So the interests of a child definitely in that context do need to be represented in some way, but the problem very often is that people are posed as the good guys and the bad guys. It is either the rights of the parents—the parents know—or it is the rights of the

child. What the convention does, and where I think the convention is particularly valuable, is that it places a positive obligation on governments to provide resourcing to support families.

So I see in the convention the potential to say that states should be providing respite care, and in the context of children with disabilities a lot of the issues that are very often now posed as conflicts between the rights of the parents and children are simply to do with parents who often cannot cope. The parent would love to do different things very often if they could cope. So we need to find a mechanism to make that possible in a way that respects everybody's rights.

I would hate to see all the money being spent on extra judicial proceedings, giving more money to lawyers and having more money going into the whole litigation process. I would much prefer to see the money going into services and having it administered in that sort of way.

Mr McCLELLAND—The points you raise are entirely valid, but one of the clauses those who criticise the convention frequently refer to is the right for children to have a say in their destiny. That perhaps is a situation where I think any fair-minded person would say the child had a right to be heard in their own interests if it involved institutionalisation.

Ms Jones—It is curious that article 12 would give rise to such distress. In common law we have the idea of natural justice which now applies to any decisions affecting the rights, interests or legitimate expectation of any person—except a person is usually an adult. In any context we have the idea that the person should get a hearing. It does not mean that they get the outcome that they want. It does not mean that everything else has to stop because that person has had a hearing. All article 12 is saying is that if the child is going to be involved and their rights and interests or whatever are going to be affected their voice should be heard, their perceptive should be seen and, if they need an independent person to do it, there should be a mechanism brought in for that. It seems to me that this is not such a radical thing.

Someone mentioned the case of B & B. In B & B it was made very clear that this idea of the child being heard is not definitive of the outcome; it is simply saying that children too are entitled to have equal concern and respect, to be treated not as property—an idea that we have long abandoned—not as good and chattels to be traded but as people with an interest and a right; and that respect can very often be given simply by letting them be heard. I think all of us who are parents know that we are not going to do things just because children decide that they want to leave school or go to school or drive the car or go to the party. Even if they really want to go we do not necessarily say, 'Well, therefore you can go.' That would not be good parenting. But I think the point is, as Dr Cronin made in the previous submission, that to let them have their say probably is good parenting.

Another problem I see is that we are dealing with from birth until 18, and the needs, interests, rights, whatever, of people in that age range are very different. My local library was doing a survey about the children's library. This may seem irrelevant except that I think this is actually the sort of thing that the convention is designed to address. They had a big sign up: 'Please stop and fill in the survey about the way the library is providing services'. I was there one day with my 15-year-old and 13-year-old, and they stopped and said to me would I fill in the survey and I said, 'But I'm not a user of the service. Why don't you ask my children? They're users of the service.' They said, 'Oh, no, we're asking parents because toddlers can't fill in forms.' Then they finally said, very bad-temperedly, all right, they would survey the children, and apparently there was then a move and they did actually start surveying some of the older children. But they had not thought that this was an issue. They are the borrowers from the local library after all. I do not read all of their books. I read some of them, but I do not read all of them, and I certainly do not select what books they read. But for a two-year-old I probably would.

So that range is very important, and I think this convention is trying to say that when we are dealing with things like providing library services and the library service is for children rather than adults that children should be heard in terms of what they find is working and not working or whatever the issue is. So it is not going to necessarily be some big threat looming that it is going to interfere. I was not worried that my rights were going to be interfered with if they asked the children about a service that affected them more than it affected me.

Senator ABETZ—I think generally everybody has agreed that the spirit of the convention might be okay, but it is its terms and practical outworkings that provide the concern. In your opening comments you made mention of the right of a child to have adequate food, for example, and clean water. Chances are nobody would disagree with that and would say that that is about as fundamental as you can get. Yet, in one of the submissions, it says:

> Dr Weston said that doctors are not infallible. "I am personally acquainted with three genetically small children whom Dr X diagnosed as malnourished. After several months in an institution, where there was minimal weight gain, the children were recently returned to the mother by the magistrate," he said. "When one is constantly dealing with the problem of child abuse, it is easy to develop a presumptive bias towards guilt. . . "
>
> The damage done to the Hill daughters through government intervention has been great. "Emily and Eliza have been through hell," Mr Hill said. "When they were taken away from us, they thought we were punishing them."

Here is a very good example of government officials, undoubtedly with the best intentions in the world, doing untold horrific damage to a family unit—shades of the stolen generation. I have got to say to you as a parent that I become very suspicious and concerned when social welfare agencies think they have a right or a duty to interfere in the case that I have just read out to you and in other cases. At the end of the day, if I had

to make a judgment whether the parents are better or some social institution is better to bring up kids or decide what is best for the kids, I reckon 99.99 per cent of the time you would say the parents.

I think that is what has caused a lot of fear within the community—that this case of the Hill children is not an isolated situation. The state of Victoria I think had numerous examples. I do not think those welfare officers set out to be mean and nasty and to destroy families, and chances are—exactly with the stolen generation as well—the welfare officers there really did not have that intention, but that was the unambiguous consequence of their action. How can we guard against that with these sorts of conventions?

Ms Jones—That is a very sad story, and it is certainly not the only one of that nature. I suppose part of the problem is that I do not think the convention affects that one way or the other, with one caveat. But before I get there let me just say that we are dealing with human agents, and we know that in the context of child protection there have been very bad decisions made in both directions. At times there have been decisions not to intervene, and there has been quite a lot of recent information about child abuse in New South Wales where the department had chosen not to intervene because they felt they trusted the parents or whatever else and they made the wrong decision. I do not think we are ever going to get around that problem, no matter whether we have the convention or do not have the convention.

But one thing that the convention might help with is to add one level of reflection to the process. Let us just stop and think what is in the best interests of the child here. Let us actually go and ask the question, 'What could be done to improve the situation? What would be the benefits of leaving the child in the family and what would be the benefits of taking the child out of the family?'

Senator ABETZ—That is allegedly already officially the test that welfare agencies apply, namely, it was determined by somebody, 'These kids are malnourished, therefore it is in their best interests to take them into an institution,' and then months later they realise, 'Well, possibly it wasn't in their best interests, so we'll take them back again,' dislocating the children further, but of course ultimately for their benefit being put back with their parents. That test of the best interests of the child is not a new one—it has been around for a long time—but its interpretation seems to have got very much out of kilter.

Ms Jones—Lee Ann and I have spent a lot of time discussing this problem. She is a family lawyer and I am a human rights lawyer, so we come from different directions. I would argue that very often this test of best interests actually has nothing to do with concepts of rights, and while I do not think we will solve the problem by having a concept of the rights of the child there, because of the sorts of issues of mistaken fact and the complexity of particular situations, rights have to be seen as more complex than in terms of just taking them away or leaving them there. If we say that the child has got a right to stay with its family, which is one of the things it says in the convention, then there is a

stronger onus on the welfare agencies before they take any step to say that they are going to have to make out their case.

Senator ABETZ—What makes you say that it is in the convention—the fact that it says so in the preamble?

Ms Jones—I can refer you to the section.

Senator ABETZ—The preamble tells us:

> Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment . . .

Is that what you were referring to?

Ms Jones—Certainly that; but, if you go through, article 3(2) says that parental rights and duties and responsibilities have to be taken into account and respected with respect to particular welfare measures. Article 5 says—this is just a summary without reading it all out—that parents and extended families are best able to provide guidance and direction for the families. All the way through we can find—

Senator ABETZ—It is not exactly all the way through, but could I put to you that a lot of the community angst could be overcome, and indeed the United Nations may have done a greater service to the world community, if instead of talking about a convention on the rights of the child they had talked about a convention on, let us say, the family unit as being the best place to bring up a kid and that children, in recognition of the wonderful services the parents provide in washing, feeding, clothing, ironing, vacuuming, providing lunch to school, et cetera—all those freely provided services—also have a responsibility to respect the guidance that the parents seek to provide to them, even if at their stage in life they might consider that guidance to be somewhat misguided. It just seems a more holistic approach to the situation than just saying, 'Kids have got rights.'

Ms Jones—There was a reference made earlier on to the Ten Commandments, and the Ten Commandments say to children, 'Not only should you respect your parents but you are going to got a reward for doing so. Your days will be long on the Earth the Lord hath given you.' So there are a lot of things in terms of moral education that parents have still got complete control over, with respect. The convention does not interfere with that in any way.

Senator ABETZ—What about, just on that very point, if a child makes a determination at age 10 or 11 that it no longer wants to go to church or religious education classes at school? Do we have to look after the rights of the child to freedom of expression and religion and things of that nature under the convention?

Ms Jones—Both under the convention and under the common law, which I do not think is affected by the convention—I mean if the convention was there it would bolster the common law position—parents are required to respect the emerging capacity and maturity of the child. So there is going to be a point if the child is Gillick competent—that is, the child understands the nature and is mature enough to respond to the situation, and I cannot tell you if the 10-year-old would be; in my family two of my children would have been and one of them would not have been, so it is not an age matter—where we have to say, 'If our child does not want to go to church, then the parents have to say somewhere along the line before they are 18.' In most cases that would happen before they are 18. It is a continuum, though. It may even happen when they are 17.5 or 18, or it might happen when they are 10. But there comes a point when we do have to respect that, yes.

Senator ABETZ—Yes, but you would not see a situation for example where the father tries to physically manhandle a 17½-year-old into church. That would be a ludicrous proposition, I would have thought, for anybody. But let us say a 10-year-old makes that determination more emphatically, and then rings up the National Youth Advocacy Centre, from whom we heard this morning, who will assist any youth that rings them on matters of this nature.

We were told of one example where scarce legal aid funds were used to conciliate on behalf of and argue for the child about the need to wear a school uniform. It just seems to me that these rights have gone right out of kilter. When there are very real and pressing needs in the community, we are spending scarce legal aid dollars to allow a kid to fight whether he has to or does not have to wear a uniform. It just seems to be—to my simple mind—very much out of kilter.

Ms Jones—If there is a major conflict between the parent and the child, to the point where a family breakdown is going to come about in some form or the child is going to leave home and become homeless or go on the streets or whatever the child is going to do, then some intervention in that family is needed. If it comes over because of a conflict about going to church or whether it comes over because of school uniform or whether it comes over for some other reason, that is a family that needs help. It is not going to survive as a family unless help in some form is provided to it.

Senator ABETZ—If you look at society today, those sorts of problems have existed throughout the ages where kids have not wanted to wear uniform, have run away from home or whatever. I pose the question: is there now less of that within the community as a result of all these national youth advocacy centres and children being told about their rights? Has the situation got better? Are more children staying at home with their parents because these positions have been resolved or are we finding more and more kids on the street?

I think the unfortunate conclusion that most commentators come to is that more

and more kids are leaving home and, if that is the case, then you have to wonder about the efficacy of some of these programs and the philosophy behind them.

Ms Jones—I would submit that there is very little knowledge by any children or by anyone else in the community about what rights children have and that knowledge, therefore, could not have had any impact one way or the other. The sorts of reasons why children—

Senator ABETZ—We have had, with respect, a stack of anecdotal evidence in our electoral offices, but also before this committee, where children at the age of eight say to their mother when a demand or command is made, 'That is verbal harassment, you cannot tell me what to do.' Whilst you might laugh and I might laugh—I do not have a child that is eight yet, but I only have a year to go—if that situation were to arise and the parent asks, 'Who told you that this was verbal harassment?' the children say, 'Oh, my teacher did.' I have got to say to you that that sends horrifying messages throughout the community. With respect to some of the people that have given evidence to us, especially earlier this morning, they do not seem to link into that community concern at all. Or, if they do, they are very dismissive of it.

You said that there needs to be education of the community because it is so misunderstood. And yet the previous Minister for Justice, Senator Michael Tate, thought reservations ought to apply in relation to parental rights. The former Shadow Attorney-General, Andrew Peacock, was of that view. The current environment minister, who was then a former foreign minister, Senator Robert Hill, was of that view. You can go through a lot of people who according to you and the Human Rights and Equal Opportunities Commission were somehow not properly educated about the impact on the convention, which I see is somewhat patronising, but also very concerning in that there can be such a divergence of views.

Ms Jones—I think there is a very big difference between being able to use rhetoric and actually understanding a concept. The concept of rights is about respect. We have seen very big problems in our society recently in terms of the increase in racism, the increase in racial violence, the disparagement between different sectors of the community that actually is indicative of the fact that people have not understood, whatever way you want to describe this, the notion of what rights are all about. Rights are about learning and understanding to respect each other and give each other the respect that is due and appropriate in the particular circumstance.

While there is a lot of use of the language of rights, every man and his dog has a right to everything. They have a right to have guns, everyone who wants to make a case says they have a right to it. Everyone who does not want you to do something says, 'I have a right not to do it.' It does not follow that they actually understand this concept of rights which actually is more complex and can be used in a more complex way.

Certainly, no evidence has come across any of the scholarly meetings, academic meetings, or other meetings I have been to on children's rights from educational authorities, from members of the parents and citizens association, from places like that, where there is any evidence that there is actual knowledge of the convention throughout schools, throughout the community. A survey was done a few years ago which showed that most people that were surveyed did not know whether we had a constitution or not and did not know whether we had a bill of rights. I think it is highly unlikely, given the general community knowledge on those things, that people would have any sort of detailed working knowledge of the Convention on the Rights of the Child.

My children, who are in a household where I work in this area, last night when I said that I was doing this today, said to me, 'Well, what is this Convention on the Rights of the Child?' They are involved in all sorts of community things with schools and, although I have spoken to them about it before, until last night they had not actually physically looked at it and there had been no environment in which it had been physically mentioned or there had been any sit-down discussion. My oldest is 15. The convention has been around for quite a few years and she operates in many different circles. That was certainly the feeling at the children's rights conference that was held in Brisbane earlier this year—that was the sort of feel that was coming through.

Mr TONY SMITH—You spoke about how rights were about respect and learning to respect others. Would you agree with the proposition that every claim of right can be wholly translated into the language of duty?

Ms Jones—No, I would not.

Mr TONY SMITH—You do not, and you would disagree with Professor Finnis of Oxford University, would you?

Ms Jones—That is right, I do. I have had long debates with him on that subject.

CHAIRMAN—Thank you very much indeed.

[12.47 p.m.]

NILE, Reverend Hon. Frederick John, National President, Call to Australia, GPO Box 141, Sydney 2001

CHAIRMAN—Welcome. Is there anything you wish to add to the capacity in which you are appearing?

Mr Nile—I am National President of the Call to Australia political party and a member of the state legislative council under that banner, which is in the process of being changed this week to the Christian Democratic Party.

CHAIRMAN—We have received your written submission. Are there any omissions, errors in terms of that written submission that you wanted to draw to our attention?

Mr Nile—No, not that I am aware of, Mr Chairman.

CHAIRMAN—I ask you to make a short opening statement.

Mr Nile—Thank you very much for the opportunity to contribute to the committee's important investigation concerning treaties and, in particular, the United Nations Convention on the Rights of the Child, which is the one that I am particularly concerned about. I recognise that the committee has a difficult decision to make in considering the convention. I believe the basic questions come down to the following. Is the UN Convention on the Rights of the Child open to the possible interpretation that many people believe, and which I believe—including churches, lawyers, United States senators, as well as the Vatican and, for example, there has been a statement issued in Germany related to this convention—that children no longer have a duty to respect their parents' views or obey them, nor do parents have any right to require children to perform duties within the home, based on their interpretation of this UN convention?

I believe that type of material and other views that have been stated indicate that the UN convention is certainly open to different interpretations, perhaps different from the authors of the convention, although I am not too sure as to whether the authors of the convention did intend some of these meanings. The answer is clearly that it does undermine the rights and responsibilities of parents—in other words, the convention has tilted the scales too far towards the rights of the child. It adds to the confusion, and we have got enough confusion in a modern society with parents seeking to bring up their children, whether they are older families or ethnic families dealing with the different pressures within our Australian Western society.

Your committee, as I said, has difficult decisions to make. I believe on the surface of this issue in examining all the aspects that it would be better to recommend that the

convention not be implemented by our Australian parliament because of the confusion over the interpretation and its application on Australian laws, culture and conventions. If the committee feels it cannot reject the convention, then there should be some procedure to amend the convention if that is possible, either by the United Nations or by the Australian parliament in an enabling legislation and, as a minimum, that the committee would recommend this reservation, which is in our submission on page 1. It says:

> If Australia does not withdraw completely from the Child Rights Convention, then it should declare a reservation on Articles 12-16 and 28, to the effect that Australia interprets these Articles in a way which safeguards the primary and inalienable rights of parents to make decisions in the best interests of their children, in particular insofar as these parental rights concern education, religion, access to broadcast, print and other media, association with others and privacy.

Those words are, in fact, very similar to a reservation that has been expressed by the Vatican which, as you would know, has the dual role of being both a church and a state and, in its state capacity, has expressed very similar wording to that reservation I have just quoted. I understand the United States Senate, which has a role in the United States government procedures concerning treaties and conventions, is apparently still discussing this particular convention and there is a great deal of criticism of it. They may adopt a similar reservation or may even reject it through the Senate, even though I understand the President has signed it. They are a summary of the main points I would like to make in these opening remarks.

CHAIRMAN—Thank you very much. The difficulty with the reservation proposal that you make is that that is not possible. It is not possible simply because once you have ratified a convention—which, indeed, has happened—albeit in this case without the appropriate consultation that, in fact, a nation state cannot insert further reservations. It can react to reservations of other states. So that avenue, unfortunately, is not possible.

Mr Nile—It could only be done at the point of signing.

CHAIRMAN—It can be done prior to the ratification process and then at the ratification process you can put in reservations which, as you may or may not know, we put in one which a lot of people would argue was a relatively minor one under article 37(c) on imprisonment of children with adults, or you can make some sort of declaratory statement. What I am saying to you is that if you cannot go the reservation route, which we cannot, then we have to look in the extreme at the deratification approach. I think you are suggesting that perhaps we should look at that carefully.

Also, you have made the point that if we do not withdraw, which we can but that is an extreme, then we should say that we do not want to participate in and certainly receive into Australia the UN Convention on the Rights of the Child committee. That committee is coming to Australia shortly and it is incumbent on this committee to hear what they have to say, albeit that some of us do not agree with some or most of what some of them have said from time to time.

Just to correct a misconception which I think is implicit in your submission, these people do not represent those countries. They might come from country A—Burkino Faso or whatever—but they are selected not on the basis of the country but of the person. So it is a perception. I understand what you are saying because a lot of those countries are less than what we would term as democratic.

Mr Nile—That is right.

CHAIRMAN—We will be listening to what they have to say in the next few weeks, hopefully. But we will be questioning a lot of what they have to say. Regrettably, the proposal that you make in terms of reservation is not possible. The deratification is possible but, of course, that is an extreme situation which we have to address in due course in our report. That committee exists in the UN in relation to this convention, and although it is in the convention itself that we receive what they say, it also says that we do not have to act on what they say. There is a bit of give and take.

Mr Nile—I suppose if it is possible for the reservation or that term of wording, if there is a bill passed, as has happened with other United Nations conventions, could the Australian Parliament itself include that overall interpretation of the UN convention?

CHAIRMAN—That is why the post-Teoh legislation is so important in terms of what it really means. There is legislation which has gone through the House of Representatives and is about to go into the Senate which, hopefully, will clarify the situation, although we heard some evidence today from some people that, perhaps, that will not be case. But I will attempt to make it clear that, as I said yesterday in Hobart, simply because Geneva or New York coughs Australia should not necessarily get a treaty cold. There is a view, which I suspect you hold as well, that these external authorities are dictating domestically what we do. That is a perception.

Mr Nile—I believe it is actually contrary to the whole thrust of Australian public opinion to establish clearly our independence. It may even be one of the arguments behind the republican movement. We are an independent sovereign nation and they will replace Great Britain, if they have any influence—which I do not think they do, but if they did—with the influence of the United Nations over our domestic legislation, as obviously you would believe. As a member of parliament I feel very strongly about the sovereign powers of our federal parliament and our state parliaments. They have passed laws as democratically elected governments to govern our Australian people and are not to be overruled by United Nations documents of any sort.

CHAIRMAN—The international instruments legislation, which is about to be debated in the Senate early next month will, hopefully, clarify that.

Mr McCLELLAND—I take on board some of your comments, but would you agree that there are some clauses that are worth while in the treaty? If I could go through

a few of them. For instance, article 33 is on the protection of children from exposure to narcotics; 34 is on the protection of children against sexual exploitation; 17 is on the protection of children from exposure to information and material which may be injurious to them; 19 is on protection from physical violence and 38 is on protection from being called up for national service if they are under 15 years of age. There are some good principles, would you agree with me, in the treaty?

Mr Nile—Yes. I would not question that. But my answer would be that, basically, our Australian laws and state laws already embody those principles. We do not have to be educated, if you like, or taught by a United Nations committee or through a convention when we, perhaps, have some of the most advanced laws in our nation dealing with child abuse and so on, compared to any other nation. I am not disagreeing that those are important principles, and I would not like to say in some way by rejecting that that I believe the opposite to what this states. We must protect children, obviously, from pornography, illicit drugs, et cetera—I accept that.

Mr McCLELLAND—If you can overcome those ambiguities that you referred to, concerns in some sectors of society that some of the clauses are open to a construction because of their ambiguity, which you believe could undermine the authority of parents, if that could be overcome in terms of the framing of Australia's own legislation dealing with these matters, would that avoid a situation where you throw the baby out with the bath water? In other words, the baby, being some very sound principles in here, is being tossed out with the bath water, being the ambiguities. If you can take away the mud from that bath water, would that make you feel more comfortable?

Mr Nile—That would be the minimum situation, the fallback situation being that reservation, and you are proposing that that can be embodied in some way in the Australian legislation. The other solution would be to take what are some of these principles that seem to be non-controversial and have our own Australian set of documents, so that there was a rights of the child that covered some of those areas without it being in the United Nations convention.

Mr McCLELLAND—That is effectively what our legislation would be. It would be an entirely Australian document made by the Australian parliament.

Mr Nile—What I am suggesting is, if that is the case, select the very sections which we think have an application to Australia and leave the other ones out, if that is possible. The whole issue has become complicated in recent years because in the past we did not have these controversial United Nations conventions; they were virtually rubber-stamped by the Prime Minister or the minister for external affairs. Since then we realise that these conventions have a substantial impact on our Australian nation.

That is why we support the whole operation that they must be like the United States Congress and Senate, received within the parliament, debated in the parliament, then

ratified, not just signed. Whether it is a Labor or a Liberal politician it does not matter, it is not a political party issue, it is really how our democracy works. I think that has been the loophole that this particular situation has now brought into the public arena.

Mr McCLELLAND—Taking on board your comments that Australia in the overall scheme of things is pretty sophisticated in terms of the way it treats children, do you think Australia has an obligation to ensure that those standards are reflected in other countries?

Mr Nile—That was the main argument for these United Nations conventions. People say, 'We're not speaking about Australia.' I don't want to quote another nation because it sounds as though I am defaming another nation, but there are certain nations, in the Middle East and so on, that may treat children completely differently from the way we do in Australia. They do need to be helped and the UN convention could have some practical value in those areas. That is where it has become blurred in saying the United States, Australia and Britain also have to sign them to help these weaker nations. We do not want to confuse and undermine our own nation in the process of trying to educate other people.

Mr McCLELLAND—Taking on board that Australian legislation is for the Australian parliament, and taking your point that Australia does have an international obligation to invoke these broader moral principles in the international community, do you not think Australia would be turning its back on that broader international obligation to simply denounce the treaty?

Mr Nile—There may be some other method which I would prefer you to put your minds to. I do not have all the solutions. For argument's sake, some of the nations that are perhaps most abusive of children may not ratify this UN convention in any case. I am not sure how many nations have ratified it, whether Iran and Iraq and those sorts of nations—

Senator ABETZ—They have all ratified it—and ignore it.

Mr Nile—So to that extent it has no impact on them at all so it becomes a piece of paper. To them it is paper; they have no machinery through which it is administered but we actually have human rights commissions and we have all these bureaucracies that are set up at state and federal levels. My concern is that—

Mr McCLELLAND—You can hardly ask for standards though unless you are prepared to abide by them yourself. You could not ask standards of your children if you did not live by your standards.

Mr Nile—Yes. The problem is that we have bureaucrats in the area of social work and so on. If this is adopted as it stands as Australian law, and with these areas of confusion over interpretation, then we could find a lot of pressure put on parents by

people objecting on behalf of a child and putting in place all the bureaucratic machinery which does not even apply to Iran. They do not even have human rights commissions.

Mr McCLELLAND—Sure. My final question is, taking that final point on board, what about removing those ambiguities that take away that rope for public servants and bureaucrats, as you say, to misconstrue the terms of the documentation?

Mr Nile—That would be, as I said, my minimum position to do that, to make it that the convention cannot be abused in a way which may have been intended or not intended. When you talk to the UN convention, I have a report of where they are very critical of that reservation of the Vatican—the UN convention committee itself. When you meet them you might like to question them on that because they have argued against that reservation, saying that this would stop children getting advice regarding sexual activity or methods of contraception and so on, which could be against the parents' wishes.

So the UN convention committee actually has revealed their hand by saying, 'This is how we interpret these sections.' In other words, I am giving you some credit to say there are some areas of confusion but the UN convention committee does not seem to be very confused at all. They actually do intend the clauses that we are concerned about to mean what we think they mean. You may find that, when you speak to them, they will confirm that for you.

Senator ABETZ—This committee does not have any agenda and so to label one option or another as extreme is not to be taken by you as dissuading you from putting a particular proposition to us. There is another method of going about this and that is to renounce the treaty. We have to give 12 months notice. In doing so, we could make it quite clear in the letter of renunciation that it is our intention on the 366th day to reratify, subject to reservations which would then be declaratory of our interpretation of those articles in the convention that have this ambiguity or the possibility of being interpreted in the manner that you have suggested, and indeed, a lot of other witnesses have suggested.

Rather than renouncing it all and, as Mr McClelland said, throwing the baby out with the bath water, should we say, 'Look, we think the spirit of it is good, our intention in renouncing is to reratify, subject to these reservations to clarify our own domestic situation'? Would you have any difficulties with that?

Mr Nile—No, I think that would be a very good pathway. It would make the Australian situation very clear. Maybe the reservation should have been made initially and I suppose we would be acknowledging that there was an oversight—if you like—it was not done then and now it is going to be done through the method you have outlined.

Senator ABETZ—Or the Minister for Justice at the time, Senator Michael Tate, is of the view that Australia would not be ratifying it without putting in a similar reservation to the Vatican's. Somewhere along the way he undoubtedly got overridden. We have had

two lots of evidence before us, one mainly from parents and parent groups saying that if not the convention itself, then the philosophy behind the convention is percolating down and children are coming home at eight years old saying, 'You are not allowed to tell me off—that is verbal harassment.' Yet we hear from other witnesses, such as the witness immediately before yourself and the Human Rights Commission, that knowledge of children's rights and the convention is non-existent within the community. We have these two bodies of evidence which seem to be in contradiction.

In your role as a parliamentarian you would get about a fair bit, talk to groups and get community feedback. What has the community reaction been in your experience to, if not the details of the Convention on the Rights of the Child, some of the philosophy that is being promoted by social welfare agencies?

Mr Nile—I agree with you one hundred per cent that the sentiments have already been conveyed and are being conveyed through our education system. Whether that is the policy of state education departments or the minister for education, but obviously teachers read these documents and they would be aware of the UN convention and of other documents and I believe, even though we are debating its future role, they would see it as already having a role.

As you know, the High Court has indicated that all these UN conventions should be taken note of in our Australian judicial system et cetera. I would not say every teacher is promoting it, but there would certainly be a large number of teachers who have conveyed some of these ideas to the children because I have had—as you have indicated—complaints from parents about the attitude of children, saying, 'You cannot smack me, and you cannot make me do this.'

I remember one of my sons coming home from high school when he was 16 saying that he understands that he has to leave home now. I said, 'I do not understand what you are talking about,' and he said, 'The teacher said today that at this age you cannot make me stay at home and I should leave home.' He said, 'Do I have to go?' and I said, 'No. You can stay as long as you like.' He stayed until he was about 34. I had to say, 'I think you ought to go and get married.'

But I do not know just why that teacher stirred up these teenagers by conveying his personal views—which were not departmental policy, I do not believe, because I do not see them anywhere in print. They have certainly made it harder for parents in exercising their roles. As I said, with the tilting of the scales, the big weakness in our society is trying to get parents to accept their responsibility and exercise their rights as parents in really caring for their children and loving them and bringing them up in agreement with their fundamental beliefs and faith and so on.

That is what we should be encouraging, and it seems as if this convention is undermining that very desire. All our social problems come from dysfunctional families

where children are running in the streets and where they are not getting the care and protection from parents. This gets parents to back off even more so if this convention applied. As you say, and I agree with you, it is being applied indirectly already through education and perhaps even through the media and television programs on various high school themes and so on.

Mr BARTLETT—Are you aware of any specific cases of where parents would, to use your words on page 11, lose control of children to the state? Do you know of where that has happened or it has come close to happening?

Mr Nile—We certainly have had complaints, and not just of hearsay but of actual cases, where, getting back to this issue of child abuse, there was suspicion of child abuse and the child did not return home to the parents, but the teacher requested the respective community services officials to come and actually take that child. In the end, there has been no truth in the allegation at all. I believe that, in those cases, often the interference of social workers can be actually more harmful than the physical abuse, maybe, of smacking.

Mr BARTLETT—Have you had many of those cases reported to you?

Mr Nile—We have had quite a few and a range of cases where children are on the streets, particularly young girls involved with prostitution, and the welfare officers knew of that and knew of the whereabouts of the person—this could be a child of 14 or 15 years of age—and would not tell the parents where the child was. I have had many complaints along those lines.

Mr TONY SMITH—Pardon me for being a little bit pedantic, but I just wanted to correct the top part of page 4 of your submission where you said that the Keating government incorporated the Convention on the Rights of the Child and the Human Rights and Equal Opportunity Commission Act in December 1992. That actually is not correct. The convention itself has not been incorporated. The Declaration of the Rights of the Child has been incorporated into that act.

Mr Nile—The declaration is incorporated.

Mr TONY SMITH—Yes, but not the convention. The declaration itself is part of municipal law because of that incorporation but the convention is not. It is an important distinction because one of the arguments we have had is that all of these international instruments should be construed in conjunction and flowing chronologically, in effect. That is all I wanted to say.

Senator COONEY—I would like some clarification. From what you have said, I understand you do not object to universal principles that bind the conduct of all nations, do you?

Mr Nile—I do have a reservation about that in the way in which it is now occurring.

Senator COONEY—I am not talking about this particular convention. You said your party is now the Christian Democratic Party and you would not have any difficulty in saying that it would be good to have Christian principles followed in all nations.

Mr Nile—I certainly would agree with that. I also would like to try to respect the independence and sovereignty of nations to administer their own affairs. That is democratic.

Senator COONEY—That is what I am asking. Do you have any difficulties with there being a sort of universal recognition of principles—I am not trying to trick you either—whatever those principles might be, whether they are Christian principles or Muslim principles or whatever, but good principles?

Mr Nile—Yes. That is why I strongly support, in the original declaration, some of the points they made there about the family being the basic and natural unit of society. I would like that to be recognised right around the world.

Senator COONEY—You are not objecting to universality but giving certain principles universality which are wrong principles. Is that what you are saying?

Mr Nile—Yes, but I still have reservations now about what I would call compulsory legislation to compulsory forcing. I would accept that nations could agree to accept a voluntary code or so on but not to give it the power of law.

Senator COONEY—The only other question that I wanted to ask was are you saying that because a particular convention or a particular document is interpreted in different ways by different people therefore it should not be adopted—do you go that far?

Mr Nile—Yes. Because I could argue now that there is not the possible interpretation. I would say from the reading of the United Nations convention's committee that that was the intention of some of the wording of this convention. It is not that we are misunderstanding it, but they actually did have that intention and that is against our Australian—

Senator COONEY—But I want to get from you, if I can—and if you feel that it is perhaps best not to answer then do not—whether you think that the fact that a document or a convention or a particular law is open to different interpretations makes it a bad law? Do you go that far? The fact that whatever law it is—it might deal with the conservation of elephants—if it is open to different interpretations that makes it a bad law: do you go that far?

Mr Nile—Yes, I think laws should be simple and straightforward as to what they are trying to actually say. It is not a good law because you will have different decisions made at different levels of courts—federal courts and High Courts and state courts et cetera.

CHAIRMAN—Thank you Reverend Nile, we apologise for holding you up and we thank you for your evidence.

Mr Nile—You did ask me whether there was an amendment and I am happy to have that submission amended according to Mr Smith's recollection that that should refer to the declaration and not the convention.

CHAIRMAN—Thank you.

Luncheon adjournment

[1.35 p.m.]

JONES, Mr Jeremy Sean, Executive Vice-President, Executive Council of Australian Jewry, 146 Darlinghurst Road, Darlinghurst, New South Wales 2010

CHAIRMAN—We have received your written submission dated 9 April. Do you have any errors of fact or omissions that you wanted to draw to our attention in relation to that submission?

Mr Jones—Not of which I am aware.

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

Mr Jones—Yes. This is not a core issue for the Executive Council of Australian Jewry, but as we do have broad concerns as members of the Australian community and specifically as members of the Jewish community, we welcome the opportunity in the review of Australian's compliance with the treaty to state some of our concerns.

I would like to state at the opening that the reason that so many people have chosen to come to live in Australia—I know from the experience of my own community—is that this is a good place to bring up children. The mere fact that there are many people from around the world who want to come to Australia says a fair bit about how parents are perceiving Australia as a place in which to bring up their families.

As members of the Jewish community we see this as a good country to bring up and educate children who can be part of our community and also of the wider community. A key concern of the Australian Jewish community is how people in a small minority can remain part of that community and understand their own personal identity.

We also believe that Australians are more likely to be caring than uncaring. Where problems have arisen in the treatment of children or any other member of our community it is much more likely to be because of human error or good intentions guiding bad actions rather than because people are uncaring or malicious.

Consideration of how laws are complied with or how treaties are observed can be seen to be premised on the idea that there are nasty people, a bad element or even a conspiratorial element out to do harm. Our council does not believe that for a moment. The process followed in putting together this submission was to put it before our committee of management, the body which governs our council between annual meetings, and to ask consultants and other members of the committee of management to make submissions which were eventually put into the final submission to this inquiry.

One of the consultants, Melinda Jones, a human rights consultant to our council, appeared before the committee this morning. I think it is worth while your being informed of that situation.

Senator ABETZ—Any relative?

Mr Jones—She is one of my three older sisters and all three sit on the committee. A number of humanitarian issues—indigenous and disability concerns—are of concern to us. They arise sometimes from the special interests of members of our committee and reflect how we see ourselves as Australians. There is also a great deal of diversity in our community and in our committee. When I talk about diversity in our community it is an unfortunate fact that, when there are problems within families generally, there are going to be problems in Jewish families. When there are issues relating to offenders there are going to be Jewish offenders who are affected by the same issues. We do our best to represent that diversity in our submissions.

Our key Jewish concern though is education and how we can educate our children; how these Jewish children can remain part of our community and understand the community. We do this in the light of a general government school system which is not premised generally on the idea of a religiously or culturally diverse society. Many Jewish children—arguably a majority, although there is some dispute exactly how large that might be—are sent to private education by their parents, mainly for the Jewish educational component rather than the concept of removing children from the government system.

An additional concern, I think unique to the Jewish community, is that we pay enormous amounts for physical security of the premises that our children have to attend or to which we send our children, and our places of worship, because of outside threats to our community. As parents and members of the community this is something which faces us uniquely and which we see as a basic duty. Above all, though, with that said, we welcome the opportunity to reassert the importance to us of strengthening the family as a unit in the context of building a better society for our children.

When Professor Jacob Bronowski was asked how he defined Judaism he said, 'For him, Judaism was a commitment to making for your children a better world than that in which you yourself live.' Despite the diversity in interpretations of Jewish tradition and broad interpretations within our community, I think that is a broadly held ethic across various religious groups and moral groups within our community. With that, I invite questions.

CHAIRMAN—You have suggested the reservation of article 37(c) should be removed. Would you like to just say a little more about that?

Mr Jones—I was here this morning and heard what was put by Chris Sidoti, the Human Rights Commissioner, and also by Melinda Jones in her personal submission. I do not really have anything additional to say to that. Unless I am mistaken—and I must say the Human Rights Commission is a resource for many community groups who want to investigate these questions—given the presentation of Chris Sidoti, and given that there is enough flexibility in it, there would not seem to be a major problem with this. We do not

have an independent source beyond that, so I do not think we have anything specific to submit.

Mr BARTLETT—In your introductory comments you spoke about the need to strengthen the family unit. A number of submissions have referred to the way in which this convention might be used to threaten the family unit, particularly articles 12 to 16—and the emphasis there is on autonomy. Do you not see any credibility in that line of argument?

Mr Jones—With any line of argument, when we are looking at something this broad, there are going to be people with legitimate concerns. We have to ask ourselves: even if there are legitimate concerns are they more important than the general principle or the general rule and how can you address those legitimate concerns? I am troubled by people who often seem to present problems within their own family unit—problems perhaps caused by lack of parenting, training or education of how parents can operate in a family—bringing those as problems with the law or problems with outside forces.

I am not saying that is always the case but certainly I think that is something that we have to consider. It has been mentioned this morning as well as in the written presentation that, if there is going to be some form of advocacy or council for the concerns of the children, a very important concern of children must be the training of parents. Parenting is a concern of children. Children's rights are assisted by resourcing parents to deal with the problems that might come up. In light of the earlier discussions today, I might as well point out now that I am a parent of an eight-year-old precocious child. As a parent, if I am presented with the issue that you raised, I hope that I have the parenting skills to address that situation in terms of the family unit, of which that child is a functioning member.

Mr BARTLETT—You spoke also in your introductory comments about the attraction of Australia as a home for migrants because it is a fair society and because we uphold generally the principles contained in that convention anyway. Evidence we had yesterday from the Law School of the University of Tasmania indicated that, although there are no references to the convention in Tasmanian legislation, almost all of the principles of the convention are contained in this legislation anyway. It said this is not surprising because it is a democratic and relatively free society.

Would you agree that it is a fair comment that the principles are here generally within Australia regardless of the convention; that our social mores and our commitment to standards and principles and the welfare of the family over the generations have created that sort of society that has brought about a state which is consistent with the general principles of the convention, regardless of needing to apply the convention?

Mr Jones—You have raised a number of issues there. First, if we are inquiring into Australia's compliance with a treaty, I think it is not unimportant to look at what that

treaty is and what that says as against only the principles related to that treaty. It is also important to know how true that might be in terms of all the broad principles and whether, because a society is running broadly parallel to the intention of the convention—and I think we are running broadly parallel to the intention of the convention—whether that does no mean that the convention could not be used to assist those people who need some form of assistance in terms of society understanding their needs and their concerns, in terms of guiding legislation, in terms of keeping an agenda in front of legislators. I think that is why it is very important that we look at this question just in terms of compliance with the treaty.

I cannot say whether each and every state of Australia or the federal government meets each and every one of those principles. If it does, I would be surprised in one sense and not in the other. I would not be surprised because they are relatively broad. I would be surprised because, unless there is a consciousness that you are working towards a certain goal, unless you are trying to think about what the needs of a section of the community are and what your commitments are internationally and what you have agreed with internationally that you should be trying to reach, I cannot see why people would be meeting those.

Mr BARTLETT—Do you not think we have been working towards those goals over the years anyway because of a commitment to the welfare of our society and a commitment to the welfare of our children?

Mr Jones—I would hope so, but at the same time there are certain features, such as an issue of freedom of religion, and the child being able to feel safe or safely part of a religious community is something which really has had its ups and downs historically. Exploitation of children is something which has had its ups and downs. There have been areas relating to the general treatment of children, servicing the needs of children, where there have been varieties. It has not just been a steady climb up the mountain. There have been areas where it has moved upwards and downwards.

From the point of view of the Jewish community, there was a time not all that long ago when most public occasions, most civic services, would attempt to include the whole of Australia, they would be inclusive. It was a long climb to move away from specifically Anglican to broadly Christian, to a more widely religiously diverse nature of public ceremony, yet in the last few years we have seen a return almost to a situation where there have been public services, and a Jewish child seeing that would feel that they are not really part of Australia.

For instance, the Unknown Soldier was buried as a Christian. The Unknown Soldier was not necessarily a Christian. Jewish children who are trying to learn about the Jewish contribution to Australia learn about General—later Sir—John Monash. If that had been in another set of circumstances, John Monash, a proud member of the Jewish community and a proud Australian, would have been buried in a religiously inappropriate

way.

The ceremony at Thredbo last week was based on the assumption that all of the victims of that terrible tragedy were Christians. I would hope that we had not the situation where there was somebody who—based on good intentions but a lack of thinking about what the situation might have been—was not included. But I know from speaking not so much to my own children but to my older nieces and nephews that they were very conscious that when there was a service for all Australians, it was based on the premise that this is a specifically Christian country.

So there are little areas like that. I am not saying they are big issues, I am not saying they get in the way of general progress, but they would tend to indicate that we are not overcoming all the problems of trying to look after the concerns of all children.

Senator COONEY—Can I just follow on from there. What you are saying, as I understand it—and you can correct me—is that this convention can serve as a reminder to keep us on the right track; that although, as you say, these might be little things you are talking about, nevertheless if we had proper objectives in mind we would not start to go astray.

Mr Jones—That is part of it, but there is also a general principle that Australia is a party to a treaty. You would hope that Australia feels that that treaty is something which is of itself going to give the sort of guidance or the sort of future direction for that aspect of Australian society which it addresses.

Senator COONEY—Yes. I think the problem, though, is that people are saying that the answer to that proposition you just put is to denounce the treaty. I take it that your association, from what you have said so far, would not welcome that.

Mr Jones—No.

Senator COONEY—All right. I said before to you in private conversation that you have got consensus here, which is a big statement, given the fact of the diverse groups that you represent.

Mr Jones—Yes.

Senator COONEY—But can I go on from that. Consensus by its very nature tends to be expressed in wide terms, would you say that, and in minimum terms in the sense that you are going for minimum propositions?

Mr Jones—Chris Sidoti, the Human Rights Commissioner, put it this morning that if you look at any treaty like this, it shows on what points the various signatories to that treaty can agree; it is finding points of agreement. The Executive Council of Australian

Jewry was established in 1944 specifically to try and give the broadest possible consensus position when the Jewish community was asked or invited or wanted to make representations to the Australian government, and that was the logic behind the organisation, and we are as democratic, I think, as any community organisation can be.

You contest elections to be delegates to your state body; you contest elections from that state body to be on the national body; and you contest elections to hold office within the organisation, with a very broad representation of anybody who belongs to any Jewish organisation anywhere in Australia. Additionally, in New South Wales, we have the facilities of those people who do not otherwise belong to any Jewish organisation to become part of the franchise. That is the way we try to be broad in our discussions and considerations and adopt broad consensus positions. That is why our submission might not address in a great deal of depth some of the issues, because it has to be agreed to by a variety of parties.

Senator COONEY—Would we get a correct result in interpreting your constitution and looking at your submissions to put a very legalistic approach to it, or are your constitution and your statement in various areas broad statements of principle?

Mr Jones—Yes, basic very broad statements of principle, policies determined by an annual general meeting which sets policy and, between annual general meetings, a committee of management which decides on those matters which arise in the meantime. I would say democratic rather than legalistic.

Senator COONEY—From your experience would you run into trouble as an organisation if you tried to take a very legalistic approach to everything that comes up?

Mr Jones—If we were to prescribe a particular wording to a legislation on an issue, I imagine we would have a great deal of problems. However, if we were to say we support the concept of legislation on a subject, we will have fewer difficulties. I will give you two examples. My council strongly supported the idea of Australian law having the ability to deal with any Nazi war criminals found to be resident in Australia. We did not set any idea of what the legislation should be. We had a fair bit of unhappiness with the legislation as it was finally passed, but our council supported the broad principle.

Similarly, with what eventually became the federal Racial Hatred Act in 1995, our community broadly supported anti-racism legislation. We did not look at wording of legislation because, as I said, we have a broad range of people within our community who could come to the position of broadly supporting a legislative approach, but might not have come to a particular viewpoint on details of legislation.

Senator BOURNE—Can I just ask one question. I must say I was very struck by your example of the Unknown Soldier, because that person represents all Australian soldiers who died and who are unacknowledged by a nameplate, so it is a very good point.

But to go back to education and the way we do fail to reflect the multicultural and multi-religious nature of our society, can you give us a few examples of where we ought to be changing what we are doing at the moment?

Mr Jones—It is difficult because I do not want to take away from anybody the way they want to celebrate their person and their own religion and being Australian, and in the state system, in the government system, the majority still overwhelmingly are Christian. There are different denominations, obviously, and different practice. Almost as an aside, I play in an indoor soccer competition. A number of the soccer teams are predominantly Greek Orthodox, and they discussed the difficulties they had with their Christmas not being at the time of the rest of Australian's Christmas, and their children being told, 'You don't celebrate the real Christmas.' This is another not unrelated issue.

One of the issues we have in the state system is in New South Wales, for instance, non-denominational Christian prayer is regarded as okay, which means Jewish children can be at a school and hear a non-denominational Christian prayer. It could be part of what they are taught, if not secular, it is common to everybody, when obviously it is not common to them, so when there are school communities which are not of a single religion or a single background, there needs to be an awareness of cultural and religious diversity. That is a single example.

I was fortunate last week in Melbourne to attend the Religion and Cultural Diversity Conference where for the first time leaders of many different Australian religions and very senior people from most religions were talking about how they themselves could work towards a society which was aware there were many ways of being a believing person and being a good person and being a moral person, and looking to take some sort of leadership in bringing Australians together, finding what unites us rather than what divides us. If we put that into the school system, there is plenty that unites everybody, or plenty I think which would be generally unobjectionable, which is subsumed by the practice of—if it makes sense—non-denominational Christianity, just because people have not been thinking about what impact that might have on somebody who is not a Christian.

Senator ABETZ—I understood your submission—and it was very well-reasoned—that you were concerned about the rights for a child to—in the words of article 14:

The state party shall respect the right of the child to freedom of thought, conscience and religion—

You interpreted that as being important, especially for the Jewish community, for children of the Jewish community to have access to Jewish schools. I would not argue with you on that, and you know what my view on that is. It has been published in the *Australian/Israel Review*.

But having said that, what would you as a Jewish parent say to this, using this

article of the convention in another way. Your 10-year-old, knowing how cruel children can be to each other for example out on the street, says to you one day, ‘Look, dad, I don’t want to go the Jewish school any more. I’ve thought about this long and hard, I want to be like all the other kids down the road.’ Do you think it would be acceptable to the Jewish community at large that that child be given the right to express that freedom, not only to express the freedom, but then basically say to you, ‘You’ve got to take the child out of the Jewish day school and send her to another non-Jewish school’? That, I suppose, is personalising it to the Jewish community what a lot of the concern is in relation to the Christian community within this country.

Mr Jones—You have raised a number of issues. First, my understanding is the treaty is about the responsibility of governments, and when we look at the responsibility of governments when it comes to the issue of freedom of religion, I see it as almost a problem the other way. At the moment Jewish parents who want to give their children a Jewish education take upon themselves a burden which most Jewish parents are happy to do, but it is nevertheless a burden. So is the state providing equally? I do not know.

Secondly, point 2 of article 14 states:

The state party shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. I think that does largely address how a parent might be able to deal with the issue you raised without the undue interference of the state. The more important issue though, as I see it, is if you are a member of a small minority the outside influences, the street influences, your television, your sporting encounters or whatever, are going to involve you in coming into contact with a very seductive force of the majority and being like others. If there is not the ability for parents, together with the state, to provide for the education of people in religions, given that every religion, like anything else, has to conform with basic laws and community standards, then the state is the party falling down on the treaty.

Senator ABETZ—Yes, and we have got no argument in relation to the right of the Jewish community or any other community to try to establish a school within appropriate guidelines. What I am exploring with you is, if the child were to make a determination, what rights would that child ultimately have to pursue that to the nth degree? You are saying that you think this convention only applies to government.

Mr Jones—In addition, part 2 of article 14 I think is important.

Senator ABETZ—Yes. But first of all can you see this as having any impact—when I say this—the convention—having any impact on family life that the state could say and determine, ‘Well, I’m sorry, Mr Jones, but we as the government or as a state have taken on the obligation to allow children to give freedom of expression to their view of religion, and therefore we will intervene in your family situation.’ So by that backdoor method it in effect undermines and has an impact on the family, parental care and responsibility.

Mr Jones—I only think that is a plausible hypothesis if section 2 of article 14 was not there, but as long as section 2 is there, I do not think it is a plausible hypothesis you are putting, because there are the rights and duties of parents and legal guardians.

Senator ABETZ—It just says, 'shall be respected.'

Mr Jones—Yes.

Senator ABETZ—It does not mean, 'shall be followed'.

Mr Jones—And article 14.1 says 'shall respect'; it does not say, 'shall obey'.

Senator ABETZ—No, it says you 'shall respect the rights and duties of parents and, when applicable, legal guardians —' we can leave that bit out '- to provide direction to the child -'. So you would have the right to provide direction to your child and say — I do not know what his or her name is; let us say little Johnny—'Little Johnny, I'm going to guide you and try to keep you going to the Jewish day school,' but somebody determines that the evolving capacities of little Johnny are such that at the age of 10 he has evolved a capacity to determine in his own mind that he no longer wants to attend the Jewish day school and therefore the state says, 'We are fully abiding by the provisions of this. We're respecting your views to guide the child, you've been given that opportunity over the previous 10 years to guide him into going to the Jewish day school, but he has ignored you. He has rejected your guidance. Whilst we respect that guidance, Mr Jones, we are going to allow that child to go to the school of his choice.'

Mr Jones—I simply do not see that happening given the balance between 1 and 2. But I should also point out something you are raising there. If a child is not a Jewish child or is not a child of the Islamic faith or is not a child attending a particular parochial school of some sort, if there is a general provision for that child's education they are not going to be leaving something for 'nothing' in terms of their religious affiliation the way a Jewish child would placed in that particular situation.

So the general issue that you are touching on here more is the provision of broad, culturally appropriate, religiously appropriate education for children. The second question is that of, boiling down again, as I see it, to parenting. Families are going to operate in all sorts of different ways. Parents and children are going to have certain relationships which develop, and I would believe that it would be an extraordinary situation, though not impossible, where a 10-year-old would be at the stage of a particular evolution of its identity where it would be felt that the child could make the best independent decision about his or her education.

Senator ABETZ—All right, but just say that we are both possibly right or both possibly wrong. Do you think it would detract from the convention if we were, through a mechanism, to put down another reservation on the convention to make it absolutely clear

that (1) this convention only applies to government, and (2) that article 14 for example

refers to the provision of culturally appropriate schools, such as Jewish day schools and does not apply to young kids trying to determine their own religious schooling before the age of 16 or whatever. Would that detract from this at all?

Mr Jones—I presented a submission which comes out from a number of people within my committee management of the Executive Council of Australian Jewry, and that was not something we discussed specifically. It would be difficult for me to answer on behalf of the Executive Council of Australian Jewry. My broad impression of the discussion was that it is better to sign the treaty with few reservations at the level of signing the treaty and not to have reservations throughout any treaty on a whole range of articles. If there is one priority concern or something within the broad community, maybe a reservation somewhere is not the worst possible thing that can happen. But using that sort of argument that you have just presented, I can imagine on virtually every article somebody saying, 'Let's put a reservation here or there until we agree that we care about children and nothing more.'

Senator ABETZ—Yes, but is that not more honest and has a greater degree of integrity about it than, for example, some of the Islamic states that say, 'Yes, we have signed that, but subject to where this convention is in conflict with Islamic law, Islamic law will prevail.' That means virtually every single article. You would say that is okay because they have only put down the one general reservation, whereas what I am suggesting is declaratory reservations in relation to specific things to make it absolutely clear, and still uphold the spirit of the convention. I find it strange that you would agree to a general reservation but not to specific reservations which are limited—

Mr Jones—I am not agreeing to a general reservation. I was just saying that I doubt whether this would be the most serious reservation, and if the government were going to put a series of reservations throughout the treaty, I think that would be a problem. On the first issue you raised, though, there are states who were going to sign all sorts of treaties they had no intention of honouring. It is very sad, and it is something that I do not think anybody particularly thinks is a good thing, but it does not mean that a country like Australia with our Western democratic tradition should use that as a model. Hopefully, other states will use Australia as a model, not the other way around.

CHAIRMAN—Thank you very much.

[2.07 p.m.]

GINN, Mr Colin, Board Member, Child Abuse Prevention Service Inc., 13 Norton Street, Ashfield, New South Wales 2131

GINN, Mrs Dorothy, Director, Child Abuse Prevention Service Inc., 13 Norton Street, Ashfield, New South Wales 2131

CHAIRMAN—Welcome. We have received your written submission dated 4 April. Are there any amendments, omissions or errors that have to be reflected in the *Hansard*?

Mr Ginn—No.

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

Mr Ginn—We had not intended to. We have not prepared for it, but if I could just be the one to speak for the time being. My wife is the founder of the Child Abuse Prevention Service, although it was not under that name when she began. It began in 1973, so you could regard her as probably the pioneer of child abuse prevention in Australia. Ever since that time, March 1973, a 24-hour phone service for crisis and support for parents under stress who were afraid they may be at risk with their children, has operated, and still operates today.

The phone service has been joined since then by other services that we offer, and these are all free, particularly in what we call our Child and Parent Stress Centres, which now operate with two in Sydney, two on the Central Coast and one in the Central West. The 24-hour crisis line which stressed parents or children may contact for help at any time of night or day, tied in with the drop-in centres and the places where counselling and other facilities for these people are available, are tied together and we believe are a great bonus in this area of preventing child abuse and helping people generally.

In that regard, we are seeing probably about 5,000 New South Wales families come to us for help in any one year. We would be further afield and we would have probably more contacting if we had the finances, but that is a separate matter. We can only do what we can do. Because of the length of time that CAPS, as it is called, has been operating and because of the numbers of families that have come to us and that we have helped over that time, my wife in particular feels that she has something to contribute to the convention.

When we looked through the convention we restricted ourselves to certain items only because we felt that with the number of people that would make a submission, there would be plenty dealing with the rest. We felt that we would stick to those things where we might have something to offer. I am sure my wife would like to speak to any of those points. The only last thing I would say in general, and then I will ask my wife if she

would like to speak, is that we believe the preamble to be as important as the articles. We mention some aspects of the preamble in our letter.

Mrs Ginn—Basically, I would like to answer questions, but I will let Colin speak because I have problems with laryngitis. It is probably better that he uses his voice and I will come in when necessary.

CHAIRMAN—All right.

Senator BOURNE—I just have one question. On page 2 of your submission, referring to article 16, the publication of names and of that book that went out, I take it you are speaking here about children who may have been victims or who may be related to the people whose names—

Mrs Ginn—I was speaking basically about perpetrators, I think. That is what you are referring to?

Senator BOURNE—Yes.

Mrs Ginn—I was referring to the book that had perpetrators' names listed. My concern is not for the perpetrators; my concern is for the children of the families. It is well known to us that where there are perpetrators of whatever abuse—sexual, physical or emotional—the families take the ramifications of that. As I think everybody knows, children get treated very badly at school once a scandal is known and they live with that throughout their lives. We have seen this when perhaps a mother will go on TV and let it all hang out and the family is known. One child said to us he felt like committing suicide because what came after that, and the trauma, was worse than what she was doing to him. What we are saying is that with this book, and the publication of it—and some of those perpetrators do go back into their families—that the whole extended family suffers the ramifications.

Senator BOURNE—That is a good point. Would you think the same would apply, for instance, with the Police Royal Commission in New South Wales when some of the police were named as doing dreadful things and shown on television doing dreadful things? I remember at the time people talking about what happened to their children at school and so on. You would see that in the same light, would you?

Mrs Ginn—Yes, I do, and perhaps putting in newspapers the name of the father. As a child said to us, 'They didn't give my name, but they all knew because I was the daughter,' and so the same thing applies.

Senator BOURNE—Yes, exactly.

Mr Ginn—I think the point we are trying to make there is that in everything that

we say, we are trying to take the child's point of view, because our service is the Child Abuse Prevention Service. So we are looking at it from the child's point of view. You can get caught up in the rights of the mother or the father in all of these things but we are trying to look at it from the children's point of view.

Just on that last point, I have other notes that we wrote down in preparation for today. Giving out the names of perpetrators of child sexual assault smears the character of victims, innocent siblings and other children in extended families and even blackens the future of children mistaken in identity as belonging to the family of the offender.

Senator COONEY—You have made some comments on articles 13, 14 and 15, and you say:

Although we are in agreement with the general intention of these articles, we have grave disquiet—

and then you go on and make great qualifications which would seem to indicate that you really do not agree with the general intention. It is probably just the way you have put it, but could you expand a bit on that; what you mean by being in agreement with it, but then having grave disquiet. What are you in agreement with and what have you got grave disquiet about?

Mrs Ginn—It is relating to a parent's right to oversee what their children are doing or who their friends are.

Senator COONEY—Right.

Mrs Ginn—Is that correct? Okay. Many of the calls I think that—

Senator COONEY—Well, perhaps I should go through it. Article 13 is the one that gives a child the right to freedom of expression. Article 14:

States Parties shall respect the rights of the child to freedom of thought—

Article 15:

State Parties recognize the rights of the child to freedom of association and of freedom of peaceful assembly.

There are other parts of that, but that may bring to your mind what those three articles were. If you want it, I could perhaps pass this over to you. But what I wanted is to get from you what you agree with in those particular articles and what you do not agree with.

Mr Ginn—There may seem to be conflict there. We believe that a child does have the right to acquire knowledge and to make friends who may not always be the ones that the parent approves of, but we believe that the parent also—and let us call guardians and

everybody else's parents for our talk—has a right to guide the child and really to be the final arbiter. So although it seems to be a conflict, it is not,

The main, and I think the critical, point is that we believe that rather than have a law which says the child has the right to do all these things and the parent can only object or take whatever action it can to still keep the child in its opinion doing the right thing, it should be the other way round. We believe that the rights should be the parents' to guide the child and to have the child do what the parent considers is proper for it to do; that is, what is in the child's best interests. Let the parents decide that, and only if that goes astray then should the state be able to come in and say, 'Hey, you're not doing it properly. We've got to interfere in this.' There is a difference.

Senator COONEY—The impression I have got from what you say is this: that this is a convention that deals with what the state can do and cannot do, and what you are saying is that the state should not be able to interfere with the parental carrying out of the parents' duty. Is that what you are saying?

Mr Ginn—That is right.

Mrs Ginn—Yes, that is right.

Senator COONEY—That you should not look at it from the point of view of the child so much as the point of view of the parents, and if you look at it from that point of view, the treaty is in accordance with what you think is the right way of doing things, but if it is concentrating on the children, it is not. Have I got you right in saying that?

Mr Ginn—Yes.

Mrs Ginn—Yes—only unless it has been proved that the parents have lost that right.

Senator COONEY—So the onus is on the state to show that the parents have not fulfilled their duty properly, and it is only at that point that you would then start looking at the children's—

Mr Ginn—As in all misdemeanour.

Senator COONEY—Right.

Mr Ginn—If I could read the points we made on 13 and 14 and 15, which may be additional to those: 'If the rights of the child to privacy, knowledge and association are to be set down, should not also those of the parents' rights be set down? Rights of parents in this area should prevail, except where the breach is proven and not vice versa. A mother reading her daughter's diary—' which is one case that my wife has been dealing with

recently—found an explicit account of her sexual experiences, and she was quite a young child. Now, was the mother right in reading her daughter's diary so that she could take a step in probably setting the child on a better path or blocking what was happening, or was she wrong in reading it? Would you like to comment on that one?

Mrs Ginn—Yes. The child was an 11-year-old child and the sexual experience was with an older 25-year-old man, and they were fairly explicit.

Senator COONEY—So you are using that as an example to say, 'Look, it's the parents' rights that must be protected.'

Mrs Ginn—Yes.

Senator COONEY—But you are not saying that children should not have rights.

Mr Ginn—No.

Mrs Ginn—No.

Senator COONEY—You are saying the children's rights should become a priority only when it is established that the parents' rights—

Mr Ginn—Proven that the parents are not handling the thing properly.

Senator COONEY—The parents are not handling their rights correctly. That is correct, is it?

Mrs Ginn—Yes. When the parent is starting to be concerned that the child is becoming overly, perhaps, secretive, and reasonable parents are suspecting that something is not quite right.

Mr BARTLETT—I am just wondering about the way ahead in order to try and put into effect the concerns that you have got. I presume you would not be in agreement then with suggestions that a Commissioner for Children be set up to apply the convention.

Mr Ginn—We do have a suggestion—I am not sure whether it was in our submission or not, but it is certainly in what we have written today—that there should be an office of the federal government which we called a Children's Guardian. Dorothy will be able to be more explicit than I. She sees many cases and many examples where she believes, with good reason, that justice is not done to many children by the state. Therefore, if you are going to acknowledge this convention on behalf of Australia, we would hope that the federal government would take some active part in setting up a Children's Guardian—call it what you will—an office of that, with representatives throughout all states, where people would have the right of appeal, if you like, against

what is happening by the state department.

Mr BARTLETT—Would I be right in assuming then that you would want its charter to include a fairly explicit list of the rights of parents?

Mrs Ginn—Yes.

Mr Ginn—Yes, because we have already said that I think in one place. If they are going to have—I think it was in number—
Senator ABETZ—Three.

Mr Ginn—Three, was it? Three, yes. Are the rights of parents spelt out anywhere? I am not sure that they are.

Senator ABETZ—On that point I think that is where, logically, those that assert that the convention has the rights of parents in it fall down, because it is very long on specifying and detailing the rights of children but you asked the question rhetorically, 'Are the rights of parents spelt out anywhere, and if not, how can they be taken into account?' The fact is they are not spelt out and therefore it is very difficult to take them into account.

From what you said I must say, if I can make a gratuitous comment to you and with respect to you, I think the way you looked at it was a very sensible way, namely that parents are the ones that ought to have the rights, subject to ensuring that the physical wellbeing of the child is looked after, et cetera, rather than putting it round that the children have the rights, and I think that is an interesting way of looking at it.

Can I ask you: in relation to the preamble of the convention, have you taken any legal advice as to the emphasis that ought to be placed on the preamble, or not?

Mr Ginn—No. We have not taken legal advice.

Senator ABETZ—Because before this committee we have had all sorts of varying assertions made by those who support the convention. Those who support the convention and are confronted by the, 'What about parents?' argument, say, 'Oh, no, look at the preamble,' which says, 'Recognizing that the child'—I think it is the sixth preambular clause.

Mr Ginn—Yes.

Senator ABETZ—It tells you about the family being the best environment for bringing up a child. So it is important that you then put to somebody like Mr Sidoti, for example, from the Human Rights Commission that there is another preambular clause which talks about children being defined as before as well as after birth, and it is

dismissed as being only preambular.You have got those two conflicting views and it appears as though if you want to talk about the right of the child to life before birth it is only preambular, whereas if you are trying to dismiss an argument about the involvement of parents in their children's life you are told this is fundamentally set down in a preambular clause. I was just wanting to know if you had any advice to proffer to this committee as to what weight ought be given to a preambular clause.

Mr Ginn—We have not. Would you like us to?

Senator ABETZ—The chances are they could ask the foreign affairs department for that.

CHAIR—It is in many ways a technical-legal argument and we have already asked the legal—

Senator ABETZ—It goes beyond technicalities because sometimes we are told to read an article by itself. Other times we are told, 'No, you have to read that article in the context of the whole convention including the preamble.' So I would like to know what weight should be given to the preamble.

CHAIR—If I were to give a personal opinion I would say that what goes into the preamble should colour all the articles that follow it, but that is only a personal view.

Senator ABETZ—If you read it at the very beginning it refers to 'the state parties to the present convention'—then it has got all the preambular clauses—'recognising that the child . . . has agreed as follows'—and then you have got all the articles. I think the preamble should be given some weight but what weight we do not know.

CHAIR—We have sought the views of the Law Reform Commission and we will also seek the views of the Department of Foreign Affairs and Trade.

Senator ABETZ—You have indicated in the last paragraph of your letter, Mrs Ginn:

> The Commonwealth in enacting legislation to give effect to recognition of the convention should include the right of appeal by the child or its representative at no cost to a federal jurisdiction.

You say 'by the child or its representative'. What do you mean by 'or its representative'? Is that his or her legal representative or the parent?

Mr Ginn—Not necessarily.

Mrs Ginn—Not many people are able to have legal representatives, particularly now where legal aid is not available to most people.

Senator ABETZ—That is why I am wondering whether you would give at no cost to the child who may be being aided and abetted, albeit by a well-meaning but misguided welfare officer, and then the parents are in a situation of wanting to intervene in the proceedings to put their point of view and financially they simply cannot do it and therefore are denied a voice in the process. That is what I just wanted to explore with you, what you meant by that.

Mrs Ginn—Maybe that person comes back to the guardian directly outside, that is, state departmental people.

Mr Ginn—What we had in mind was that there are lots of organisations around that have to do with children and these services—we have services, as I said, in Sydney, the Central Coast, and the central West—would always be prepared to be the representative of a child. I am sure there are plenty of others like us that would be. It does not have to be a lawyer, it is just someone who can represent that child. Dorothy's service is doing that all the time in a variety of ways.

You will remember we commented on articles 9 and 12 in the letter. She could speak on three cases where one had a son of 10 years, another had a son of eight years and another had a son of four years. All of those children were removed from one parent and given to the other. We do not want to get into an argument about family law, but in each of those three cases the children were most unhappy. Forget about whether the mother and father were unhappy, because they are generally unhappy in the case of splits like that. But the kids were not consulted and the parents who had come to Dorothy's service and asked for assistance first of all had no legal aid, so they had no legal representation. They did not know their rights. They did not know really what to do. They had no clues. And they had a kid to which they had access occasionally, who would come and cry on them and say, 'Look, I want to die if I can't come back to you.' This is not only to the mother; it is sometimes to the father.

So obviously the children are not consulted. Should a child of 10 have an opinion? We believe he can—quite a good opinion. We believe that a child of eight can have a good opinion. It may not be the deciding opinion, it may not be the one that will convince a court which way it should go, but at least he should be heard. In all of these cases no children are heard.

Senator ABETZ—Nowadays in most of the contested cases in the Family Court there is counselling or a separate representative for the child. But having practised fairly extensively in family law, one of the things that children seemed to react to in a very negative way, in my experience, was that well-meaning counsellors, or a well-meaning separate legal representative would ask—they would not ask it this bluntly—'Who do you want to live with, Mum or Dad.'

Mrs Ginn—That is a leading question, is it not?

Senator ABETZ—Yes, that is why I said they would not ask it that bluntly but that was the purpose of their questioning and research. Children, especially if they are at the age of 10, have got a fair idea what it is about, why they are going to a Family Court counsellor that is actually in the Family Court building. That is why removing the counselling service outside the Family Court I think is a good thing. But they would say to both their parents, 'I don't want to make the decision. You and daddy or you and mummy make the decision and we will go along with it.' It is a two-edged sword when you then try and say to the child, 'Look, you can have some say in this,' because they feel as though ultimately they are going to be disloyal to one of their parents when they just do not want to be.

Mr Ginn—All those things come into it.

Senator ABETZ—Yes. That is the other side of it.

Mrs Ginn—And this would be back and forth where each parent speaks to the child and puts its own view to the child—but we are not really talking about that. I think it is where a child is with the parent and who obviously is concerned about either not going back to the mother or not going back to the father. In our view quite often the father is not being heard sufficiently. Quite often priority is given to the mother, more consistently.

Mr Ginn—One of the reasons we used that word 'guardian' today in that suggestion we made is to avoid the word 'advocate' because we do find the word is used—there are children's advocates—there is one in New South Wales, but it is more the legalistic thing. That puts a legalistic twist on it. We do not believe it should be someone who interviews a child occasionally or once in a while and gives an opinion to a court. We believe that there should be an observation of that child's activities in its environment wherever it may be, and it should be studied over a period of time to decide what is best given directly to the Court or through the guardian.

Mrs Ginn—One of our concerns—and this happened quite recently—was where a mother had custody of two children and there was a battle going on. The father was accused of certain things, the mother was accused, however the mother had them. Just out of the blue six policemen at 8 o'clock in the morning came to that house, took those children—no pre-warning—and those little children had not a clue because they were terrified of the fact that six authoritarian people came and whisked them away. The mother did not know where they had gone. This is very recent and I am not sure that too many people are aware of those things happening.

Mr Ginn—We believe there should be an appeal before that happens, before the seizure is made.

CHAIR—Yes. Thank you very much for that evidence. We are most appreciative.

Mr Ginn—We are happy to give it. Thanks for listening.

[2.36 p.m.]

ALLEN, Ms Shirley Patricia, General Secretary, New South Wales Federation of School Community Organisations, c/- Bourke Street PS, 590 Bourke Street, Surry Hills, New South Wales 2010

LONNON, Mrs Gail, President, New South Wales Federation of School Community Organisations, c/- Bourke Street PS, 590 Bourke Street, Surry Hills, New South Wales 2010

CHAIRMAN—Thank you very much for coming along today. Thank you also for the written submission, dated 23 April. Are there any errors or omissions that you want to make to that quite short written submission?

Mrs Lonnon—No, not really. We did not in fact intend to make a full submission; we just wanted to make that simple statement.

CHAIRMAN—In terms of one specific issue. All right.

Ms Allen—There may be some other issues we would like to raise today, though.

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

Mrs Lonnon—Yes, thank you. Perhaps I should explain what FOSCO is first.

CHAIRMAN—We should ask you to do that, yes.

Mrs Lonnon—It is a voluntary organisation which has affiliates in primary government schools in New South Wales. So it is a similar organisation to the Federation of P&Cs, but our affiliate clubs are infants clubs, mothers clubs and day clubs in K-6 schools in New South Wales. We do have council meetings and an annual conference which organises our policy—our delegates from those schools. So it is a grassroots organisation in that the actual club members from schools have input into our policy. The material in our submission to you and some of the things we would like to say to you today are based on that policy.

CHAIRMAN—So it is only primary schools.

Mrs Lonnon—Only primary schools. We are mainly interested, in our policies really, in children's rights in education, but we feel that there has been a certain complacency about the Convention on the Rights of the Child in this country. People perhaps think, 'Well, children are not going to be tortured, children are not going to be made slaves in this country, so it doesn't really apply to us.' But children do have rights in a variety of other ways which are just as applicable to the rights of children in

Australia.

We did, in our submission, mention a particular item of our policy, and we have brought along our policy statement on children's rights in education. There are sufficient copies there. The education system in Australia does not really seem to accept that children are individuals with independent rights. They have very little say in decision making. They are denied opportunities to be heard or to express their views or to question and challenge school decisions. We feel that very little is done to actually educate children about their rights under the convention.

There are materials in schools within various curriculums about citizenship, and there are some new citizenship materials both in this state and federally, but those new materials, the ones flowing from Dr Kemp's 'Discovering Democracy', for instance, do very little to address the fact that children are not actually educated about their rights. There is very little evidence that the Convention on the Rights of the Child, for instance, is even mentioned in teacher education programs. It would be interesting to know whether teachers are in fact aware of all of the parts of the convention.

The other thing we are concerned about really is that resources and funding for education, for child welfare programs, child protection policies and so on seem to figure very low in government spending priorities. The convention advocates free primary education with a progression to the provision of free secondary education for all children. A country like Australia should be well along that track. But there seems to be an increasing reliance on parental funds to supplement funds provided by education authorities, and I think that is undermining this even at the primary level.

Both general and vocational education is consistently underresourced and student choices in subjects and their pathways in education are often limited by their parents' capacity to pay. Education budgets and some social welfare policies seem to hit at the most vulnerable in the community, that is, children and young people.

Generally, perhaps more in terms of the actual references for this committee, we feel that there is a need to sensitise public opinion on the rights of children; that the children themselves should be made aware of their rights; that teachers and carers and people who are dealing with children should be made more aware of the things in the Convention on the Rights of the Child. The public generally would include people like law enforcement officers—politicians even. I do not think that the fact that Australia is a signatory to this convention has been very well publicised, and the contents of the convention I do not think are very well known.

Ms Allen—I think Gail has covered most of the matters that we wanted to discuss. I think we might just initially raise—and you might pursue it, I am not sure—the recent report on students with disabilities in New South Wales by David McRae. It did indicate that in fact the increase in integration of students into mainstream classes in government

schools had resulted in a reduction in per capita funding for students with disabilities, and this was certainly viewed with great concern because we had always said that integration of students into the mainstream should not be a cost-cutting exercise, and David McRae's report has indicated that that in fact is what it has turned out to be, even if people said it was not intended to be. So expenditure on students with disabilities is an area, I think, where the government is looking at cutting back rather than doing as much as it possibly can.

Another matter that came to our attention recently was a review of the cost of transporting students with disabilities to school, and it appears from the recent policy that has been adopted by the New South Wales Department of School Education that they are trying to cut expenditure in that area too by making it the parents' responsibility to take their children to school unless they are unable to do so. That is the kind of matter that we view with some concern in relation to children with disabilities; that they seem to be cutting back on expenditure in a way that probably one could argue was discriminatory.

One other matter that we have not mentioned here that probably we should have is the increasing use of exclusion from school, even with very young children, and there is some concern that the government is not really taking a primary responsibility for ensuring that all children should be educated but looking at ways where it might in fact exclude children from schooling altogether. So it is certainly not something that we would be happy to see continue as a trend.

CHAIRMAN—I have two observations. First of all, in terms of children with a disability, at the federal budgetary level there were very major financial initiatives announced in May in relation to that which are quite the opposite to what you said, in that there are marked increases in disability services for children at the federal level.

The second thing is that yesterday in Hobart we had some evidence on the knowledge of this convention. It is mixed. There is no doubt about it. Some people do not really know it exists. In Tasmania there was quite extensive mention of a lot of knowledge, but it would be fair to say that that is the exception rather than the rule, and therefore some of the teachers have a very mixed reaction and knowledge of the convention. In Tasmania, for example, it is now ingrained in legislation. The convention is the baseline for a couple of pieces of legislation in Tasmania in terms of the rights of children. My question to you relates to the creation of an office for children in this state. That means different things to different people. What do you mean by an office for children? Is it going to be advisory; is it going to be independent?

Mrs Lonnon—There is a person called the Children's Advocate already in New South Wales. It is a fairly recent appointment but it has not been widely publicised. The gentleman concerned I do not think even has his own office or premises. I think he lives on the south coast somewhere. His role is not well known. I do not think that children would have any way of accessing that person. He may be a wonderful person; I simply do

not know. But I do not think the children would be able to access him.

You need an office for children—perhaps one person plus supporting staff—but I think it needs to be within the office of the Premier so that it has status, and so that children are not seen as the bottom of the political rung, and they are at the moment to a certain extent. Children cannot vote.

CHAIRMAN—Why not an office for families rather than an office just for children?

Mrs Lonnon—Because sometimes the problems that a child has are related to problems in the family. Presumably this office would not be trying to separate a child from a family. I think there is a bit of a misconception in some way that the rights of the children necessarily deny the rights of the family. I think that is a bit of a myth. The majority of families would be fighting for the rights of their children.

CHAIRMAN—Just to argue your case for you: if you say that a number of the problems stem from the family, does that not reinforce an argument to have a wider office of the family rather than just specifically for children?

Mrs Lonnon—I do not think so. There are times when a child's rights may be in opposition to the family and they do need protecting from the family. They may be in opposition to the school and they do need protecting from the system, from the law enforcement organisation or something. I do not think just having an office for the family would cover the wide range of circumstances where children would need it.

Ms Allen—I think we would be looking at an office for children covering children's interests in a broad sense. Part of the problem with the current Child Advocate is that he is mainly concerned with child protection issues in that fairly narrow sense, whereas we would be looking at something that would be promoting the interests of children and defending the rights of children in the broader sense, in all senses that the convention covers—including education and so on—and not just within the child protection area.

Senator BOURNE—You were not here for the Jewish Board of Deputies, I suppose?

Ms Allen—No.

Mrs Lonnon—No.

Senator BOURNE—This was before lunch, which was only 15 minutes long anyway. One of the points that they made there was that in our public school system in particular—I hope I am not misrepresenting them; I do not think I am—Jewish children

can sometimes feel excluded because what is taught in schools is not multireligious and multicultural enough. I notice in your policy that you have a similar statement: children have the right to have access to schools that respond to different family backgrounds and meet individual needs, particularly in primary schools, which of course is where you are involved. Can you give us any suggestions for how we could improve what we are doing—I guess New South Wales would be your own expertise—to be more inclusive of all children?

Mrs Lonnon—Quite a lot of the primary schools that I have seen really have very good programs for including all children. Coincidentally, our premises happen to be in the grounds of Bourke Street public school which has a very wide variety of children from a wide range of ethnic, cultural and religious backgrounds. There would be lots of other schools, particularly in the metropolitan area. I do not know that I would have all the answers, but I think a lot has already been done in that field.

Ms Allen—Generally it is. It is interesting that it was Jewish people that were saying this. The system, particularly in New South Wales, has been providing very well for a range of people who have come into the country relatively recently. They have fairly strong cultural activities that are fairly evident and they seem to be able to take that on board fairly easily. Some of the Jewish families may find that it is not noticed, in a sense, that they are Jewish; therefore, particularly when it comes to Easter and things like that, there can be some overlooking of their difference and the fact that they are Jewish.

We have not had any complaints recently, but some years ago we certainly did have a number of complaints from Jewish families, particularly at Easter where there was a great lack of sensitivity shown in the enacting of the crucifixion and so on. It was in schools where the majority of the students were Christian that this was occurring. There was a very small group who were not Christians and it was more an oversight in a sense. That is not excusing it, but where schools are very aware that they have a multicultural population they are really doing very well with it. It is perhaps those schools where the majority are fairly homogeneous that a small minority can be overlooked. Maybe that is something they need to become more aware of.

Mr BARTLETT—In your introductory comments you mentioned increased use of exclusion from schools. Could you just elaborate on that. Are you talking about that as a suspension, as a method of responding to discipline problems?

Ms Allen—Suspension and then sometimes exclusion.

Mrs Lonnon—I think it has been fairly common in some areas of the secondary school for some time but it seems to be becoming an increasingly common method of behaviour management in the primary school.

Mr BARTLETT—How would you respond to the suggestion that this is becoming

increasingly necessary because emphasis on rights such as in the convention that preclude the use of corporal punishment, that label a verbal dressing-down as verbal harassment, that prevent isolation at lunchtime as an infringement on the rights of freedom, et cetera—all of those measures—severely restrict the ability of the teacher or the school authorities to adequately cope with breaches of discipline and leave them no alternative?

Mrs Lonnon—I can see that some people who have not much idea of a variety of methods of behaviour management and of looking at the causes of bad behaviour could possibly think that. I do not think I could possibly make that link.

Mr BARTLETT—Could you suggest alternatives. If all of the ones I have just mentioned are precluded and a teacher is confronted with a group of restless children, but with one or two who are particularly stressing their rights—their right to express themselves the way they want to, their right to learn what they want to, to access the information that they want to, et cetera—how would you suggest they be dealt with?

Mrs Lonnon—I think that they could be separated out without being stuck in a broom cupboard for the day.

Mr BARTLETT—Doesn't that separating out then run counter to the article in the convention of the right to freedom of association with others?

Mrs Lonnon—I think they could separate them out at the time of the incident that you are talking about. They do not necessarily have to separate them from the rest of their peers for the entire day or for the week or for the days that they are excluded. I do not think that they are the same thing.

Mr BARTLETT—What if that particular approach to management does not result in any changed behaviour?

Mrs Lonnon—I do not know that separation is the only type of management behaviour or control that I would be advocating. I think there are ways of speaking to children, discussing with children—say, a more executive person in the school—if the teachers themselves feel that they cannot get through to that child. There are school counsellors. There are even peer support mechanisms—

Mr BARTLETT—But often, when those school counsellors are in fact stressing the rights of the child, the rights of the child are often counter to the rights of the authority of the school. Does that not make it very difficult for the classroom teacher to be able to cope?

Ms Allen—I would not equate the rights of the child with unacceptable behaviour.

Mrs Lonnon—No, neither would I.

Mr BARTLETT—No, but the point I am making is that often the children see the emphasis on their rights as a licence for unacceptable behaviour.

Mrs Lonnon—If you are really serious about educating people about their rights, then you are equally serious about educating people about their responsibilities.

Mr BARTLETT—Great. We do not hear that so much though, do we?

Mrs Lonnon—I think you do in some schools.

Ms Allen—I think you do in fact. One of the reasons why students are not properly educated about their rights is a fear by teachers in schools that it will result in unruly behaviour. Sometimes teachers tend—and I can understand why because they are often in very difficult situations with students who are extremely rebellious and wanting to assert themselves; I can see why they do it—to react strongly against educating students about their rights because they fear their loss of authority over them. If they in fact educate them about their responsibilities at the same time, then they will not get into that situation, but I think that is one reason why they are not educated properly about their rights.

Mr BARTLETT—I certainly agree that education about responsibilities has to go side by side with the rights. We heard evidence yesterday, though, that children were coming home and stressing their rights. They mention nothing about responsibilities but come home stressing their rights as given to them by teachers at school, and not only rights in the school context but rights in the family context that extend to a reluctance to accept their parents' advice at home, because their rights indicated they did not need to be shouted at by their parents, made to do things they did not want to do, et cetera.

Mrs Lonnon—It sounds like a pretty normal household to me actually. But is the parent shouting at the child? Perhaps the child does have a right for the parent not to shout at them. Perhaps there is another way within the family, just as there is within the school, of coping with that child's behaviour.

Senator COONEY—In your submission you say:

> We have been actively, but unsuccessfully, supporting the setting up in New South Wales of an Office for Children or a Children's Ombudsman within the Office of the Premier.

Have you got the same concept there? I take it that they are interchangeable in your concept. Would the office of children and the children's ombudsman be the same thing or is that separate?

Mrs Lonnon—Yes, they would just be alternate titles.

Senator COONEY—So the sort of office you want is an office comparable to an ombudsman's office in other areas?

Mrs Lonnon—Yes.

Senator ABETZ—Can I say that I thought very highly of your written submission and I do not want to go into, because of time constraints, some of the difficulties I have with your verbal submissions. Regarding the rights of disabled children, would you see it as a breach of the convention if somebody advocated as public policy that children born disabled ought be able to be killed within the first month of life?

Mrs Lonnon—Able to be killed? I am sorry, people told me that you get funny questions at Senate inquiries. It absolutely staggers me that you should even ask.

Senator ABETZ—It staggered me too when I heard that from a Dr Helga Kuser in front of a Senate inquiry. She is advocating that particular view, and I just wanted to get from you people—

Ms Allen—That they should be able to be killed within the first month of life?

Senator ABETZ—Yes, if they have got disabilities. To me it is an horrific concept, but she is being promoted through the media as being a person who is very soft-hearted because she happens to support euthanasia, but they never promote the other side of it. But I was interested in that commentary. Can I ask you, as determiners of where limited resources ought to be spent, where public funding should be spent to assist disabled children. I remember fighting for a two-year-old in Tasmania to get sufficient support because the disability that child suffered from, whatever developmental stage that child reached by the age of three, would basically be the level of development that she would have for the rest of her life. So that early intense training was vital and government was simply saying, 'Look, there aren't enough resources,' yet this morning we heard from the National Children's and Youth Law Centre, I think, that they have legal aid money to spend so that officers can intervene to represent a child who does not want to wear a school uniform.

Senator BOURNE—I do not think they said legal aid money.

Senator ABETZ—The National Children's and Youth Law Centre are funded out of legal aid moneys and the officer of that centre is employed out of those funds.

Senator BOURNE—I do not think they said it was legal aid money. I think they said they were funded from Attorney-General's—

CHAIR—No, the Community Youth Centre.

Senator BOURNE—I do not think they said it was legal aid at all.

Senator ABETZ—Does it matter what pocket of the taxpayer it comes from when you have got those two competing needs within the community? It just seems to me that there are the rights of the child in these esoteric areas where lawyers can get involved and have nice little test cases for themselves—that is the area where money seems to be channelled—when the very real need of the disabled, who are unable quite often to capture the community's imagination, is that they are starved of funds and not properly cared for as they ought to be.

Mrs Lonnon—Is the point of your question from which part of the rights of the children's pot of money do we take to put into the other part of the rights of children—

Senator ABETZ—No, what is more important—

Mrs Lonnon—Or is it that we buy less bombers and then put more money into the children's—

Senator ABETZ—In social priorities what should the government be stressing?

Ms Allen—I am sure the government is putting a lot more money into the education and welfare of students with disabilities than they are into any of the very esoteric little bits and pieces that we might pick up. We would still argue, though, that a government should not at this stage be looking at making any cutbacks in money for students with disabilities. We would agree with you that the earlier the better is very often the case, as in many areas of education. It is very often much more productive and economic to put your money in at an early stage. We would argue that in education generally, and even more so with students with disabilities.

As you I am sure rightly say, it is very important to get the funding in early, and we have been arguing for a long time that students need support very early on in their schooling to be able to get what they deserve out of education. We would just say at this stage that we would be looking for governments to be continuing to increase funding in that area rather than looking at cutting it back.

I referred earlier to David McRae's report where he is recommending to the New South Wales government quite a significant increase in funding for students with disabilities, worked out on a different basis, and I understand that the New South Wales cabinet will be making a decision about that fairly soon. We hope that they make a wise decision.

Senator ABETZ—You indicated to us that the terms of the convention were not well known. Is that because it is open to interpretation that if you believe in the woman's right to choose for example, abortion would be allowed on one interpretation of this

convention, yet if you took the right to life approach you could equally argue as firmly that abortion ought be outlawed under this convention? You have got people capable of arguing both sides of the debate and that relates also, let us say, to corporal punishment; some argue that corporal punishment is not allowed under this, others say, yes, it is.

How can we as a government or as a community come to grips with communicating this convention when you have got such a wide range of possible interpretation. Basically you promote whatever philosophical standpoint you have, and then just link in the convention behind you and say, 'Well, it says it, so therefore it's okay'. It is so wide and open to interpretation.

Mrs Lonnon—I think I must go back and read it again if all those interpretations are possible on it.

Ms Allen—My understanding was that the issue of abortion was really one that was, in the drawing up of that convention, deliberately left as undecided because it was hoped that in fact it would not be used as an issue—this is about the rights of the child—and that the issue of abortion would not muddy the waters too much. I know that it was intended that it be left as not quite decided, but also not a matter that ought to be debated within this convention. It was in a sense not relevant to the articles of the convention. I would have thought you could argue that corporal punishment would contravene the convention.

Senator ABETZ—You would?

Mrs Lonnon—Yes.

Ms Allen—I would not have thought that it was arguable that it did not.

Senator ABETZ—The former Labor Attorney-General, Michael Lavarch, was clearly of the view that corporal punishment was allowed under the convention.

Ms Allen—I was not aware of that.

Senator ABETZ—Yes. He made a public statement about that, saying that your assertion was a ludicrous and extreme interpretation of the convention, yet other people accuse other people in the community of extreme interpretations for example with abortion. But are you aware, if that is the case in relation to abortion—and that has been put to us on a number of occasions I have got to say to you—that in reading the convention black on white you would not come to that conclusion. There is some suggestion that behind it all somehow you could come to that conclusion because of the debate. But the human rights committee that looks into these things specifically addressed the issue of abortion, as I understand it, in Russia, and expressed very real concerns about the prevalence of abortion in Russia.

If that is the interpretation we are supposed to take in relation to this convention, what on earth then was this committee doing making findings about the prevalence of

abortion in Russia? That is the difficulty. You cannot have it both ways. Certain people who support the convention wholeheartedly tell us it cannot deal with abortion, it does not deal with abortion, yet in commenting on events in Russia they have pontificated about the prevalence of abortion in Russia. If it is not part of the convention, they should have said, 'This is out of our sphere of influence. It doesn't fall within the parameters of the convention, and therefore we don't comment on it.'

CHAIRMAN—With due respect, what is your question?

Senator ABETZ—Exactly that. How can you assert to this committee, with respect, that abortion is not an issue in relation to the Convention on the Rights of the Child when the committee charged with overviewing the convention has pontificated on the prevalence of abortion in Russia? Surely it must be a relevant consideration.

CHAIRMAN—We are digressing a fair amount on this.

Senator ABETZ—I am sorry, Chair, it is not digressing. These people have told us that there is a need to make the terms of the convention well known within the community. I have picked on one area as to what impact the convention might have on an area of public policy, and I have for argument's sake put one side, to which they have responded, on which I have been able to disclose to them that the UN committee charged with overlooking this convention seems to consider it appropriate.

Ms Allen—I have certainly been involved in discussions on the convention when it was being drafted. I know that the intention was to try and ensure that issue of abortion was not an issue in relation to this convention. Obviously, people's interpretation of any set of words on paper is always going to be arguable. We have a High Court, we have a court system to decide these things. Everybody argues about words on paper. But that does not necessarily stop us from educating the public about the very important major articles in the convention, and the intention of the convention.

Senator ABETZ—Fair enough, we will have to agree to disagree, but there is a preambular clause which tells us of the child before as well as after birth.

Ms Allen—I am very much aware of that, yes.

Senator ABETZ—If it is not before birth—

Ms Allen—Yes, I know, but I am also aware that some people wanted to try and put some number of months before birth into that, and it was then left as well.

CHAIRMAN—We will be seeking some advice in terms of the emphasis of the preambular element of the convention. The point that Senator Abetz was making is just to reinforce that there are varying interpretations of this convention. You have one view, he

has other views, some of us here have maybe slightly different views, but I just reinforce that there are various interpretations. We are running out of time. Are there any final points that you wanted to make before you leave?

Ms Allen—No, thank you.

Mrs Lonnon—I actually was going to ask you a question, but it was only out of my ignorance, and that was that there was a reservation on the ratification, and I was not sure what the reservation was.

CHAIRMAN—There was one reservation that Australia put down. That is in relation to article 37(c), which is the imprisonment of children with adults, and the reservation was that because of demographics and geography in Australia that was inserted. We have taken substantial evidence today and over the last couple of months to indicate that there is a view that reservation should be removed. That is something that we will need to consider over the next couple of months. It is, for many of us, important, but it is of relatively less importance than some other aspects of the convention.

Mrs Lonnon—Thank you for that. I just did not know what it was.
CHAIRMAN—Thank you.

[3.14 p.m.]

BESSANT, Ms Catherine, Youth Development Worker, Dundas Area Neighbourhood Centre; Youth Action and Policy Association Representative, Parramatta Youth Services Network, PO Box 699, Parramatta, New South Wales 2124

D'SOUZA, Ms Vanessa Ann, Youth Development Worker, Karabi Community and Development Services Inc; Chairperson, Parramatta Youth Services Network, PO Box 699, Parramatta, New South Wales 2124

HOWARD, Mr Grant David, Coordinator, Parramatta Youth Project, Anglicare; Member, Parramatta Youth Services Network, PO Box H113, Harris Park, New South Wales 2150

WHITTINGTON, Ms Vanessa, Research Officer, Streetz Subcommittee, Parramatta Youth Services Network, PO Box 699, Parramatta, New South Wales 2124

CHAIRMAN—Thank you for your submission dated 10 May. Before we ask you to make a brief opening statement, are there any errors or omissions in that written submission that we need to inject into the *Hansard* record before we start?

Ms Whittington—Not as far as I am aware.

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

Ms Whittington—We were aware that we only had five minutes.

CHAIRMAN—You have a little longer than that; you have 15 minutes.

Ms Whittington—Most of the main points that we wished to bring to your attention were set out in the submission. I was just wanting to document that with some direct quotations from police officers and young people. I will just flick through the report which I am in the process of writing. I will throw out some quotes, if that is okay. It may seem a bit haphazard, but I was not really prepared to make another formal verbal submission.

CHAIRMAN—Just before you start, do not get the impression that we in any way are belittling what you have to say, because we are not. If you need a bit more time to give us some further supplementary written material, please take it.

Ms Whittington—This report will be available in perhaps two months. I can make it available to this committee.

CHAIRMAN—That is fine.

Ms Whittington—As part of the methodology for this research project I interviewed several police officers from Parramatta police station. I also spoke to around 100 young people who live in or use the Parramatta central business district. We wanted to look at young people's experiences using the CBD, because other research has shown that young people sometimes do have problems with using public space.

We also wanted to take into account the experiences of other users of public space. There is a perception that there are some conflicts in regard to public space. There are stakeholders with different, separate interests and sometimes these interests come into conflict. That was the premise from which we set out. We were looking at different stakeholders, such as the police, local government and retailers, at youth workers as advocates for young people, and at young people themselves. We also looked at StateRail, the city rail, because young people do use public transport a lot and have a lot of contact with city rail officials.

Just to begin with, I wanted to point out some of the rather negative attitudes that police do seem to hold about young people, which did come across in the interviews I did with the police officers. I also want to point out some very legitimate problems police do experience in working with young people, which make their job quite difficult. I will start off by pointing out some of the negativities, if you like.

Senator COONEY—Can you give us an idea of the age of the policemen?

Ms Whittington—Yes, certainly. I interviewed a sergeant from the beats office; I interviewed workers from the beats office because they have contact with young people on the streets; I interviewed the youth liaison officer from the beats office.

CHAIRMAN—What is a beats officer?

Ms Whittington—The beats are the police who are out on the street. They do the beat, walk the beat. They are the beat police. The sergeant I interviewed would probably be in his forties or fifties, if not older.

Mr Howard—He is a senior police officer.

Ms Whittington—A younger—I suppose a 30-year-old—policewoman was the liaison officer and another young man in his late twenties was the beats officer.

CHAIRMAN—What about the age of the young people?

Ms Whittington—Technically a young person is defined as someone aged 12 to 24 years. For our purposes, we had to get parental consent to speak to young people. We could only speak to young people 14 years and over.

CHAIRMAN—But does this include young people on the street as well?

Ms Whittington—On the street, yes. We only spoke to young people 14 years and over.

CHAIRMAN—Yes, I know, but on the street—literally living on the street in a home situation?

Ms Whittington—Yes. I am based at the High Street Youth Health Service, a service which is funded by the health department and which specifically caters for at-risk homeless young people.

CHAIRMAN—So it is the homeless?

Ms Whittington—Some of them were homeless; some of them were not. I ran a group at the Parramatta Youth Refuge with homeless young people. There was a fair sample of homeless young people.

Senator ABETZ—Your definition of a young person is someone aged 12 to 24 years. Where does that definition arise from?

Ms Whittington—It might be a UN definition.

Mr Howard—The World Health Organisation see young people as 12 to 25.

Senator ABETZ—As opposed to a child?

Ms Whittington—As opposed to a child being under 12 years of age.

Senator ABETZ—Which is up to 18. I am with you.

Ms Whittington—There is an important distinction between juveniles, which would be 12 to 18, and the 18 to 24, especially if we are looking at issues of crime and use of public space.

I might just start off with some quotes. One of the police officers interviewed believed, just to quote him, that 'young people have a chip on their shoulder and think that the police are always harassing them and picking on them'. There is a perception on the part of some police officers that they have difficulty with the young people they are dealing with. They do not like their attitude, if you like. Just to elucidate that further, the sergeant I spoke to said that the way police respond to young people 'depends on the demeanour of the young person'.

There is not an objective situation happening here. The police will respond,

depending on the attitude of the young person to the police officer. Again this officer—this is a senior police officer, a senior sergeant—said:

> The main problem is . . . that [young men] around 14 or 15 years of age resent being told what to do, they resent authority figures. Police represent an authority figure. Some police are more heavy-handed than others, which has got to be acknowledged. So if the [young] people react well to us then we react well to them and that's something that the kids have to learn. And that's something we try and tell the kids about, is that the way that they perceive us is shown in their faces and in their demeanour to us, which doesn't mean that we are going to treat them as the best sort of a person.

I find these attitudes quite concerning. Police officers are public servants, as you are aware, and should be responding to all people in an impartial manner. You would think that they would be treating everyone in an impartial manner. When you see a homeless young person, you get a young person who has had a bit of a hard life. They may have a few problems with authority, but that still does not mean that they should not be treated with respect. This is why we get some of the problems here between police and young people on the street. There are perhaps attitude problems on both sides, but we have to remember that we are dealing with adults, public servants and children, and there is a huge power differential there. The police have the power and the responsibility to behave correctly.

CHAIRMAN—But as he said, as you indicated, it is a two-way process.

Ms Whittington—It is a two-way process, but we are dealing with children. We are talking about the rights of the child here. We are talking about juveniles, about 14- and 15-year-olds, about children.

Senator ABETZ—But if they are not able to respond in an adult manner—

Ms Whittington—But they are not adults.

Senator ABETZ—Yes—then how does that reflect in relation to other articles of the convention saying that children ought to have all these adult-like rights?

Ms Whittington—I do not think they are adult-like rights.

Senator ABETZ—On this occasion you are saying they are not really adults, they are still children.

Ms Whittington—I think they are human rights. Children need to be given human rights: the right to freedom of association and assembly, the right to freedom from violence and harassment, and all the other rights which are guaranteed in the convention.

CHAIRMAN—How many of those young people would understand there was

even a Convention on the Rights of the Child?

Ms Whittington—None of them would understand it, unless I told them. I think I discussed it with some of them.

CHAIRMAN—So it is almost non-existent.

Ms Whittington—They would not know.

Senator COONEY—What you are saying—correct me if I have got you wrong—is that the police are judging in terms of the demeanour rather than whether or not they have committed an offence.

Ms Whittington—Absolutely.

Senator COONEY—If you have not committed an offence, then you should be treated not on the basis of what your demeanour is but—

Ms Whittington—This is just the beginning of the problem, as it were. I will just continue, if you like. This, again, is the attitude of the senior sergeant:

I don't think they—

young people—

respect a lot of older values, and . . . the law represents older values and it represents the values of the people who are actually working and voting, represents the values of the politicians who are reacting to the public . . .

So in a way young people there are seen as outside of the law. The law there is seen to be applying to people who are adults in the work force, who are voting. Young people here are not seen as having any rights, which seems to tie in very well with the comment that the same sergeant made to Mr Grant Howard in an informal capacity, which I think would be worth repeating here.

Mr Howard—Because of our role as street workers, we are out with young people on the street largely. We saw a number of young people being questioned all the time, and also being searched. And a number of young people were saying to us that they were getting their names taken for being in public space.

We made an appointment to see this officer and a couple of other people. At that interview the police officer stated to us, 'Young people don't have rights. Shopkeepers have rights, commuters have rights, but young people don't have rights.' They openly admitted that they were targeting young people because they were young people and also because they were using public space, and that that was doing their job.

They asked us whether when we went out and contacted young people we kept a record of it, and we said, ‘Yes, we do, we keep a record of how many young people we speak to.’ He said, ‘Well that’s what the police are doing’, that they need to be seen by council and by the ratepayers in Parramatta to be doing their job and that young people who were spending time in public space would be approached by police, asked their name, asked what they were doing.

On a number of occasions we have witnessed young people—and it is also documented in the research—that have been pulled off the street and asked to pull their pants down in order to check whether they have weapons or drugs. Young people were not charged, it was the fact of their—

Ms Whittington—Ethnicity.

Mr Howard—Yes. Largely they are from non-English speaking background but not wholly. They are young people that, for whatever reason, spend a large amount of time on public space whether they are from Housing Commission or whether they are from areas where obviously you would question their family situation as to the type of support they receive at home, and they would rather often spend time with their friends and receive probably more support in that setting than they necessarily would in their home environment.

Mr BARTLETT—The alleged harassment by police of those from ethnic backgrounds—you are saying that is greater that for young people from non-ethnic backgrounds. Does that roughly reflect the proportion of kids in open space from other cultural backgrounds compared to Australian-born kids there?

Mr Howard—In the people interviewed I think it would be mainly a cross-section, but in our experiences a young person that is of an ethnic culture is more likely to be approached by a police officer than people who are from English speaking backgrounds.

Mr BARTLETT—More than the proportion of those using the open spaces?

Mr Howard—I would believe so.

Ms Whittington—If I could just interject, it is mainly young people from Middle Eastern backgrounds and young people from Pacific Islander backgrounds in the Parramatta CBD who seem to run into this kind of trouble. A lot of the focus of a problem in the CBD is around the Parramatta poolroom. The police perceive the poolroom to be a problem and it is a place primarily used by Middle Eastern—primarily Lebanese—young men. So it is those young people that the police admit they themselves have a problem with.

Also, the management of the Westfields supermarket—I think it is the biggest

shopping centre in the southern hemisphere. I spoke to the manager—I think he was manager for Westfields for New South Wales actually—and he actually said to me that Lebanese young people were troublemakers in supermarkets. So there is a major problem in Parramatta CBD in regard to relations between police, security guards and retailers and the Lebanese community.

Mr BARTLETT—Is there proportionately a high incidence with those Lebanese kids say of shoplifting and those sorts of things that might lead police or shopkeepers to that conclusion?

Ms Whittington—To be honest with you, I don't think so, but I would have to check the statistics. I am not sure that they give an ethnic breakdown, they give a breakdown by age and sex. There are lots of problems with crime statistics, which I do not know whether you are aware of, in that they are not consistent between government departments. So as a researcher it is very hard to get accurate information.

If you look at the stats for juveniles anyway, offences are actually quite low. They are mainly property offences as you are probably aware, and it is when you start looking at the over-18s, mainly young men in their early 20s, that you have, I suppose, a high proportion of crimes of violence. But for juveniles the proportions of their involvement in crime are quite low, and again this report is trying to get at the misconceptions about juvenile crime. There are not many, they are relatively quite low, and most young people, if they do offend, will only offend once; they will not reoffend.

CHAIRMAN—Keep going with your submission.

Ms Whittington—I just want again to talk about the attitude of the police, I will read you another quote from the same sergeant.

as you're walking along, you see the kid, you see the looks on the other public space users' faces . . . you often see the way they steer away, they shouldn't be made to steer away from an area that's being used by other people.

The police have an attitude that they are looking at the way they believe people respond to young people and then they are acting on the basis of that belief. Now, whether that is true or false, it is just their opinion. They are prioritising the rights of who they consider to be legitimate users of public space over those of young people.

The same officer explains further that young people were: vibrant . . . loud, . . . boisterous . . . when they walk up a footpath in their groups they don't walk up taking half the footpath, they walk taking up the full footpath. Their very demeanour, because of their youth, upsets other users . . . they feel intimidated by them. If they are upsetting, if they are unruly, then they have to be calmed down, quietened, if they won't quieten, removed.

Senator ABETZ—But if you were an elderly person, 80 years old, with a shopping trolley trying to do your weekly shopping and confronted by half a dozen boisterous youths—

Ms Whittington—I agree with you. There is some legitimacy—
Senator ABETZ—using language which you are not familiar with, and by that I mean not ethnic language but rude language.

Senator BOURNE—No-one has said that happened.

Mr Howard—Excuse me, can I just ask, if young people are walking down the street—if I was walking down the street and I approached—was just walking down the street, would you say you were confronted by me, because I was walking down the street? That is what I hear you saying.

Senator ABETZ—No, that is a complete misrepresentation. Ms Whittington said that the police officer had said a whole group walking up, taking up the whole footpath, right? Not one person walking towards me, a group walking up, taking up the whole footpath. In the opposite direction comes an elderly person, and all I am asking is, can you understand that they may well feel intimidated by the boisterousness, possibly some bad language or whatever, and those elderly people then come, let us say, to our offices or to supermarket managers and say, 'We don't like shopping there any more, we're going to go elsewhere.' How do you balance those two?

Ms Whittington—I understand the problem. Yes, this is a difficult problem that we are looking at, but I think that if we are looking at the crime statistics here a lot of the beliefs of older people do appear to be unfounded.

Senator ABETZ—I would accept that.

Ms Whittington—The truth of the matter is that most young people are victims of crimes by other young people. So the fact is that if you are a young person you are more likely to be a victim of crime than an older person. That is statistically correct. So, yes, we do have to deal with the community's fear and their mis-perceptions.
Senator ABETZ—How do we break down the barriers between the two?

Ms Whittington—A lot of the problem is with the media and the media representations of young people, and the fact that people do not have enough contact with each other. One of the strategies we are looking at coming out of this report is to, say, have young people go to senior citizens centres or vice versa so that there is more contact between different members of the community.

Senator ABETZ—Good idea. All the best with it.

CHAIRMAN—Perhaps I am jumping ahead a bit, but you are talking about the police, you are talking about young people. What about other people in that same space? Have you interviewed them?

Ms Whittington—Yes, I have. I still have not got to the point of actually incorporating that in the report. We did interview women with children through a local—

CHAIRMAN—That would cover Senator Abetz's point about this potential confrontation. If they are taking up the whole footpath then it is a bit threatening.

Ms Whittington—I interviewed a group of women with children and they did have some concerns about their safety, but again they revealed very racist attitudes—the group I interviewed—towards young people from non-English speaking background. So there do seem to be major problems in that area.

CHAIRMAN—What is causing that?

Ms Whittington—What is happening in this country at the moment.
Senator ABETZ—More racist based than youth based, would you say, or not?

Ms Whittington—I would say it was both.

Senator ABETZ—Both? All right.

Ms Whittington—It is both. It is not just racism. There was a fair element of that—I mean, it is just the one group. I cannot judge.

Senator ABETZ—Of course.

Ms Whittington—It was just one focus group to get a flavour for what some of the issues might be. Then I did run another focus group with older people to find out some of the concerns that you have voiced.

CHAIRMAN—So what you are saying is that you feel you have done a balanced assessment?

Ms Whittington—Yes, absolutely.

CHAIRMAN—But you have not yet put it all together.

Ms Whittington—It is pretty much coming together. It is not totally finished. I would like to read you another couple of quotes. Would that be possible?

CHAIRMAN—Sure, yes.

Ms Whittington—This is from the same beat sergeant who is now, I think, in a very senior position within the actual station. I think the more senior staff have been removed in the changes in the force. This sergeant said about the belief about the CBD

being a commercial centre:

. . . it's all commercial, it's for shopping, that's what it is intended for. They come to the wrong place for the wrong reason. They come here, they just get bored . . . [and] . . . boredom leads to mischief . . .

So he just says there are some areas in Parramatta where they like to congregate. So the attitude here is that the CBD is only for workers, shoppers—that is it. If you are a young person you have to have a specific reason to come in. It is almost like you need a permit to come in. I might just leave the police there, and I will just move on to what some of the young people have said, quickly. I hope I am not taking up too much of your time.

CHAIRMAN—No, keep going.

Ms Whittington—I did do interviews with youth service providers about their experiences of young people and police contact, but I will skip that because I think that we probably do not have time. I will just read you a few quotes from the young people themselves.

CHAIRMAN—I think we need to hear a few young people, and we also need to hear from a few geriatrics like myself.

Ms Whittington—I am sorry, I have not got the older people ready today, but I can try and remember what some of the issues were.

CHAIRMAN—All right.

Ms Whittington—I will just do the young people first. This is a young man. I think he was about 14. He was a Pacific Islander. I interviewed him in a place called Telopea, which is a public housing estate in Parramatta. It is one of the most socio-economically disadvantaged areas in the LGA. He says:

When I went to High School . . . , the police like, pulled us over you know, 'cause we were High School kids, and like . . . they start swearing at you, . . . and they start abusing you, (asking questions like), "'Why hang around on the streets? What's so bad about staying home and going to sleep?"' And we keep saying, 'Oh, we just want to hang out', and they go, 'Oh, what's wrong with going to sleep or hanging out in your front yard?'"

So there are a few problems here in that the young person is alleging that the police have sworn at him and that he has been told he cannot you use public space; he should be at home in his yard.

Another problem is that young people are victims of crime by other young people but they do not report crimes against them to the police. This has been a major finding of this study. Young people do not report crimes against them. One young woman, a

homeless young woman aged 15, said:

> What's the use?

You will have to excuse the language here. I am sorry, I am just quoting word for word:

> They treat you like shit anyway. They're there, we know they're there, but they're not really there for young people. They're more there for the people who are high in society and who have money. They're the only people who are protected by the law. If a store is robbed, that's what the police do.

That is the young people's attitude, that the police are not there to protect them. There are other reasons why they will not go to the police. I will not go into all of them but you can read them if you like when I give you the final report.

This is another tragic case, a young man from a non-English speaking background who I interviewed at the pool hall. He was probably a refugee because he had recently migrated from Afghanistan. He did not speak very good English, but he reported being rolled, which is actually assaulted and robbed, at 3 a.m. around Parramatta station. He was attacked by three other young people.

CHAIRMAN—What age was he?

Ms Whittington—A young man, 22.

CHAIRMAN—Twenty-two.

Ms Whittington—But I believe he has a developmental disability. You know the guy I am talking about, don't you?

Mr Howard—Yes.

Ms Whittington—He is a bit slow.

Mr Howard—I could not say that that was confirmed that he had a particular mental health issue, but obviously my assumptions would be that his social development and also size and stature sort of—

Ms Whittington—He is a victim.

CHAIRMAN—But surely at 3 a.m. he just was not hanging out?

Ms Whittington—No, I think he was going home actually. He was probably going home. Anyway, he said that his face and head were heavily injured, he was put in hospital. The long-term effects of his assault are that he is not able to read or write properly. The police were called but he claims they did not try to apprehend the offenders.

Rather, they accused him of provoking the assault. He explained:

> The police can't help you. I don't know. They say, 'You pinch his wallet.'

Again he said:

> The cops don't like you. They say, 'Get out of the car. Where's your licence?' I wait for my friend and they told us to fuck off.

Some of the other major problems that young people talked about—that was just an overview. Young people have problems with the fact that police are suspicious of them when they use public space. They are questioned and moved on a lot by police. Could I read you some more?

CHAIRMAN—Keep going.

Ms Whittington—For example: A young homeless woman noted that on one occasion she and her friends had been sitting in a park in Parramatta CBD and the police allegedly approached them and said:

> 'Come on, get out of here, stop causing trouble', (but) . . . we were just sitting there doing nothing.

On another occasion she and four friends were sitting in Parramatta Mall and talking at around 10 p.m. and detectives allegedly approached them and asked their names and where they lived and moved them on, saying:

> 'We don't want anybody in the Mall at this time of night.'

The young woman felt this treatment was unfair, stating:

> 'It's . . . a public place, it doesn't say nobody's allowed . . . And there was other people in the Mall and they didn't move them on, they just moved us on.'

She was actually homeless.

Another problem young people report is being questioned and searched by the police when they are using public space. Police say that they do this for the purpose of finding drugs and/or weapons concealed on the young person that they believe the young person may have. They commonly involve making young people open their bags but also include searches of clothing not being worn at the time, such as jackets, pat-downs and strip searches. Several participants complained about being strip-searched in public places or being threatened with strip-searching. These seemed to be mainly young people from a non-English speaking background. This is a quote from a young man I interviewed at the pool hall:

You're just walking around and they come up to ask you where you been, what you been doing, you know, too much of a hassle. Just say you're sitting down here you know, they'll come up to you, search you and all that, (looking for) knife, marijuana. Happened about five times to me.

Another Middle Eastern young man interviewed at the pool hall said:

When they want to search you and you won't let them, they get pretty angry and all that. (They say) 'I just want to search you . . . Get out you wallet. Your pockets, empty them. Your socks . . . ' They grab you like that, touch you.

Another young man complained that the police would search young people:

. . . in front of (other people), you know, like, in the open, they'll be here harassing you, searching you, questioning you and like, your relatives or someone might go by and it makes you look bad. And then you go home, cop a lecture, cop a beating. Yeh they (parents) say 'Someone told us they saw you with the police', like, you just start getting headaches.

These young people have done nothing wrong. And there is more. There is a lot more about being searched, being searched with dogs and—

CHAIRMAN—Vanessa, I think we are running out of time now. Once you have put the report together, we would appreciate having a copy of it because it is very relevant to what we are looking at.

Ms Whittington—There are a whole other range of issues. I think I summarised them in—

CHAIRMAN—But I think we do need—and I am sure you will do this when you evaluate the whole thing—to have a balance—not just young people, not just older people, not just ethnic groupings, whatever. It needs to be a composite.

Ms Whittington—Certainly. That is the sort of project which I am hoping to produce.

CHAIRMAN—Okay, does anybody else want to make any general comments?

Ms D'Souza—No, there is not enough time.

CHAIRMAN—Do you want to make a comment?

Mr Howard—The only thing I think that I would like to comment on is about the use of private public space—security guards—which also will be mentioned in the report which we are looking at. There are certain young people within shopping malls—not just Westfields—that cannot stop, even when they are sitting down, drinking. Their income might be limited. So if there are four people and three of them have drinks then they will

be targeted and asked to move on. They cannot stop anywhere within a shopping centre. I have seen security guards walking up to groups of young people. I have walked up to them because I have known some of the young people, and they will walk past. That is all right while I am there. As soon as I leave them, the security guards come back and say, 'Look, you can't be here. You've got to move on.'

CHAIRMAN—But are they taking a similar attitude to Parramatta police or are they more heavy-handed again than the police?

Ms Whittington—They are more heavy-handed.

Mr Howard—They are more heavy-handed than the police. Yes, I guess there are a number of instances within those things. Often young people within those things and of those backgrounds will come up and actually push the young people or grab them, and it just escalates from there to times when the security guards have offered to fight young people and then have taken them down to a spot and they have been rolled or bashed by a number of security guards. This is not uncommon in Parramatta. I know street workers and youth workers that have experienced—

Ms Whittington—And elsewhere.

Mr Howard—Elsewhere as well.

CHAIRMAN—In Parramatta are there police liaison officers of the various ethnic groupings, for example?

Ms Whittington—I know they have a youth liaison officer. I interviewed her.

CHAIRMAN—Is there an Aboriginal community in Parramatta or it is more Middle Eastern, is it?

Ms Whittington—It is hard to know the size of the Aboriginal community. Aboriginal people tell me it is not insignificant, but statistically it appears to be smaller within ABS statistics.

Senator COONEY—I do not know whether you will be able to do this, but when you are giving us the report can you set out what powers the police say they are acting under?

Ms Whittington—Sure. I have done that in the literature review.

Senator COONEY—Have you?

Ms Whittington—Yes.

Senator COONEY—Have you got any statements from the police as to what powers they say they exercise and what statutes they are acting under?

Ms Whittington—It becomes clear if you look in the literature review. I could refer to that, if you like.

Senator COONEY—Could you get that?

Ms Whittington—I could refer to it when I discuss the police action, if that would make it clearer.

Senator COONEY—I understand that they are not necessarily supported by that power, but what power they purport to act under.

Ms Whittington—Yes. There is a good book called *Young People and Police Powers* written by Blagg and Wilkie. They are lawyers and they set out the powers that police are acting under, and I have mainly used them as a resource for that.

CHAIRMAN—All right. We look forward to reading your final report and thank you for coming this afternoon.

[3.48 p.m.]

FINLASON, Ms Judith, Coordinator, Network of Community Activities, 66 Albion Street, Surry Hills, New South Wales 2010

CHAIRMAN—We have received a written submission dated 4 April. Are there any errors or omissions that you wanted to correct on the *Hansard* record?

Ms Finlason—No, I do not think so.

CHAIRMAN—Thank you. Would you like to make a very short opening comment?

Ms Finlason—Yes. What I would like to stress is that I am here to represent school age children in their out of school hours and primary school age children, middle childhood—I think a group of children that are generally very neglected in that particular time, which is actually half their childhood. Most people do not realise that children spend more of their waking hours out of school than in school and very little attention is given to this.

Network is the peak organisation in New South Wales involved in children's time out of school hours. We started in the early 1970s. We are child focused. A lot of it has become now out-of-school-hours child care, but our organisation has always been child focused and believes that services and provisions should have a child centred approach with the best interests of children in mind.

I did try to concentrate on certain areas, and I would like to talk to those areas when I respond to questions, in that we are looking at particularly the child's right to play, article 31, and we are also concerned about children with disabilities. We are interested in the lack of community awareness to the convention and we have also said that we are interested in looking at whatever provision there can be for some commissioner for children so that we do have somebody that has an overarching interest in children, which we believe is not the case in Australian society today.

Senator COONEY—How much work have you done on this? I read that and I thought—I have not been to all these meetings—it was a point that had not been touched on very well and in a certain sense follows on from that last submission. Have you got any impression around the various states or perhaps only in New South Wales as to what facilities are available for people who are not, say, the elite sports people, if I can use that expression?

Ms Finlason—Can I say that we are not speaking for sport. We believe that sport is something that children can tap into. Our interest is in children's playtime and children's culture, which is play, in middle childhood. Therefore, if children care to be

involved in sport, that is fine and we are not opposed to sport, but our organisation is not involved in sport. We do believe that probably too much emphasis is placed on competitive sport at this age and it is probably not in the best interests of children always. It is probably more an adult interest that they achieve in this age group.

I have put together, and I do not know if you would be interested, just a few articles from our newspaper which is called *Network News* and we have been strong advocates for the rights and the convention since its inception. We were very involved in the International Year of the Child in 1979. I do have an article here from our newsletter 'International Year of the Child, IYC79 to IYF 1994, What Progress?' We question that there has been any progress.

One of the questions that came up earlier, which is quite interesting—and I am glad I was here to hear it—was, 'Why not a commissioner for family?' I went to many, many meetings, discussions, and I went to the conference on the International Year of the Family in Adelaide and at every single discussion group I went to, even though people were there in the interests of the family, they all said we need a commissioner for children, and that was quite definite. Covering it by just saying 'family' was considered by that wide range of people who attended those groups, but we do need a commissioner for children.

I am not aware of all the options. I do have something here which you people are probably aware of—it is quite interesting—and it is the Commission for Children's concerns in Germany. That is from *Play Rights*, the international magazine for the rights of the child to play. We are members of that group. It is a very interesting international organisation. They also have a children's parliament. I do believe that, even though we would be looking at a commissioner for children at national-state level, it needs to extend down to local government, and I think it needs to be a process whereby we respond to children's needs. I see here that they are forced to respond to and to discuss the issues raised by children from their parliament, and I do not think we listen enough to children. Can I just comment on a few things here?

Senator COONEY—You can come back to that, but can you just explain—because I think it is a very important point you are on to here—what sort of rest and leisure and play and recreational activities and cultural life and arts you have in mind. Have you got any sort of concept of the sorts of things you would want? Is it what they have got in Germany?

Ms Finlason—We are talking about children in middle childhood—and we are stressing this in this particular stage of their development, and I think to talk about the child from nought to 18 is just too wide an age range; they have totally different needs—and children of this age really need self-directed play. We would like to see more opportunities for adventure playgrounds, places where children can make cubbies and hide from adults. Most children do not want adults around. We know that they need to be safe

and secure, but we are removing the environment in which children of this age group like to function. It is important for them to be with their peers, for them to work out their social interactions. They are learning through play, but childhood is a culture in itself. The rhymes, the stories, the fantasy, the play—they should be allowed this.

We are taking away most of the opportunities in Sydney with urban consolidation—the backyard, which has been probably the place where children used to gather, or the safe streets where they could play. In fact, some people are talking about even shortening the lunchtime at school, and the playground is probably one of the freest places for children of primary age to play with minimum supervision.

Senator COONEY—I get the impression from the way you speak that what you are looking for mainly is space for them to play—parks and schoolyards. Am I correct in that?

Ms Finlason—No, I am looking at it from various viewpoints. The previous presentation was very pertinent to what I was talking about. A lot of our public spaces, so-called, now are commercial spaces, and really children have no rights there either. You will hear mothers complaining that it is very difficult for mothers to—

Senator COONEY—I know others want to ask questions, but could I just tease this out from you. I understand you say it is not only the space, although that is very important, but you would like some adventure playgrounds on that space. Would you want anything else? Would you like opportunities—halls for them to have plays in?

Ms Finlason—Yes.

Senator COONEY—I am just trying to get from you some sort of sense of the concept you have got.

Ms Finlason—What we would like is that any planning proposal should say, 'Is this a child-friendly environment, and what is the impact on children?' I am glad you raised that about halls. For instance, in new housing estates there is nothing for children, and yet what we do is introduce punitive measures so that if children get into normal mischief—in the country you can throw a stone and it does not matter; it would probably go through a window in the city and that child is immediately a delinquent.

We have nowhere where children can be children, and we do not plan for it. What we do have a lot of now are after-school care centres. These centres are unregulated, unlicensed, they are the most poorly funded, and I would maintain that no-one considering health and safety at work would allow themselves to be working in the environment in which many children are put after school. I think it is a disgrace that this has continued. We have had a cutback in funding in the last budget and the money has been put in the hands of the parents rather than—

Mr BARTLETT—Not for out-of-school hours.

Ms Finlason—Yes, it has.

CHAIRMAN—No, there have been another 28,000 places.

Ms Finlason—I am sorry, the operational subsidy which was able—

CHAIRMAN—That is long-day care.

Ms Finlason—No, sorry, with out-of-school the operational subsidy has been cut from 1 January.

Mr BARTLETT—It has not been cut, it has been increased. There has been an extra $25 million.

Ms Finlason—Can you please check that? I know for certain it has been redirected to child-care assistance, which is money in the hands of the parents. Therefore, many centres are likely to close.

Mr BARTLETT—That money has to be paid to the centre, not to the parents.

Ms Finlason—I am sorry—
Senator COONEY—Mr Chairman, I wonder if I could do it this way. What I want, not now but perhaps if you could do it in writing, Ms Finlason—

Ms Finlason—Yes.

Senator COONEY—I think you have got a concept there of the facilities, if you like, that you would like to see in place under article 31. Could you give us—

Ms Finlason—I would not be wanting to say that we know that. We believe there should be community proper consultation, not something decided on for people to comment on—talking to people before decisions are made, which is really consultation, and that does not happen now. There are lots of options available. We met with an organisation called the New South Wales Play Alliance, which is part of the Australian Play Alliance. That is their magazine called *Play Focus*, and I have included that in this package here.

CHAIRMAN—Could you just read those into the *Hansard* record because we will certainly accept those as exhibits.

Ms Finlason—I just included Network and the objectives. One of our objectives is to encourage appropriate and equal opportunities for the realisation of the rights of the

child. I have got 'IYC to IYF what progress? Is there access and equity for children with a disability?' Once again, we have quoted the appropriate articles. I would like to say, as far as children with a disability are concerned, I know that there has been an increase in funding in the federal budget for children with a disability, but what I would question once again is that children in middle childhood are tacked on to the nought to five-year-olds and their particular needs are not looked at appropriately for middle childhood. These children need the same social interaction; for instance, they were saying the transport has been cut back for schools, but that transport is discontinued when the children need it for access to leisure and recreation in school holidays.

I have also just included a paper I gave to the first national conference of out of school hours services where I have had included in that the appropriate articles that I think are pertinent, particularly in looking at school-age children. *Play Focus* is the magazine of the New South Wales Play Alliance.

Senator COONEY—If we read those would we get a picture of what your propositions are?

Ms Finlason—You would get a few of my opinions, such as I believe children are being treated as a commodity in our society today.

Senator COONEY—Would we need to have anything more than that?

Ms Finlason—No, it is just to give you an idea of some of the issues that we feel for school-age children. But I would like to stress that we have pointed out here that we feel that in all planning there should be—and this is where a commissioner for children would have an overarching view of all legislation. For instance, I would like to give you an example: in a school at the moment a neighbour has taken the after-school centre to court because the children are playing in the playground from 3.30 to 5.30. The neighbour has won the case. The judge said perhaps the after-school centre would be better in an industrial area and has said that they have to try and stop the children from making any noise of enjoyment. They are not allowed to use the play equipment which is close to the fence. What rights do children have? The judge has also told the parent committee that, if they contravene the ruling of the court, which is where the children cannot go, they may not be allowed to be directors of any company in the future, and they may have a $50,000 bond which they may have to forfeit. I had hoped to actually have the ruling to bring to you today. It has just been brought down in the Supreme Court yesterday.

Senator ABETZ—Could you send us a copy of that?

Ms Finlason—Yes, most gladly, and I think they are going to see if they can get this in the media. But to me that shows it appears that children in a location which one would have thought was a child's space apparently can be overridden by a neighbour. It is not an evening; it is normal hours. These are some of the battles that we have as

advocates for children of this age group. That is an extreme, but it is not the first time. We have had other instances like this. It is an age group that we think is generally neglected. It is swamped by the needs of the toddlers and the nought to five-year-olds. I am not saying that that is not a really important age, but I think we are saying to children of this age, 'We don't care much about you.'

Senator COONEY—That is from five to—

Ms Finlason—Five to 12 in their time out-of-school hours. I think we need to say to these children, 'We care a lot about you and we believe any money invested in you is an investment in the future.' Maybe we will not have as many teenagers with chips on their shoulders if we treat them differently at this age.

CHAIRMAN—Sure. Let us have some questions.

Senator BOURNE—I am just waiting for that ruling. I think that is extraordinary. I live opposite a school and I must say I still think that is extraordinary.

Ms Finlason—The president of the association—because I told them that I was appearing today (and I will not mention the school because I would not do that without their permission)—rang me and said that they had not been able to get the actual ruling from the court for me to present, so when I do, I am sure they will be more than happy for me to pass it on to you.

CHAIRMAN—Certainly if you leave that with us and anything else that you wanted to provide to us, we would gladly accept it, but we most certainly would like to see a bit more of this ruling. It depends, I guess, on local government ordinance and all sorts of things, but nevertheless—

Senator ABETZ—Even the facts of the case would be interesting.

Ms Finlason—Yes.

Senator ABETZ—If it was a shift worker, for example, who needed to sleep between 3 and 5 o'clock of an afternoon and that disrupted his or her sleep patterns, those sorts of things.

Ms Finlason—I think it was not that actually, but—

Senator ABETZ—But it would be interesting to know.

Ms Finlason—If anything, with this particular age group we are extremely concerned and we do have quite a network of people who are also very concerned.

CHAIRMAN—Yes, thank you very much indeed.

[4.06 p.m.]

BOLAND, Mrs Jennifer Margaret, Chairperson, Family Law Council, Level 3, 50 Blackall Street, Barton, Australian Capital Territory, 2600

CHAIRMAN—Welcome. We have received into evidence your submission dated May 1997. Are there any errors of fact or omissions that we need to reflect in the *Hansard* record?

Mrs Boland—No, there are not.

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

Mrs Boland—Certainly. Thank you very much. Firstly, to those members of your committee who may not be aware of the Family Law Council, may I tell you just briefly about the Family Law Council and its role. I certainly know there are members of your committee who well know the role of the council. Council is established under section 115 of the Family Law Act. The function of council is either on its own motion or at the request of the Attorney-General to provide advice to the Attorney on matters relating to family law legislation, particularly the Family Law Act, and to matters relating to legal aid.

The composition of council has generally been these days that half our members are women and half are male. We represent various disciplines, including a judge of the Family Court, lawyers and other professionals engaged in social sciences in the family law area. We are truly representative of the general Australian population in that membership comes from all states. When the Family Law Council was established, Mr Ellicott QC was the Attorney-General. The focus was that we gave practical and commonsense advice to the Attorney. I hope that under my chairmanship we continue to give practical and commonsense advice.

The council in its 20-year history has always had a very large focus on issues that relate to children, so I could say that this submission and matters relating to UNCROC are very close to the work of council and to the heart of what we believe we are about. I might further say by way of a general comment that we as a council believe that when Australia is going to ratify a treaty such as the United Nations Charter on the Rights of the Child there ought to be very wide consultation about that and recognition of perhaps the financial implications that adopting such a treaty takes into account.

We are not aware of why the first reporting of Australia's obligations under the treaty did not occur for two years beyond the deadline but it does cause concern even if just as an objective. It seems to show that perhaps we do not place the importance on the rights that we would like to see—that emphasis for children. We believe that this is the most important sector of our community when we are talking about that international

treaty. I simply say that by way of opening comment.

There are some difficulties in dealing with a worldwide charter and with a situation where we have overlapping state and federal laws with a multiplicity of laws that affect children. We have highlighted in our paper that council is trying to address some of those questions at the moment by way of a subcommittee which we have called Children and Family Services. We are trying to look at the practical overlap, where you have state law and federal law interacting in relation to children.

The one we see very commonly is where there is a breakdown of the marriage and there are contested proceedings in the Family Court with perhaps allegations of abuse about the child. Similarly, proceedings are then brought in a children's court. We are very anxious to see that there are the same policies and protections for children and that there is not a waste of resources. Where we have got scarce resources to be used for children we would like to see them used effectively and not duplicated. That is one of our ongoing and long-term projects. I would love to be able to say that we could give that to the Attorney in 12 months, but we see it as something that is a staged approach and we are two or three years out.

In our report we have not attempted to deal with the whole of the United Nations Charter on the Rights of the Child. We have homed in specifically on the aspects which deal with the Family Law Act. We have a narrow focus; other people here may come with a much wider focus. I would also like to say that we think that there are a lot of very positive things in terms of Australia's compliance with its obligations under UNCROC, or the United Nations Charter on the Rights of the Child. We have seen in the last five years or decade a very much greater emphasis on children's rights, particularly in family law litigation.

An example that comes most to mind is the recent amendment to the Family Law Act dealing with the right of the child to have contact with their parents. The Attorney, when he was appearing in a fairly widely reported case of B and B, a relocation case, said that one did not need to have reference to the charter because the new Family Law Act provided a statutory code which went even beyond the United Nations Charter on the Rights of the Child.

But certainly we would say that the underlying principles of UNCROC have been picked up in the child's right to know and to have contact with their parents on a regular basis. We say that the rights of the child are of paramount interest in any litigation which would involve a child or any other procedure in family law involving a child. We are also aware of the programs that have happened in the Family Court for cultural awareness of the judges: programs dealing with Aboriginal and Torres Strait Islanders, the High Court's decision in cases such as re Marion, the case that dealt with the sterilisation of an intellectually disabled child—and those rights.

We see a very substantial compliance. I would like to put the positive things first, if I could. We think there are excellent things happening in the Australian Law Reform Commission reference to children. I presume you have heard from the Australian Law Reform Commission because they would have a great deal to say. There are two things that I would like to highlight. I apologise to Senator Cooney, who I know has heard me say this before. Firstly, I would like to speak specifically about one area with which we would have some very real concerns: the question of what is happening about funding for separate legal representation of children.

You may be aware that in 1994 the Family Court handed down a decision in a case called re K. In that case the court set out guidelines as to when it was appropriate for a separate legal representative to be appointed for a child. We are concerned that in very many cases, by reason of lack of funding and lack of expertise for training of people to represent children, there is a glitch potentially in Australia's obligations for children to be afforded proper legal representation. That cutback in legal aid may well be to the detriment of children.

I had the opportunity to speak at another forum about this matter. There is perhaps a perception that bringing another lawyer into a case for children is simply adding to the cost. I can only speak from my experience. In my day-to-day life I am a family law practitioner. Very often I have found having the sensible and wise counsel of a lawyer who is there, who has experience in dealing with child matters, to be the honest broker who can help to negotiate a settlement between parents to keep the case out of court, settle it much more effectively and cheaply, and have access to tap into the resources in the community where that child might go for ongoing counselling.

I think one of the other things that we would like to highlight is that in the council's report on representing the child we try to look at what would be a better or more holistic approach for the child. There is often a lot of focus on dollars when parents are in proceedings before the Family Court but we would like to see a much longer-term solution for that child than just the minute they walk out the door of the court. So there could be out in the community better resources to community counselling facilities for children on a longer-term basis.

We would certainly like to see in the court that the children, particularly children of a more mature age, were actually involved in knowing what was going on in the process, so that they might be involved in the information sessions. The Family Court runs extremely comprehensive information sessions for husbands and wives or other parties before the court but the children are not involved in those.

One of our recommendations was that this was something that there could be so that children actually understood the process and what was going on. Instead of being put into one camp, the people who are already involved with them—and this does not involve extra cost; the court in its own report on representing children is trying to have a team

approach to a child—a court counsellor, the separate legal representative, who is now called the child's representative, and the parents could all be involved in looking at what was best for that child.

So, in short, we are just concerned that the legal aid dollar is not diverted totally into criminal law and other aspects to the detriment of children, and that we do not have a situation where the criteria which have been very carefully thought out in re K become the subject of administrative divisions and perhaps undermine Australia's compliance with our obligations under UNCROC and also what is in the best interests of children. I think that is probably the foremost point I would like to make.

Other than that, one of the things again in my experience in travelling around Australia is I am very conscious of a very small number of cases which I do think need to be highlighted, and they are the cases of children with severe intellectual disabilities where there are perhaps applications for medical procedures before the court. It seems that very often those cases come to court with a large amount of money being spent by representatives arguing the case before the court—and very often I think if support was there at the grassroots for those families you may not even see those cases get to the court because—

Senator ABETZ—We heard evidence to that effect earlier today.

Ms Boland—So I can only say that has been my experience speaking to lawyers and others who have been involved in that area. I think that as a matter of principle the judgments of the High Court in Re Marion set a gold-mark standard for what one would like to achieve for these children. But if you can put the support there so that we do not need to have judges making those hard decisions, I think it would probably be an even better situation.

CHAIRMAN—Thank you very much for that. We have got about 12 minutes to cover what is a very wide area but I have to say that of the 400-odd written submissions that we have received thus far, a substantial proportion mention in one way or another the family law legislation and everything that flows from that. It is more appropriate that some of that be dealt with in other committees than this committee but nevertheless it highlights some of the difficulties particularly affecting children.

Senator ABETZ—You have got half of the Legal and Constitutional Affairs Committee here with Senator Cooney and myself.

CHAIRMAN—Yes, I know; that is right. Both of you are here. Just a couple of questions. You had some concerns in your submission about article 12.2. B and B has not reinforced the rights of the child, or the paramount situation of the child.

Ms Boland—Absolutely, the best interest of the child, because what B and B says

is that this is the overriding, overarching principle and the other matters are subsidiary to that.

CHAIRMAN—We are looking at that judgment, or we will be in due course. We are just a little concerned, I have to say, because the federal Attorney-General was quoted as having said in the context when he appeared for the Commonwealth in that case—and maybe he was taken out of context—that in this case parents had no rights now. That may not have been correct.

Ms Boland—I actually have the judgment in B and B with me, all 200 pages of it.

CHAIRMAN—I do not think you will have a chance to go through it now, but we will be going through it in due course. So that was the first point, 12.2, and you have covered that. The other one relates to Teoh or the post-Teoh international instruments legislation. In your submission you said that the previous Attorney-General sought advice on that which was provided by your council. Did the present federal Attorney-General seek further advice from the council in the lead-up to the most recent 1997 cabinet decision?

Ms Boland—Not so far as I am aware. I cannot remember anything coming to council specifically dealing with that.

CHAIRMAN—You say you oppose the—the word you use is—overruling of the High Court. Why do you say that? Is it going to lead to further litigation, do you think?

Ms Boland—I think that one has to look at that back in the context of the decision that was made in Teoh's case and the particular facts of that case dealing with children in retention, and we were looking at it specifically from a child focus. You will have to forgive me because I do not have the exact one, but I certainly know that there are articles that deal with children who would be in a situation through no fault of their own, and in circumstances beyond their control. We felt that in a situation like that where Australia had ratified the United Nations Charter on the Rights of the Child and the particular convention articles, then it would be a retrograde step, on the one hand, to be affirming an international convention and, on the other hand, taking away those very convention rights by legislation if they affected particularly a child.

CHAIRMAN—It is arguable; you perhaps have a different view than some legal practitioners on this subject.

Ms Boland—What I should say here in fairness to council members is that that decision was a decision of the members of council who formed the council in 1996, and of course we have had new appointments to council since then. The general view, and certainly when this submission was being prepared in May, concerning the rights of children—be they children who were born in Australia who were here through no other

reason of their own—was that we saw that our obligations under the convention were such that we wanted to see consideration given by an administrator when applying the law to take into account the rights of those children.

Senator COONEY—The Law Council will be going forever and improving on legislation because this is an area I think that you will never get to—

Ms Boland—We do not seem to run out of projects.

Senator COONEY—No, you do not. I think it is a bit like workers compensation: there will be always be problems. But when you face those problems as a council do you draw any help from the Convention on the Rights of the Child? Not in a directory way, but is it a helpful document for the council to work with?

Ms Boland—I think it is a very helpful document in that it is setting out, if you like, an international standard and it is a very objective way for us to be able to measure against—how do we comply with that? If I look at the present projects we have in council and how do they come now—the Attorney-General has asked us whether child abduction should be criminalised. The convention deals with the very circumstances of illicit removal of children. We have currently got a project on penalties. One of the great complaints, and I am sure you would be aware of this, is the complaint that the Family Court does not enforce its orders and what can be done about enforcing its orders. So we have got provisions in here for enforcement of orders, particularly in relation to maintenance.

We have looked at the problems from time to time of people trying to enforce overseas orders, working or not working, and that is here in the convention. The convention talks about mass media. We have just done a submission to the attorney on whether or not section 121 of the Family Law Act should be amended to make Family Court decisions more available. I can tell you now that our advice in that area is that whilst we would want to see a form of liberalisation we would not want material which specifically identified children being made available in the media.

With all of those things, in a way it is a sort of test. You can say, 'Here's this international charter, here's what we're doing in Australia.' In some instances we are ahead of that and that is to be commended, and I would like to see us strive—it would be nice to think that we were always a step ahead or leading the convention—but it is like a basic platform where you would say if we can keep to this standard we are achieving what is seen if you like in some ways as the internationally lowest common denominator and in other ways an ideal about what we would want for all children in the world, but particularly for Australian children.

Senator ABETZ—Just on that, there seems to be some confusion, at least in my mind. Some people tell me the convention represents basic minimums and you just sort of

said that. But then in the next breath we are also told to achieve the high standards to which the convention aspires, as though these are sort of standards that you might never ever reach and you have continually got to aspire to them. Yet others say, 'Look, they're just a basic minimum.' Which way should we be looking at it?

Mrs Boland—Australia is unique in terms of where we are as an economic force in Asia. Quite clearly we do not have children who are exposed to—one certainly hopes not in this country—child labour conditions or to war conditions. Those parts of the charter you would say are ones that we do not have to strive to, where other countries have got a real need to lift their ability to comply with those parts of the convention. Probably everyone would acknowledge that in relation to indigenous people and some of our ethnic groups, we have to keep striving in those areas.

I have just chaired the Family Law Council in Coffs Harbour and one of the things I was very anxious to do while I was there was to hear how the Aboriginal communities on the Far North Coast access the Family Court? Do they access it? Are the counselling services reaching them? It is quite clear that the mainstream legal services are not something that are user-friendly to that community, so that is something we have still got to strive to.

Senator ABETZ—In the preamble to the convention there are a whole host of statements and we are told in the report from members of the Convention on the Rights of the Child Committee, which is an appendix to your submission—it is the document signed by Sally Thomas—we are told in the second paragraph:

> The preamble to the Convention on the Rights of the Child recalls the basic principles of the United Nations and specific provisions of certain relevant human rights, treaties and proclamations.

You then go on to say:

> It reaffirms the fact that children, because of their vulnerability, need special care and protection and it places special emphasis on the primary caring and protective responsibility of the family. It also reaffirms the need for legal and other protection of the child before and after birth.

So you see the preambular part of the convention and the fact that it makes reference, one would assume in favourable terms to example the declaration of the rights of the child, that the preambular part of the convention is an inherent part of the convention. You cannot read the convention without giving full effect to the preambular clauses.

Mrs Boland—I think that is absolutely right. It sets the background. If you like it is the general principals and the articles I see as the specifics.

Senator ABETZ—Yes, that is how I would view it. I think we were given some advice to the contrary this morning but I will check the Hansard on that.

Mrs Boland—I have to say again that is my interpretation.

Senator ABETZ—Yes. I will have to check the Hansard whether what I am thinking is in fact right, so I will not make any further comment in that regard. As a result, because of some of the preambular clauses which tell us about parental rights or responsibility, you have said in preliminary comment, 'This council rejects any suggestion that the convention empowers children at the expense of the authority of their parents.'

I can understand that interpretation of the convention but I have to say to you, I also understand the interpretation of the convention that was given by Daryl Williams—when the government was in opposition—by Andrew Peacock, by Robert Hill, by the former Minister for Justice, Michael Tate, who said he would assume that Australia would be putting a reservation on the convention in similar terms as the Holy See did. The Holy See put on a reservation in relation to what I think they called parental rights. Islamic countries have done so, and in fact the country that started it all, Poland, has put on a similar reservation about parental rights.

Seeing that you are of the view that it does not in any way detract from parental rights, responsibilities, whatever, would it therefore detract from the convention at all if we were to make a declaratory statement—let us say along the lines of the Holy See's reservations or Poland's reservation—that this document should not be read as impinging on what we would call normal family authority structures and things of that nature? That is the biggest fear in the community—that this convention does undermine that—rightly or wrongly. We have been told also by numerous people that it does not undermine the parental structure. If that is the case we would do nothing wrong to put that as a declaration and it would alleviate this unnecessary fear in the community.

Mrs Boland—I appreciate what you say. That is certainly the view of council, that we would say that the fundamental unit of society is the family. That is the best environment for a child to be brought up in. The Family Law Act still has what I would call the Fraser amendment, which was the amendment that was brought into the act which says that the family is the fundamental unit of society and it is a duty to protect that unit, and we certainly see that. The Family Law Reform Act of course does not talk about rights of parents. It talks about the rights of the child and responsibilities of parents, and I think it is a question of how you interpret it.

When this relocation case was being debated, I heard a Family Court counsellor say that in his view if parents were responsible then this whole question about rights did not arise. That is the basis we come from. We see the family as the fundamental unit of society, the right and correct place in most circumstances for a child to be brought up, and this is emphasised against that background the rights of the child.

Senator ABETZ—Yes, but in the context the Victorian Department of Welfare, the *Stolen Generation* report—there are a whole host of examples—well-meaning bureaucratic social welfare-type agencies have intervened at great expense to the children

involved and the families involved and done untold damage. I would have thought if there is at least one message out of the *Stolen Generation* report it is basically that families know best and bureaucratic and social welfare structures ought to stay out except in the very extreme circumstances.

Mrs Boland—I think you always have to have the exception there and it is just as in section 60B of the Family Law Act now it says that a child has a right to have contact on a regular basis with both of that child's parents except in exceptional circumstances.

Senator ABETZ—Would not a convention on the rights and obligations of family members be a lot better overall, that children do not see themselves as having rights, that parents do not see themselves as having rights, but they see them as connoting duties and obligations as well. **Mrs Boland**—I must say that I like legislation or the written word that talks about responsibilities rather than rights, and I come perhaps to that obviously from my background as a lawyer. If you look back in the 19th century women did not have rights. They were dominated by male rights. I like to look at those in terms of responsibilities. I know in relation to my own children I would not like to think I had rights over my children but I think that I have responsibilities.

Senator ABETZ—And similarly they have a responsibility to honour and respect the fact that you go out and earn an income to clothe them, to feed them, to provide them with—

Mrs Boland—Which they busily try to spend.

Senator ABETZ—Yes.

CHAIRMAN—Yes, thank you very much. One final point: Senator Abetz was saying something that we are searching for, bearing in mind the ratified status of this convention—that the declaratory approach might, in some way, overcome some of the misinterpretation or a variation in the interpretation of what this convention is all about. Do you generally agree with that sort of approach?

Mrs Boland—I generally agree with that sort of approach but I do emphasise here that being asked that question today I speak in my capacity. That is not something that the council has debated.

CHAIRMAN—Sure. The other point, again, perhaps you could comment on as an individual. Earlier today we heard Dr Cronin from the Law Reform Commission, and Chris Sidoti, Human Rights and Equal Opportunity Commissioner, saying quite clearly that because of this wide variation of interpretation it was not possible to produce some sort of umbrella legislation covering all aspects of the convention. Would you share that view? Family law is a subset, I suppose, of that. There are enough problems in terms of the family law area, quite apart from other lots of other areas—child welfare and all sorts

of things. Would you agree with that?

Mrs Boland—As it is presently, just in our federal-state system, you cannot have one piece of legislation that deals with all children. It is one of the things that we see as one of the real problems in relating to children, the fact that you have got a care and protection system operating in state courts, another system operating in the Family Court and the difficulties we have because of that. Contrast that with the United Kingdom where you have got the UK Children Act where you can deal with both public and private law matters in one piece of legislation and in the one court hierarchical structure.

CHAIRMAN—I see. Thank you very much indeed.

Ms Boland—A pleasure.

[4.39 p.m.]

BURDEKIN, Mr Brian Edwin, Chairman, Australian Youth Foundation, Suite 302/134 William Street, East Sydney, New South Wales 2011

CHAIRMAN—Mr Burdekin, we have got a summary of what the AYF is all about provided in the submissions. Are there any errors, omissions or additions to that that you wanted to make, apart from making an opening comment?

Mr Burdekin—No, just a couple of brief points, but I could incorporate them in an opening comment, Mr Chairman.

CHAIRMAN—All right, speak please.

Mr Burdekin—First of all, Mr Chairman, thanks for the opportunity to address you and your colleagues. I want to say a couple of things in the brief time available about several of the terms of reference of the committee. I am doing it in my capacity as chairman of the Australian Youth Foundation but I will perhaps draw on my experience in some other areas including for several years in the eighties when I was in my previous capacity involved in actually negotiating the convention. I will not have time to go into some of the ambiguities and unsatisfactory elements of the convention unless your colleagues want me to.

What I would say is this: my particular interest in presenting some information to your committee is that I had the privilege for seven or eight years of working in the federal parliament; six years as the principal adviser to Lionel Bowen, a man who I think had a very considerable commitment and was involved in a multi-party process to set up the foundation I chair. This foundation was set up with a grant of $12.4 million left over from the so-called bicentennial, with the agreement of all political parties. So we are totally independent and proud of that.

What I want to talk about particularly is the importance of the convention which you are looking at in a context where, for eight years, holding the commission as federal Human Rights Commissioner, I repeatedly found the most egregious abuses of the rights of the most vulnerable and disadvantaged children in our community—and I do not just mean homeless children. I am talking about children with physical disabilities; children with intellectual disabilities; children in rural and isolated areas; children, of all things, the most vulnerable and disadvantaged—children with dual and multiple disabilities—where our state legislation and our federal legislation, such as it was, had failed abysmally in protecting the most basic rights of many of the most vulnerable children in our community.

A lot of the people who were concerned about the rights of families did not seem to understand—if I can sum it up in one disgraceful anecdote—that every homeless child I looked at in the three years of that inquiry who was prostituting themselves on the wall in

Kings Cross was or had been, Mr Chairman, a ward of the state.

What the Convention on the Rights of the Child is about more than anything else, as far as I am concerned, is not an attack on family values. Quite frankly, a lot of the rubbish that was put about in the lead-up to the ratification of that convention was just that. I might add in passing that I took considerable trouble to write to every member of parliament, and every senator, at considerable length to spell out—since it was the prerogative of the executive to ratify that convention and since, as many of you know, it was not considered perhaps at the length that some thought it should have been by the parliament—some of the contentious issues and to try and explain them.

I, as much as anybody else, regret that there is still considerable misunderstanding in some sectors of the community. But if I leave no other point with you, Mr Chairman, it is this: that in my experience of looking at the plight of many, many thousands of children in our society now, as well as when I was Human Rights Commissioner, as well as for the six years when I served Lionel Bowen—a man who had a great commitment to family values and the protection of children, and I say that with great respect and in no sense gratuitously—what I found repeatedly in that inquiry, which led to this inquiry, was that young people with a mental illness, young people with a psychiatric disability, young people with dual and multiple disabilities were repeatedly rejected or almost totally marginalised by what passed for our legal and health systems. They were repeatedly in a position where their rights were either ignored or openly violated.

What I would like to say to you with the greatest of respect—and I started 30 years ago in Melbourne as a Collins Street lawyer and then moved into the Foreign Service. I spent many years as a professional negotiator in Geneva and in Washington and places like that. I know this treaty has got shortcomings. I know the convention is not everybody's idea of a perfect convention, but I have been involved in hundreds of conventions and I do not know one that is to be quite candid, including things like the Law of the Sea Treaty and many other things which we may consider to be more fundamental to our national interest. For the record, I regard this convention as more important than the Law of the Sea Treaty which is probably worth several hundred billion dollars in terms of our exclusive economic zone, offshore resources and all the rest of it.

But that inquiry led to this one because what I found—and again let me just give you one example. I do not have time to—

CHAIRMAN—Just for the benefit of the record could you indicate both reports.

Mr Burdekin—The first report I am referring to is the inquiry called Our Homeless Children; the report was called that. That was three years. The second was a four or five-year inquiry into the human rights of people affected by mental illness.

What I repeatedly found in the first inquiry referred to was that many of our

homeless young people were psychiatrically disturbed or mentally ill, and yet—God help us—we had set up a series of refuges based on women's refuges and the bureaucrats in Canberra had not realised that there was a fundamental difference between how you looked after homeless children and how you looked after women who had been the victims of domestic violence. We just had major systemic problems.

One of the things I want to emphasise, just to very briefly touch on the role of the foundation, is that in the six or seven years I have been chairman—and I can give this information to your secretary, so I will not bore you with it—we funded over 300 projects. Most of them relate to homeless young people, mentally ill young people, young people with intellectual disabilities, young people with physical disabilities, young people who have been abused. A number of them relate to early intervention and prevention, hence the emphasis in this convention not just on the back end of the equation, where we seem to be reasonably good in this country. We are not much good at early intervention and prevention.

We have funded programs for doctors to teach them about child and adolescent health, because we found in this inquiry—the mental illness inquiry—for example, that a very substantial number of women affected by postnatal depression were not accurately diagnosed because our doctors had not been anywhere near as well trained in mental health as they had been trained in physical health. Indeed, in my generation they got four to six weeks in the back ward of a psych hospital in the course of their entire degree, and we wondered why we had, in terms of the Commonwealth's own admission, half a million Australians—something like 500,000 Australians—of whom a very large number are young people, half of whom—I think 47 per cent was the figure, according to the Commonwealth's own admission—were receiving no treatment at all from the public or private health sector for their mental illness or their psychiatric problems. And we wonder why we have got a youth suicide rate that is one of the highest in the world.

Mr Chairman, when you come across that sort of evidence—and with great respect that was evidence that was first produced by the Human Rights Commission—you realise that we have a very large number of children and young people in this country who in some cases are paying with their lives for the price of our neglect.

I suppose this is the other main point of my presentation this afternoon: the point of negotiating the Convention on the Rights of the Child, if I can be very candid with you, was to get the federal government involved in areas where, in my very respectful admission, it has not only the right but an absolute duty to be involved. It is disgraceful that in the early 1980s a federal minister could get up in the parliament and say, 'You can move an amendment on people with psychiatric disability but we're only going to help those with physical and intellectual disabilities because that's a state problem.' Well, it is not, and neither are the rights of children.

I have to tell you that the state legislation relating to homeless children, relating to

children who are so-called wards of the state, relating to children who are on so-called care and protection orders, relating to the protection of the most vulnerable and disadvantaged children and young people in our community is, in my considered opinion, after 30 years as a lawyer, six years as adviser to Lionel Bowen, two as a federal attorney, eight years as federal Human Rights Commissioner and nearly seven years as chairman of this foundation, disgracefully inadequate.

I noted with interest the other day, in a report I happened to see overseas, where I now live, that the Tasmanian parliament has come up with a piece of legislation which is in significant part based on the Convention on the Rights of the Child. It actually has some very progressive elements in it. It actually talks about things we do not talk about in most state legislation. I think the report said this was the only legislation in the country where you find references to things like affection, proper environment or whatever.

I am on the record many times, as I said in this report and that report, as saying: absent the family, we are in big trouble. All the evidence suggests that the state is a lousy substitute for parents. But, Mr Chairman, I have to say to you that the reality is that we have many, many children who have been abused, many families which have disintegrated, and we have a collective obligation as a community to provide some sort of safe and secure environment in which those children can grow up.

I will leave for the secretary the various notes about the foundation and the sort of programs we fund. I want to come briefly, if I can, to your terms of reference relating to federal and state progress in complying with the convention, relating to the need for agreed national standards. If it is not obvious from what I have said: when are we going to wake up? We can accept the need for uniform national standards in relation to companies and securities law, in relation to taxation, in relation to fair trading and trade practices. Why on earth would anybody want to argue that we should not have uniform national standards for the most vulnerable people in our community—that is, children?

I want to underline that by saying that what I found in every jurisdiction in this country was that it was precisely the children who were the most vulnerable and the most disadvantaged—those with an intellectual disability and a mental illness, those with a physical disability and a psychiatric disability—for whom there were either no services, in many cases in rural and isolated areas, or pathetically few services, and it was those young people who were repeatedly rejected or marginalised by such services as did exist.

I will give you a classic example.In the area of the mentally ill, where many of our young people who take their own lives could be said to come from, our detox units and our drug and alcohol units do not want to deal with the mentally ill because as far as they are concerned that is a psychiatric problem. But I have to tell you, Mr Chairman, that many of our psychiatrists do not want to deal with substance abusers either, and they define heavy alcohol, drug and amphetamine use as substance abuse.

I refer to one thing you will find if you look carefully, as I have—and there are whole chapters of it in these reports. I refer you particularly to this report in relation to people with dual and multiple disabilities.

Senator ABETZ—Which report?

Mr Burdekin—This is the report on human rights and mental illness, *The rights of the mentally ill*. I repeatedly found that young people who had taken their own lives or who were in danger of taking their own lives were young people for whom we were providing nothing. Ladies and gentlemen, by this stage you know this convention backwards. But there are specific provisions, as you know, about states having an obligation to provide adequate services for children with disabilities. I am referring in particular to article 23—mental health, article 24—education, article 28—equal opportunity.

My mother spent many years teaching children with learning disabilities—kids who were said to be slow or retarded in those days. My sister spent many years teaching children who were hearing impaired. In my experience, and it extends to this day, there is not equal opportunity in education for children with disabilities. There is not equal opportunity for young people who need psychiatric care. I will not go into the details but you will find in here the most appalling statistics about the percentage of young people in gaol who actually have some form of psychiatric disability. Instead of treating them, we are locking them up. It might be thought to be a cheap alternative in the short term. I can assure you it is an alternative for which we will pay very dearly in the long term, and not just in terms of the lives of some of them.

In conclusion, I ought to come back more specifically to the terms of reference. I want to come to what seems to me to be obvious: the need for uniform national standards. I do not accept as an Australian that children can have fewer or more rights in any jurisdiction in this country. I regard that as a totally untenable proposition and make no apology for it. With regard to children who are state wards or under so-called protection orders, many times, in the evidence in the homeless children's inquiry, we found that these orders were just an excuse for abusing those children even further.

I reiterate: absent the family, we are in big trouble. In my view, the evidence is crystal clear. The state is very poor at providing care and affection, love and attention, the things which are most fundamental to the development of any child. So help me, Mr Chairman, when you have looked at the evidence I have looked at in these areas for nearly 10 years now, I would say with respect that we begin to understand that our federal government, our federal parliament, has a fundamentally important role to play. That role has now been acknowledged in the area of mental health and the mentally ill, albeit perhaps somewhat reluctantly; I did not get a lot of thanks, as I recall, from a former Deputy Prime Minister for pointing out some of the defects in our mental health system, but I did not get a lot of thanks from a former Prime Minister for pointing out the plight

of homeless children.

However, I am proud as an Australian to say that the federal parliament and government finally responded to both those reports with about $100 million, in cooperation with the states, over four years in relation to that one and I think at last count some $500 million or $600 million in conjunction with state increases in mental health services for that.

My point is this: one of the things we do as a foundation is try to jointly fund things with government, with the private sector and in particular with local government. If there is one lesson I think I learnt from Lionel Bowen that is more valuable than any other, it is that we pay an enormous price in this country for the fact that the third tier of government, local government—very often the only tier, with the greatest respect, which is closely in touch with what is going on in towns and communities—is very often ignored. I repeatedly found, and it is documented in both these reports, that in relation to the construction, the planning, the delivery of services for the most disadvantaged young people, local government was not consulted. Indeed, in many cases they were not involved.

The gentlemen from the Legal and Constitutional Committee might help me: I do not find anything in our constitution that says that local government is supposed to be restricted to pipes, holes, drains, zoning and all of that stuff which most local government still perhaps does to the exclusion of delivery of human services. I would say to you with great respect that one of the benefits of this convention is that in my view it provides a framework, albeit at the international level, but of course with the state party being the Commonwealth. It gives the Commonwealth the clear right, if it needed to be given that—and I do not think it does; I certainly do not think it does in relation to children but nor do I think it has the right, with the greatest respect, to abdicate the role to set minimum standards across the country in relation to the protection of children, which it certainly has not done in relation to so-called state wards. It is past time it did because children are literally dying because there are not adequate standards. We have a scandal every other month in this country, usually in New South Wales, Victoria or other states. The history of abuse of children in institutions is something that you do not need me to tell you about.

In conclusion, this convention is not and was never intended to be an attack on family values. I am proud to say—and the files will show if you go back through the records—that I wrote to Lionel Bowen saying Australia ought to get more involved. One of the reasons there are so many defects in this convention I have to tell you, and it may be relevant to your deliberations and recommendations, is that many governments did not take it seriously. I got there in about year seven. The negotiations had been going on for seven years with a group of NGOs and a handful of governments turning up in the room in any given year. Governments were not interested. They did not take it seriously.

There were virtually no provisions in the convention until two or three years before

we finished drafting it relating to families, the role of parents, the protection of families. Perhaps that may strike you as ludicrous but if you get a group of NGOs concerned with children's rights and protection of children they tend to focus an instrument on children. Working for Lionel Bowen it was not hard to come back and say to these people, 'Listen, if you've got a convention on protecting children and you don't have families right up front and the obligations and duties of parents right up front and the obligation of the state to support parents in the exercise of those duties right up front, you're wasting your time because no country is going to ratify this.'

I admit there are imperfections, and a number of them, in this convention but it was largely because of Australian intervention that those preparatory paragraphs are in there and I think, from memory, articles 3 and 5 specifically refer to parents and families. I come back to the point that we have tens of thousands of children, minimum, probably hundreds of thousands, who do not have a functioning family. They just do not have a functioning family. I am not just talking about single-parent families, I am talking about families where there are two parents—two adults in the household.

Forgive me for giving you one more example: what was frightening in this inquiry was what I found in areas like the so-called Frankston to Melbourne growth corridor where almost 80 per cent of children lived in households where the adult male was not the biological parent of the child. In those areas the incidence of sexual and physical abuse of children went up 500 to 600 per cent. You do not need to be Einstein to work out what the effect of dysfunctional families and substitute caregivers, so-called, is on children when you see that.

The answer to that sort of thing, as I kept saying to people at the time, and with great respect I say again, is not just for us lawyers to pass laws on mandatory reporting of child abuse. That is not worth a cracker if you have not got the resources to follow it up as, with great respect, I think they are finding in Victoria. It is not worth a cracker passing legislation for mandatory reporting if there are not the services there to look after these children.

I have to tell you that in the last six or seven years with this foundation I now have the privilege of chairing we have programs that are presented into the equation to prevent sexual abuse of children and to try and educate parents on what is a very sensitive subject. In my view the Commonwealth must take an activist role in this area. I do not just mean a role of perhaps funnelling the dollars into a lot of programs where a lot of federal money does go. It must take an approach, as it does—to go back to the days when I sometimes used to go to the Constitutional and Legal Committee under the previous government—in areas where it is vitally interested, like corporations, securities, trading law, and anything that affects our international trading performance.

I have never been able to understand why the Commonwealth has not got every right to legislate. Yes, let the states do it initially but if the states do not put in place

minimum standards which are consistent with this convention then, in my view, as I said, the Commonwealth not only has a right, it has an absolute obligation, a human rights obligation, to come in over the top of the states if necessary and legislate uniform national standards.

There are no two areas in which that is more urgent than in relation to children who do not have functioning families—state wards, children under protection orders or whatever who fall into the hands of the state. In the homeless children's report we found out that that was almost a certain road to homelessness. Once they were wards of the state there was a pretty fair chance they were going to end up in the juvenile justice system or homeless.

It is those areas that are urgent, and the area of children with disabilities, particularly dual and multiple disabilities. Again, I speak with some personal knowledge of this area from the family I grew up in, not just with my knowledge as a lawyer, gathered around the halls of parliament trying to advise some of our political leaders. I do not know anybody who does not wish a child has a functioning family. But, with the greatest of respect, I think sometimes, even at the level of our legislature, we fail to understand that passing legislation is perhaps five per cent of the equation unless the resources are there for the delivery of services, unless you have state governments who understand that children do actually have basic rights.

The other treaties we are party to—the universal declaration, the International Covenant on Civil and Political Rights, which every civil libertarian I know subscribes to—talk about all people. They do not talk about adults, they talk about all people. That includes children. Now, our much vaunted common law system, as you would have heard, until the beginning of this century regarded children essentially as chattels. They are not. It is very nice if children have benevolent loving parents. That is terrific.

I was fortunate enough to grow up in that sort of family. I am surrounded in the work I do these days by children who have no such privilege and for the sake of those children the national government of this country has a very clear responsibility to ensure that the state and territory governments pass appropriate legislation—I would argue, based on the minimum standards in that convention. If they do not do it, then I think the federal government, as I said, has the right and the responsibility to ensure that does happen.

The federal government has a number of levers to do that, as you know better than me, in relation to its powers of the distribution of taxation revenue and in relation to a number of other things. So you do not necessarily need to pass legislation but the federal government has got a lot of ways of ensuring that those particularly vulnerable and disadvantaged children in our community are cared for. I am sorry if I have taken a lot of time. Thank you very much.

CHAIRMAN—No, that is fine. There are just a couple of things. First of all, and I

am sure my colleagues all agree with you about the third level of government—local government—it gets down to the fact that many of them, I suggest a vast majority of them, still see themselves as dealing with roads and rubbish and all the rest of it, rather than some of the fundamental social issues. It is a question of trying to get local government involved in that area. Many of them, particularly in rural and regional Australia, which I can speak to, just do not seem to want to get involved. At the state level, yesterday we took some evidence, perhaps not in as much detail as we need. On the Tasmanian legislation, for example, do you see that as a reasonable blueprint on which other states might work? There is another justice bill that has been introduced as well in Tasmania.

Mr Burdekin—I guess the first thing that struck me about that, to come immediately to your point, was the reference in section 7 to building a cooperative relationship between local government, non-government agencies and families in addressing problems of child abuse and neglect. I take your point but I have to say that when we have gone out as a foundation to the Council of Local Government Associations, we have funded something like $9 million or $10 million worth of those 300 programs plus since I took over as chairman. We have got another $10 million from local government, federal and state governments and the private sector, the business community. We went to local government and said, 'Listen, you've got a major problem here. Kids are being arrested in public spaces, shopping malls. They don't feel welcome and the shopkeepers don't want them there.'

One of our most successful projects has been with a number of local governments in major areas—Westfield; Launceston City Council has done one—and we found that local government is reasonably responsive when asked. I have to tell you I have the impression sometimes that they feel a little bit the other way, that they are often not asked by Macquarie Street or Canberra what they know about the local situation and what would work. I do see many good things in that Tasmanian proposal.

I like the emphasis on strengthening the relationship between the family and the child and leaving the child in the care of the family wherever possible. I have to say to you, and I have been criticised on this before, on all the evidence I have seen, if you have got minor problems in the family and you take that child away and put it in state care, you have done something disastrous. In my view state care should only be an alternative if the family is clearly dysfunctional.

Striking that balance is what worries me, Mr Chairman. Frankly, as lawyers, with great respect, I do not think we are very good at striking that balance. I think striking that balance requires a lot of committed professionals and I am sorry to mention a state by name again but I have to tell you about what worries me in states like Victoria, where I have seen the guts ripped out of some of the most dedicated professionals in the child care area. It has happened in other states. Governments come in, governments change, priorities change, people who have given to a career suddenly do not feel they are appreciated or

they are given a package and pensioned off.

This legislation, like the rest of it, will not be worth a cracker without the resources that go with it and that is where, in my view, the biggest danger is. It is not so much the state legislation that is inadequate, although a lot of these problems are in areas of administrative practices or omission rather than commission—you know, breaches of the law. But I do think the Tasmanian draft bill is a great improvement on a lot of the other legislation.

CHAIRMAN—At the federal level would you also agree that it is impractical to come up with some sort of umbrella legislation to encapsulate everything that is in CROC?

Mr Burdekin—I had the advantage of hearing some others this morning. I do not entirely agree with that. I would put it this way, if I might: I do not think any federal legislation, black-letter law, which tried to replicate the provisions of CROC would be successful, because by definition it is a very broadly drafted treaty with many of those international compromises that you know about.

What I do think is that it would be possible to do something that would incorporate in federal law uniform national standards in the way that we did with legislation virtually incorporating the international convention on racial discrimination, and with legislation very closely incorporating the international convention on the elimination of discrimination against women. We have done it before. It is not easy but it is certainly not impossible. What we have got at the minute of course is a halfway house where we put some of these things in as appendices to the Human Rights Commission Act and say, 'Right, a breach of these is a breach of human rights and you can investigate it.' So we give it the force of law in the sense that it is something that can be investigated.

One of your terms refers to monitoring. I think it is very important to have a monitoring agency. I have to tell you that, with the greatest of respect to some of the ministers involved, I did not get a lot of support from federal bureaucracies or, in some cases, ministers when I was trying to monitor our human rights obligations including those relating to children. I got a lot of support from members of parliament, particularly the women who I spoke to about what I regarded as an outrage in our own country.

But I do have to say—and I have been a federal bureaucrat for many years before my present incarnation, and I mean working for the UN—that we do need an independent monitor. It is either the Human Rights Commission or something else because, with the greatest of respect, you cannot rely on any government department or agency to monitor itself; it will not.

CHAIRMAN—I would like to sit here and talk for another hour but we just do not have the time.

Senator ABETZ—May I perhaps ask one very quick question. Mr Burdekin, you have indicated to us that this convention is definitely not anti-family, and you are stressing the role of the family. I, for one, and I am sure the rest of us also, fully agree with your comments and sentiments. Yet for whatever reason there is a view in the community that there is the possibility, if nothing else, that the convention could be, to coin a phrase, misinterpreted to undermine the family.

Would it therefore undermine the convention in any way if we were to make a declaratory statement or somehow put a reservation or whatever—let us not get into the technicalities—to basically say that this convention in no way can or should be interpreted as undermining that most important fundamental unit of society which is the family? I think a lot of the community angst and fear would be gone because that declaratory statement then would be needed to interpret the convention for our purposes. Would you see that as undermining it at all?

Mr Burdekin—I think a government can make any declaration it likes and that is the prerogative of any elected government. I think the answer, if you ask me specifically about a reservation, would be different because of the international legal technicalities involved in making reservations.

Senator ABETZ—Yes, I understand that.

Mr Burdekin—Secondly, I say to you with great respect, I think what has got to come across to the community is not just that we are upholding the values of families, but what about the children who do not have families? There seems to be this belief out there that all we have to do is reaffirm the role of the family and recognise its central importance and somehow everything will be better. Well, for the kids who have not got a functioning family, frankly that is not going to make any difference. I am not against reinforcing and making the strongest declaration that anybody likes about the importance of the family—

Senator ABETZ—But we can do both.

Mr Burdekin—Sure, as long as we acknowledge that the point about the kids who do not have families is not just declaratory. You cannot fix that with a declaration. The community has got to understand that there is a big question of resources and it is not just about legislation—it is about resources for the people who have to then become the alternative caregivers, and we have not even started that debate.

CHAIRMAN—I do not know your movements—you are backwards and forwards. How much time are you spending in Australia these days?

Mr Burdekin—I am on my way to Papua-New Guinea. I will be here for the rest of the week, but if I can assist your committee in any way—

CHAIRMAN—I would ask this quickly, if you would not mind; you have a very busy schedule, I know. Bearing in mind your involvement in this over many years, there has been a lot of discussion today while you were here and before and after you were here the first time, about the preambular emphasis, and the role that that preamble plays in terms of the specifics of the articles. What we would really appreciate—because we have asked the Law Reform Commission to give it to us, we have asked Chris Sidoti to give it to us, so why not ask Brian Burdekin to give it to us as well?
Could you do that?

Mr Burdekin—I can. The first thing I will do, Mr Chairman, is go back through my files to see if it was in the letter I sent to all members and senators five or six years ago. If it is there I might just send you a copy. I would be very happy to do whatever I can. If there is any other information—I did bring some information but I do not want to waste your time with that, the secretary will have it.

CHAIRMAN—Yes, all right, thank you.

Mr BARTLETT—Can I just ask if you have included in this other information your submission in terms of an approach as to how you would see the federal government being involved?

Mr Burdekin—No, I have not, but I would be more than happy to come back to you on that question.

CHAIRMAN—Can you take that on notice.

Mr Burdekin—I apologise that I have not had time to prepare any submission.

CHAIRMAN—You have raised issues of legislation and about resources which we would like to pursue.

Mr Burdekin—The brief answer is that I think it is perfectly possible to pass a federal act which has certain uniform national standards for the care and protection of children, particularly those who are deprived of the benefit of a functional family—in one sentence; not very grammatical but I think the federal government ought to do that, and I believe that very strongly.

CHAIRMAN—Okay, thank you very much.

Resolved (on motion by Senator Bourne):

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

Committee adjourned at 5.12 p.m.