COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

DARWIN

Thursday, 14 August 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

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

For inquiry into and report on:

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

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

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

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

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

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

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

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

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

DARWIN

Thursday, 14 August 1997

Present

Mr Taylor (Chairman)
Senator Abetz
Senator Cooney

The committee met at 10.05 a.m.

Mr Taylor took the chair.

CHAIRMAN—I declare open this public hearing into the inquiry on the status of the Convention on the Rights of the Child, the so-called CROC that we refer to. This inquiry has been going on for some months and has excited a lot of interest around the country. We have had about 1,300 or 1,400 inquiries as to whether written or oral evidence might be given. We have had about 400 written submissions.

We have visited all states, some states for the second time. This is our one trip, I suspect, to the territory to take evidence. We accept that we will probably have a hearing in Alice Springs in the next couple of months before we wrap up the inquiry. We hope to have a report prepared and tabled before we get up for the Christmas-New Year break.

It is a subject that has excited a lot of emotion, including in 1988-89 prior to the ratification. A lot of that emotion and understandable concern in some quarters has not abated over the 6½ years since the treaty was ratified.

Before I invite the witnesses to open the batting this morning, I draw attention to the role of this committee in the treaty making process. This committee was set up as a result of the sorts of situations that we have with CROC, where the convention was ratified with very little, if any, consultation with people, particularly at the grassroots level.

My government at the federal level said we would, when in government, set up machinery to reverse those perceptions and experiences. That is exactly what happens for treaties that are tabled in the parliament. This committee becomes involved between the signature of those conventions and the ratification. We make appropriate recommendations to the parliament and, therefore, to the executive government, which has the treaty making constitutional power, and leave it to the executive government to make the final decision.

The big difference between that process, for treaties that are in the process and have been tabled since the middle of last year when this committee was set up, and the process for CROC is that CROC is an already ratified treaty. This committee also has a right under a joint resolution of both houses to revisit all extant conventions, protocols, treaties or whatever you want to call them—and there are just under 1,000 of varying shapes and sizes.

Why did we do it with CROC? It is because as a committee—and this committee is 16 strong, the second largest in the parliament, representing all parties and both houses—we felt that it would be worth while, 6½ years after ratification, to get the appropriate feedback, bearing in mind that we were in the process of reporting to the UN committee in this area, and to make some recommendations to the parliament and, therefore, to the executive government. That is what we are all about.

We are hearing both ends of the spectrum in terms of what this convention does or does not do for Australia as a sovereign state. We will be interested today to hear from the witnesses their particular perceptions of what this convention is all about.

[10.08 a.m.]

TURNER, Mr John Neville, President, Oz Child, 150 Albert Road, South Melbourne, Victoria 3205

BOWEN, Ms Marguerite, Law Student, Northern Territory University

ANTON, Ms Jackie, Law Student, Northern Territory University

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

Mr Turner—I am the President of Oz Child, which is a children's organisation based in Melbourne, but I appear in Darwin because I am a visiting lecturer in family law at the Northern Territory University, for this semester.

Ms Bowen—I am—I would not say a victim—one of the estranged wives that became affected by the Family Law Act.

Ms Anton—I am a keen advocate of children's rights.

CHAIRMAN—We have received two things: exhibit No. 3, which is an article by J.N. Turner from a publication dated August 1996, and exhibit No. 2, which is a written submission. Before we get onto opening statements, are there any errors of fact, omissions or amendments to the written submission?

Mr Turner—I believe that you have copies of the article 'Betrayal of children' that appears in the *Australian Lawyer*.

CHAIRMAN—Yes, that is right. It is in *Australian Lawyer* August 1996. The other item is 'Panic over children's rights'. I am really asking you whether there are any errors of omission or fact in there before we get on to inviting you to make an opening statement.

Mr Turner—No, that article appears in the *Newcastle Law Review* and that is an entirely accurate statement, in my view. I would perhaps add, since I have written both those articles, that another article I have written is recently published, in a publication which I did not have the opportunity of supplying you copies of. It is called 'Children's rights: the next step'. This was the first Asia-Pacific Conference on Children's Rights, in Brisbane on 2-5 April 1997. I do not know if you have any copies of that particular article. I have a copy here.

CHAIRMAN—Thank you. We will just accept that as an exhibit. Would you like to make an opening statement?

Mr Turner—I would. I think that my position is very clear from the articles that I have written. I believe that this Convention on the Rights of the Child is probably the most significant human rights document since the Declaration on the Rights of Man. It is the very first time that children have been recognised as having rights, as having status. It is probably the most significant human rights document that Australia has ever ratified.

It disturbs me a great deal to hear whispers that there are some reservations about the ratification of this convention because it is without doubt the convention which has been most ratified in the whole world. More than 185 countries have now ratified it. A notable exception has, unfortunately, been the United States of America. But it has, in effect, been ratified by the whole world.

It is sad to have to report that Australia has lagged very far behind in implementing this convention. I would have to say that the most charitable adjective I could use to describe its approach to the Convention on the Rights of the Child is lukewarm. I make this statement having visited several countries in the Asia-Pacific region, such as India and Sri Lanka, Third World countries, where the convention is having a considerable impact, where there is a very brave attempt, even amongst countries with poor resources and huge problems relating to children, to translate the convention into reality.

For instance, Sri Lanka, with all its ethnic problems, has actually legislated the convention as a children's charter. If Australia were to do that, of course, we would not hear any argument any longer that the convention was not applicable to municipal law. Therefore, I would advocate that the first thing we ought to be doing is to be legislating or promoting the legislation, the adoption, verbatim if you like, of the convention into municipal law. This will get round the arguments which have been produced since Teoh's case that the convention does not have binding affect in Australia.

The second thing which has been done in several neighbouring countries, notably New Zealand, is that they have appointed a children's ombudsman or commissioner to monitor the implementation of the convention, to act as an advocate for children and to represent children in parliament and generally. Until we have such an officer in Australia it cannot be said that we are complying enthusiastically with the convention. As I said, New Zealand has set the lead, as have several European countries and even countries in Asia.

The third bother I have is that the very carefully reasoned decision of the High Court of Australia in the Minister for Immigration v. Teoh, which did give a strong imprimatur to the convention by saying that children have a legitimate expectation that the convention will be taken into account in all decisions affecting them, was attempted to be reversed by the Labor government of the time. The Attorney-General and the Foreign Secretary made a statement immediately after the finding which, in my opinion, was a gross overreaction to the case. This sent a message that we did not care about this

convention at all. The bill lapsed, but the current government has now revived it and this causes me great concern.

I think the message that is coming through is that Australia does not care about children and in comparison with other countries is actually betraying them. I am very concerned about the reaction that this will have in international law and in the international community. I very strongly suspect that the monitoring committee of the United Nations in Geneva will come down very forcibly against the government's report on the implementation of the convention, which, frankly, is a euphemistic whitewash.

If you read the government's 400-page report on the Convention on the Rights of the Child everything seems to be hunky-dory, but the reality of the situation is that that document is a bland self-aggrandisement. I do not think for one moment that the position is anywhere near as satisfactory as that report suggests. Indeed, we have already incurred the opprobrium of the international community by submitting that report three years late. The indications are that the monitoring committee in Geneva is not satisfied with a good deal of that report. It has in fact sought further elucidation on several issues.

The final point I want to make is that in the article which I have written in the *Newcastle Law Review* I have attempted to analyse carefully the 41 substantive articles of the Convention on the Rights of the Child and indicate quite clearly, I hope, that every single one of these articles is being breached somewhere in Australia.

One of the important points I want to make in my submission is that while you, Mr Chairman, stated that there had not been a great deal of community discussion before this Convention on the Rights of the Child was ratified, the convention was in fact adopted by the United Nations after 10 years of preparation with which Australia had a good deal to do. Australia made a very strong contribution. It was the subject of a world summit in New York in 1990, before we ratified it, and there was a good deal of discussion. I was at the time the president of the National Children's Bureau of Australia. We published a good deal of material on it and so did the Human Rights Commission.

To say that we ratified it in a hurry, not knowing what we had ratified, when the whole of the world has also ratified it, and to suggest that in some way we should derogate from it at this stage and possibly review it, is an appalling suggestion. I would have to say that one of the things that Australia could be ashamed of in its ratification was that it did not ratify it unreservedly—there was a reservation. I would say that your committee should be thinking about whether that reservation should be removed. I would strongly suggest that your committee recommend that this convention be the blueprint for all actions concerning children, that it should be distributed widely, that it should be taught in schools and that it should be enthusiastically embraced.

CHAIRMAN—You have given us a lot of ammunition for questioning. With due respect, if only it were as straightforward as you are suggesting. Even in evidence in

Sydney from the Law Reform Commission and the Human Rights and Equal Opportunity Commission there was agreement that it would be impossible, to take up your point—'impractical' probably is the right word—to produce some sort of umbrella legislation which would encompass everything in this convention. It is pretty clear from evidence given to this committee that the convention, in some areas, means different things to different people.

I know, Mr Turner, that your submission is very black and white and that we have transgressed in almost every article, but I would just say to you that if you were to put Australia's record against the records of the 191, I think was the last figure we had, of those who have ratified, you would have to consider also some of the reservations put in by some of those countries who have ratified. Indeed, at the other end, in terms of the ratification, some of those countries have ratified without any reservation, without any declaratory statement, and that really raises question marks about their moral and legal intent. I refer specifically to some of the Islamic countries, where they may have ratified without reservation and some of those countries, unfortunately, still indulge in female genital mutilation. It does raise some basic question marks about their intent. I am sure we will cover a lot of the issues that you have raised in our questioning.

As you would know more than most, in terms of the reservation process—and you did make some comments about further reservations—Australia cannot make further reservations in terms of the convention. Yes, there is an option to remove that article 37(c) reservation and that is one of the options this committee will consider. It would be reasonable to say at this point in time that there is a body of view, in terms of article 37(c), which deals with, as you know, the co-imprisonment of children with adults, that it is a fairly weak argument—again speaking personally—that the government put in and perhaps there are some more fundamental things that could have been included if, indeed, we were going to reserve our situation at all.

In terms of further amendments, yes, we can make proposals for further amendments, but then, of course, it has to go through the UN machinery. I suspect the majority required would make that fairly impracticable. There is also a declaratory approach; we have received a body of evidence which might lead us towards making some sort of declaratory statement. For example, the Holy See in ratifying has made it very clear under what circumstances, in a declaratory way, without having any reservations, that really means. The same with some other countries—again, Islamic countries in particular: they have indicated that so long as it lies within the Islamic principles, et cetera. So we have a number of options that we can entertain in terms of this committee. In the next couple of months we will see just how we come out as a result of the evidence.

In terms of the Teoh legislation, we will explore that one in a little more detail with you—the administrative statement and the legislative solution that the present government has come up with. As far as the children's commissioner is concerned, of course, we have already taken evidence from the Queensland Children's Commissioner. At

this stage it is the only one in existence—albeit in abbreviated format, I think you would agree. There is the possibility under the legislation now before the House in Tasmania of something like that coming up in Tasmania.

Moving on to the New Zealand experience, were it not for the very serious illness of the Children's Commissioner in New Zealand we would already have taken evidence from him. We hope, depending on his illness, to take some evidence from him. I agree with you that it is evidence that we should take. The New Zealand experience is something that we should not neglect; we neglect it at our peril in terms of producing this report.

Senator ABETZ—A lot of people who support the convention tell us that it is the most ratified convention in the world. Fine. But they do not tell us the other side of the equation: that 47 countries have put on substantial reservations, including the country that initiated this concept, namely, Poland. They have expressed concerns about the normal functioning of a family. I wonder why even a lot of academics do not tell us the other side of the story. In your article we are told about hysterical right-wing groups, and then you see the country that initiated the convention, Poland, put down a substantial reservation. The then Minister for Justice, former senator Michael Tate, said that he doubted Australia would ratify it without a reservation similar to that which the Holy See placed on it. Where is the objectivity in all this?

Mr Turner—As far as I am concerned, the very fact that the convention was adopted in full by the United Nations suggests that it was intended to be ratified in full. I think incidentally the particular reservation that Australia made—namely, article 37(c), which provides that children should not be housed in adult gaols—was a particularly unfortunate reservation with regard to the Northern Territory, because of course there is a perception that the children who will most suffer from this existing practice are Aborigines. I think that that particular reservation, as you rightly say, Mr Chairman—others might have been made—was most unfortunate.

As far as Islamic countries are concerned, it really is not a sound argument to say that we should seek to emulate the countries which object to being obliged to abandon female genital mutilation. I have travelled extensively in Asia. Australia has a very strong role to play in this area, it seems to me, because it is regarded as a balanced, liberal and non-doctrinaire country where religious freedoms and tolerance are practised. Therefore, it seems to me that Australia, with all its resources compared with other Third World countries, should be setting an example and certainly should not be following the bad example of those countries which have failed to ratify it in full.

I might say that the monitoring committee of the convention in Geneva has come down very heavily on the United Kingdom, which has put in about five reservations. The monitoring committee of the United Nations considers that every country should be persuaded to abandon all reservations and adopt the convention in full. I am certainly of

the opinion that that reservation on article 36 should be removed and that Australia should strongly support the optional protocols which are proposed, such as increasing the age at which children should not be in the armed services from 15 to 18. That is one optional protocol. Under that article, if the optional protocol succeeded and the age, as it should be, were raised to 18, Australia would be in breach of that article because, of course, children are recruited to military service in this country at 16 and 17.

My first point would be that it is not proper for Australia to seek to emulate or in some way to take the view that because a few Muslim countries have put in reservations, we should follow them. That is certainly not the case.

Senator ABETZ—I only mentioned in my question, with respect, Poland and the Holy See. You have not spoken about them but only concentrated on Islamic countries.

Mr Turner—I will go on to Poland.

Senator ABETZ—Let us move on. You talk about embracing the convention or putting it verbatim into municipal law. I think it is your interpretation of the convention that male circumcision is a barbaric practice. Is that correct?

Mr Turner—Yes, that is my own view.

Senator ABETZ—Do you think Israel would have ratified this convention without any reservation if it was of the view that the convention could be interpreted in that way? I am sure that the Australian Council of Jewry, that was before us supporting the convention, were not of the view that this convention meant that they could not practice their religious ceremony of male circumcision.

Mr Turner—Of course, article 24(3) says that barbarous practices, traditional practices, are not to be sanctioned because—

Senator ABETZ—They would think it quite offensive for you to label their traditional practice as being barbarous and they would say that that is not very multicultural of you to put your values on to them to say that it is such a barbarous practice. In your article, you celebrate the fact that we are the most multicultural country in the world, yet you would deny the Jewish people in this country the right to practise male circumcision based on the Convention on the Rights of the Child.

Mr Turner—I cannot speak for Israeli practice. I think that this country should abandon circumcision, for sure. I will concede—

Senator ABETZ—What about the rights of people to practise their own religion in Australia? We celebrate the fact that we are a multicultural nation, the convention tells us that there is the right to practise religion, et cetera, and be brought up in the cultural

tradition of that child, and part of that is circumcision, is it not, for the Jewish community?

Mr Turner—With respect, would you take the same view with regard to female circumcision, which has been justified by the Islamic community as being part of their culture?

Senator ABETZ—That is exactly the point, and I thank you for making it for me. I am one of those people who think that, depending on your philosophical or political ideology, you can use this convention for whatever purpose you want to use it. That is why it is impossible to put it verbatim into municipal law. I just thought I would tease out the issue of circumcision. There are people who say that corporal punishment is allowed and there are others who say that it is not allowed under the convention. There are people who tell us that abortion is allowed under the convention and there are others who tell us that it is not allowed. So you go on ad nauseam. How do you implement that into municipal law when nobody knows what the convention means?

Mr Turner—I think it is a gross exaggeration to say that. There are certain articles of the convention which are susceptible to interpretation. There are others which are unequivocally clear.

Senator ABETZ—Yes, but you have told us about embracing it all, in total, and putting it verbatim into municipal law. Are you saying that the ones I have just referred to are crystal clear? As I understand your submission, you are telling us that male circumcision, corporal punishment and abortion are not allowed under the convention. Is that right, on your interpretation?

Mr Turner—No, it is not right. I do not think I have written anywhere that abortion is not allowed.

Senator ABETZ—Then, in that case, just bear with me; we have had a number of submissions. What about in-vitro fertilisation? Children have a right to know their parents. Having a cocktail of eggs and sperm and not knowing who your mother or father might be and surrogate motherhood, et cetera, are not allowed under the convention.

Mr Turner—My personal view is that surrogate motherhood is most certainly not allowed under the convention and should not be legislated in any shape or form in Australia for the very reason that you have given, because it is contrary to article 8 of the convention, which states that a child has a right to identity. When there is doubt as to that child's progenity, I think that is a breach of the right of the child. I would venture to suggest that surrogate motherhood cannot be justified under any circumstances in the child's best interests, and this is a classic example of a law which has been passed for adults by adults for the benefit of adults. So that is one example which, in my opinion, is clear cut.

Senator ABETZ—But, with respect, can you understand that the people who have powers of interpretation, intelligence and intellectual capacity and rigour similar to yours can come to a different conclusion as to what these articles actually mean?

Mr Turner—I have conceded that there is room. There is scope for interpretation of these articles. It is very interesting that you raise the question of Poland because Poland, certainly initially, submitted its own convention on the rights of the child as a draft to the United Nations. The United Nations committee said, 'No, we can't possibly accept this lock, stock and barrel.' They set up a working party which worked for 10 years on the convention. Ultimately, of course, the convention is a compromised document. We clearly have to concede that. At one stage it was thought that the foetus should be included in the definition of a child. Ultimately, because of the difficulty of abortion, for instance, the rights of the foetus were not included.

So there is no doubt that certain articles of the convention were compromises and are, indeed, interpretable in the terms of the particular culture in which the convention is operative. But for the most part this convention, in my opinion, is unequivocal. There is no doubt, for instance, that article 28 says that education should be free. There is no doubt that education is not free in Australia. There is no doubt that many parents of poor children are obliged to pay for their children's education, and the children suffer if they do not pay so-called voluntary levies.

Senator ABETZ—But there is a free list, isn't there?

Mr Turner—There is, in fact, clear evidence that many children are suffering because of their parents' poverty in the matter of education and in the matter of article 31 relating to the right to sport, play, leisure and cultural activities. There is no doubt that that article, as far as I am concerned, is incapable of any possible interpretation. Free means free, and free is clearly an unequivocal statement of a child's rights.

If you really want me to categorise the articles, I would say that, of the 41 articles, something like 37 would be incapable of any kind of controversy. They are fairly clear statements. The ones that you have raised are extremely interesting. I must say, Senator, that I think you have raised some very sound and very interesting issues connected with the whole debate as to when human rights can impact on cultural diversity. That is a perennial problem. I think that, as far as Australia is concerned, I cannot see any serious objection to our legislating a children's charter which is based on the convention, leaving perhaps a certain amount of flexibility of interpretation for cultural minorities. I do not know.

I must say, however, that the whole thrust of the convention is to discourage even religions from conducting harmful procedures on children without their consent. My main objection to male circumcision is that it is practised in religions before a child has any opportunity to consent, and the operation is irreversible. To say that male circumcision is

painless for children is ludicrous. In fact, there is one case in New South Wales where a little boy went in for a routine circumcision and finished up being castrated. So it is not entirely an operation which is without risk and without pain. I think, as far as male circumcision is concerned, the main objection that I would have to it is that the child has no opportunity of reversing what is, in fact, a bodily intrusion.

Senator ABETZ—I want to move onto another discrete area, your interesting view on the separation of powers. I am not sure that that is necessarily shared by other commentators. As I understood it, the separation of powers does not mean that a government cannot change its legislation or cannot legislate to overturn or overcome a court decision. Indeed, it happens on a very regular basis that if there are developments in the common law which the people do not like, it is a fundamental tenet of our democracy that the people through their parliament can change the law, irrespective of what a court may have held.

Mr Turner—In theory, you are right. In Australia the legislature has power to abrogate a court decision. Usually when this happens, the court itself has pointed out the unsatisfactory state of the law, but this particular case involves a decision which was a four to one majority, a very carefully reasoned decision. The reason for which the parliament sought to abrogate this decision—namely, that it would cause inconvenience to decision makers—was very carefully dealt with in the High Court itself. I think that in this particular case this is a great insult to our chosen judges, apart from the fact, of course, that we are dealing with a ratified convention. The message that it sends to the community is that we do—

Senator ABETZ—That is, with respect, separate to the issue of the separation of powers. I was interested in your view, as a lecturer in law before this committee, on the separation of powers because, as I understood it, the High Court virtually invited the federal government to make it quite clear if it did not intend these international conventions to have a domestic impact.

So, if you like, the High Court threw a bone to the then government, which the then government took up—and has been confirmed by the new government—and we have the Teoh legislation coming through. But to describe that action as completely ignoring the hallowed convention of the separation of powers is, with respect, not an argument that is sustainable when you analyse it, because the parliament always has the right to make the laws in a democracy such as ours otherwise we would be electing the High Court judges, wouldn't we?

Mr Turner—It is also a view that the Chief Justice of the Family Court takes. It is not just my view.

Senator ABETZ—With respect, I do not think the Chief Justice of the Family Court holds a great degree of regard.

Mr Turner—With great respect to you, he holds a great deal of regard in my opinion.

Senator ABETZ—He undoubtedly does.

Mr Turner—If every other judge regarded the Convention on the Rights of the Child with the respect that the Chief Justice of the Family Court did, I would not be here arguing that children were being betrayed.

Senator ABETZ—Senator Bolkus, from South Australia, had some very interesting comments to make about that particular judge, but I do not think that is necessarily helping us. Can I get from you your definition of separation of powers so it is on the record and we can understand it?

Mr Turner—My view would be that there are three organs of government—the executive, the legislature and the judiciary. In the normal course of events, the judiciary has the right to interpret legislation and to make decisions in individual cases which really state the ultimate law of the land.

Senator ABETZ—'The ultimate law of the land'?

Mr Turner—Indeed, because the High Court would have the right to declare—

Senator ABETZ—As it stands at that particular time?

Mr Turner—No. The High Court of Australia has the right under the separation of powers in this country to declare legislation unconstitutional.

Senator ABETZ—Yes, but then there would be nothing stopping the parliament going to the people to change the constitution—for example, to then make that legislation, if it were re-introduced, constitutional.

Mr Turner—Yes, but ultimately the High Court could also declare that amendment unconstitutional.

CHAIRMAN—Mr Turner, you use the words 'interpretative powers'. Do you agree then that the parliaments make laws, not judges? Judges do not make laws; they interpret.

Mr Turner—I am not a constitutional lawyer, but my interpretation would be that the ultimate source of power is the High Court, because the High Court can actually ultimately keep on declaring—

CHAIRMAN—In an interpretive sense. The High Court is the highest judicial

body in this land and it makes judgments. They may be majority judgments, as in fact Teoh was. But what I would also suggest to you in relation to that minority judgment—and we have a large body of evidence in this committee—is that you cannot dismiss what Justice Mason, I think it was—

Mr Turner—No, it was Justice McHugh.

CHAIRMAN—It was Justice McHugh, sorry. A lot of what Justice McHugh said cannot be dismissed and it comes back into big question marks about what this convention really means and that it can mean different things to different people. So, with due respect, I as an individual do not see it in the black-and-white sense that you do.

I have a further two points that I should have raised when I opened the committee. I did not say that it was a quick ratification; I said that there had not been due consultation. Yes, it was a long gestation period—it started in 1969, if I recall—but the consultation process was inadequate in relation to who was consulted. That was the point I was making and that is what this committee is all about under the new system.

The second point I should have mentioned but I did not was that this convention does mean that governments—to use your words—do not care about children. That is untrue. Of course governments care about children. What this committee, the parliament and the executive government care about is the treaty making process. It is not that we do not care about children. That is wrong.

Mr Turner—I concede that you may care about children, but the message that is coming through from this legislation—and which attempts to emasculate Teoh's case—is that you only care about children when they do not offend adult rights. In other words, because children do not have a vote and certainly have not been invited to express their opinions on this proposed legislation, I would say that we are still an adult-oriented society and that, where children's rights clash with adults' rights, adults' rights will prevail, which is completely, exactly, the attitude which the convention seeks to avoid.

CHAIRMAN—Your submission indicates that Australia transgresses every article, to varying degrees.

Mr Turner—That is correct.

CHAIRMAN—We have invited some supplementary evidence on this very point. But in order to get some sort of feel for that in an international sense, where would Australia be in terms of the interpretation and the implementation of this treaty? We will wait and see what that supplementary evidence is, but I would suggest to you that Australia is right up near the top.

Mr Turner—I suggest that it is right at the bottom—perhaps not right at the

bottom. But considering its resources, it has not done very much to change things since ratification.

CHAIRMAN—With due respect to you, I think that is a very legalistic interpretation. In a legalistic sense, maybe you could argue that. But in terms of a social and moral intent, I do not see how you can argue that.

Mr Turner—Let me take an example which is particularly relevant here. Since the convention was ratified in 1990, we have had two state governments—Western Australia and Northern Territory—introducing mandatory sentencing for children. Mandatory sentencing is completely opposed to article 37, which says that erring children should be rehabilitated and not sentenced to imprisonment. As recently as 1996 or 1997, the Northern Territory has passed legislation blatantly contrary to that article.

In Victoria—and I think this applies in other states—the children's courts are available only to children aged 17 and under. So 17-year-olds are tried in adult courts. This legislation has been passed since the convention was ratified.

I have to say that the judiciary—especially, if I might say so, the Family Court—has certainly taken the convention seriously. Parliamentarians generally have not. Perhaps you can produce evidence to the contrary that there have been debates in parliament and that there has been legislation passed which has cited the convention and which has sought to implement the convention. Compared with New Zealand, for instance, the convention has had virtually no impact on legislators.

CHAIRMAN—I suggest that you have a look at the two pieces of Tasmanian legislation—one in the justice area and one in the children's area. Okay, it is only a start, but there is a state that is attempting to come to grips.

Senator COONEY—As I understand it—I would like to clarify it in my own mind—you are saying that the convention as it stands ought be brought into the domestic law.

Mr Turner—Yes.

Senator COONEY—Had you thought about whether it should be at federal level or state level?

Mr Turner—I have thought about that. For the benefit of those who are unaware of this, I think one of the great problems with Australia complying with the convention is the division of powers between federal and state parliamentarians. It has been argued by some state parliaments that the convention is not applicable to them because they were not part of the process which ratified it. That is complete nonsense. Undoubtedly, the convention itself makes it perfectly clear that it is applicable to all legislative bodies in

Australia. That is one thing.

The other thing, of course, that is inconvenient for children is that so much children's law is the province of each state, and it varies tremendously from state to state. An example I have given is in the area of adoption of children. In New South Wales, de facto couples can adopt and in other states, including Victoria, they cannot adopt—or, at least, until recently they could not adopt. Also, in the Australian Capital Territory, surrogate motherhood is possible whereas it is not in other states. So, in Australia you have the possibility of people moving from state to state to find the most favourable jurisdiction.

When I was in Melbourne, for instance, at Monash University, I got a call from a solicitor in Queensland saying, 'I've got a couple here who cannot adopt in Queensland because they are not married or because they are too old. Is it okay if they come to Victoria? We will get the adoption in Victoria and then it will have to be recognised when they come back.' He asked my opinion on forum shopping, in fact. That is a great inconvenience.

I would argue that the convention really is saying that, in so far as possible, as much legislative power over children as possible should be surrendered to the federal parliament. That is certainly part of my platform. I am arguing, really, for a much greater degree—and perhaps the whole of child law, if possible—to be legislated by federal parliament. There does not seem to be any justification for these diverse laws in Australia. In the absence of that—

Senator COONEY—I want to clarify that. Do you envisage that the states will hand over the power? Am I right in saying that that is your position?

Mr Turner—It would be my position. I would, in fact, argue that that is what the convention demands. Otherwise, it is in breach of article 2, which says that children should not be discriminated against on the origin of the birth of themselves or their parents. That is certainly my platform. In the absence of that, surely, gentlemen, it would be possible for the attorneys-general to agree on uniform legislation. They took the lead in relation to ex-nuptial children in 1987-88; they have done it as regards ex-nuptial children. Why shouldn't the laws of adoption be uniform?

Senator COONEY—I want to ask you about adoption. By the way, I take it you lecture in family law.

Mr Turner—Family law, yes, and child law.

Senator COONEY—At Monash?

Mr Turner—No. I am now a visiting lecturer at the Northern Territory University.

Senator COONEY—I understand. I thought you were on loan, as it were, from Monash.

Mr Turner—No. I took early retirement from Monash. But I have now been appointed visiting lecturer at the Northern Territory University.

Senator COONEY—In family law and child law?

Mr Turner—Yes.

Senator COONEY—On adoption, article 21 says that the state party shall make laws where the paramount interests of the child are the main consideration. Have you thought about that?

Mr Turner—Of course.

Senator COONEY—Have you found that is the situation in Australia, for example on adoption law, or not?

Mr Turner—Certain sections of certain adoption acts, in my opinion, are not consistent with that. In my opinion, one of them being that the adoption practice in this country often makes it too hard to adopt a child because the natural parents will not consent when in many cases it would be very much in the child's best interests for the consent to be dispensed with.

Senator COONEY—Have you given any thought to the right of the child to know who the parents are, and what processes you would put into place if you thought that they did have that right?

Mr Turner—Most states in Australia have, in fact, legislated for that, but the legislation varies a great deal from state to state. In some cases, for instance, a contact veto can be imposed by the relinquishing parent; in others, it cannot. There really needs to be some uniformity in that. That is a very good example.

Senator COONEY—But the primacy of the child's interests is reflected in all legislation throughout Australia.

Mr Turner—You have raised another very good example. In my opinion, most of those acts do not comply with the Convention on the Rights of the Child because the child has to wait until he or she is 18 before there is an absolute right to information.

The most important article in this convention, in my opinion, is where it says that a child should be granted rights in accordance with his or her evolving capacities, and to put an arbitrary age of 18 on the right to know who your parents were, in my opinion, is

probably against the convention. That is my interpretation—I think it is a rational one.

Senator COONEY—Another thing that interested was where you said that the newspapers, the press, do not make sufficient fuss, if you like, or give sufficient importance to children and their rights.

Mr Turner—Correct, yes.

Senator COONEY—Can you develop that a bit?

Mr Turner—I certainly can.

Senator COONEY—And can you give us thoughts as to what government could do about that in any event, because would you then not have—to anticipate what you might say—problems with the freedom of the press, government interfering with the press and those great issues that you no doubt know about?

Mr Turner—I do not know that newspapers can be compelled to publish material on children, but I think a great deal could be done to disseminate information on the convention. I was in America two or three years ago to watch the world soccer cup. I was in Chicago and I noticed—I think I have mentioned this in one of my articles—the *Chicago Tribune* publishes four pages every day—

Senator COONEY—I think you have mentioned that in your article.

Mr Turner—Those are articles written by children for children, and it introduces the convention in a very user friendly way for children. We could set a lead like that. Of course, you will agree that the feminist movement, the women's movement, has tremendous coverage and has made a colossal difference in this country to attitudes towards women. If you go around schools or talk to teachers, very few of them have heard of the convention, let alone know what it means. It is, in fact, the duty of the government, it says, to publicise the convention. One step which this government is taking, which I disagree with, is that they are reducing the powers and the budget of the human rights commission.

Senator COONEY—I think I have gathered what you are saying. You did not contemplate that there would be any laws passed requiring the media to—

Mr Turner—I do not know that I have said that.

Senator COONEY—What I am saying is that you are not saying that.

Mr Turner—I do not think I am saying that.

Senator COONEY—You do not think you are, or you are not?

Mr Turner—I have not said that. You have asked me now whether I do think that. I might have to be put on notice to think that one out more carefully. It is a very intriguing suggestion. I think the answer must be that that would seem to be impossible, although it would be desirable.

Senator COONEY—Would you like to have a think about it and give us a little note on what you have thought?

Mr Turner—Yes, I would be happy to submit a supplementary note on that point. It is a very imaginative suggestion.

Senator COONEY—I understood you to be saying that you could introduce legislation using the terms that the convention uses. Am I correct in that?

Mr Turner—I am saying that.

Senator COONEY—You are saying that the very language of the convention could be put into domestic law?

Mr Turner—Yes, I think I would agree to that. An attempt has been made, by the way, by the National Children's and Youth Law Centre in Sydney, to do just that. They have actually produced model legislation which could be used.

Senator COONEY—Are you satisfied that the language used in here could not be made more precise for Australian law?

Mr Turner—Like any other language, it might be improved on by a parliamentary draftsmen—who knows? But my own personal view is—contrary to that of other advocates of the convention—that it is an extremely poetic and beautifully drafted document. I like it as a piece of prose.

Senator COONEY—Should I take it from that that you are saying that you can see no problem with using this language to legislate with?

Mr Turner—Yes, that is my view.

CHAIRMAN—Your example of the *Chicago Tribune* is interesting. That is a country which has not ratified. It raises the basic question, 'Do you need a convention to do something in a domestic sense without some sort of international body?' That leads on to a couple of questions. First of all, would you agree that we do not have world government?

Mr Turner—I would agree to that, yes.

CHAIRMAN—The term you used before was that 'this convention demands of governments'. This convention, surely, cannot demand anything.

Mr Turner—If you read the convention itself, that is what it says.

CHAIRMAN—Yes, but you have also said that we do not have world government. Is it not true that we have a federalist society in Australia?

Mr Turner—But, Mr Chairman, the world government—

CHAIRMAN—Just answer my question, with due respect.

Mr Turner—Yes, we do have a federal government in Australia.

CHAIRMAN—Is it not incumbent on governments at the federal level that, unless it is changed, we take due cognisance of that federalist approach? In doing that, if you want to take the international instruments legislation about to be before the Senate, why is it incumbent on governments to have state or territory governments as part of that process? That is what that piece of legislation does under our current federalist approach, surely.

Mr Turner—It is true that we do not have world government, but the United Nations organisation did not impose this on the world. We voted for it in New York. We also ratified it. This is not being imposed on us. This is a democratic process within the United Nations.

CHAIRMAN—But you used the word 'demand'.

Mr Turner—That is precisely what the convention says. This convention requires all governments to implement these provisions. That is exactly the word used. It is mandatory; it is not permissive. Once you have ratified it, then the democratic process ends. By ratifying this convention, Australia, like every other country in the world, agreed, if you like, to fulfil the demands of the convention to put it into effect. That is not discretionary; that is mandatory.

CHAIRMAN—It is interesting that you should make that comment. Last week in Sydney, Brian Burdekin said that if we had had the machinery that we now have back in 1988-89, the convention probably would not have been ratified the way it was. You are a great champion, I know, of the Human Rights and Equal Opportunity Commission, yet there is somebody who is an absolute champion of that whole process indicating to us as a committee that that would have been, as I understood him to say, the by-product of this sort of process; that his judgment would be that that it would not have been ratified the

way it was had this consultative dialogue process taken place at that time.

Mr Turner—Of course, at the time, he was the Commissioner of the Human Rights and Equal Opportunity Commission.

CHAIRMAN—That is the very point I make.

Mr Turner—I cannot comment on that without knowing what Mr Burdekin actually said. In what respect would it have been different? I would be very interested to know, as well, whether Mr Burdekin thought—

CHAIRMAN—He is going to write some supplementary submissions for us.

Senator ABETZ—But he was not too flattering about the process, was he?

CHAIRMAN—No.

Mr Turner—He was responsible for it.

Senator ABETZ—About how the convention was developed.

CHAIRMAN—He was involved, yes.

Mr Turner—He was responsible for the Human Rights and Equal Opportunity Commission's initiative in promulgating the convention at the time. I really cannot comment on Mr Burdekin's view on that, except to say, prima facie, I do not agree with it. I think that it would have been scandalous at the time had we not ratified it, and we would have incurred the contempt of the international community, as we will if we back down on it now.

Senator ABETZ—That is another area. I wonder who this international community is. I have to say to you that when I go on overseas visits people do not badger me about our stand on the Convention on the Rights of the Child or a lot of other conventions. It just seems to be a certain set of individuals in the world community that tell us about these things. Did I understand you correctly to say, in answer to the chairman, that after ratification that is where democracy ends?

Mr Turner—If I did say that, what I meant was that that is where the choice finishes. We have already committed ourselves to that. I think with great respect, that is precisely what we did in December 1990. We cannot go back on it and say, 'Let us go back to our electorate and see whether they want it any more.'

Senator ABETZ—Why not?

Mr Turner—Because it is a fait accompli. It has already been ratified.

Senator ABETZ—No.

Mr Turner—What else does the ratification of the convention mean?

Senator ABETZ—Are you saying that the Australian people can change government—and we will just talk about this in hypothetical terms—ratify any type of convention, then form a party and say, 'If we get elected, we will renounce that convention—get rid of it'? Are you saying that once it is ratified that is the end of the story, that we should not have any more import as a democratic body politic in Australia?

Mr Turner—I suppose in ultimate theory it would be feasible to de-ratify a convention which is already ratified. I do not know of any country in the world that has done that and I do not think that Australia has ever done that in connection with any treaty. In actual reality, the ratification made a fait accompli. I think when that had been done, we had no longer any right to argue as to whether we should or should not have ratified this or that. It is already there. It is incumbent on the country to implement it.

Senator ABETZ—So, it is like Holy Writ?

Mr Turner—Absolutely.

Senator ABETZ—Our forefathers signed it and therefore we, as the next generation, are not allowed to revisit to possibly even amend it or make changes?

Mr Turner—Of course, the United Nations can do that. There is an optional protocol for the procedure.

Senator ABETZ—But why should we not be at the vanguard of making changes as, say, Poland was? They initiated this convention. Why should Australia not, for example, be at the vanguard of making some changes to the convention? The convention itself does allow renunciation on the giving of 12 months notice. That possibility must have clearly been in the minds of all the parties involved when they unanimously adopted it—that is, that some countries in the future, because of domestic circumstances, may want to renounce.

Mr Turner—With the greatest respect, Senator, you are actually proving the point that I am making constantly—namely, that this country is uniquely lukewarm to this convention. The very fact that you actually raise as a possibility Australia being the first country in the world to renounce a convention which has been ratified by 190, to me is frightening.

CHAIRMAN—No, he is not saying that.

Senator ABETZ—No, this is where, with respect, you have been not straightforward with a number of your answers here today. All I was putting to you was the hypothetical situation in response to your assertion that after ratification that is where democracy ends, we have to treat it as holy writ and we cannot revisit it. If you were to put that to the people of Australia and say to them, 'Once we sign a convention you, as the Australian people, will have to abide by the terms of that convention however it may be interpreted 20 or 30 years down the track by the international community. Bad luck, you're stuck with it.' I reckon the average Joe Bloggs and Josephine Bloggs out in the street would be absolutely livid and would be very upset with a government that signed them up to those sorts of conventions.

Mr Turner—That is precisely what has happened with the sex discrimination legislation. It is no longer possible for us to say, 'We do not agree with this convention on the rights of women. We do not agree with equal opportunity. We are going to change it and we are going to come back to a society where women are not equal with men.' You just cannot conceive of that being done. I do not think you can conceive of the Convention on the Rights of the Child realistically being de-ratified.

Senator ABETZ—But, in principle—we are dealing with principles, not specific sex discrimination or rights of the child treaties—can we, as a body politic, de-ratify or renounce any of these treaties? Most of the treaties have a specific clause in them that countenances that very possibility and that is why I am astounded that you would assert that it cannot happen, that is where democracy ends—end of story—that you have got to like it. You cannot leave it; you have got to like it.

Mr Turner—With great respect, you seem to be suggesting that we can pick and choose which articles we would like to implement and which we would not like to implement, which we do not feel are appropriate to Australia. That is not what the convention says. The convention says unequivocally that when once this has been ratified it is the duty of governments to implement every one of these articles. That is clear.

Senator ABETZ—Suppose that later on, in 20 years time, we get an interpretation of one of these clauses, for example from the international community, that says that abortion on demand is not allowed, that that becomes the international jurisprudence, and that the Australian people say, 'We still want to allow abortion on demand in this country.' Are you saying that they will be locked in by this convention, no matter what?

Mr Turner—If that were the interpretation, we would be, yes. I would also like to make a point which I have not had time to make so far but which I think we ought to consider. I know it might sound horrific to those who believe Australians should be completely sovereign, but in European countries, under the Treaty of Rome, children actually have a right to take their own countries to the European Court of Human Rights when they consider their country's legislation is contrary to the Convention on the Rights of the Child. That is what some children virtually did with regard to Ireland's policy of

the cat-o'-nine-tails.

This is also true in Africa and in South America. Children in countries in the Asia-Pacific region are somewhat discriminated against when compared with children in the rest of the world because they must accept all the breaches of the convention without any right of appeal. I would argue that, far from being hesitant about this convention, we should be taking some initiative to set up some kind of Asia-Pacific regional tribunal, similar to the European Court of Human Rights. I have not had time to develop that argument, but that is my view.

Senator ABETZ—How many children were involved in the writing of this convention?

Mr Turner—I cannot answer that.

Senator ABETZ—From what I can gather, the writing of the convention was done by adults. All the legislation that is drafted is done by adults, who somehow think that they have this all-wonderful knowledge as to what is beneficial for children. One area that we have not developed at all—and time is running out—is that after the stolen generation report I happen to think that usually parents know what is best for their kids, and those people, albeit well meaning, who act on behalf of governments, usually do not know what is best for children. The parents usually are the best—

Mr Turner—That is so in some cases. But I am afraid the incidence of child abuse suggests that it is not universally true. We have a very high—

Senator ABETZ—Of course not. But in the vast majority of cases it is true.

Mr Turner—Yes. I think your suggestion is an interesting one. What you might possibly consider is taking the views of children and perhaps lowering the franchise so that young people might be able to participate in the democratic process as they grow more and more mature. That is an interesting idea. I think that it would be very desirable, as you rightly point out, to take the views of children on the suggestions that have been made in connection with this convention. I presume that this committee has in this inquiry interviewed children as well adults.

Senator ABETZ—The point I made was that children were not involved in writing up the Convention on the Rights of the Child, were they? It was all the bureaucrats from the various governments that were over in Geneva busily writing it up in legalistic terminology.

Mr Turner—I am not quite sure on that. I think there was some consultation with children, but certainly your point is very well taken. If there are any future amendments, I think we should now be taking the views of children. To that extent, I certainly endorse

your suggestion.

Short adjournment

CHAIRMAN—Ms Bowen, before I invite the committee to ask you questions, I understand that you want to make some points in terms of family law. Before you do that I should say to you that we have had a lot of written evidence in terms of individual family law cases. We welcome those comments as an indication of unsatisfactory elements of the law or of administrative arrangements. We cannot, in this committee, come down in terms of any of those specific cases, but we can use them anecdotally as evidence towards making particular points in particular areas. Would you bear that in mind when you make your statement. Keep it brief, but do let us understand the point that you are making, particularly as it affects this convention and the rights of children.

Ms Bowen—I would like to relate to section 64(1)(a) of the Family Law Act, which is parallel to article 3 of the convention relating to the primary consideration the court must give to the children's best interest. It must regard the welfare of the children as paramount consideration as it is expressed in the section of the Family Law Act or primary consideration in article 3 of the convention. However, the criteria establishing what factor or factors may promote the welfare of the child are not actually delineated in the Family Law Act, nor in the convention.

I would like to talk about the issue of public policy that is being considered, especially in relation to property settlements and the issue of income tax evasion. Mr Turner suggested that governments do not care about children. The response was, 'Of course, we do.'

In relation to public policy, the question of the Family Court—as a judicial arm of the federal government—being a guardian of the public purse in areas such as income tax evasion is portrayed in this situation: when people come to court to decide on property settlement, if there is a case of tax evasion, as a matter of public policy the judge is under an ethical and practical obligation to refer the case to the Federal Court to be dealt with as a matter of tax evasion. How can that be justified as providing for the welfare of the children when, after the matter is dealt with in a Federal Court, there may not be much left to divide between the parties in order to cater for the children?

In relation to the discretion that the judge has in respect of the division of the property, there is full discretion. The judge can say, 'Because this is in the name of so-and-so and this is in the name of so-and-so, under the property law, there is a certain division.' In the Family Court, there is a discretion. The judge can say, 'This is how much is needed for this party who looks after the kids. This is how much is needed for the other party.'

Why is this issue here? Section 15AB(2) of the Acts Interpretation Act provides

that the court may, in certain circumstances in interpreting legislation, consider relevant materials. How can the public policy issue be translated in order to cater for the needs of the family?

Senator ABETZ—As I understand it, what happens in Family Court matters is that a husband or a wife asserts that they were part of a partnership or this was the arrangement they had, and then one of the parties gives evidence to basically say, 'That wasn't really the case. She wasn't really a partner in the business'—that is usually what happens—'but we did it to minimise our tax and to avoid paying tax.' They created a structure to try to con the Tax Office so they would not have to pay their fair share of tax, then they get in a dispute in court and open up the can of worms by admitting that their business structures were not genuine but were designed to avoid the payment of tax.

Ms Bowen—There is a case where the wife takes full responsibility for the wellbeing of the children and the family as a whole, which means looking after her husband, herself and her children—she is down the bottom of the list. So there is full respect for the activities that the husband engages in. There might be a silent director here, there might be trusts here and there, et cetera. Companies can be formed in many different ways. The income tax can be allocated in many different ways.

When it comes to the issue of providing maintenance for the children, there can be a great discretion on the part of the father of the child to say, 'This is my income as discussed in Form 17 'Financial Statement'. This is how much we earned here,' which can be beautifully cooked by an accountant who may happen to be a silent director. So then the amount comes to $10 or $20 a week, as assessed by the Child Support Agency.

The wife is in a situation where she has to prove that she cannot live on this. The Family Court says, 'No, we can't let you divide your property. The house may be worth $200,000, but we can't do this. We have to get some money back to the government.' So now she has to fight somehow. She has to prove that this financial statement is not necessarily in accordance with the truth, so she tries to show the court, 'This is the case.' In the process, the court says that it is a clear case of tax evasion.

Senator ABETZ—That is right.

Ms Bowen—This is the situation I am talking about. Is there any provision that can be made within the Family Court to provide for situations like that? So it would bypass allocating the family assets for the purposes of income tax for the government in order to provide for the welfare of the children.

CHAIRMAN—You have not given us a written submission, have you?

Ms Bowen—No.

CHAIRMAN—It is important. Are you questioning the paramount rights of the child? What are you actually saying, apart from the tax evasion side of it?

Senator COONEY—Are you saying that, where there is a certain amount of money that has to be divided up in various ways, the welfare of the child should take priority over the taxation department?

Ms Bowen—Absolutely. I am not talking about the tax evasion issue; I am talking about the allocation of funds for catering for the welfare of the children of the family. That seems to be a secondary issue as far as the Treasury of the country is concerned. The money seems to be directed into the government for tax purposes rather than looking after the welfare of the children.

Senator ABETZ—I can understand what you are saying in relation to the particular family that is before the court. But it would be fair to say that those who have these innovative, for want of a better term, tax arrangements are usually those who are somewhat better off in the community. Then there are a whole range of other children in the community for whom the government would like to do more but cannot because of a lack of revenue.

Part of the reason for the lack of revenue is that there are a lot of people engaged in these, as I described before, innovative tax schemes. Should not the courts and the government send out a message to the public at large that, if you get caught with one of these tax schemes, you are not going to get it for the benefit of your family, but your contribution to society as a whole will still need to be made?

Ms Bowen—That may be one avenue, but there are many messages that the media portrays to the general public and it is not known how many of them get through to the consciences of the people who might be guilty of a particular behaviour. We are talking about the maintenance of the lifestyle. So, if children are on a particular level of lifestyle, that lifestyle can get changed drastically from a sociological and psychological viewpoint. If you look at those children you see that they are being deprived.

Senator ABETZ—I understand that, but why should kids be entitled to be maintained in a rich lifestyle because mummy and daddy were engaged in tax avoidance schemes? I do not think that is very fair. I, as a politician, would find it difficult to sell that concept to the public and say, 'Look, if you were engaged in a tax avoidance scheme, and if mum and dad split up, the chances are we can arrange things so the kids at least still benefit from it.' I do not think that is fair to all the other kids, is it?

Ms Bowen—I am not quite sure why you say that the children are part of a rich lifestyle. I am not saying that at all.

Senator ABETZ—Usually those tax avoidance schemes are entered into only

when people are concerned about the amount of tax they have to pay. Usually when people become concerned about the amount of tax they have to pay, it is because they are starting to earn a pretty good income, an income above the average within the community.

Ms Bowen—It might be the case, but it might not always be the case. Some people may basically say, 'It is mine,' and they begrudge paying any cent to the government for tax purposes. I am not actually talking about kids coming from a rich lifestyle and kids coming from a less privileged lifestyle, or whatever; I am talking about a provision that does not cater for these kinds of situations. I am not saying that the lifestyle of the rich cannot be lowered because of the loss due to the tax evasion; I am saying that that family can be left with absolutely nothing.

CHAIRMAN—We really do not have enough time this morning to come to grips with it. Mr Turner would know far better than I, but that recent B and B case talks about the paramount rights of children—that is, in custody cases and all the rest of it. Is there anything in that case that swings over to the point that Ms Bowen is making?

Mr Turner—I have read the judgment. I do not recall that there is anything specific on this issue. I suspect that Ms Bowen has had some personal experience of this particular problem.

CHAIRMAN—What we really need from you is a written submission on it.

Senator COONEY—It is up to you how you do it, but probably your best area to get some sort of comparison would be the industrial relations area—bankruptcy, insolvency and who has priority in that area when workers are owed wages.

CHAIRMAN—I am not a lawyer, whereas my two colleagues are, but my understanding is that B and B does talk about this, but maybe not specifically.

Mr Turner—Not specifically with regard to tax, I do not think.

Senator ABETZ—Could I invite you, Ms Bowen, in considering all this, to consider another aspect in your written submission to us? That is, in relation to the Child Support Agency, many men—and I use that advisedly because it is mainly men who are required to pay child support—engage in corporate structures whereby they earn no income at all and thereby avoid the duty to pay child maintenance.

Under the Corporations Law, the Australian Securities Commission is allowed to look behind the corporate veil, so to speak, to see if the new company structure was set up to defeat debts from previous structures, et cetera. Should the Child Support Agency be allowed to have the same power to investigate new company structures to see if they were solely, partially or substantially developed to avoid the payment of child support, which is grossly unfair to kids?

CHAIRMAN—In the context of this review of the convention, we can make some recommendations in that area if you raise that sort of issue. Do it the way you feel you have to, but the sort of thing that we can do is highlight the fact that there are these veils set up.

Senator ABETZ—Yes, but seeing the interest in the company structures in family matters—

CHAIRMAN—That is right. So, if you could do that and give it to us as soon as you can, we would appreciate it.

Ms Bowen—Yes.

CHAIRMAN—Do you have any final questions?

Senator COONEY—Mr Turner, you have gone through the convention and said that in some part of Australia, at some time—even in recent times—each of those conventions has probably been broken. I know you have done a lot of work on all of this, but do you have any evidence, or do you have an impression, of where in Australia these articles have been complied with? Can I give you an illustration? Article 12 states:

State Parties shall assure to the child who is capable of forming his or her own views the right to express those views . . .

I would have thought that, as far as the state is concerned, children can express their views. Article 14 states:

State Parties shall respect the right of the child to freedom of thought, conscience and religion.

I would have thought that was the position in Australia. Do you have any evidence of how Australia has in fact complied with the various articles of this convention? I know that you have examples of where they have not complied, but I would be interested if you could give any examples, to your knowledge, of where Australia has in fact complied with these various articles. If you cannot, that is the end of the matter.

Mr Turner—In my article I have referred to several instances where the judiciary has complied with the convention. Article 12, which you mentioned, is probably the most important article in the whole convention, in my opinion.

A very good example is that the Family Court has now increased the situations where separate representatives for children to represent the child's point of view in Family Court matters will be ordered. In other words, the case of re K in 1994 very considerably expanded these situations so that the child whose parents split up can express a view on which parent the child wishes to live with, et cetera. That was expressly in accordance

with article 12, which was cited and, indeed, utilised in that Family Court case.

Another example would be in the case of re Marion. You would recall that that was a Northern Territory case where the parents of an intellectually handicapped girl wanted her to be sterilised. In fact, the dissenting judgment of the Chief Justice of the Family Court was adopted in the High Court of Australia's case of re Marion. The court said that, for an irreversible medical procedure, the child's consent is necessary—it is not sufficient for the parents to consent—but, where the child is incapable of giving that consent because of his or her disability, the consent of the court is necessary. So I have to say that article 12 has had some impact. That is one positive. However, it has not had much impact in the schools.

Senator COONEY—Yes, I can follow that. In your very comprehensive submission and in that article 'Panic over children's rights', you have gone right through the various conventions and told us examples of where they have been breached. Could you give us any examples of where any of them have been complied with?

Mr Turner—I have given you one. If you turn to page 89 of my article—that is, article 26—for instance—

Senator ABETZ—Sorry, what page? Article 26?

Mr Turner—This was my article in the *Newcastle Law Review*.

Senator ABETZ—I have it now. It is page 51 of our papers.

Mr Turner—You must have a draft. Article 26, you would recall, requires governments to pay appropriate social security to every child in need. In fact, my organisation, Oz Child, has done a survey on this and has come to the conclusion that something like 40 per cent of children in Australia go to school hungry, without breakfast. The majority of these are children from single parent families. Nevertheless, it must be said quite clearly that the new parenting allowance was a step in the right direction. That is one positive you can put. You cannot put forward many. You could argue that the child support scheme was an improvement on past practice. I am not being entirely negative, I hope. There are some positives.

Senator COONEY—This is not a criticism. I am not suggesting you are being negative, but it may help us, in writing the report, to say there are buds in the spring—perhaps we should not be talking about buds in the spring in this part of the world—or that there are signs that things could grow better. If you do not have time, or it does not occur to you, do not worry. The reason I ask is that you obviously have done a lot of work in this area—you have been through Asia—and I thought you might have come across examples that we could quote as the good thing to do.

Mr Turner—I would be very happy to do that. I will say that there are positives which have emerged. However, the positives are overweighed by the negatives. That is what I am saying.

CHAIRMAN—You might like to take that on notice.

Mr Turner—Yes.

Ms Anton—I would like to express an opinion about the disgust that I have for mandatory sentencing in NT. Mr Turner made the point that it is where adults' rights are infringed. This provision is mainly aimed at the Aboriginal community and at Aboriginal youth. Aboriginal kids are 18 times more likely to end up in gaol. It is an embarrassment that something has not been done to stop the mandatory sentencing. What that is doing is teaching kids, in the way you teach a dog, 'Don't steal because you'll be punished' rather than they should not steal because it is wrong. They are saying, 'Don't do it. You'll be punished for it.' That is absolutely disrespectful to kids and is negative. They cannot expect something positive to come out of a negative.

Senator ABETZ—With the mandatory sentencing, is it the first time you are caught stealing that you are locked up?

Ms Anton—For 15- to 17-year-olds, on the second offence they get 28 days. For adults, on their first offence, they get two weeks mandatory sentencing, which is a draconian measure.

Senator ABETZ—Does that show a special bias in favour of children, that they get a greater chance than adults, or should I not interpret it in that way?

Ms Anton—Do not compare it.

Mr Turner—What I think is part of Jackie's lament is that 17-year-olds are treated as adults.

Senator COONEY—I understood Jackie was saying, where you have an automatic sentence, as distinct from one which is imposed by a judge exercising his or her power in that particular situation, that there is no consideration given to the particular person. This is where you were using your analogy of the dog, that it is hitting the dog, not in terms of whether or not it is good for the dog, but in terms of using fear to get to a result.

Ms Anton—Yes.

Senator COONEY—What you say is that it would be better if the child was treated as a human being with—

Ms Anton—With common respect.

Senator COONEY—With all the attributes that human beings have, and that those attributes be taken into account when imposing a sentence. It should not simply be an automatic sentence imposed by somebody sitting away from the particular person without any knowledge of his or her attributes.

Ms Anton—That is exactly what I am saying. It is doing more harm than good. It is going to exacerbate the situation when they get older. What are the chances of an Aboriginal child who has been to gaol for stealing something worth $2 finding employment, no-one is going to employ them? They start off with such a disadvantage going into the adult world that they end up with too much resentment for everybody else and contempt for society. They do not want to give anything back to the community at all. Nobody is giving them a chance to reform.

Senator COONEY—If they could be nursed through their difficult years—

Ms Anton—They should be educated through it. They should be informed. They should be counselled through it. Of course, stealing is wrong, but it is actually quite common. Every child goes through a period of it. They are not doing major crimes, they are just stealing cans of beer or a chocolate bar or something like that. Every child has done something like that. Every child has gone through a phase of it. It is quite normal. The measures they are taking, and the fact that it is in the NT with such a high Aboriginal population, is absolute intolerance from the government when it should be a little bit more tolerant in the NT with such problems.

Also, there is the refusal of the NT Attorney-General to sign the communique on Aboriginal deaths in custody. He is the only Attorney-General who has not signed it in Australia. His comments were, which I read in an article, so I did not actually hear him say it—was that it was futile and that they would rather concentrate on curbing drunkenness and street crime. How can that compare to deaths in custody? Even though that is not a big issue in the NT, it still would investigate the social, cultural and economic factors within the Aboriginal community which would be underlying factors as to why they have a very high unemployment rate, why there is a lot of crime, et cetera.

But this drunkenness and street crime is the thing that we see every day. They are the things that affect us and they are things that we do not want to see. We do not care. We want to push it aside, get rid of it and not worry about the fundamental and more important deaths in custody. It is a pretty appalling situation in the NT about which something has not been done.

Senator COONEY—Did you want to say something about the imposition of a sentence being really a judicial function rather than a legislative function?

Ms Anton—It should be a judicial function rather than giving it to the—

Ms Bowen—There is a shift. It upsets the balance of separation of powers. The shift seems to be up towards the executive where the police seem to be given discretion to charge the person with an offence knowing that that person is going to be incarcerated. Martin Flynn's article clearly explains that where the judiciary seems to be deprived of the discretion to impose a minimal or maximum sentence as per the Northern Territory Criminal Code in relation to property offences. The property offences—there are seven of them—are listed in the new mandatory sentence. These are the offences for which the offender will be imprisoned.

Article No. 7 of the convention talks about cruelty, and I feel that the way that this mandatory sentencing act is being implemented in the Northern Territory seems to clearly relate to article No. 7 because a juvenile detention centre does not exist in Alice Springs. We have an issue of separation. The children are being separated from their kin. They are being flown to Darwin—away from all the communities that they can be in touch with and where people can come and visit them. They cannot do that here.

We have children who are escaping and because of the new sentencing law they will plead not guilty which, again, has ramifications for the criminal justice system because it slows the process down. A child might escape lawful custody two weeks before being released, that child pleads not guilty and has to be released. In the past there was no question about pleading guilty or not because there was enough evidence to convict the child of escaping lawful custody. Today, because of the shift in powers, they have got nothing to lose. Again, it is not doing justice.

CHAIRMAN—Of course, it is not restricted to the Northern Territory. The 'three strikes and you are in' legislation in Western Australia is similar.

Senator ABETZ—Ms Anton, do you have research or could you provide it to us? When did this mandatory sentencing legislation come in, in the Northern Territory? What number or percentage of kids have been up for the second time and sentenced as a result of that legislation? Given previous stealing statistics, can it be shown or disproved that the legislation is or is not acting as a deterrent, or is it too early to tell?

I happen to agree with you in principle. I suppose that is how Senator Cooney and I used to earn our money, by being able to argue to a court as what a proper sentence ought to be, rather than saying 'Well, judge, you have got no choice. This is what you have got to do.' That sort of puts us out of a job. In principle, I think I agree that there ought to be judicial discretion in relation to sentencing, but I would be interested to see whether this legislation has had what undoubtedly were the alleged desired effects when it was introduced. Undoubtedly, that was the basis on which it was introduced and it was passed by the parliament—that it would stop crime or reduce it considerably. Let us see if it has worked.

CHAIRMAN—Would you like to take that on notice?

Ms Anton—Yes, I will. I have read a bit on people who end up going to gaol. There is no proof that they come out reformed. It is more common that they re-offend. It would be the same in this situation.

Senator ABETZ—I can accept that. But what I am saying is that, if a kid has stolen once and then knows that if they do it again they are likely to go into the slammer—no questions asked—it may well act as a deterrent. I do not know if it does or not. I would like to know what the statistics are—

CHAIRMAN—Can you do that?

Senator ABETZ—Because undoubtedly that is why it was introduced. I am not sure I agree with the rationale, but I would like to see the figures.

Senator COONEY—I do not think Senator Abetz was saying that your main principle was wrong. In fact, he may well be agreeing with it.

Senator ABETZ—I agree.

Senator COONEY—You are saying that this denigrates people, that it makes them less than human because they get an automatic sentence and are not considered on their merits, and that is a bad thing.

CHAIRMAN—We may hear a little bit more about this from the next witness. We will see how we go. Do you take it on notice?

Ms Anton—Yes. Also, can I mention something quickly? The announcement of the closure of the human rights commission office in the Northern Territory seems to be a response to the stolen generation report that was handed down. The Northern Territory now will only be serviced on human rights via telephone from Sydney. Not much has been written in the papers. I have heard about it on the radio only a few times.

CHAIRMAN—That is on the record. We will certainly look at that.

Senator ABETZ—We will have a look at that. We are aware of that. Thank you.

CHAIRMAN—Thank you very much indeed. Sorry to delay you like that.

[12.10 p.m.]

FRIEL, Ms Margeret, 38 Stobo Crescent, Alawa, Northern Territory 0810

CHAIRMAN—Welcome. I apologise for keeping you waiting. In what capacity do you appear before the committee?

Ms Friel—As an individual, I guess. My centre no longer exists.

CHAIRMAN—As a private citizen. The written submission of April 1997 was submitted on behalf of the National Aboriginal Youth Law Centre, but there were indications that from 1 July that would no longer exist. What you are saying is that you now are a private citizen, because that centre no longer exists. Is that so?

Senator ABETZ—A former director.

CHAIRMAN—A former director?

Ms Friel—Yes. I actually left the centre before it closed.

CHAIRMAN—But it has closed?

Ms Friel—It is my understanding that perhaps the centre has amalgamated with the National Children's and Youth Law Centre in Sydney.

CHAIRMAN—Let us have you appearing as a former director. Is that all right?

Ms Friel—Yes.

CHAIRMAN—Just in terms of that written submission, are there any errors of fact or omission that need to be corrected on the *Hansard* record?

Ms Friel—No, not that I am aware of.

CHAIRMAN—Would you like to make a short opening statement? You heard the previous witnesses and you do mention that in your submission, so perhaps you might say a bit about the mandatory sentencing.

Ms Friel—Actually, I thought that you were going to ask me specific questions.

CHAIRMAN—We will. But do you want to make an opening statement? It is up to you.

Ms Friel—I did decide that there were some main points that I wanted to make.

Could I respond a bit to some of the discussion that was just held? With the mandatory sentencing, one of the concerns we had was that it was in contravention of this notion of detention as a last resort. It meant something new. It is a new world, basically, that we live in now. You do something twice and you go straight to gaol—that is life. From our point of view, that was thoroughly different to what existed previously. It detracts from this idea of detention as a last resort. That, I think, is in the convention, and probably in the Beijing rules.

One of the other things about it is that, when you take away the right of the judiciary to look at all the circumstances and the individual, you take away his or her right to look also at the life of a child. One of the things that we have always talked about is that sometimes children are victims of a range of things, but those things are not matters that are pursued necessarily by the law. You have, at the end of the day, this child or young person who has had lots of things done to them—retribution or whatever—and the same sense of justice is not applied, if you would have it like that. Do you understand what I am saying?

CHAIRMAN—Yes.

Ms Friel—That is something that is not considered at all, at the end of the day. Really, the law looks at certain things and says, 'These things are punishable.' What I think we are saying is that there are some things that happen to children that are not punishable by imprisonment or whatever. Lots of horrible things happen and the people who do those things are not subject to that same sort of treatment. That is one aspect of it. When you use mandatory sentencing in that way you take away the potential to look at that child's life and the possibility that that person has been a victim.

Senator ABETZ—I am sorry, but which article are you referring to?

Ms Friel—I think it is 37. You have to understand me, I have changed jobs thoroughly and probably last night was the only night I had a quick look through it.

Senator ABETZ—You are right, thank you.

Ms Friel—The other point I wanted to make or refer to was something that Martin Flynn, who is a lecturer in the Faculty of Law at Northern Territory University, talked about. He was also on the board of our centre. What he sees as happening in the Northern Territory as a result of mandatory legislation is that there is going to be a new era of young Aboriginal people from remote communities, aged between 15 and 20 years, who are going to basically spend that period of their life—from 15 to 20 years—in prison. He says that from his and other research you will see that some young people do engage in this sort of activity from that period up to 21 years, but once they turn 21 or 20 they actually stop, whether or not they have been in. It is a sort of—

CHAIRMAN—Passing phase.

Ms Friel—Yes, it is. I will not quote him, but my understanding of how he talks about it is that it is almost like another way of the stolen generation saga happening again; you are actually removing children from their families and putting them into institutions. That is something that I remember from talking to him before.

One of the other things that were referred to here was that there is no juvenile detention centre in Alice Springs. What there was in Alice Springs was a centre called Aranda House, which was a long-term youth-bail hostel centre—one of the sorts of centres funded under the recommendations arising from the Royal Commission into Aboriginal Deaths in Custody. I think there were some others but they had closed. That centre existed. I think, in the last budget, there were cuts in the ATSIC budget, specifically to the community and youth services programs, and that centre lost funding.

I know there were also discussions—and I do not know where they are at now, but they are perhaps something that you might follow up—between correctional services and the people running it, the Aboriginal and child care agency in Alice Springs, to turn that centre into a detention centre, as it was previously. That is just something for your information that you might want to follow up. Those were the points really that I wanted to raise from that previous discussion. Do you have any questions about that?

CHAIRMAN—You keep going and we will come back to it.

Ms Friel—I will not go through this in detail because it is a while since I did it. There are perhaps four main points that I wanted to bring up. From my point of view there really needs to be a resource commitment to implementing this whole thing. One of the things that I discovered in the whole time that we were working, particularly from the point of view of a non-governmental organisation, is that what you can do—it is like everything—is limited to the resources that you have. But when you have government engaged in non-government organisations, then a more coordinated use of resources and a commitment to working together is something I would find much more useful.

One of you asked a question before about whether there are good things that you can point to, as well as bad things. There are both good and bad. The point I am trying to make is that if you actually worked at or were at the same table, and exchanged those ideas, and made it possible for all relevant stakeholders to participate in that sort of discussion, that would be something that is different. I am speaking generally in relation to these first two points on resource commitment.

The other point is on public education, because I actually had a look through some of those other submissions and what a lot of people talk about is this right to hit your child, or that you are not supposed to hit your child. There is this focus on specific issues. But the convention covers a range of issues. There are people who are focusing only on

certain things and other people who know absolutely nothing. In the territory, what our centre did, on behalf of the National Aboriginal and Youth Law Centre, was that I actually went to schools, with the permission of school principals, to speak to young people about a proposed charter of rights which, essentially, was to be an Australian version of the convention—how best it would suit Australia. We were the indigenous youth centre. But there was not the equivalent of a non-indigenous youth centre. When we went to schools we spoke to any young person, Aboriginal or otherwise, who was interested in speaking about this matter.

One of the problems we had was to do with funding, so our trips were basically to Darwin, Katherine, Tennant Creek and Alice Springs—a straight line. We did not go to other schools, remoter communities or smaller communities, because we did not have the funding to do that. That sort of opportunity to discuss those issues, or discuss the things in the convention and think about how they might apply, if they should apply, in Australia, is something that people need to be able to do.

How you do it, how you resource it, is the problem. It is all very well for me to say that there should be more this and more that, but if you do not even begin to think, 'Okay, that is a possibility. How can we do it?' then you do not actually get to do it either. Public education, as far as I am concerned, is something that is really needed with that particular focus on the convention, because what you do have in the end is different groups of people running around focusing on different things and never getting beyond that.

My next point is that there is really a lack of focus on indigenous children—and I have written in brackets 'and resources'. At the time that I wrote that I realised that our major focus was looking for money to enable the centre to continue. Last night, I looked briefly through the four submissions that I have received and I noted that there is very little reference to indigenous children or young people in those submissions. But I think that generally in Australia that focus on indigenous young people is missing. It is missing in legal aid services, DEETYA—that might have changed—and in the youth advocacy movement or the youth services movement. I could give you—

Senator ABETZ—What about ATSIC? Most people would say that ATSIC is given a large bundle of money to determine its priorities—a bit like DEETYA and all the other departments as well—so when you make those comments, which I am very interested in, could you also tell us about ATSIC's approach?

Ms Friel—All right. I have dealt with a range of them, but with ATSIC my understanding—I think I have actually said it in writing—is that it is an organisation or a statutory agency that is funded to provide supplementary funding, which essentially means to me any funding over and above existing things. I am trying to think of an example. Some time ago a lot of work was done on access and equity and how you make sure that the service that you are delivering, the programs you are delivering, actually reach

everybody.

ATSIC funds specific programs, over and above other programs. We will use the legal aid service as an example. Attorney-General's funds national legal aid and ATSIC funds Aboriginal and Torres Strait Islander legal aid services, but it is quite interesting to see the division there in practice. Even with the cuts to legal aid funding and the cuts to ATSIC, there is not that relationship. I could not see that developed network relationship, but if you look at legal aid funding you will see that there are legal aid commissions, the environmental defender's offices, women's legal services, and now there is a small component of children's legal services. With both the women's legal services and the children's legal services, there is no separate indigenous children's or indigenous women's service. If you look at the development of them—

Senator ABETZ—Is that not for ATSIC to provide, though?

Ms Friel—I have sat in a meeting and heard a submission for funding for an Aboriginal women's legal service discussed—not an actual service, but a discussion about who should fund it. The approach that was taken, from memory, is that with legal services there is an organisation called the National Aboriginal and Islander Legal Service Secretariat. Basically, it is a conglomeration or whatever of Aboriginal legal aid services—not all, mind you, but a large number. Their position at that time was that there would not be just a separate women's legal service; that if women wanted some service, it could perhaps be part of, but not a separate one.

The women who put that submission in had done a number of years of research, in association with other women in New South Wales, on women who had been turned away from Aboriginal legal aid services. They had documented that, and they had provided assistance under the domestic violence legal advocacy service or whatever. They wanted a separate service because they felt that they were not being provided for by that particular service or services. But it is also because there are issues that are very specific to women's legal issues.

This gets back to the idea of why you have children's legal services and why you have women's legal services. It is to do with more than representation in court; there are other issues like legal education. When you talk about young people going to prison, young people sitting in police interviews, lots of things can happen in all those situations without stuff like legal education, either previously or on the spot. I have sat in police interviews and thought that they were wanting in some ways—not all, but some. We are we going to? Sorry, I have gone further on from what you were saying.

Senator ABETZ—I was trying to explore the role of ATSIC. Within the indigenous community there is a view that they ought be entitled to set their own priority—self-determination. So ATSIC is given a budget to then allocate as they deem appropriate—

Ms Friel—That is right.

Senator ABETZ—Albeit the government does, say, quarantine areas for health and education. But in this area that would be discretionary ATSIC funding, would it?

Ms Friel—Yes, it is. I also take the view that, if you give someone a bundle of money, you cannot tell them to continue to cut it up, cut it up. As far as the reality of legal services is concerned, we surveyed legal services around the country and asked them what they were doing in relation to young people. Essentially, the response that we got back was, 'We would like to do all of those things, but we don't have the money, particularly for legal education, advocacy and networking.'

Our centre was established because the legal services in the Northern Territory wanted to have research resources to focus on children and young people. Their main activity is going to court, kids in gaol—they wanted to have that focus. That is why our centre was established.

CHAIRMAN—Are there any other points from the written submission you want to raise before we ask a few questions?

Senator COONEY—What are you doing now? You have obviously got to search your mind a bit. Is it related to the issues we are talking about now?

Ms Friel—No.

Senator COONEY—You are right out of it?

Ms Friel—It is and it is not. I am working at Batchelor College now. There are people there from around Australia, but largely they are people from remote communities in the territory. I am the Associate Head of the School of General Studies, which is the school for people who need further literacy and numeracy study skills—the rest of it—before they go to higher education or vocational education training.

Senator COONEY—What sort of appreciation have people you educate and those you came across in your previous life got of the concepts of the convention? I am not talking now about the actual written words, but of the concepts that we have talked about.

Ms Friel—It is quite interesting because there is a teaching school at Batchelor and they have discovered it just by chance and are discussing it at the moment.

Senator COONEY—I was wondering how far we can go in saying that the convention is a written expression of what people feel anyhow. I was wondering whether you could provide any thoughts or any impressions about that. Do people think they ought to have a right of, say, free speech and should not have punishments that are cruel?

Ms Friel—Yes and no. There are different influences. For example, there is the accreditation work in child-care centres which makes staff and families sit down and look at how best the child-care centre should run and what these 52 principles are that we must look at. It is basically designed to make sure that, when you drop your child off at a centre, you know that your child will be looked after properly because, if your centre has done that quality improvement and accreditation process, you are supposedly well aware of the standards that you expect from that centre. The staff know the standards that you expect and you can feel better about leaving your child there.

But that is in a particular pocket that has been targeted some time ago. I do not know how it is going now. I think there are community attitudes that have not changed, but it might well be due to a lack of understanding. People say, 'You are talking about children having rights—rights they can assert against other people.' Yes, you are saying that, but you are also saying something else.

You could use the case of hitting children. Would you like to be hit every time you did something wrong? Some people can understand that when it is domestic violence. The thing about hitting kids is different. You are allowed to hit kids when they do not do as they are told. Do you go and hit your wife or husband when they do not do as they are told? It is different but it is not—do you know what I mean? It is the way people look at it. They think of it as this person being able to assert this right against them and then it is defensive.

CHAIRMAN—Are there any final points you want to make before you leave us that you did not pick up from your notes earlier?

Ms Friel—No. I did have down here youth legal advocacy. I also had a quick look at these questions from the committee on the rights of the child. Perhaps I can submit a written response. If I run through it very quickly, could I make some very quick one-statement sentences?

CHAIRMAN—This is the questionnaire from the committee, is it?

Ms Friel—Yes.

CHAIRMAN—I think we would prefer that you take it on notice and give it to us, because there are some question marks about some of those questions anyhow. Perhaps you might like to think about it a bit more and take it on notice.

Ms Friel—Right. One thing I will say, though, about youth legal advocacy is that there is a lot of running around. Those who do it are all adults, are all over 18, but there needs to be more room for young indigenous people to also participate in that process. I know there are organisations like AYPAC—and AYPAC is a very good organisation that we have worked with well—but the bottom line really comes down to a commitment and

a financial commitment.

For something like AYPAC, it would be really good if there were an inclusion in their budget for an indigenous youth project officer on a long-term basis. They did have someone there. You have the youth movement, the youth advocacy movement, the Aboriginal movement and the lawyers—a whole range of people—but I am saying that, if you are going to work seriously in this area, there needs to be the pulling together or making sure that you have got everybody involved.

Senator COONEY—Should there be something in control of that?

Ms Friel—Yes. I agree with all the things that you probably heard from the National Children's and Youth Law Centre—that there should be an office of children, there should be a children's ombudsman, there should be a charter of rights and all of those things. But, as I have said to them, you must make sure that you have Aboriginal participation in that.

I do not know if you have been to South Australia, but I know that in South Australia they did have small amounts of funding—I think, by the South Australian government—for youth councils and youth groups. Basically, I am saying that in South Australia I have witnessed groups of young indigenous people who have formed youth councils, who learnt through that process the whole idea of meetings and associations—how you run meetings, how you make decisions, budgeting—and putting their view through to other forums. That is what I am saying is really seriously needed.

CHAIRMAN—Thank you very much. We apologise for keeping you.

Ms Friel—That is okay.

[12.37 p.m.]

CONNELL, Mrs Lorraine Betty, Member, Association of Adoptive Parents of the Territory, PO Box A1084, Casuarina, Northern Territory 0811

MOSS, Ms Bonita Elizabeth, Associate Lecturer, Early Childhood Group, Faculty of Education, Northern Territory University, Casuarina, Northern Territory 0811

CHAIRMAN—Welcome. Until a few moments ago we did not have a written submission. Is this going to be an opening statement, or do you want us to accept this is an introduction to the evidence? Are you going to read this?

Mrs Connell—I was going to read it.

CHAIRMAN—That is fine. It is nice and short; that will make it easy. Please proceed.

Mrs Connell—A report in the newspaper declares that a person has finally found their real parents. My question is: what are real parents? A dictionary might define real as true, genuine, not artificial or imitation.

The convention, of course, supports the notion that a child who has no family is entitled to special assistance and protection from the state—that is found in article 20. Alternative care should be provided for such children and alternative care can include adoption, as pointed out in article 20(3). Intercountry adoption is recognised as an alternative means of child care, as stated in article 21(b).

Why then do we still have attitudes that see adoptive parents as not the child's real parents? We continue to have policies in place that make intercountry adoption incredibly difficult, extremely lengthy in time and very expensive. If we are serious about the rights of the child and a child's best interests, then any family is real.

As we are aware, the conditions for some children are appalling without a family. For some children, adoption can almost certainly save a child from dying in a overcrowded orphanage. Although that sounds very emotive, it is very true.

In all cases, intercountry adoption provides a child with a real genuine family, not an imitation. Yet the policies in place prevent Australia from providing this basic right to the children of the world. Bureaucracies continue to tie prospective adoptive parents up in red tape and also charge them fees to do it. Immigration fees to bring the child into Australia have recently gone up to $1,055.

States and territories are slow to respond to inquiries concerning new countries, or to establish links with orphanages in countries of need. When non-government organisations such as AAPT attempt to do the same thing, they are continually harassed by

paperwork and officialdom. Our immigration laws are so strict that only very healthy children are allowed to be adopted into Australia. If we are serious about the rights of the child and are determined to work in the best interests of children, then we really need to be committed to an intercountry adoption program. Adoption can provide children with the basic right of every child, as the convention states, to have a 'real family.'

CHAIRMAN—Thank you very much. Did you want to make any supplementary opening comment, Ms Moss, or are you happy just to take questions?

Ms Moss—I had a written submission. It was a general submission about two issues which are separate to the issues that Lorraine raised.

CHAIRMAN—Do that first, then.

Ms Moss—I would like to address some issues that I think are related to the ratification of the Convention on the Rights of the Child. They relate to the general implementation of the convention and the specific issue that I believe legislative bodies in the Northern Territory are not acting in the best interests of the child and are seriously infringing upon children's rights, including their ability to reside with their family and within our society.

I want to affirm an issue that I know has been raised before your committee a number of times. It is the need for a strategy to oversee and monitor the implementation of the convention, as have other human rights instruments—for example, the Declaration on the Rights of Disabled Persons. I have a background in working with advocacy organisations for disability advocacy. I know that that is a very effective mechanism through the Human Rights and Equal Opportunity Commission to support the development of specific advocacy services. I know that, nationally, the issue of having a national agenda for children, a commissioner for children, has been raised—the resourcing of a specific organisation with a mandate to implement and monitor the declaration.

One issue that has been raised with regard to disability and aged care advocacy is the need for systemic advocacy, not specific advocacy, for clients. A monitoring organisation or body can provide that systemic advocacy, whereas if you fund small agencies to provide specific advocacy for individuals, you do not have changes in systems.

I just felt that the mandatory sentencing legislation in the territory for what are termed 'child criminal offenders' is an example of where legislation in a specific territory contravenes article 3 of the convention. If we did have a national agency that was to advocate for the rights of children, we might have an opportunity to discuss this legislation and how it infringes on children's rights. I feel that it is basically not in the best interests of the children that that type of legislation could not be enacted.

At the university I teach a course called Family and Society. One of its primary

focuses is looking at what is called a social construction of childhood, which is one of the issues that people have generally discussed as being a focus for a national agency so that we can actually look at what childhood is today, how it is changing, what issues affect children, what resources we need as a society to sustain children. That course, I think, is very valuable on a general level of getting especially younger people who are becoming adults to look at what the issues are for children in our society. I know that many education, arts and sociology courses focus on that. People say that we do not spend time as a society looking at the position of children and children's issues. I think there is a place and a body of knowledge that can be built on in Australia so that we can actually discuss what a national agenda for children is.

CHAIRMAN—Let us deal with adoption first. You have mentioned immigration constraints, and that is clearly something at the Commonwealth level that we can talk about. The second one in relation to the adoption process is very much a state and territory issue. Last week in Brisbane we took some evidence about specific adoption memoranda of understanding with specific countries. What is the situation in the territory? We hear in the territory that we should deal with the territory. What arrangements are in place in terms of some of those memoranda?

Mrs Connell—At the moment, the Northern Territory has been undergoing some changes in relation to that. One of the issues that is being discussed at the moment is to actually hand the entire adoption process for inter-country adoption to South Australia's organisation, and I think it is AFC. If that occurs—it is known as devolving responsibility—then fees will dramatically increase. It is proposed that fees for adoptive parents will come into force in July 1998. After paying virtually very little in the past, it will go up to something like $1,500 to $2,000 for the process of going through an inter-country adoption.

If it is taken over by South Australia, it is obviously envisaged that those fees will rise even further. They will have to provide social workers, case workers and so on to interview prospective adoptive parents, and that means that many of them will have to come from South Australia to actually go through the process. What we are looking at again is a situation of red tape that involves lengthy situations because, if it goes to South Australia as well, you are competing against South Australian couples. For Northern Territory couples in particular, there are disadvantages in fee increases and also in increased numbers of parents going through the process.

CHAIRMAN—What is the rationale for the territory government wanting to devolve?

Mrs Connell—I am sorry, you would have to ask the ministers related to that. I have no idea. When we ask them those sorts of things, one of the responses that we get is, 'We will get a better service.' I do not entirely agree with that.

CHAIRMAN—Are you aware of what arrangements South Australia has in place in terms of memoranda with specific countries?

Mrs Connell—Yes. They would have more extensive agreements with countries, but that has never been an issue in the Northern Territory. Because of our size, what we have been allowed to do in the past is, for example, if the Northern Territory does not have an agreement or an arrangement with a particular country, then the welfare area has allowed us to go through other states and territories which may have an understanding or a memorandum of agreement with other countries, which makes sense. Why keep reinventing the wheel?

Alternatively, we have had a very good arrangement with Sri Lanka in the past. Victorian and New South Wales couples have actually gone through our system up here, which has worked very successfully. So it has worked extremely well in the past. What appears to be happening now is that there seems to be more and more red tape which, of course, is my major concern.

CHAIRMAN—I suppose one aspect or rationale is economies of scale. How many inter-country adoptions take place per annum in the territory?

Mrs Connell—That is a catch-22 situation.

CHAIRMAN—I know.

Mrs Connell—For example, last year three would have been lucky to have gone through. If the conditions had been better, probably more would have gone through. When you are confronted with enormous amounts of red tape, a lengthy time frame and regulations that say, 'You can't adopt once you turn 43,' and you are confronted with the huge amount of expense, then it is no wonder. I think they are the sorts of issues, if we are being serious about the rights of children, that could be addressed.

CHAIRMAN—What about over the last 10 years? Has that varied?

Mrs Connell—Yes, it has enormously. At one stage—for example, when I went through—it was quite usual for at least five or six families to have adopted from Sri Lanka. Now, in the last two or three years, because Sri Lanka is difficult with the problems over there, that has decreased. We had one two years ago. There have been no more since then.

Senator ABETZ—Are the red tape and the difficulties only experienced in Australia, or do they also exist in the countries from which you seek to adopt?

Mrs Connell—Generally it would depend. We found with non-government organisations—for example, even with our organisation—that you build up a very strong,

personal relationship that is often able to get around the red tape. People are well known, and there is respect for them and so on. For example, 10 years ago, when we went through the adoptive process, it ran very smoothly.

Now what is happening is that the government is taking over more control, and it is becoming their position to make those arrangements. What happens is that, often because these orphanages and so on are dealing with different people each time, that personal relationship is not being built up. I, of course, understand that it is important to have strong relationships and strong organisational ties so that we do not have any wrong sorts of adoptions occurring. There certainly has not been that in the past.

Senator ABETZ—How attuned is your organisation to the cultural needs of the children who are adopted from countries overseas? Do you see it as a desirable practice? Do those parents seeking to adopt children from overseas do that out of a feeling that they want to help some children in an overseas country, or would they prefer to adopt children born in Australia? If there are not any children up for adoption in Australia, do they go overseas?

Mrs Connell—I cannot answer for everybody else. In our situation, speaking personally, we tried extensively to conceive through the IVF program. We then looked at local adoptions, of which the books were closed completely, even 10 years ago. There are no adoptions at all. We desperately wanted to have a family. We were confronted with situations with organisations who said, 'This will be a really good thing because you will be saving a child from appalling conditions,' which is a factor. For us personally, that was not a factor. We desperately wanted a child, and this was a way of having a family.

Senator ABETZ—In fact, that is similar to what we heard in Brisbane when a similar question was asked. So then moving on to the cultural—

CHAIRMAN—What country did you eventually adopt a child from?

Mrs Connell—Sri Lanka. What I was going to add to that is that these sorts of questions are never asked of people who can conceive naturally. They are never asked, 'Why do you want a child?'

Senator ABETZ—Of course.

Mrs Connell—So there are all those sorts of issues. Ultimately, the bottom line is that what you are doing is giving a child a family. That is the most important one.

Senator ABETZ—I started asking a question about the cultural aspect, and then I got sidetracked. We heard evidence in Brisbane that many parents of the adopted child then become members of the particular—

Mrs Connell—Cultural group.

Senator ABETZ—Yes, cultural group in Australia. Has that been the experience in the territory as well?

Mrs Connell—That has certainly been the case, yes. We have a Sri Lankan organisation, and some of our members of AAPT are members of that. Because we are also an association, we meet reasonably regularly, so we have the opportunity of meeting with other children from other backgrounds. We are very fortunate in the Northern Territory that it is very multicultural anyway. For example, my son is in a class where you are hard pressed to find a white Anglo-Saxon. As far as being aware, it is absolutely impossible not to be aware of their cultural backgrounds because they are a different colour. So it would be absolutely insane to try to hide the fact that my son is from Sri Lanka. Why would I want to?

CHAIRMAN—Does that Tamil-Sinhalese article come up?

Mrs Connell—No, it has not even been an issue. We can make those comments. He does know of other children who, for example, are Tamil. He is Sinhalese.

CHAIRMAN—He is Sinhalese?

Mrs Connell—Yes, classified as Sinhalese. He is aware that there are a lot of problems going on over in Sri Lanka between the Tamils and the Sinhalese. So it is a fine example to say, 'Does that mean you should dislike so-and-so who happens to be a Tamil?' He can see that that is absolutely insane.

CHAIRMAN—What age was he? What age is he now?

Mrs Connell—When we adopted him he was six weeks old. He is now 10.

Senator ABETZ—This is a sensitive question. It relates to the very first paragraph of your document about what are real parents. You would undoubtedly empathise with adopted children who would like to know the physical—

Mrs Connell—Birth.

Senator ABETZ—Yes, the origins of their birth and who, in fact, their mums and dads were. I have spoken to countless numbers of children who have been adopted and who say, 'My adoptive parents were fantastic,' et cetera. They are full of praise but there was still something inside them which yearned to find out who—I do not want to use the term because you find it—

Mrs Connell—I think the term is birth parents.

Senator ABETZ—All right, birth parents. They want to find their birth parents. Can you understand that?

Mrs Connell—Most certainly.

Senator ABETZ—So your argument is that you can understand adopted children wanting to find their birth parents but you and other adoptive parents are in fact real parents as well?

Mrs Connell—We are, yes. I pinch myself regularly.

Senator ABETZ—More sensitive language ought be employed, but you do fully recognise that adopted kids will want to find out who their birth parents are?

Mrs Connell—That is one of the considerable attractions, in a way, of inter-country adoption, in the fact that you cannot hide it.

Senator ABETZ—It is quite obvious?

Mrs Connell—That is right. The process that you go through is that you actually meet the birth mother. We have photographs of her. When we returned, I then became pregnant and so we have a biological son as well. In the same way that my other son is interested in knowing where his roots are and who his family are and how he has family in Scotland—we have family in Scotland—we would say, 'We also have family attachments in Sri Lanka.' At some stage when it calms down, we will go over there and visit them in the same way that we go to Scotland. It does not even become an issue. Jonathan was very well aware at a very early age that he had a birth mother. In regard to the media, that has happened. It has been reported. You have probably read it at times or perhaps you are not aware of it because it hits me a lot more.

Senator ABETZ—I could imagine that.

Mrs Connell—I have actually rung the newspaper and said, 'Are you aware that that is an inappropriate term to use. What is 'real'?' They have certainly taken that on board very quickly and said, 'All right, we will make sure that we always put "birth parent" in.'

Senator ABETZ—Thank you for sharing all that with us. That was very helpful.

Senator COONEY—Do you agree with the convention and article 21? If you do, doesn't that involve a lot of red tape in any event? I want to read you article 21(a) of the convention before you answer. It states that state parties:

> Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and

reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

If you look at that, you see that it is a fairly hefty process to go through. Article 21(b)—I will not read it all—

Mrs Connell—No, I have it in front of me.

Senator COONEY—Since we are giving personal views, it seems to me that article 21 is a very good article because there are problems with inter-country adoption. It seems that that addresses the various issues that present themselves to various people. If you do adopt article 21, does that not involve a fair deal of what you might call red tape?

Mrs Connell—No, I would not say so, because most of that sort of information would be gleaned from the host country. So before a child would even be eligible for adoption that process would have been gone through, particularly if they are in orphanages. It would be assumed that all of that had been gone through before a person could even apply or be eligible or able to go and adopt a child.

Senator COONEY—I understand what you are saying, but I think this addresses state parties, not one state party. I would have thought, and I am subject to correction here, that article 21 is addressed to not only the country from whom the child comes but also the country to whom the child goes.

Mrs Connell—For example, in our situation, Australia could not find out information about Jonathan's birth parents. That was outside our jurisdiction, so that was all done by the host country, Sri Lanka, before we got there. Sorry, are we arguing around in circles?

Senator COONEY—All I am saying is that I think Australia itself has a responsibility to see that the treaty is carried out.

Mrs Connell—Yes.

Senator COONEY—The fact that Sri Lanka—

Mrs Connell—Or other countries.

Senator COONEY—Or other countries put the seal on it is not necessarily the end of the matter. In other words, I would have thought that Australia has under this convention an obligation to see that proper procedures are gone through and proper evidence is obtained. If that is the situation, do you agree or don't you agree with that?

Mrs Connell—I agree that it must be looked into. I do not think buying of children or anything like that is even part of it at all. What I am saying is that it is done by the country and, I guess, to a certain extent, we have to trust the country, and I am prepared to do that.

Senator COONEY—I am not sure what you are saying about article 21. Have you thought about that at all? Are you saying that, if that applies to more than the country from which the child is adopted, that is going too far? Are you or aren't you saying that?

Mrs Connell—Yes. Basically, I am saying that that should be done by the country from where you are adopting, not by us.

Senator COONEY—And the country to which the child comes should not concern itself with the issues that are raised in article 21?

Mrs Connell—Certainly not with the fact that these countries are ratifying the Hague convention that is coming out on adoption. So they will abide by these rules and regulations.

Senator COONEY—I will not persist, but I am not sure yet what you are saying. What I gather from what you are saying is this: you do agree with article 21 in so far as the country to which the child is adopted should go through these processes, but you do not consider that the country to which the child comes should concern itself with the issues that are raised in article 21 beyond what the country to which the child comes tells that country.

Mrs Connell—I agree that Australia should say, 'Have you made sure of this, this and this,' before they go ahead with that. But what you are concerned about is my discussion about the lengthy red tape, isn't it?

Senator COONEY—Yes, and that is related to what you think Australia should do. You say that Australia should accept whatever is said by the country from which the child comes.

Mrs Connell—Certainly that would be built up in so as far as organisations going over there and visiting the orphanages and the state requirements, yes.

CHAIRMAN—The Hague convention has been signed but not ratified. Part of the process which involves this committee, and we will get involved in that, is the preparation of that national interest analysis and consultation with government and non-government organisations. Has your national body been consulted?

Mrs Connell—Yes. AICAN has been consulted through Ricky Brisson, yes.

CHAIRMAN—To what extent? Has it been recent?

Mrs Connell—Yes. I have a recent letter here that refers to notes from the standing committee of community services and letters of concern to Cheryl Scarlett. I think Cheryl has already indicated that they will be meeting at some stage.

CHAIRMAN—Yes, when it comes up. We will deal with a lot of those issues. We do not really want to get bogged down on those today.

Mrs Connell—No, certainly not.

CHAIRMAN—It is important that it highlights some of the issues that you make here. In terms of the immigration fee and all the rest of it, a lot of things these days, in the view of a lot of people, cost too much money, and that is a constraint to the process.

We might, just finally, move on to the more general issues, away from the adoption process into the commissioner ombudsman concept and the possibility of umbrella legislation encompassing everything that is in this convention. Do you take the view that it is possible to produce some sort of national legislation which would encompass everything in the convention? If so, should that be at a state level or the federal level?

Ms Moss—I would say that it should be at a federal level, just as we have had other pieces of human rights legislation in Australia since the mid-1980s that have been powerful in developing changing attitudes to people who are often powerless.

CHAIRMAN—As I indicated earlier today—before you arrived, I think—we have had evidence that this convention means different things to different people. This view persists. Do you accept that? Do you concede that this convention does mean different things to different people?

Ms Moss—I absolutely accept that. But I think that one part of a discussion about the development of national legislation would be the gathering of those views, seeing how they meet, what the common elements are and trying to develop some key principles. It might actually re-examine what we think childhood is now. I think there are social circumstances that are really impacting on that.

CHAIRMAN—How would you react if, in fact, it was not feasible, practicable or whatever to produce that umbrella legislation? Would another avenue perhaps be for Australia—we can do it post-ratification—to make some sort of declaratory statement in terms of the convention?

Ms Moss—A principle?

CHAIRMAN—To set out a principle, yes—as a lot of other countries have.

Ms Moss—Yes, that is right. I think there are a lot of opinions on it. You might be able to make a principle statement, but you have to have some way of implementing those principles. People, especially children, are often powerless. You have to have an organisation—it is usually an organisation—that supports them to enact a principle. Principle is all well and good—or a bill of rights, a declaration of rights or a convention—but unless you actually look at a process for implementing policy there can be an empty bit of paper.

CHAIRMAN—But even under a federalist approach—with the exception, perhaps, of the major area of family law, and that as it affects children—most of the children's issues are under a federalist approach; the federal system we have is state related or territory related.

Ms Moss—Yes. I would assume that they would have to be developed by all parties. For example, a commissioner for disability or human rights works with legislation. Usually, the two principles that they work with are advocacy and education. You would not just have a principle that is based on education or on advocacy; you would have an approach that is multifaceted. What would have to be looked at is what the best approach would be.

CHAIRMAN—But with the spaces in legislation?

Ms Moss—Yes.

Senator COONEY—Have you thought of doing this through COAG or one of those?

Ms Moss—I know what COAG reports on. For example, we have had two recent ones on the situation of young children. COAG does not take a legislative approach, they do not take a structural approach. In fact, the last reports actually supported the dismantling of a lot of children's services—not just long day care, but community services based on facilitating improvements in the welfare of children. So, I am not sure if COAG could be supportive, and yet they actually have affirmed a lot of what children's rights are in the last two reports that have been done.

Senator COONEY—Sorry, did you say you would go to COAG straight off or that you would wait for more development to take place before you went off to a body such as that?

Ms Moss—I think COAG has already tried to address the situation of young children very recently, yes.

Senator COONEY—Are you saying it is a good thing?

Ms Moss—I do not know whether I would say it is a good thing or not; it is part of the parliamentary processes.

Senator ABETZ—Are the important things out of this convention the principles or the black-letter articles, or do you see them as being indivisible?

Ms Moss—I think they are indivisible. It is part of a process that could be dynamic and could lead to a discussion of agenda. I am not saying that there be a hard and fast, black-and-white agenda on a piece of paper, but until you actually take part in something that tries to focus on it we will just get fragmented and often very disparate opinions and punitive legislation, for example, mandatory sentencing legislation in the territory that actually means that young people can no longer reside with their family and within wider society for significant amounts of their childhood and youth.

CHAIRMAN—Lecturing as you do, I guess you are aware in some detail of the New Zealand concept involving a children's commissioner. We have had evidence dealing with the status of commissioners and what they all mean. Do you think the New Zealand model is the one that should be followed?

Ms Moss—My only understanding of it is from listening to the commissioner on the radio, so I do not have an in-depth understanding of the mechanisms.

CHAIRMAN—So you did not attend the conference in Brisbane a few months ago?

Ms Moss—No, but I have heard discussions about what the roles of the commissioner could be. My understanding is that it could be similar to some of the—

CHAIRMAN—Do you have a comment to make about the Queensland situation? It is the only one in Australia.

Ms Moss—I do not have enough discrete information to be able to contrast the different roles.

CHAIRMAN—Do you have a comment to make about the Tasmanian legislation currently going through?

Ms Moss—No.

CHAIRMAN—I would suggest to you, in the context of what you are teaching, that it might be worth having a look at the two pieces of Tasmania legislation—the justice

bill and another bill, which I forget the name of now. In the explanatory memorandum, or whatever they call it in Tasmania, there is specific reference to the Convention on the Rights of the Child. Thank you very much for attending the hearing today.

Luncheon adjournment

[1.55 p.m.]

BAIRD, Mrs Rosie, Director, Karu Aboriginal and Islander Child Care Agency Inc., PO Box 40639, Casuarina, Northern Territory 0811

LLOYD, Ms Jayne, Project Worker, Karu Aboriginal and Islander Child Care Agency Inc., Shop 2, Casuarina Plaza, Casuarina, Northern Territory 0811

CHAIRMAN—Welcome. I apologise for the late start. We had a late finish before lunch. We do not have a written submission. I invite you to make a short opening statement.

Mrs Baird—We thank the committee for inviting Karu to give our views. I would like to give you a brief background on Karu. We came into being in 1985 after Northern Territory self-government created the Community Welfare Act. In that act is the Aboriginal child placement principle. Karu administers that principle by the placement of Aboriginal children that come into the care of the minister. What Jayne is also doing as a worker at Karu is making sure that the operational part of the Aboriginal child placement principle works properly for our Aboriginal children. I will let Jayne explain some of the difficulties and problems we have with the Community Welfare Act and our territory health service.

Senator ABETZ—I invite you, in discussing that, to address the question of whether you have enough Aboriginal homes to put Aboriginal children into in terms of placements under community welfare.

Ms Lloyd—At Karu I am the project worker. In existence for some time has been the alternative care program. A worker recruits, assesses and places Aboriginal children by finding Aboriginal people to care for them. In Darwin, we have been lucky in that the actual recruitment of carers—we call them care providers not foster carers—has not been that difficult. We have always had a pretty good pool of Aboriginal carers available to take on children. Where the concerns for Karu come in is that in looking at Aboriginal children we see that their needs are really so different to all other children in Darwin and probably all other children in Australia. We see that they have specific needs and need specific services. More importantly, there is a specific need in terms of the delivery of these services. They do not always necessarily have to come out of government departments.

Just getting back to your point, for 1995-96, say, out of all the children who came into care in the Northern Territory 54 per cent were Aboriginal children. Out of that, 58 per cent of those children were placed with non-Aboriginal care providers. That is despite having available Aboriginal care providers. One of the issues for Karu is that we have this great piece of territory legislation which has section 69, the child placement principle, that clearly instructs the department how to deal with Aboriginal children, but there is no

effective way of ensuring that it gets—

Senator ABETZ—Why is that? Is it a lack of commitment, do you think?

Ms Lloyd—It is a lack of commitment. It is a lack of acceptance that Aboriginal people can take on that role. It is about letting go. It is about accepting that Aboriginal people are the best people to care for Aboriginal children. The department is breaching its own legislation. I guess it is like the convention, you can have all of these things in place, but if there is nothing to monitor or evaluate them, or to ensure that what is in the legislation really happens—

Senator ABETZ—You are, by the sound of it. Good on you.

Ms Lloyd—We have a number of concerns that stem from that particular issue, that we would like to talk about.

Senator ABETZ—What percentage of children in the territory are Aboriginal? I want to get that 54 per cent in care into context.

Ms Lloyd—I know that in the Darwin urban district, the percentage is, say, 12 per cent, but I am not sure for the whole of the territory. When I say Aboriginal children make up 12 per cent of the Darwin population, in placements they are represented by at least 50 per cent of children. That is the kind of overrepresentation you are looking at.

Senator ABETZ—That is the disparity.

CHAIRMAN—You say that 54 per cent are placed. Can you just quote those figures for us again?

Ms Lloyd—This is for 1995-96. In the Northern Territory, out of all children placed, 54 per cent were Aboriginal children. Out of those Aboriginal children, 58 per cent were placed with non-Aboriginal care providers.

CHAIRMAN—That does raise the basic issue of the criteria. Are you suggesting that the criteria have a basis in race? What are you actually saying?

Ms Lloyd—What we are saying is that, if Aboriginal children must go into care, they must be placed with Aboriginal carers because of what we know of the past history of removal, what that has caused and what that has meant for Aboriginal people. To then, in this day and age, still be removing Aboriginal children from their culture, their country and their people—

CHAIRMAN—Surely the criteria have no basis in race. Are you saying that they are not satisfying the criteria or that the criteria are being stretched?

Ms Lloyd—No. Are you asking why this is happening?

CHAIRMAN—Yes.

Ms Lloyd—We are saying that it happens because the department is not recognising that Aboriginal people want their children to be placed with Aboriginal carers. It is just like a non-acceptance of the particular needs of Aboriginal children and how they are so very much different from other children.

You have the legislation, and protocols and so forth are put in place—which help—to ensure that Aboriginal children are placed with Aboriginal care providers. It still appears that departments choose to ignore not only their own legislation but also their own protocols. It is difficult that an outside organisation has to appear to be aggressive, battling or almost fighting for what should already be.

Senator ABETZ—Have you approached the department? Have they come up with any reason or rationale for these figures?

Mrs Baird—Karu initiated the protocols in 1995 and forced the department to adhere to its own legislation. I think the problem Karu finds is that the department reviews itself and we do not get a look-in into that.

CHAIRMAN—Has it been taken up just within the bureaucracy, at a ministerial level or what?

Ms Lloyd—It has been an ongoing thing where we are trying to address the issue of ensuring that Aboriginal children are placed appropriately and so forth. I guess, for us, the child placement principle is not only the placing of children, because on a scale of a child going into care and coming out of care, the placement is a really small bit. There is all of the stuff that happens before, there is the placement, there is, hopefully, some kind of intervention with the family and then, hopefully, a child is returned home.

If an Aboriginal organisation has only been involved in the placement of a child, where is all that other consultation? How is a sustainable transfer home going to be made if Aboriginal organisations or people are not consulted in that process? What we are saying is that the Aboriginal child placement principle is not only about the physical act of placing a child. That is really short-sighted and perhaps a reflection of why there are so many children in care—because there is not that proper consultation.

CHAIRMAN—To put it into the context of this convention, are you saying that Aboriginal children in the territory have fewer rights than non-Aboriginal children? Is that what you are saying?

Ms Lloyd—What we are saying is that they have specific needs. It is recognised

that they have specific needs, yet nothing is being done about that. That is what we are saying.

Senator COONEY—You have laws, haven't you?

Ms Lloyd—Yes.

Senator COONEY—Those laws do not discriminate, but the carrying out of the laws does. Is that what you are saying?

Ms Lloyd—Yes, because we have very good legislation. We have a part of our act that is specific for Aboriginal child welfare.

Senator ABETZ—So it does in fact discriminate, in a positive sense, towards the Aboriginal community, but then it does not seem to work itself out in practice? That is what you are saying.

Ms Lloyd—Yes, that is what we are saying. We are saying that you can have great legislation and you can have lots of really good things but, unless there is some mechanism to make that work or to ensure that things like that are carried out, it does not mean anything.

CHAIR—So it is the administrative practice that is at fault. Is that right?

Ms Lloyd—Yes.

Senator COONEY—Following on from that, have you got any tribunals, courts or ombudsmen that you can go to about the administration?

Ms Lloyd—No. What happens with children in care in the Northern Territory is that every three months there is sort of an internal review of the child by the department, and every two years or whenever the court determines—but certainly no less than every two years—there is a court report which goes to the court where you ask to have a child remain in care for two years or whatever.

Senator COONEY—That is the court that adopted out the child and made the order?

Ms Lloyd—Yes, that is the court that made the order for the child to go into care. Then they have a responsibility to review that periodically. What we are saying is that often what is written in those reports is to satisfy the courts. It is not necessarily reflective of what is happening in the lives of these children.

Senator COONEY—You have not got any other mechanism other than going to

the courts every two years?

Ms Lloyd—There are child protection teams which review new investigations. They do not deal with children who have been in care for any length of time, but they are all new cases. Karu had to really fight to actually get Aboriginal representation on that board.

What happens with the child protection team, although you can make comments and suggestions, is that it appears that because that is only at a program manager level—there are different levels—it is a very closed system. So there is not much scope for significant change or for things to be made different.

CHAIRMAN—So the bottom line for you is that the legislative framework is appropriate but the administrative practice is less than satisfactory? Is that the general message?

Ms Lloyd—Yes.

CHAIRMAN—Were there any other comments that you wanted to make? Do you deal with child care as such, or do you deal with children in care?

Ms Lloyd—Only children in care of the minister. I guess one of our other concerns is what I was referring to before—we have the placement, and we see that as only being a small part of complying with section 69 of the act or the child placement principle. We think the role that Aboriginal organisations play in the lives of these children should extend beyond that to the actual case management of children. They would then ensure that, when children are placed in care, they are returned to their families promptly. They would make that sustainable and ensure that changes happen so the children do not keep re-entering the welfare system, the justice system or whatever. As you probably know, Aboriginal children are also over represented in the justice system as well.

What we are saying is that not only should the responsibility of finding these foster placements for Aboriginal children be with the Aboriginal community; the management of these children should also remain with the Aboriginal community. The Aboriginal community is saying, 'We want to take responsibility for what is happening to our children. We want to make the decisions about what is going to happen with them while they are in care.'

Senator COONEY—Who looks after them now?

Ms Lloyd—What happens is that, although we find the placements and we support the foster carers—

Senator COONEY—When you say 'we', who is that?

Ms Lloyd—Karu. These children are actually managed by government workers who belong in government agencies.

Senator COONEY—You say that function should be performed by Karu, too?

Ms Lloyd—Yes. There is provision for that in the act—that the responsibility of those children should go back to the Aboriginal community, because obviously this current system is failing these children. It is apparent in the statistics; it is apparent in the rate of Aboriginal children who are continuing to go into care.

What we are saying is that, if you bring that back to the Aboriginal community, it is going to much improve the quality of service for those children. It is not going to create another generation of children who have been removed and alienated from their country, their people and so forth.

CHAIRMAN—Thank you very much indeed. I do apologise for keeping you.

[2.10 p.m.]

DAVIDSON, Ms Colleen, Project Officer, Stolen Generations Litigation Unit, North Australian Aboriginal Legal Aid Service, Level 2, 43 Cavenagh Street, Darwin, Northern Territory 0800

STOREY, Mr Matthew, Senior Solicitor, Stolen Generations Litigation Unit, North Australian Aboriginal Legal Aid Service, Level 2, 43 Cavenagh Street, Darwin, Northern Territory 0800

CHAIRMAN—Welcome. Is the Stolen Generation Litigation Unit a subset of the north Australian Aboriginal legal aid office?

Mr Storey—That is correct, yes.

CHAIRMAN—We have got no written submission.

Mr Storey—You are about to receive one.

CHAIRMAN—Thank you.

Mr Storey—Unfortunately, we did not have time to prepare this in time for the committee to read it, but we have copies for the committee.

CHAIRMAN—Let us formally take that into the evidence before we start.

Resolved (on motion by Senator Abetz):

That the submission from the Stolen Generations Litigation Unit, prepared by Matthew Storey, Senior Solicitor, and submitted on this day to the Joint Standing Committee on Treaties be accepted for publication.

CHAIRMAN—As you have just had it tabled, I assume that there are no corrections of errors of fact or omission that we need to incorporate at this stage.

Mr Storey—I understand not.

CHAIRMAN—Would you like to make a short opening statement in relation to the written submission?

Mr Storey—The written submission covers this in greater detail than I will be able to here today. However, the submission covers three main elements. Two of those elements relate particularly to contemporary separations and the third, briefly, covers some of the historical removals that indigenous people in this country have been subject to.

The contemporary separations section examines both the indigenous child welfare

systems, looking particularly at the Human Rights and Equal Opportunity Commission's recommendations on that matter, and juvenile justice issues. The report notes that the stolen generations have a particular experience of these matters, based on the historical practice of removals and the contemporary effects they continue to have. Also, the Stolen Generations Litigation Unit, as an element of the North Australian Aboriginal Legal Aid Service, has a particular interest in these issues as an indigenous legal aid service in relation to, in particular, juvenile justice.

The final section of this submission deals with the issue of the historical removals that are more generally known as the stolen generations, which the bulk of the Human Rights and Equal Opportunity Commission report dealt with.

In relation to the first of those—the indigenous child welfare systems—the submission notes the statistics quoted in the Human Rights and Equal Opportunity Commission report, which I heard the previous party giving evidence on, and notes that the inquiry report found that in 1993 indigenous children constituted only 2.7 per cent of Australian children but were 20 per cent of children in care.

Following on from that, the submission goes on to look at some of the history of child welfare legislation in this territory. Harking back to some of the previous comments that were being made to the committee on the criteria for the assessment of a child in care, the submission notes that the legislation that was the basis of, more recently, the Kruger v. the Commonwealth case, the Aborigines Ordinance, is also the starkest example of where the delivery of indigenous child welfare systems has gone wrong. In that case, the criteria for the assessment was explicitly racial and thus it was no surprise that one found a racial basis for taking indigenous children into care.

While that is perhaps the starkest and thus most prominent example of where separation has occurred because of inappropriately targeted welfare systems, the submission goes on to look at the experience under subsequent legislation. It draws the example of the Welfare Ordinance 1953. At that time, the government of the day found that the explicitly racial criteria were no longer acceptable. On page 2 of our submission, we quote government secretary Leydon, who stated:

The Aborigines are the only people standing in need of assistance as a group . . . Clause 14—

of the ordinance—

applies to them. But we have not used the word 'Aborigine' so we can avoid discrimination.

The purpose of this bill was to help the work of assimilation.

Senator ABETZ—Was this the Legislative Council of New South Wales?

Mr Storey—No, the Northern Territory. The criterion used in that bill was that a

person could be declared a ward on the basis of an assessment of their manner of living, their inability, without assistance, to adequately manage their own affairs, their standard of social habit and behaviour and their personal associations. In this Welfare Ordinance we find an example of assessment criteria which are not explicitly racial in their operation. Indeed, with some slight modification, it would not be surprising to find criteria of this sort in contemporary legislation. However, the issue goes on, and we point out, if you look at the social conditions applicable at the time, that there were criteria set up to ensure that indigenous people were removed.

However, the issue that the stolen generation finds particularly important, based on the historical practice of removing Aboriginal children of mixed descent, is that this legislation, in its operation, ensured that the effect of the delivery of family services on Aboriginal people of mixed descent who were in urban settings was the removal of Aboriginal children. In remote communities, where there was an en masse declaration of wardship, the family unit remained in tact. Thus, historically, you found a distinction in operation between urban Aboriginal people of mixed descent and Aboriginal people in remote communities. It is this that lays the basis for much of the indigenous welfare paradigm that we find existing today.

The submission goes on to recognise this as the historical basis to propose solutions to this, some of which were propounded by Ms Barbara Cummings of the litigation unit in a recent speech which she gave, and that is to suggest that the criteria for the delivery of services should be more culturally determined by recognising that the Aboriginal community—and in this case, we would be specifically suggesting the Darwin urban Aboriginal community—should be more in control of the criteria for determining whether services are let loose upon a family unit. I think this is very similar to what was being suggested by Karu.

It notes that the HREOC model of self-determination is, in fact, very close to this. The confluence of the HREOC recommendations and the views of this community, as represented by Karu and in Ms Cummings's paper, are significant. The separation of indigenous children through the operation of the welfare system is statistically incontrovertible. Here we have HREOC and community organisations suggesting that the reason for that degree of separations is, in a white dominant cultural assessment, the criteria necessary to let loose family services. The solution being proposed by all of those organisations is to increase the indigenous self-determination in the determination of those criteria.

CHAIRMAN—We have not had time to digest some of the detail in this submission, but would it be reasonable to say that one element of the solution is to have a children's commissioner, or would that just add to a misunderstanding of the whole process?

Mr Storey—A children's commissioner?

CHAIRMAN—Yes, to cover children, both Aboriginal and non-Aboriginal.

Mr Storey—We have not developed a formal policy position in relation to that proposal. Our initial view would be that it would not be detrimental. However, the essence and the vital thrust we are suggesting is to increase the indigenous self-determination on that. I would emphasise again that this is not just a call for self-determination because that is what Aboriginal organisations do. The very reason for the continuing separation of indigenous children from their families is the inappropriate assessments based on cultural factors being made by what are always going to be predominantly white authorities.

CHAIRMAN—In my quick reading of your submission, you have basically taken the Karu position a bit further and explained some of the questioning that we had of Karu about the criteria. You have spelt it out in a little more detail but pointing out that it goes so far as to create an undesirable situation. Is that basically what you are saying?

Mr Storey—In effect. I have not had the opportunity to read any written material presented by Karu but what I heard of their verbal submissions, yes, we are taking a very similar track. Perhaps because of where we come from we are taking a more theoretical approach to their more practical approach.

CHAIRMAN—Yes.

Senator ABETZ—The overwhelming feeling that I got reading the stolen generation report *Bringing them home* was that there were people in, say, child welfare areas of government, possibly well meaning, believing that they knew what was best for children and getting it terribly, terribly wrong—all the devastating effects that we can read about.

Mr Storey—That is a very succinct summary of my preceding submission.

Senator ABETZ—Taking that a step further, I have these huge doubts. The Convention on the Rights of the Child and a children's commissioner might have all the good intentions in the world. But let us look at the past experience of the Aboriginal community or, indeed, at the white community. In my home state of Tasmania, for example, the welfare agencies not so long ago were of the view that white women who were single who gave birth to a child should be told that the child had died at birth. The child would be adopted without the mother being told, because they deemed that that was the best for the child at that time. I think everybody now agrees that that was not the best for the child and was terribly wrong to do.

Given that history, especially in the Aboriginal community but also experienced in the white community, I view with a degree of cynicism or I have a lack of faith in those who seek to promote some super structure as being the way to look after the best interests of the children. There just seems to be something very earthy and fundamental about

mums and dads and extended families basically knowing how to look after kids, be they white or Aboriginal. Do you have any comment about that?

Mr Storey—Certainly the development of 19th century welfare models and, again, harking back to an inappropriate cultural determination of criteria to intervene in England was based perhaps not so much on race but class. The idea that the working classes were somehow morally deficient was predominant and often this is why welfare was seen as necessary to overcome that perceived moral deficiency on the part of the working classes. Transferred to Australia it developed a more, and certainly an uglier, racial overtone.

To move from there to what you are suggesting about the failure or the absence of a need for super structure over extended families, to an extent and in an Aboriginal cultural context an extended family can be seen very much as a community. Where the boundary of extended family stops and that of community starts is an interesting question, particularly in an urban Aboriginal setting, based on the experience of the stolen generations, where the definition of family might be strongly influenced, for instance, by which mission or institution a group of people were incarcerated in, to the extent to which family ties to people in remote communities have been able to be re-established. So you see a merging of the concept of extended family with community. What the submission gets to is a need to give the community some priority in determining the criteria for introducing family services. I think, in a way, you and I are taking a very similar approach.

The point I would note is that the community, thus identified and empowered in a way, still needs some resources to be able to carry out that function. Those resources inevitably require a degree of administration. If that constitutes the superstructure that you were talking about—

Senator ABETZ—No.

Mr Storey—Then I would suggest that is necessary.

Senator ABETZ—I think we are at cross-purposes. Surely everybody would agree that if there is a difficulty with a family unit and its children then resources ought be provided, if at all possible, to keep the children within their family community, extended family or whatever the arrangement may be.

What I meant by superstructure was a commissioner of children pontificating and saying, 'This is the best for kids'—undoubtedly seen as very enlightened in 1997. The views expressed in 1918, with the ordinance, or in 1953 were also seen as being very enlightened and at the cutting edge of child welfare, et cetera, in the historical context. But we look back and say, 'What a disaster!' I am wondering whether we might then in, say, 2025 look back on developing a commissioner of the child in 1997 and say that it was very well intentioned but it took kids out of the proper context of family with mum, dad, extended family, community or whatever.

Mr Storey—I think it would depend on the political placement of the office of the commissioner. In the scenario we are developing, where the community has much greater control over these issues, that community exercise of power has to exist within a general political milieu within the territory or the Commonwealth for that matter. Inevitably, that political setting means there is going to be some conflict. One of the potential dangers of empowering arguably small communities to that extent is in the big pond of political settings they are going to be overwhelmed.

For instance, if the community was empowered in the way we are suggesting within the territory political situation, that would accord we suggest with many of the articles of the Convention on the Rights of the Child. Governments may, at this stage, applaud that and decide they will do that. As other aspects of our submission that deal with juvenile justice show, those same governments can, at a moment's notice, completely ignore all obligations under the convention. In that context, it may be that having the big stick of a commissioner for children protect those principles would be a necessary political outcome.

Senator ABETZ—Are initiation ceremonies amongst the Aboriginal community culturally important?

Ms Davidson—I would definitely perceive it as being important for them.

Senator ABETZ—At what age would those initiations commence? Say, if piercing an ear or something like that is part of an initiation ceremony, at what age would that start?

Ms Davidson—It can vary. It depends on what part of the community you are from and which traditional group you belong to. Different groups have their ceremonies at different times.

Senator ABETZ—What is the youngest age?

Ms Davidson—As I said, I am not in a position to give ages and be exact. It varies at different communities. I am a bit unsure why you need to have an exact age.

Senator ABETZ—The reason why I was asking the question was—and allow me to put it into context—you may be aware that the Jewish community circumcise their young boys at age eight days.

Ms Davidson—You are talking about genital mutilation and things like this in the communities?

Senator ABETZ—No. We had a submission earlier this morning referring to the circumcision of boys as barbarism and that the Convention on the Rights of the Child would disallow that and, as a result, we as a nation ought to disallow circumcision of boys

until they are of an age to be able to make that determination for themselves. I was just wondering whether that sort of interpretation of the convention might adversely impact on practices within the Aboriginal community as well. That puts my question into context.

Mr Storey—It is difficult to answer because of the divergence of Aboriginal cultures. As I indicated at the outset, the stolen generation—

Senator ABETZ—Yes, it would impact on some, wouldn't it?

Mr Storey—The stolen generation community represents to a significant extent urban Aboriginal communities, while there are associations with more, what are known as, traditional communities. They vary. Some of our community have been able to re-establish contact with the remote communities that they were originally taken from many years after the fact and, at that stage, gone through some sort of business. However, what I am informed by those clients is that, despite going through the initial form of business, the delay and the separation have a profound effect on the acceptance within the community, so I am informed. Certainly, legally, it has an effect on their entitlement to land rights.

Senator ABETZ—Yes. I think you are developing it further than I was going to, but thanks for that.

Mr Storey—Having said that, of course—

Senator ABETZ—Would a traditional community, for example, undertake some physical action on a child that may inflict some pain or discomfort? For example, it may be circumcision or the piercing of an ear or a nose or something of that nature at an age where the child does not have the capacity to really consent.

Ms Davidson—It is really hard to talk about that. I think it is up to each community how they sit in judgment of their own community and make decisions about what is happening to their children.

Senator ABETZ—I happen to agree with you, but we have evidence before us saying that the Convention on the Rights of the Child would overarch the Aboriginal community or the Jewish community. It would not allow—for example, the one we dealt with this morning—the circumcision of young boys at age eight days because it was interpreted to be barbarism and the child could not consent. I am very concerned that, if that sort of wide interpretation of the convention were to be adopted, it may well adversely impact on Aboriginal culture and the sense of belonging. So, for whatever reason, if the Jewish community determines that circumcision at age eight days is part of belonging to the community and has great religious significance as well, the chances are it will not only impact on the Jewish community in Australia but, I would have thought, also the Aboriginal community.

Mr Storey—Senator, perhaps our organisation is not the most appropriate one.

From the theoretical perspective, your question raises fundamental issues of culture and the nature of rights.

Senator ABETZ—Yes. I agree with you.

Mr Storey—I have heard that spearing as a form of traditional punishment is a fundamental violation of human rights and thus should be outlawed completely, and those concerned should be punished by the criminal law to the full extent possible. I have also heard argument that, if a spearing is over fairly quickly and the person is rehabilitated and returned to the community, it is a much more humane treatment than locking somebody away for 15 years. There are certainly arguments on both sides.

Senator ABETZ—That is the argument in favour of reasonable and sensible corporal punishment for kids, which some people say is outlawed by the convention and others say it is not outlawed by the convention. I just wanted to explore that aspect with you, so thanks for that, Ms Davidson and Mr Storey.

Ms Davidson—I want to say that we do not specialise in that area, and we are not able to comment a lot on it. I guess it is up to those communities and how you follow through with this, but I do not know. The communities need to be consulted. Certainly there would be changes in terms of those sorts of things happening in the community, because I think how we are living today has certainly been affected.

CHAIRMAN—Let me bring you back to a more contemporary issue. On page 8 of your submission you suggest, in part:

. The declaration of a section of the Alice Springs gaol as a juvenile detention centre.

You would be aware that one of the reservations inserted by the previous federal government back in December 1990 was under article 37(c) in terms of the co-imprisonment of children and adults for geographic and demographic reasons. Should I understand from that comment on page 8 that you would be proposing the withdrawal of that reservation?

Mr Storey—That is correct, yes.

Senator COONEY—Just as a matter of curiosity, are you taking action in the courts about the stolen generation?

Mr Storey—That is correct, Senator.

Senator COONEY—How far has that got? Have you issued your writ and got your defence in?

Mr Storey—We have issued slightly over 700 generally endorsed writs out of the

Darwin registry of the High Court. Twelve fully pleaded writs were remitted to the Federal Court. Pleadings did close on those, but in light of the Kruger case—

Senator ABETZ—Was your organisation involved in the High Court decision that came down recently?

Mr Storey—Yes.

Senator COONEY—Why the High Court? It is interstate, is it?

Mr Storey—Because the defendant is the Commonwealth it is within the original jurisdiction of the High Court. Our belief was that it was an issue of national significance to the extent that it warranted being issued out of the Darwin registry of the High Court.

Senator COONEY—And they have referred it to the Federal Court, have they?

Mr Storey—For determination of the facts. It would not surprise me if at a later stage it found itself somewhere else.

Senator COONEY—How far have you got?

Mr Storey—As I said, pleadings in the 12 matters that had been remitted to the Federal Court have closed. In light of the decision of Kruger v. the Commonwealth, it is more than likely that we will have to amend some of the pleadings to reflect the decision.

Senator COONEY—What are you suing for?

Mr Storey—Damages, both general and punitive, and equitable compensation.

Senator COONEY—For what?

Mr Storey—Pain and suffering. Senator, if you are interested, I will supply you with a set of the pleadings.

Senator COONEY—I am. I will get those later on, thank you.

CHAIRMAN—Any more questions?

Senator ABETZ—I am still reading the submission.

CHAIRMAN—Yes, I know. We might take a little while to digest some of that. I thank the witnesses.

[2.38 p.m.]

HATHAWAY, Ms Margarita Desiree, Multicultural Issues Worker, Children's Services Resource and Advisory Program (Northern Region) Inc., PO Box 26, Nightcliff, Northern Territory 0814

LAWFORD, Ms Jane, Aboriginal and Torres Strait Islander Coordinator, Children's Services Resource and Advisory Program (Northern Region) Inc., PO Box 26, Nightcliff, Northern Territory 0814

McCARTHY, Mrs Lee, Program Manager, Children's Services Resource and Advisory Program (Northern Region) Inc., PO Box 26, Nightcliff, Northern Territory 0814

CHAIRMAN—Welcome. Particularly, Lee, welcome back. I will explain that Lee was the director of a child-care centre in Toowoomba.

Mrs McCarthy—I looked after 1,500 children there. Now it is a few more than that.

CHAIRMAN—We do not have a written submission. Do you want to table something, or do you want to make a short opening statement?

Mrs McCarthy—I think we will talk very briefly and then you can ask questions. We have had a huge change of staff. I started working here this year, and Desiree and Jane have been in positions for a little bit longer than I have. Because of that, we did not put in a submission. It normally would be the sort of work we would do. We will probably talk to you mainly under term of reference No. 7—adequacy of services.

We look after child-care centres in terms of training, resourcing and advice. I suppose it is two-way advice: advice back to territory and federal government as well as advice to services. We also have probably the main thrust of support services to multicultural services, to Aboriginal and islander services and to families in terms of child-care issues.

A missing worker of our team who should have been here today is on study leave. She is our disability support worker. So those are the sorts of areas we could talk about. We work in the northern region. We service from Katherine to Nhulunbuy and Groote Eylandt, and points in between. That is the sort of area that we work in.

There are some really positive things that are happening in Australia for children. There are many quality child-care centres. Unfortunately, it is those services that usually get filled first. Word of mouth supports them. Often, these days families are very mobile. We work in a region where there is a lot of mobility. Also our region is very heavily service oriented, Darwin and Katherine as well. Often families moving in have to take any

place for a child, and I do not think any place is good enough. We in Australia still have some work to do.

We have a national system of accreditation, and I would say let us keep it. This service would say let us keep it, let us support it. It is federally funded, but it does need to have teeth. We have some services in the territory that do not comply and seem to be taking a long time to even think about participating in accreditation.

When I talk to bureaucrats about this, they often say that parents should ask questions and be informed. But parents, particularly with a first child, can be very new to child care and they do not know to ask questions. So we do need to have a watchdog about things like that otherwise we have infrastructure in Australia that better serves people who are knowledgeable about these issues and less serves people who are not. We need to be mindful of that. When we talk about child care, we are often talking about non-verbal children and very young children anyway. Some children, therefore can be left in childcare programs that seem to be one thing but which are not.

We also seem to have enormous difficulty with conflict between service types. I think there is room for all: there is room for family day care, for private centres and for community managed centres. They all serve a purpose, which is about quality care. Whilst it is fine to be looking at the sort of care that is given, we need to recognise that some groups of people promote one line and that perhaps they stand to gain by fragmenting their opposition—and there seems to be an enormous amount of that.

We seem to have politicians who enter the fray without understanding. I have a document here that reached my desk in the last few days—I might refer to that at the end, if you like—where people are absolutely bagging family day care. In the territory we have to be mindful of needing innovative services and services such as family day care.

No service proprietor will want to build a centre at Mataranka. There are not enough families. Yet the families that are there deserve to have some family day care or a similar sort of service so that they can participate in the work force. Family day care provides 24-hour care. It provides care, particularly in a town where there is a need for emergency services or there is a major amount of tourism. So I think we need to stop bagging and start looking at what makes quality care in all its varieties.

In terms of child-care infrastructure, we see the whole of life as education, but it does start at zero, and not at five. We seem to provide a really good infrastructure for training and for our schools nationally. We need to watch that we provide a comparable service to support our very young children. It is really important that we learn to think of education as starting at those very beginnings, and to provide appropriate remuneration for workers in that field. I have been heard to say before that it is often more worthwhile to clean toilets than look after young children. In our country, that is a real indictment. That means that we are losing the best of our child-care workers, who will often retrain to become teachers so that they earn a worthwhile living. That is something that I think we

could come of age and deal with. We could address that.

We also need to look at our special needs children. Because Kim is not here today, I will talk a little bit about that area. We have a very good support program in the territory, but it can be quite expensive for a small service such as ours because we do need to bring people to us or to travel out. We seem to often be per capitated out of funding. I think, if we are going to be truly Australian, we need to recognise that the islands to the south, and places such as Darwin, to the north, are not detached from the other side of the mountains, and that we are all part of Australia. It is not just about main population bases; it is about everywhere. We need to perhaps find some ways of equating programs so that we do not just say, 'Well, there are 50 children here, and 5,000 children there, so we'll divide the funds accordingly.'

There is a very good program which has just been brought into place for high support needs children. It does not have a very good title, it is called SNSS, but it is about very good things. I have been involved in its development in Australia and I commend the government for it. But we have just found that instead of there being one grant nationally and all families having an equal right to apply, the money seems to have been split. I believe that the amount that has been apportioned to the territory might support six to nine children for a year.

I wanted to say to you that in a territory that has emerging and growing needs, but has a lot less infrastructure than many other cities, maybe that sort of per capita thinking is inappropriate. I think we need to deal with things like that. I know that there is not a bottomless pit of money, but if we are going to have really good programs, let us try to see that they are there for the real cases of need, and let us try to see that they are there for all children. I think that is something we really need to do.

With regard to traineeships, there is a very under-trained population in terms of child care in the territory, yet there are very many people of fine quality working in services. I have just discovered that the traineeships go forward and not backward. By that, I mean that we are looking at training people who are not working in the work force; and that is very good. But we would like to be able to ask for traineeships to be there for people who have been working, who are unskilled and who have not been able to access training in any other way. I think it is time that we kept talking to the field about what the needs are and not making all the decisions in Canberra.

I have had a very scant chance to read the documents from you, but I do see that you are looking to see whether national standards affect states and territories well or adversely. In terms of child care, we have been trying to have a national child-care curriculum, we have been trying to have national standards, and we have been trying to have national competencies. Yes, we need them. It will make it better for all families, and all children. Our sector is working very hard to see that we get there. Sometimes it takes a long time, but I think we have to keep trying.

We have rural and remote issues everywhere in the territory. We try to overcome them in our service by giving people the choice to come to us for training, or by us going to them. I would like to ask that we have continued funding for a little longer so that we have very solid services in place. If we have to have funding cuts, could there be a thought about rural and remote families for a little bit longer? It has only really been accepted, I suppose, in the last decade that most women have the right to work. In many places in the territory, I see that the infrastructure is way behind that. If we are just getting child care up and running in Nhulunbuy, then it is important that we keep training staff so that what we are doing there is excellent.

I want to talk lastly about peak bodies. Peak bodies are places that people can go to to talk about issues. They are often research bases. They are places where people can meet with others that share a common interest. Some wonderful things have come out of them in Australia. One of the peak bodies I am referring to is the Australian Association for Early Childhood. It is probably a body that federal government often refers to for advice. I have the feeling that these bodies are very rarely funded, but they seem to be facing more and more crises at the moment. I think we need to look at that. If we allow that sort of infrastructure to be dismantled, we will have lost a whole wealth of information and a whole wealth of support.

Mostly, the people that work for those bodies provide the work in a voluntary capacity, but you often need infrastructure funding for mail and things like that. Those sorts of bodies traditionally have gained most of their income by having people pay memberships, but it seems to me that it is becoming harder and harder to do that, particularly as the child-care industry is becoming very fragmented. I think that there needs to be some urgent dialogue or discussion about that.

There has been a national family day-care body for a few years. It was unfunded three years ago. It thought it could go it alone. The federal government provided some funding recently, but I think it is another body that does very good collective work and needs to be watched because, if we do not have those bodies, then there is going to be no-one to turn to to have some dialogue about what is happening across sectors, across the industry, or whatever. Desiree is going to talk briefly about her program 'Multicultural support' and then Jane will speak about Aboriginal support.

Ms Hathaway—My remarks are in relation to term of reference No. 7. I am going to talk about the adequacy of programs and services of special importance to children. My focus is on the needs of non-English speaking background children. The Children's Services Resource and Advisory Program offers a bilingual workers pool. The role of these workers is to help the child feel included in the new environment of child-care services. We offer this to long day care, family day care, out of school hours care and occasional care.

The aim of this program is to maintain the child's language and culture, and to reduce anxiety while he or she is getting to know the new environment. It is also there to

help child-care services to understand the needs of migrant children and their families. We encourage the bilingual worker to share aspects of the child's culture with other children in the service. They do this by organising activities such as simple greeting songs, stories, games and sharing aspects of child rearing practice from their culture.

The Children's Services Resource and Advisory Program coordinates the bilingual workers pool and provides them with resources and training. The Children's Services Resource and Advisory Program provides the multicultural issues worker as a resource for non-English speaking background families. This worker liaises with migrant community organisations, provides advice to migrant families, liases with the services provider and government and non-government agencies, and provides child-care services with advice and information about the needs of migrant children and their families.

The gap that I see is that migrant families do not know how to access child care. They do not know the difference between bad child care and quality care for their children. Child care is a new concept for them. I also see that they need to have multicultural child care in the northern region, not only one but a couple of them. This will give non-English speaking background families the opportunity to experience a good quality of care in Australia.

CHAIRMAN—Thank you.

Ms Lawford—I help Aboriginal and Islander families with their children, trying to bring them into child care. I have had no luck doing that—I also run a playgroup—because most of the Aboriginal families do not bring their kids to child care. They either bring them to their parents or to old aunties, uncles or whatever to look after them. But when they want to do something for themselves or when they want to go back to uni, they do not know how to access the child-care centre, so they do not go anywhere. They just stay home or go to school. Lee might want to say something else.

Mrs McCarthy—Jane does wonderful work and she has an important role in trying to be there for the families. The playgroup is a contact point. By working and being available at this contact point, she will often learn about very young mothers that perhaps would like to return to studies and she learns about the difficulties they have in accepting what is irrelevant in their culture—that is, to go to formal child care. We are trying to make more access of family day care because that is more relevant, perhaps, to their needs. That is the sort of work Jane does. In fact, when she was sitting in the back she was saying that maybe you could ask her a bit about initiation. She has lived in Broome and she might be able to help you.

Senator ABETZ—You have heard all the questions. If she wants to tell us, I would be delighted.

Ms Lawford—No.

Mrs McCarthy—Anyway, if you want to ask us questions now, we will answer them.

CHAIRMAN—Lee, I only wish you had been sitting next to me in Toowoomba last week when I appeared with a group of private centre owners. I agree with you entirely that it depends who you listen to, as to which area within the child care industry, if they are the right words, has priority. I heard a lot of bucketing of family day care. I must admit that I have some personal reservations about standards as a result of that. My judgment would be that that would not necessarily apply in rural and remote Australia; that can be done within the community. But you are quite right.

In terms of peak bodies, I said to them, 'At long last you are starting to realise that you have so many peak bodies within the industry that it is a question of divide and conquer.' It is a question of whether there should be operational subsidies for long day care centres, on the one hand—and I will come back to a couple of questions in that area in a moment—and whether the balance is right. Listening to you, I only wish you had been sitting with me, because I was making exactly the points you are making—and you are the expert; I am not—in that there has to be a balance between those various elements. For one section of the industry to take a view that they are the paragon of all virtues is very counterproductive. Unfortunately for Toowoomba, Toowoomba's loss is the territory's gain in terms of Lee McCarthy. Without wanting to go too far this afternoon, I can tell you that she is a very valuable person to have up here in the territory.

I turn to a couple of things which have territory relevance. One is the loss of the operational subsidy to community based long day care centres. What impact is that having in the territory? The second one would be the $10 million over four years for additional ATSI type places. How much of that is being taken up? How effective is that in the territory? But before you get on to that—I am sure we are all asking the same question—what does your group actually do?

Senator ABETZ—Whom do you advise?

Mrs McCarthy—We advise territory health and children's services. We go into many services every week. When I say 'we advise', I mean that we dialogue a lot.

CHAIRMAN—But who funds you, Lee?

Mrs McCarthy—We get about one-fifth of our funding from Northern Territory health and approximately four-fifths of our funding from the federal government. We would probably make $1,000 from our own resources. It is very minor.

CHAIRMAN—But basically the financial resource provided is to pick up the personal resources—yourself and other staff members?

Mrs McCarthy—Yes. We work across different programs. We provide training to management committees. We provide set-up assistance to private services. We provide

advice to family day care coordination units. We might train family day care providers. We run training courses—in-service training for staff of centres. We can help services with centre-specific help if they are in trouble.

We are part of the Gowrie consortium—there is a RAP in Canberra, there is a RAP here and the others are the Lady Gowrie centres. But, where they provide mostly for centre based care, we provide for all forms of child care. So we are uniquely placed to have a bird's-eye view of what is happening right across the industry. If you remember, in Kath Dickson the same applied. We had disability services, long day care and family day care, so you do look at things differently.

CHAIRMAN—I guess from what you were saying a moment ago in terms of Aboriginal people that you have another variation of family day care in that it is 'the family'—the real family, not just Mrs Bloggs over there looking after six kids.

Mrs McCarthy—Yes. Jane has just come from doing some work at Yuendumu. Jane has been working with government officers helping to set up innovative Aboriginal services.

CHAIRMAN—What about those two questions of mine to start off? The first was about operational funding for community based centres. It may be that, in the territory, community based is very important—that is what we have been advised.

Mrs McCarthy—Yes.

CHAIRMAN—The second was in relation to rural and remote areas, about the extent to which the $10 million over four years has been taken up.

Mrs McCarthy—I can talk to you a little bit about the ridiculousness of the loss of the operational subsidy in terms of the territory; that is, it has been a clean sweep, pretty much, across the territory. That includes loss of operational subsidy for services in Katherine.

CHAIRMAN—But you had some retained, hadn't you?

Mrs McCarthy—Yes, but in Katherine there is no private service—there was just a rumour of a private service being built.

CHAIRMAN—And financed over the next three years—the ones which have hung on to the subsidy?

Mrs McCarthy—Yes. Services like Nhulunbuy, Groote Eylandt and Jabiru are fine, but services in Katherine are really struggling—and this is the level playing field that was mooted by these private centres in Brisbane, Sydney and Melbourne. They did not think about Katherine when they talked about that. It is causing hardship to families.

Some wonderful but small community managed services in Darwin will, I think, have to close fairly soon. They were never built around the 75-place monoliths that make money; they were built around another whole philosophy. Some of the models that were discussed along the eastern seaboard to enable small services to continue operation were about amalgamation. But some of these services that may close are not geographically placed in a way that would facilitate amalgamation.

CHAIRMAN—But are not going to be replaced?

Mrs McCarthy—They will not be replaced. That is a pity. I cannot go public on which ones, because I am privy to information.

CHAIRMAN—Sure.

Mrs McCarthy—But there are some. It is really quite disappointing, because it was the small church groups and others like that which really set this work up in the beginning.

CHAIRMAN—Will some of them go because they have not been able to mount a case?

Mrs McCarthy—Yes.

CHAIRMAN—As you would know, they were given provision to mount a case and in some cases to retain for about three years.

Mrs McCarthy—I have a feeling that our officers here tended to look at things on a territory level instead of on an Australia-wide level. They forgot that the territory's infrastructure is very young. It was from people who live and work in the territory and have not had the chance to look at things nationally. So when I questioned them it was like, 'Well, from a territory perspective, the worst off are these.' Some of the groups, if you judged them in Sydney, yes, they would have retained it, but when you judged them on a territory basis, they just missed out.

I do not know how or why that happened. I certainly tried to see that it did not, but it seemed as though we were not consulted. So it was a case of just slipping in comments. I do not know whether it is too late. When I talk about the infrastructure of an emerging territory, that is really what I am talking about here.

CHAIRMAN—There is a second round, as you would know, which has just been implemented, but that only gets you over the hump, whereas some of the others perhaps have not been able to sustain the three-year moratorium.

Mrs McCarthy—Part of what was talked about to help them sustain child care services was that they might like to have some funds to add a few places. So one of these services that may close is actually surrounded by other services which got funds to add a

few places. It was a bit cut-throat.

CHAIRMAN—What about the $10 million with ATSIC in particular?

Mrs McCarthy—I am actually going to a meeting at the department tomorrow—which is bad timing for this—to advise me in on everything that has been happening this year and what is being proposed for the next two years, but that is talking specifically about the set up of innovative services.

CHAIRMAN—So it is in its early stages?

Mrs McCarthy—Yes, and there is a lot happening.

CHAIRMAN—I have 21 private centres in my electorate, together with about a dozen others. I am not an expert, but I am fast becoming one because I can feel the electoral pressures. It is an area that I think is very important in the territory.

Mrs McCarthy—The main issues that were picked up by community managed services were that they took on the bulk of under two's, which is the expensive area of child care. They took on many children with special needs, either emotional or physical, and they often waved the fee, but they did not go public saying that—they just did the work. They did a lot of charitable works and that is where the operational money helped them.

CHAIRMAN—And what about the 50-hour rule and the 20-hour rule?

Mrs McCarthy—My belief is that there was a lot of rorting of child-care assistance and so I think that might help it.

CHAIRMAN—In relation to 50 or 20?

Mrs McCarthy—Both. My concern would be more for the child-care services in a town like Palmerston or Humpty Doo, if both parents travel into the city to work and back again and they only have one vehicle. But then, in a way you have answered that because parents can apply for an exemption.

CHAIRMAN—That is right. They can get more than where the travelling is—

Mrs McCarthy—Yes. I am not a proprietor, but I think that was fair and just.

CHAIRMAN—Both?

Mrs McCarthy—Yes, because there was so much rorting across Australia. We knew that there were services that were saying to families, 'You need to enrol for the full week. If you only need three days, well fine, but you have to enrol and pay for the full

week,' particularly if they were child-care assisted. Then the other two days would be sold off and, if people did not want those two days but only wanted ten hours, there was a third selling off. So I think something had to happen.

CHAIRMAN—Listening to the private centres the other night, as you would probably know, under the 50-hour rule, the average nationally—it is a national average, I know, and would vary from area to area—is about 26 hours and under the 20-hour rule, it is about 14. So I agree with you entirely that somebody is creaming off the top. Generally it is pretty easy for some of these places to blame government for putting up fees; whereas some of it is of their own managerial doing. Do you agree with that?

Mrs McCarthy—Absolutely, yes.

Senator COONEY—One thing you can clear up for me—I know you have been through this—is this: what is the level of supervision around Australia, or does it vary from time to time?

Mrs McCarthy—It very much varies. I understand what you are saying. You find that services that are with an organisation like Lady Gowrie or the Creche and Kindergarten of Queensland will have a lot of checks and balances. That is part of a requirement of belonging to an association of like services.

It depends very much on what the state or territory does—and in Queensland childcare is monitored by Family Services and in the territory it is Territory Health—what their offices can do. They are usually quite undermanned. So, even though the state body will license the services, and the service might meet all the licensing requirements, usually they have more to do with building the physical environment than the nurturing of the child. We all know that we need to nurture the child. Children have died in hospital from lack of nurturing—with every piece of equipment in the hospital. So we have learnt those lessons. So it is the people skills that really need to be monitored.

Senator COONEY—Who looks after them in the territory? I know that in Victoria some are done through hospitals and some are done through the local councils, which actually supervise the providers.

Mrs McCarthy—It is Territory Health in the territory, but it is not a very rigorous supervision. So that is why I talked earlier about having accreditation and having more of it and having teeth. It is the national kind of accreditation system that is supposed to be self-monitoring, and it is a very good system. I brought the handbook with me in case you did not know what it looked like, but it is your national system. It is a very good system, but what has not happened yet is it is not really challenging or closing the services that do not comply. So that is why I said it needs to have 'teeth'. I believe that, if you keep funding the Accreditation System and keep up the dialogue with it and about it Australia's child care system will be excellent.

Senator COONEY—So, if we persist for a while, there will be adequate supervision and adequate child-care provisions?

Mrs McCarthy—Put it this way, accreditation is a national type of supervision that I think we are a long way off from getting in any other way. We would like to think we supervise. The Resource and Advisory Program, and service like us, actually visit lots of child care services. Because we go in in an unstructured way, we see things not considered 'best practice'. We try to find non-confrontational ways to deal with them. It is not always possible, but we do. But, no matter what system you have, you will always get people who find ways around it.

CHAIRMAN—In terms of the need for national standards, have you had the experience, as happened in my area of Queensland with the Queensland government, of the Northern Territory government having a particular view about something which does not necessarily accord with the overall principles at the federal level? For example, I had a case very recently about there not being some overhang or shadecloth over the sandpit. Basically, what that centre had to do was literally build a second sandpit. It is a bureaucratic climate.

Mrs McCarthy—I have always thought that regulations were made to have shades of grey. I do not know whether you remember, but we lost some baby places at the Kath Dickson service. That was the best nursery in the state. It was about the fact that we did not have any more space to put in a yard. Most of the babies were not even mobile. They did not even run.

CHAIRMAN—That is the point I make. What I am asking is: do you have the experience in the territory?

Mrs McCarthy—It seems to be a lot saner, because they have not had the structure that the Queensland government had. They have been developing their own structures at the same time as the national standards are being written.

CHAIRMAN—They have not become as bureaucratic.

Mrs McCarthy—It has not become as bureaucratic.

CHAIRMAN—Thank you very much. Do you have any other points that you want to make?

Mrs McCarthy—I would love to tell you a little about of what happened here. This is a copy of a document from a journal from one of the peak bodies I mentioned before.

CHAIRMAN—Give us the reference, just to save a little time. Then we will have a look at it.

Mrs McCarthy—It will be really good to have a look at it, because it is trying to bag the government. They say that they do not agree with the national standards. It is the Australian Confederation of Child Care, and it is quite a recent journal. If it cannot be found, staff can find me and I will go further afield to obtain a copy.

CHAIRMAN—Is it a reference in a journal or something?

Mrs McCarthy—Yes, it is in the July 1997 issue of a journal from the Australian Confederation of Child Care. It deals with hot issues in child care. It says that family day care is not even quality backyard care. Unfortunately, Mr Beazley has been caught up in this debate.

CHAIRMAN—That was the background document I had the other night, so I am aware of it. Thank you very much. Good luck in the territory, Lee.

Mrs McCarthy—Thank you.

[3.15 p.m.]

BURNS, Dr Christopher Bruce, Research Officer, Clinical Research Unit, Menzies School of Health Research, PO Box 41096, Casuarina, Northern Territory 0811

CHAIRMAN—Welcome. Do you have any introductory comments you wish to make?

Dr Burns—I wish to speak specifically about aspects of Aboriginal child health, particularly those in rural and remote areas. I think it is issue No. 26 raised by the UN.

CHAIRMAN—First I will just get on record your submission, which you have just given to us.

Dr Burns—I apologise for that.

CHAIRMAN—That is all right. It has happened before, I can assure you.

Resolved (on motion by Senator Abetz):

That the submission from Dr Burns dated 14 August be accepted into evidence.

CHAIRMAN—Would you like to make a short opening statement in relation to that written statement?

Dr Burns—Yes. My main areas of research are in substance abuse. In particular, I have been interested in petrol sniffing and kava abuse for a number of years. In 1995, the Menzies School undertook a Commonwealth funded study into the provision of health services at Maningrida, which is probably one of the largest remote Aboriginal populations in Australia. The purpose of that study was to look at the health of the people in the region and what would be required in terms of staffing, infrastructure and training. It also looked at funding issues to try to develop the service to a point that would be adequate for that population.

With particular reference to child health, Maningrida is probably very typical of a lot of remote Aboriginal communities or regions in northern Australia and probably central Australia too. We found there that approximately 40 per cent of the population was aged 16 years or under—essentially children. At page 1 of my submission I state:

In infancy, the children of the Maningrida region suffered high levels of morbidity. Almost one in three babies born in 1994 to Maningrida mothers needed treatment in the special care nursery or neonatal intensive care at Royal Darwin Hospital. In 1994, on average, each child under two was admitted nearly 1.4 times per year.

So each child in that region under two was admitted to the hospital approximately 1½ times per year. I continue:

Half had diarrhoeal disease, 35% were underweight or malnourished, 50% were anaemic, 25% had diagnosed ear infections, urine infections and/or chest infections.

Quite disturbingly, we found that hospital admissions for nought- to four-year-olds in Maningrida in 1994 were more frequent than in the period 1976 to 1985. Maternal malnutrition has been reported to be as high as 60 per cent in Maningrida. Underlying my submission is the fact that maternal malnutrition, malnutrition in early childhood and recurrent infections in early childhood is really the basis for a lot of the morbidity and mortality that adult Aboriginal people experience. I think that that aspect of child health is probably of particular interest to this committee, but it also sets a stage for Aboriginal morbidity and mortality in later life.

CHAIRMAN—But you are specifically referring to article 26?

Dr Burns—I am, but I noticed there was a question: have there been any studies to evaluate the success of existing child health programs for Aboriginal and Torres Strait Islander children? From my knowledge, probably globally, Australia wide, the answer is no. Probably in specific regions like Maningrida there have been. I think the findings of our particular study show a quite disturbing picture. You will find later on in that report that funding issues, policy issues and political issues have been addressed. I have also included a summary discussion in which I try to point to some wider issues, such as education and community development, as being important keys to try to redress this situation.

CHAIRMAN—I think we would all accept that these are very undesirable and, in some cases, tragic consequences. What is being done to correct the situation?

Dr Burns—I think this study was handed in in December 1995. It had some very specific recommendations as to action and very little has happened in that time. In fact, one of the first things the community wanted was to become incorporated as a health board. It is over 18 months since the submission of that report and that still has not happened. There was an undertaking by the Commonwealth that it would support the community in becoming incorporated and it still has not happened.

CHAIRMAN—Has Senator Herron been to visit that particular area?

Dr Burns—I do not believe Senator Herron has been there. The Governor-General, Sir William Deane, actually attended an interim health board meeting in May of last year at which the community made it very plain in the presence of territory health service representatives—I am not sure whether a Commonwealth representative was there—that they wanted to become incorporated as soon as possible. It is a catch-22 in that the government tells them, 'We cannot give you any money until you are incorporated,' and yet the incorporation process has been dragging on now for 18 months.

CHAIRMAN—Some of that is a result of the Aboriginal health portfolio

responsibility now being assumed by the minister for health rather than by the minister for aboriginal affairs.

Dr Burns—That had occurred long before this study was done in 1995. Some things have happened. The community also requested that two resident doctors be placed in the area. Mainly through the efforts of the community council and the chief executive officer—a non-Aboriginal person, who has since moved on—and through the rural incentives program, which is a Commonwealth program, there is now a husband and wife doctor team out there.

However, difficulties are being experienced because the Medicare model really does not fit remote Aboriginal communities because it is really focused on doctors and what doctors do. However, in that situation—particularly in remote areas and, I guess, within Aboriginal medical services here in town—a lot of the work is done by Aboriginal health workers and nurses. It is very hard to make ends meet using the Medicare model.

CHAIRMAN—Are you a social scientists or an MD?

Dr Burns—I am not a medico; I am a scientist. However, I am in the clinical research unit of Menzies.

Senator ABETZ—They are very stark statistics that you have given to us. At the end of the day, I suppose a child's rights, if we can call them that, ought to start with their basic nutrition and their health and health treatment. As we have been going through this inquiry, I have some degree of concern that we spend money and use scarce resources on representing kids who are well fed, et cetera, but do not want to wear a school uniform when there are such pressing needs within the Australian community, such as those you have just outlined. It is an interesting approach to priorities. I am not sure that you should necessarily comment on that. I just say that as an aside.

The problems that you have pointed out to us are just basic standards of decency that require Australia to address the problems that you have highlighted, aren't they? You can conveniently use the Convention on the Rights of the Child to add impetus to your argument. But if there was not such a thing as a convention on the rights of the child, you would still say there was still as much moral force to your argument, wouldn't you?

Dr Burns—I am not sure that I would like to comment on that, Senator. There is a basic moral right and it comes down to equity. I think it was the national Aboriginal health strategy that had the basic tenet of equal care and equal access appropriate to need. I think what is demonstrated in this study and in probably a number of others is that the need is a lot greater. While the territory government might be able to point to the fact that per capita we are actually spending more on Aboriginal health or the per capita expenditure is much the same, I calculated that territory health was spending around $800 or $900 a year in the Maningrida region. That really needs to be doubled.

I do not think the territory government has really got the resources to do that. The finger that I have pointed quite squarely in this little submission that I have presented here today is that I believe the Commonwealth has an obligation if not by the 1967 referendum then by what has happened overseas where indigenous health standards have become a lot closer to non-indigenous people where federal governments have intervened, whether it is the Canadian government, the American government or the New Zealand government.

I really think the federal government needs to become very proactive here. We are not talking about a massive population Australia-wide; we are talking about remote areas, where, statistically anyway, the need appears greatest, although urban people might argue with that. Certainly the statistics from the hospital and the statistics from the Bureau of Statistics point to a great swath here in Northern Territory right across from East Arnhem that has the highest standardised mortality ratio, followed by the Tiwi and then the Alligator region, which includes Maningrida and Oenpelli. I think behind that you have got some regions in north-west Western Australia. So you are looking at three to 3½ times at least the standardised mortality ratio of people living in a middle-class suburb of Sydney or Brisbane.

CHAIRMAN—Your submission really puts to bed some of the Hanson hysteria. I did not want to raise her name today, but I have—I have avoided it most of the day. In relation to the hysteria that Aboriginal people are not the most disadvantaged, clearly they are. It is not that Aboriginal people are to blame, it is some of the programs—with the emphasis on ineffective programs—and the billions of dollars that have been poured down the drain.

Dr Burns—I would agree with that. From my observation, it is what happens at the local level. Aboriginal people in remote areas also see that things break down at a local level. Often in a community like Maningrida, you have got a plethora of organisations—you have got an out-station organisation and a community council—all essentially serving the same population with the same needs and with the same sorts of services. There is incredible competition for scarce resources, such as housing and roads, or there is duplication of staff. It is a mess.

CHAIRMAN—What evidence exists in areas other than Maningrida?

Dr Burns—I think you will find that the patterns of hospital admissions that I have mentioned are very similar in Central Australia. I have talked to medical people in Central Australia and I have presented this and they say, 'We have got the same sort of picture in Central Australia'; so I think they are very common in rural and remote areas. The only thing that set Maningrida apart, in the Top End at least, was the fact that it secured a study for the Commonwealth to actually turn this over. I think, from what I can see, it is a similar pattern right across the Top End, and I think you will find it in Central Australia also.

Senator ABETZ—How thick is this Maningrida study—how many pages?

Dr Burns—I should have brought a copy today—

Senator ABETZ—That was going to be my follow-up question, whether we might be able to get a copy of it.

Dr Burns—It is not too thick. It is all said in the first couple of pages, the executive summary. Actually I have condensed a lot of it into this couple of pages. The guts of it, the funding issues and policy issues, are in the pages here, but I will send a copy.

CHAIRMAN—If you could take that on notice and send us a copy, that would be very helpful. I think what we need to do is to look beyond Maningrida and have a look elsewhere. I am sure we have already got some similar submissions in other areas. There might be some in Western Australia and Queensland.

Dr Burns—I believe you will find a very similar story there. The other issue that I have raised that is separate to the Maningrida study is the issue of education, and the lack of educational attainment being a barrier to progress for Aboriginal people. I drew attention in point No. 4 on page 4 to that issue. A colleague of mine, Dr Komla Tsey from the Menzies School of Health Research in Central Australia, in Alice Springs, has recently written what some might say was a controversial paper examining this lack of educational attainment, some of the reasons for it and how it is really a barrier for Aboriginal self-determination. I would draw the committee's attention to that, too.

Senator COONEY—On page 2 of the report here you are talking about diarrhoeal disease, and children being underweight, malnourished and anaemic. You mention ear infections, urine infections and chest infections. Are they mainly dietary problems? What is involved here? What is really needed? Is it a proper diet, proper housing or what?

Dr Burns—A lot of these things are infectious disease and a lot of them are dietary. The two go together. Usually the admissions to hospital are precipitated by an infectious disease which exacerbates existing malnourishment. It is unfortunate—I was hoping Dr Alan Ruben, who is the community paediatrician for Territory Health Services, could come along here today with me. He has published a paper on this very topic, and found Third World conditions to do with malnourishment.

CHAIRMAN—Just in case you have not seen it, in last weekend's national newspapers—and I assume that it would have been picked up in the Darwin paper—there was an advertisement by the House of Representatives Committee on Family and Community Affairs, which is chaired by Peter Slipper, a Queensland MP, asking for submissions in relation to all aspects of Aboriginal health in the country.

Dr Burns—Yes, I have heard of that.

CHAIRMAN—I just refer you to it. We can certainly get you a copy of who to write to and all the rest of it. It is not a joint committee, it is a House of Representatives committee, but it will do an in-depth study.

Senator COONEY—Is a proper dietary regime a matter of education, or a matter of having the proper food out there?

Dr Burns—I believe it is a matter of both, but I believe the education aspect is crucial. Study after study has shown that the level of maternal education is certainly a large factor in child health. There has been a lot of discussion, particularly in the medical fraternity up here and elsewhere, about education standards possibly declining amongst the Aboriginal population, with the view that possibly the education system has failed them, and things seem to be going backwards and not forwards. Education is an important issue.

Senator COONEY—How many people were involved in the research at Maningrida? What was the number of people you were looking at?

Dr Burns—Only 2,100 people: approximately 1,400 living in the township and approximately 700 living out on about 24 out-stations. However, it is a very mobile population and it will shift from one to the other. I believe that is probably another issue that government has to look at: the relationship between large townships and out-stations. I believe over the past 15 years there has been a tendency to fund the out-stations more than the towns, but the towns are the focus. They are where people often come in the wet season, they are the service centres, and that is where the outbreaks of diarrhoeal disease and health problems erupt. I think that is very important.

Senator COONEY—In the townships rather than the out-stations?

Dr Burns—Yes, in the townships rather than the out-stations. There has been publicity about it here in the Territory. Even the outgoing ATSIC regional council or whatever it is here last year pointed to the fact that this needed to be reviewed because there was a lot of empty infrastructure on some out-stations. That is an important issue.

Senator ABETZ—Can we have a copy of Dr Ruben's paper?

Dr Burns—I will also put in a copy of Dr Tsey's paper. He is based in Alice Springs. I am not sure whether you have contacted him.

Senator ABETZ—We might see him.

Dr Burns—It might be an idea.

CHAIRMAN—We might. Probably our final hearing will be in Alice Springs, in the next six weeks perhaps. We will wait and see.

Dr Burns—The title of his paper was 'Aboriginal self-determination, education and health', so it would be of interest.

CHAIRMAN—Yes. Thank you very much indeed.

[3.45 p.m.]

KIELY, Mr Thomas, President/Secretary, Right to Life (Northern Territory), GPO Box 3016, Darwin, Northern Territory 0801

CHAIRMAN—Welcome. We have received your written submission dated 4 April. Are there any omissions or errors of fact that you wanted to reflect in the *Hansard* record before we invite you to make an opening statement?

Mr Kiely—There is no real omission or error. There is a misprint where I say at the beginning 'mean what it says and says what it means.' The 's' in the second 'says' should be 'say what it means'. It is just ungrammatical.

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

Mr Kiely—Yes. I have decided, having heard what some of the others have had to say, to restrict myself to one issue. It is a bit difficult for an Irishman!

CHAIRMAN—You said it; we didn't. But go on.

Mr Kiely—Everybody tells me that I am a bit long-winded, so I am at a bit of a disadvantage. I also thought I might have an eminent QC sitting beside me to give me some moral support.

CHAIRMAN—He was just a little concerned about Senator Abetz crossing swords with him.

Mr Kiely—I have decided to address the issue of the foetus as child or the child as foetus, and to restrict myself as much as I can to that particular aspect of childhood.

You would be aware of the recent controversy over a National Health and Medical Research Council document called *An information paper on termination of pregnancy in Australia: a review of health care services*. When it was originally circulated as a draft document a tremendous number of submissions—almost four inches of A4 paper at least—were received in reply to the request for submissions, even though there was not much time to send in submissions. There was very severe criticism of the overall attitude of that particular document, with the result that when the National Health and Medical Research Council issued the final document, they pointed out:

> The NHMRC elected therefore to receive this document but has neither endorsed the report nor its recommendations. Instead it directed that it be made available as an information paper to the various health jurisdictions and institutions and to the community.

Some of the attitudes of some of the contributors of submissions to that particular document were quite surprising, I thought. A lot of submissions came in on university letterhead—covering letters, et cetera—and seemed to be very ideologically oriented, praising the level of scholarship, et cetera of the draft document. I am not a very highly

educated person—I have a BA—but I think that many people would have thought that that document certainly was not a document with a high level of intrinsic, unbiased research.

CHAIRMAN—He also has that Irish sense of humour, doesn't he?

Mr Kiely—Ideology basically took over from science, and I think that was a bit unfortunate. The reason I mentioned it is that a lady called Melinda Tankard Reist, who was an adviser to the esteemed Senator Brian Harradine, whom I respect quite a lot, wrote an article in the *Canberra Times* on Saturday, 26 May this year, page 16. I quote a brief comment:

The right to choose catch-cry is incomplete: what is being chosen is not defined. The empty "pregnancy sac" in figure 2.2 of the report—

which I have just mentioned—

attests to what Naomi Wolf—

and I am not sure who she is, but I think she is a pro-life feminist—

describes as "the foetus as nothing paradigm".

That is what I really want to address—the issue of a large section of our society seeing the foetus as nothing. This is what she is referring to: a distended uterus without a baby.

Senator ABETZ—Can you explain what you are pointing to there? Is that a graphic in an article?

Mr Kiely—It is the graphic in the report of the National Health and Medical Research Council entitled *An information paper on termination of pregnancy in Australia*.

Senator ABETZ—That graphic appears on which page?

Mr Kiely—The graphic appears as figure 2.2. It is a diagram of relevant anatomical sites, on page 15. It shows an enlarged uterus without a baby, which is a physical impossibility, in my belief, except if you pump air into somebody, which was not the purpose of the graphic in the first place. What I see it as doing, as I mentioned in my primary submission, is that it simply shows and epitomises the bankruptcy of the philosophy of some of these people—well-intentioned though they may be. I try not to be polemical or uncharitable, but I do believe there is a bankruptcy in the kind of politically correct philosophy, which is acceptable right across the country and in other countries, that the child in the womb is a nothing.

I take that a little step further when I say that, except the child is deemed to be a wanted child, the child may be given some status or value. But most of the criminal codes that I am aware of in Australia and overseas define a child in the womb curiously, as I

described it in my original submission, as being a legal figment. It is a good idea, but it does not correspond to the reality.

These days most people know—eight-year-old and 10-year-old kids know—their biology. As people who live on a farm or any of you who are hatching chickens know, it is not 'chicken and egg'; sometimes there is a chicken in the egg before it comes out. And there is a baby in the womb that is a child. It is human. It is not asinine, bovine or equine or anything else. It has to be human.

For example, the Northern Territory Criminal Code defines a child as a person who is not an adult. So a child, by definition, is a person who is not an adult. But in section 156 of division 3, under the subheading 'When a child becomes a human being' the section says:

A child—

and that is a person who is not an adult—

becomes a person capable of being killed—

so it is already a person, but by some twist of language it is further defined as a person capable of being killed—

when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not and whether the umbilical cord is severed or not.

I know this definition is not restricted to the Northern Territory Criminal Code. I believe it exists in other criminal codes, and in America and other places.

The denial of the status of humanity, or certainly of personhood, to an unborn child is a gross injustice. I would contend that the convention on the rights of the child does, in fact, confer value on the unborn child. Whether we want to call it a foetus or not, it is an unborn human being; it is a person. Paragraph 9 of the preamble talks about the Declaration of the Rights of the Child indicating:

. . . 'the child, by reason of his physical and mental maturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth', . . .

It goes on to define in article 1 that:

. . . a child means every human being below the age of eighteen years . . .

I would say six months gestation, three months gestation, seven months gestation or 10 weeks gestation is below the age of 18. In some cultures, a baby is classified as being one year old on its birth date and it becomes two on what we call the first birthday.

What I am really saying is that, in our culture, there seems to be this denial of the existence of the unborn. Article 6, as you would be aware, goes on to talk about every child having the inherent right to life. The states parties recognise that—I understand the states parties to be the Commonwealth; they are not actually the individual Australian states, but the parties to this convention—but they are selling short to the maximum extent possible the survival and development of the child. Article 3 talks about 'the best interests of the child' being the primary consideration in just about everything.

This convention is a very good document as a blueprint, but it is fundamentally flawed in its reception in Australia. I would claim that any copy of the document distributed in Australia should have a brief foreword warning that we, in Australia, do not accept the fundamental situation of a child in the womb being a human being or a legal person, except that a child who goes on to be born can have some claims, say, for damage incurred in the womb.

Article 23 talks about recognising mentally or physically disabled children and how they should enjoy 'a full and decent life'. That is one of the primary reasons for allowing abortion: to abort what are suspected to be mentally or physically disabled children.

Article 24(d) talks about the need for states parties:

To ensure the appropriate pre-natal and post-natal healthcare for mothers . . .

Yes, that is in relation to the mothers of the children because I presume a mother cannot be a mother at her birth. It is the birth of her children they are talking about. But the fact that we should have regard to care for unborn children is a reminder that that child has some value. This convention ascribes that value. For example, I was only aware on Tuesday, when I got copies from Cheryl of the four volumes of submissions, what the Teoh case was about and then I went on further to read that the Attorney-General and the Minister for Foreign Affairs had decided that they would obliterate what was seen as this kind of a righteous expectation or whatever the word was.

CHAIRMAN—It was 'legitimate.'

Mr Kiely—The legitimate expectation—that there would be some protection—was being pulled away. The carpet is being pulled from under the feet of the people who might want to claim protection under this convention. The convention says that no child should be subjected to torture or other cruel, inhuman or degrading treatment and neither capital punishment nor life imprisonment.

I suppose that abortion at any stage, apart from where it is a delivery of a dead baby, really is a situation where a baby is ripped apart. There is growing evidence from doctors, paediatricians and others that babies can feel at certain stages of their development. They react to light, and they withdraw from needles that are being inserted

for amniocentesis, chorionic villus sampling and things like that. Here we have babies in the womb who are being tortured prior to being disposed of. I try to moderate my language when I talk about that because most people say it is an emotive subject and you must not be emotional. But it is very hard not to be passionate about an issue that I think is very important and largely neglected.

What I would ask, seeing that my understanding is that the convention does give status to the unborn and that law in general in Australia does not seem to do so—although I have read recently of a developing situation in Queensland, where either a proposed law or a law that has been passed gives protection to unborn children; I am not sure whether it is actually passed or just proposed—Australian laws, Commonwealth one if the states do not, since they are the ones who are party to this convention, should give greater protection.

I will try not to be fundamentalist. I would love it if there were no abortions; that is my bottom line. I have learnt over the years that politics is the art of the practical. But I do not see as being impossible that the 75 per cent of babies in the womb who are wanted could not be protected from assault by somebody kicking the mother in the abdomen or shooting her. There have been cases over the last four or five years of babies being shot in the womb. The gunman is charged with assault on the mother, the child is lost, shot dead with no redress. They are not even covered by compensation.

Last year I think—I am not sure when it was—a boyfriend kicked a mother in the abdomen deliberately to bring about an abortion. Again, he could not be charged with killing the baby, only with assaulting the mother. I think babies in the womb—and this I say with a certain amount of pragmatism I suppose—at least the ones who are deemed to be wanted must be given the protection of the law.

I do not see the existence of the availability of legal abortions precluding that protection. The Northern Territory and South Australia are the only two legislatures where you have statutes that specifically allow legal abortion; it is called medical termination of pregnancy. The other states, to my knowledge, say that abortions are illegal except where they are lawful or they are unlawful except under certain circumstances.

But my attention was drawn to a submission, I think it is submission 121 on page 603 of the set of booklets that was distributed, point 21. It is from the Australian Reproductive Health Association. One of the points they make is that they would oppose attempts to give legally enforceable rights to the foetus because of the implication for the ability of women to seek abortions. I think in charity that that is an abominable statement to make. We have, internationally and nationally—I am not saying Australia is leading the field or that Australia is different from some of the other countries—an ongoing silent holocaust. I think that is what John Powell, an American author, called it a few years ago.

There is a kind of change. I think there are now some people who would say that they are staunch feminists who would say that the number of abortions and the attitude

towards abortions certainly would need to be re-looked at and restricted as much as possible.

There is no such thing as a right to an abortion. That is my understanding. I am not aware of any convention or any law that says a woman has a right to abortion. The Northern Territory Criminal Code, which is based on the South Australian one, basically says of medical termination of pregnancy, in section 174, that it is lawful under certain circumstances. It outlines three graded sets of circumstances where it is lawful for a doctor to perform an abortion. It does not say that citizens have a right to an abortion.

I would hope that the committee would dismiss as unjust, as well as unfair, this request by the Australian Reproductive Health Association that 75 per cent of unborn children at any one stage should have their right to protection under the law denied because there may be another 25 per cent at that time whose mothers, fathers, doctors may not wish them to be born. I know it varies from time to time. I do not believe any woman wishes to have an abortion, and I do not believe there are any real choices quite often because alternative support resources are not available. There are times when a woman goes ahead with an abortion and later is quite happy to continue with a pregnancy. I am saying that the 75 per cent who at any one time are not destined for abortion should certainly be protected from assault, from death in the womb, as any other child would be.

If I said that that the convention was fundamentally flawed, I might have been wrong in saying that. What I really meant was that, in the Australian context, it is a kind of 'live horse and you will get grass.' That should be made clear in any copies of the convention available in Australia. These restrictions exist. For example, any copies of the convention circulated these days should probably have that gazette notice from the Attorney-General and the Minister for Foreign Affairs as a reminder to people that this is a blueprint—an ideal—and we have not reached it yet.

Generally speaking, I think it is a good document. I do not see the problems that lots of people see in it. I see it as having an educative role, something to be aimed at. It has to be taken as a whole. There is no point in picking up one article which says you should not have corporal punishment. We have to look back and see what it says about various definitions.

CHAIRMAN—I think we might have explored this in other hearings to the extent we need to.

Senator ABETZ—One issue that was raised in another hearing relates to the question of disability of children. You have concentrated on the child before birth and understand all that. Somebody submitted to another committee I was part of that a child with disabilities ought to be capable of being killed up to one month after birth because of its disabilities. Do you see that as an extension of the human child? When does it become a child? Has it become so blurred that people are now also talking about killing a child after it has gone through a full pregnancy, has been delivered and been alive for a month?

It could still be killed as, basically, going to be too much hassle because it is disabled.

Mr Kiely—Yes, I think it is unfortunate. I see it as a logical extension of what we allow to be done to children, maybe up to three months or even six months. We have had a situation in Queensland with a certain doctor who has admitted to performing, and in fact recommends, what is called a D&X procedure or the partial birth, which is barbaric. I think it is logical if you accept that life begins at conception and you accept that it is okay to kill people in the womb, so why should we not kill them at one month or 12 years if they are playing up too much? Some of these arguments came up in the euthanasia debate. It is logical, but I am not saying it is just. That is why people like me are sometimes seen as fundamentalists or right to lifers. To be logical we have to accept that abortion is something that should not happen right from the beginning if life is to continue.

Senator ABETZ—There has been evidence put to us that in fact this convention is silent on the issue of abortion and the reason and rationale for that is that there was a lot of debate and argument in preparing the document and basically the soft option was taken of not trying to comment on it at all. I am not asking you whether you agree with that outcome, but can you understand that the convention could be interpreted in that way as still allowing abortions to occur?

Mr Kiely—My understanding is that abortion or termination of pregnancy is not used in the convention at all—I am not an expert on it.

Senator ABETZ—No, it is not.

Mr Kiely—It was only after a certain amount of argument, for example, that the phrase from the old declaration of the rights of the child was included again in the preamble of the convention—after 30 years of discussion. I am aware that one of the reasons that it has been left a bit ambiguous is to satisfy the diplomatic requirements of being able to get the convention through. I mentioned how, I think, it was Gareth Evans who mentioned in the Senate at one stage that those who were dealing with the preparatory documents—I think your French is better than mine—

Senator ABETZ—Il travaux preparatoires.

Mr Kiely—Left that loophole for those states parties who wished to avail of them. I would say that—

Senator ABETZ—Senator Evans also said that Australia was in full compliance with the convention when it was ratified and did not require any domestic action at all because we were in full compliance. The point that I want to explore with you is as a citizen the very telling point you made quite up front was that any formal document should be unambiguous, mean what it says and say what it means. Going through these hearings, it would be fair to say that nearly every person that has come before us has been able to come up with an interpretation of what the convention says, unique to him or

herself, which, I have to say, is not much guidance for policy makers in trying to implement this convention. It seems to be all things to all peoples.

Mr Kiely—I would say that on the face of it, and I think I might have used that phrase somewhere, it looks to be an excellent document. A young person or a teacher going to the library and getting this would say, 'Oh, wow, this is good stuff,' not being aware of the trap that it is a bit like an iceberg because so much of it is submerged, which is quite dangerous. I would not have had an idea about travaux preparatoires if I had not gone to a dictionary to find out what it meant.

Apparently, there is a whole section in law that has to do with the interpretation of law. Even in the territory I am told, 'Don't just look at the Criminal Code; you have to go and look at something called the Interpretations Act,' and all this kind of stuff. So it is quite involved. It is a bit of minefield for the ordinary person, but this is a document that was being promulgated for the ordinary person.

Before this was actually signed and ratified, Chris Sidoti and several other people came up here on several visits. I put my concerns to them. They listened diplomatically and genuinely. But there was this move to get the thing passed. They wanted it ready for the 30th anniversary. That, in itself, is a bit of an indictment, if it takes 30 years to prepare a document. Documents should be transparent. That is one of the faults. That is why I have said that copies circulated in Australia, for example, should have that little footnote saying, 'This does not apply in Australia' or 'This has been white-anted in Australia' or 'This may be white-anted'. I would put in a little question mark.

I am not sure, as you mentioned, that former senator Evans was in fact correct in his assertion that the outlawing of abortion is precluded under this convention, because it has not been taken up in a court. I also believe that, because this is a schedule of the Human Rights and Equal Opportunity Commission Act, in fact it was basically domestic law. I did not understand that it simply meant that we recognised this as being a good document.

Senator ABETZ—The interesting thing on the abortion issue—and I forget in which submission it is—is that the UN Commission that oversees this convention has made certain findings and recommendations in relation to Russia and abortions taking place there. It is interesting, if the interpretation is such that abortions are allowed, that they should even bother to investigate, take on board, and then comment on the abortion rate in Russia. It seems to me that they cannot have it both ways, yet it seems that that has occurred. But you cannot comment on that, nor can I.

Mr Kiely—I would say that it is probably ambiguous. If it were in fact Australian law, there would be a good few days spent in court trying to iron it out. There are organisations who would want to see it ironed out. That is not to say that I do not see the point of view of women who say they are forced into abortion by circumstances. The tenor of the article written by Melinda Tankard Reist in the *Canberra Times*, at page 16,

was basically that there is not an informed choice and that sometimes there is not a real choice. If the choice is between life and death, is that a choice because other support services do not exist? I am not blaming women who opt for abortions. I am less charitable about doctors who make a living out of them. I think they are a bit like the Swiss banks who garnered the Holocaust gold, and they should be treated in the same kind of light. I have little respect for them.

CHAIRMAN—Thank you very much. Thank you for your good Irish humour.

Mr Kiely—Thank you very much for having me.

Senator ABETZ—It has been a pleasure.

[4.20 p.m.]

WARDEN, Dr James Alexander, Research Officer, Aboriginal Medical Services Alliance of the Northern Territory, GPO Box 2125, Darwin, Northern Territory 0801

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

Dr Warden—I appear for the Aboriginal Medical Services Alliance of the Northern Territory, and I am employed as the policy and research officer.

CHAIRMAN—There is no written submission. Did you want to make a short statement on some particular aspect, or just a general statement?

Dr Warden—I will, yes. I thank the committee for this chance to appear. We do not have a written submission. This was drawn to my attention only in the last day or so. There are a number of points that I would like to make.

CHAIRMAN—I would like to finish by 4.30 p.m. It is now 4.15 p.m. Can we do it in 15 minutes, or is that being unreasonable?

Mr Warden—No, we can. Quickly, AMSANT is a peak organisation for community controlled medical services in the Northern Territory, of which there are 12. The best known is perhaps Congress—Central Australian Aboriginal Congress—in Alice Springs. They operate on three principles: one is the principle of Aboriginal self-determination, the second is community control and the third is delivering primary health care to Aboriginal people.

Senator COONEY—That is Aboriginal control?

Mr Warden—Aboriginal community control. These services are largely funded by the Commonwealth. They deliver something like 100,000 clinical consultations a year and about 300,000 in the field, so they are substantial organisations. As you would be well aware, the Aboriginal population in the territory is over 25 per cent, whereas it is about 1.5 per cent nationally.

Quickly: in the absence of comprehensive statutory rights and a bill of rights, we have to rely on common law, whatever constitutional interpretation arrives, and international treaties. So generally the AMSANT position is to endorse rights derived through treaties in the absence of other instruments that have been negotiated domestically.

There are a number of points that we would like to draw the committee's attention to that come through this implementation document, and I will quickly run through them for the benefit of the record. We are concerned about 3, 4, 7, 19, 23, 25, 26 especially, 28,

29, 31, 33, 38, 39, 43, 44 and 45.

In respect of the convention itself, articles 24, 27 and 28 are the most significant ones for AMSANT on a day-to-day basis. The others are of different levels of importance but, because of the significance of the problems with primary health care and basic education for Aboriginal children, those other articles we would have to judge as being less immediately significant.

The problems faced by Aboriginal children in the Northern Territory which have implications for Australia's responsibilities under the convention fall into three categories. The first is the burden of emotional and social dislocation which affects families and communities, and which is carried from one generation to the next. These effects include the consequences of what is sometimes called the colonial storm and they manifest themselves in undiagnosed mental illness or emotional trauma, which contributes to crime, anti-social behaviour, drug problems and violence, particularly in the context of high morbidity and mortality, high rates of incarceration, poverty, the corrosion of constant high levels of grief in the community, the separation of children, which I understand you heard about earlier, and the loss of feeling for what Aboriginal folk refer to as cultural security. They are demonstrable through ABS figures, mostly, but what is not demonstrable is the mental health burden.

The second burden is that illness, injury and disease which afflict Aboriginal children in the Northern Territory can cause lasting disadvantage and become inter-generational. Skin diseases like scabies create an immediate problem, but they also lead in the long term to ischaemic heart disease, which, along with accident and respiratory illness, is the highest cause of death in the Aboriginal community—at a relatively young age. The danger with that illness for Aboriginal men is late 30s to early 40s. Hearing loss, otitis media, is endemic in the Northern Territory. It creates learning and communication problems and, I suspect, anti-social behaviour to a high degree. I do not know of any research that has been done on the relationship between hearing loss and, say, petrol sniffing and alcohol abuse. Petrol sniffing can well change into alcohol abuse later. So there is a generational transfer of illness which not only has affected adults that are now in the community but also will affect their children.

A third element is the consequence of poverty. Most Aboriginal illness is caused by poverty. It is not a particularly big mystery. Poverty is one of the major problems for Aboriginal people and when linked with education and health problems experienced in the community, they have serious consequences, we think, for the application and enjoyment of rights in Australia. Point 26 in this document refers to that. Under article 24 there is an obligation to protect the health of Aboriginal children in Australia and, in our view, this is not being done as fully as it could.

I have, in one sense, a response to all those numbers I read out before and I need not run through those unless the committee would like me to. It is really a response to each one of those.

CHAIRMAN—Would you like to table that?

Dr Warden—I can do that.

CHAIRMAN—That would be helpful.

Dr Warden—As I said, I have not prepared a written submission, and I do not know whether the opportunity exists to do so.

CHAIRMAN—If you would like to, you are very welcome to give us some supplementary written evidence, but we would appreciate it as soon as possible—over the next three or four weeks if you could.

Dr Warden—Yes. That is manageable.

CHAIRMAN—Let us do it that way.

Dr Warden—That is all I wanted to say.

CHAIRMAN—We did have some evidence earlier about petrol sniffing. In fact, what we have asked the gentleman to do is to provide some additional papers and to make some further comments. It is clearly a major problem.

Dr Warden—It is an acute problem and it has terrible consequences for the people involved, but it is also contextual that petrol sniffing occurs—

CHAIRMAN—As a prelude to something else?

Dr Warden—Yes. And as a consequence of that there are other things. The level of basic primary health care delivery and of educational services, I think, is serious.

CHAIRMAN—Are you a social scientist?

Dr Warden—I am a social scientist.

Senator COONEY—I would like to thank you, in anticipation, for giving us the material you have promised. Could you give us a bit of an idea of the medical health service available to indigenous people in the Northern Territory, including the remote areas? Are there specialist services available, such as psychiatry?

Dr Warden—The short answer is no. It is a little bit uneven. The health problems that Aboriginal people experience in the Northern Territory are generally the same whether they are in Darwin or in Nyirripi. They generally tend to be the same. The role of the organisations I work for and of Northern Territory health services is to deliver primary health care which is everything from preventive health advice right through to

immunisation and a whole range of things including accident treatment.

The hospitals and tertiary care are things like post-operative care. There is a real problem across the board with specialist services in the Northern Territory. There is a problem with having specialists available at the discretion of the medical services. What tends to happen is that a specialist will come to a community. That throws the whole community into a gridlock for weeks because they have to get everyone into the clinic at the one time to see this specialist. There is a very serious coordination problem with that which tends to be an opportunity cost for other medical services at the same time.

Senator COONEY—Psychiatric services would be almost impractical from what you say because you have to have a psychiatrist coming back again and again.

Dr Warden—Part of the problem is that there are not many in the country who are capable of giving psychiatric services to Aboriginal people—particularly traditional people—because of the cross-cultural problems. It is very hard to diagnose a mental disorder in a traditional Aboriginal person using conventional European models. So there is that issue.

There is also the scale of it. The stolen generations report has eliminated some of that, and the anecdotal evidence I hear on a daily basis is that most Aboriginal people walking around town have been harmed, or feel harmed, in some way by that.

Senator COONEY—Could you put a bit of that in the report to us. That seems to me to be one of the issues that interests me and—I might be wrong about this—it would probably interest the others. It is the generational problem—you keep stepping down generation after generation.

Dr Warden—It crops up with violence and drinking. Those problems are not necessarily reducible to mental illness and emotional trauma, but there is a large element of that.

CHAIRMAN—What does that lack of resource come down to? Is it money, is it commitment, or is it a combination of factors?

Dr Warden—I think money is the issue. We have heard, as long as I can remember, that money will not solve these problems. That is true; but they cannot be solved without money, and there is not enough money.

Senator ABETZ—Is the money being soaked up in bureaucratic structures rather than—

Dr Warden—The short answer to that is yes. The Northern Territory applies 54 per cent of every Commonwealth dollar to its own service maintenance provision.

Senator ABETZ—Is that generally, or in Aboriginal health?

Dr Warden—Generally. There may be a strong element of truth in the argument that too much money is wasted because a lot of it gets soaked up in just keeping the wheels turning around.

CHAIRMAN—Thank you.

Resolved (on motion by Senator Cooney):

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

Committee adjourned at 4.30 p.m.