



COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

BRISBANE

Wednesday, 6 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

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JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

BRISBANE

Wednesday, 6 August 1997

Present

Mr Taylor (Chairman)

Senator Abetz

Mr Bartlett

Mr Hardgrave

Mr McClelland

The committee met at 9.06 a.m.

Mr Taylor took the chair.

CULBERT, Mr Noel Raymond, Director, Executive Services and Strategic Planning, Department of Families, Youth and Community Care, 7th Floor, 111 George Street, Brisbane, Queensland 4000

ELLIOTT, Ms Anne, Program Development Coordinator, Program Planning, Families, Department of Families, Youth and Community Care, Level 6, 111 George Street, Brisbane, Queensland 4000

MARTIN, Mr Doug, Director, Families Program, Department of Families, Youth and Community Care, Level 6, 111 George Street, Brisbane, Queensland 4000

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CHAIRMAN—Welcome. We have received the Premier's letter dated 1 May enclosing the Queensland government's submission. Are there any amendments, errors or omissions to that written submission?

Mr Culbert—There are no amendments or errors that we are aware of. We are happy to take questions on that, as that is one of the purposes of our being here we understand. At some stage, I would appreciate just a couple of minutes to update a few developments from the department.

CHAIRMAN—What we normally do procedurally is cover the written submission and then invite you to make an opening statement. But just before we do that we need to do a bit of housekeeping.

Resolved:

That this committee authorises publication of submission Nos 136, 144, 148, 161, 194, 230, 233 and 324 being dealt with today.

I now invite you to make an opening statement.

Mr Culbert—The Queensland Department of Families, Youth and Community Care is grateful for the opportunity to appear before members this morning to follow up on the written submission that was made on behalf of the Queensland government. We are one component of the variety of departments in the Queensland government that are relevant to your terms of reference so we will restrict our comments to our departmental scope in these matters.

The brief comments I wanted to make by way of introduction today were just to give you a couple of documents that have been published since the submission was made

in May and also to refer to some of the initiatives that were listed in those. The mission statement of the department is clearly laid out in the strategic plan which I have tabled with you. I will not need to go into any detail; suffice to say that the mission of the department is 'working with communities to create a caring society'. We take that seriously. We believe that we focus on clients, both individual clients and organisational clients because our job is to care for people. The reason the government has services such as ours is to care for people who need help to help themselves. That strategic plan lays out the programs which we have already advised you about. In some ways that gives you an update on the current mission, goals and performance indicators for our operation.

The second document I would like to refer to is called *Working with Communities*. This is in line with our mission statement of working with communities to create a caring society. This document is published for community agencies. I am aware that you will have some of those appearing later today. It spells out some of the programs of funding available and some of the rationale of our department's operation for those community agencies. So, again, I just want to highlight that more recent publication. I will table that with the secretary. I have just one copy for reference.

The third document, which I have already distributed to you, is the budget highlights from the May 1997 Queensland state budget in respect of our department. There are a number of initiatives in there that you could refer to which are relevant to your terms of reference. I draw your attention to page 4, under the heading 'Supporting Queensland families'. An additional \$1.5 million over three years was allocated from growth funds to address child abuse in the community, to develop preventative strategies in conjunction with non-government sector and to update the child protection legislation.

I also draw your attention to the reference on page 5 to support and assistance for young people. The figure of \$7.6 million there, over three years, is to assist young people's successful participation in society through prevention and early intervention programs.

The other point I want to mention is the subject of one final brief document, which is the initiative in the department that we have entitled 'Working together better.' That was a reform process initiated last year, which is almost completed. It was under way at the time of the submission but is pretty well bedded down now. The aim of that exercise was primarily to integrate the various operations of the department across the programs.

Particularly, we have integrated the regional services with the appointment of five regional directors for the department's operation. I know that is not unusual but it was quite different from the previous management arrangements in the department. The idea was to focus better on client needs and to have the department even more responsive to those needs, particularly in the regional areas. I table those documents for the committee's reference.

CHAIRMAN—Resolved (on motion by Senator Abetz):
That the four documents tabled be received as exhibits.

Mr Culbert—We are aware that the last time you had hearings in Brisbane you heard from the Children's Commissioner—the only children's commissioner in Australia—Mr Norman Alford, who I see is in the audience today. We endorse all of the comments that he has made. Mr Alford is a statutory authority, as you are aware.

One of the important points he raised, which I remind members about, was the initiative of the Minister for Families, Youth and Community Care in Queensland, the Hon. Kev Lingard, foreshadowing the formation in the Queensland parliament of a committee for children and families. As yet, there is no further development on that but there is an intention there as soon as it is practicable for the parliament to consider those matters. We see that as a very important step forward for all of us, both within bureaucracy as well as within statutory authorities such as the Children's Commission, to further enhance the status and the rights of children.

Finally, I would ask my colleague Mr Doug Martin to say a brief word about the proposed Children and Families Bill which our minister is proposing to take to the parliament in the near future.

Mr Martin—The minister has indicated that he is very keen to replace the Children's Services Act of 1965, which is now over 30 years old, with more contemporary child and family welfare legislation. I understand that he will be approaching cabinet in the near future for an authority to prepare the bill, and quite a lot of work has gone into that to date. As Mr Culbert mentioned, in the recent state budget, provision was made for expenditure to implement the new services under that legislation.

Over the past few years, a lot of infrastructure has been put in place to make that new legislation work smoothly. For example, all of the area officers have been given up-to-date information technology which enables them to input data locally themselves, and also to access a wide range of state wide data that was never available to them previously, or not easily accessible previously. Also, the positions of area managers, and the second most senior position, the area office team leader, have been upgraded so that experienced, highly qualified staff are being put into those positions to be ready for the new era under the new legislation.

Also, over 40 family support workers have been put in place across Queensland. These are employed by the non-government sector and their role is to complement the work of the department's area office. Each is in a different location; each does different things and they employ different kinds of workers. But, basically, they complement the work of the area office. Thirty seven additional family services officer positions have been permanently located in area offices to strengthen the work force and, again, to position area officers for the new era that is to come under the new legislation.

CHAIRMAN—On Monday, we took evidence in Hobart. There are two pieces of legislation before the Tasmanian parliament, one of which is in a roughly comparable area. There is also a justice bill. I think they are talking about a commissioner for children as well in Tasmania. That legislation calls for a commissioner as well, doesn't it?

Senator ABETZ—Yes, it does.

CHAIRMAN—Tasmania is following on. Whether the responsibilities are akin to Queensland's remains to be seen, but my question really is whether there has been any consultation by other governments with Queensland or Queensland with other governments in relation to this whole area.

Mr Martin—There certainly has been a lot of consultation by Queensland with other governments.

CHAIRMAN—Are you aware of, for example, the Tasmanian legislation—

Ms Elliott—Absolutely, and its contents, yes.

CHAIRMAN—Would you like to make some comments about that?

Ms Elliott—The bill that was put before parliament in Tasmania was shared in its draft form with each of the other state departments, so we have had an opportunity to look at it and to comment upon it. One of the aims of the interstate government department working groups that exist in relation to dealing with policy and legislative response to children has been to work, as far as is possible, towards more consistency with the law in relation to child protection in Australia.

For example, the proposed Tasmanian legislation allows for a greater variety of orders and a greater review capacity for orders than has existed in the past in that state. Similarly, the Queensland legislation, in terms of drafting structure at the moment, would allow for a greater range of orders and a more frequent review of those orders. In fact, it is radically different from the 30-year-old act we are dealing with at the moment.

It has been drafted with reference to the best that is available currently in other legislation in other states. South Australia's legislation is still relatively new and, for example, some of the best aspects of that legislation have been taken into account in the drafting of the Queensland act. There is a lot of communication between the states in that regard.

CHAIRMAN—How does the commissioner's role vary, say, from that of Queensland?

Ms Elliott—I am not familiar with the proposals for the commissioner's role in the

Tasmanian legislation.

CHAIRMAN—We did not go into the detail. It has only just been tabled.

Ms Elliott—I am not familiar with that area; I could make further comment if I had the proposals before me.

Mr McCLELLAND—On that last point, Ms Elliott, would the communication between the states that you have referred to be assisted by a federal commissioner for children that could serve perhaps a communication, information gathering and facilitation role?

Ms Elliott—The communication that I referred to relates to the role of the states in the protection of children at the coalface, if you like: the actual work done by departments to look at the needs of families, the support services for families and the way in which children are cared for when families cannot care for them themselves. My comments are particularly related to that area of work—the statutory intervention and support of families.

The review function undertaken by at least the Queensland commissioner is a broader role than that and is something that looks very broadly at the sorts of services that are applicable to children and families and how well they meet the needs of children and families. The benefit of more coordination between the states by a federal body in looking at that area is something that it is not within my realm to comment on directly at this stage. It would be more something for the commissioner himself to comment upon.

Mr Culbert—I am happy to make a brief comment on that. Certainly, where we sit within the department, we would welcome that sort of initiative. I know the Queensland government took the initiative and set up the commission itself because it saw a need there. In the absence of a Commonwealth one, if the Commonwealth set up a children's commissioner as a national body, whether the Queensland government then decided to keep what it had or amalgamate with a national one would be something for government to decide further down the track. The way we see it at the moment, we would welcome that sort of complementarity. It can only strengthen what the state is doing in its own right, for the short term, to have the two: the Commonwealth one and the state one.

Kids need protecting as much as possible. While we are all for elimination of overlap—we are not suggesting we do that—you could have a network where there was a Commonwealth overarching group which, if it were carefully dovetailed with the states, would work well.

Mr McCLELLAND—Even to work out who prints the papers after a conference or seminar, for instance?

Mr Culbert—That is right. There are always those sorts of issues and we certainly

want to avoid that sort of duplication.

Mr BARTLETT—In the written submission, there was a fair amount of confidential information. I do not intend to refer to anything specific. That in general terms highlighted problems in the past with what was seen to be excessive interference by the Department of Family Services in the lives of families. To what extent do you think the role of the Children's Commissioner has overcome that problem?

Mr Culbert—The fact that there is a further appeal mechanism that is an independent appeal mechanism is very significant. The government clearly did that deliberately so that there was an arms-length opportunity for people to question the decisions and, formally through a tribunal, if they wished to proceed that way and that was accepted.

As far as the department is concerned, I do not see that it changes that. It gives a further check and balance, which should keep the department on its toes a little more, but it is still the basic responsibility of management within the department to do things the right way. There has been huge debate, as you say, about that. There will never be a situation where everyone is happy because we are dealing with tough questions here. The reason the department exists is to deal with some of society's most difficult questions, particularly emotional ones about where children are placed and what happens to them when they are in danger in any way.

Mr BARTLETT—So, as part of the role of the commissioner, there is an avenue for aggrieved families to appeal about the way they feel they have been treated by the department.

Ms Elliott—Absolutely. There are two avenues: firstly, there is the ability for families to bring matters of complaint that they are seeking the commissioner to review and to formally investigate and look at. Secondly, there is the ability for persons who are formally classed as aggrieved persons in relation to administrative decisions of the department to ask for a convening of the Children's Services Tribunal to review the administrative decision made under the act.

I just add, by way of information to the inquiry, that what I would label one of the major fallacies regarding the department's work with families is that our primary means of response to abuse within families is to remove children from those families. That sort of allegation is fairly frequently made.

The actual reality is that, when we intervene to assist families in the protection of children, the vast majority of that work is done with the child remaining with the family. The number of children who are removed from families is less than 30 per cent of those where we intervene to protect children. The vast majority of that is done with the children remaining with their family. Of those children who are removed, a large proportion of

them are safely returned home within 12 months of having been removed. There is a fair bit of myth out there about how the department intervenes with families to help them protect their children.

Mr BARTLETT—Would it be fair to say that, since the commissioner has been functioning, with a lot of those complaints that parents have had—be they myth or unfairly perceived injustice—the feeling in the community is that that has been dealt with adequately?

Ms Elliott—It is hard to comment upon the feeling in the community. There has always been the avenue through the Queensland parliamentary ombudsman for matters relating to complaints about the department to be reviewed. That has been a source of review for many years.

Mr Culbert—And that is still there in addition to the test.

Ms Elliott—It still occurs. There is now the additional avenue of review—and I think it is fairly publicly known, given the numbers of complaints that the commissioner receives. There has certainly been enough media coverage of the availability of the commission for that to be something which families would have a good awareness of now.

Mr BARTLETT—Have there been any complaints to the ombudsman or to the government generally to the effect that the role of the commission has undermined the role of parents?

Mr Culbert—I am not aware of that and I would be surprised if there was anything along those lines. I think, if I could make a brief point in that regard, that it is interesting that most of the issues, as I understand, have been referred to the commission. That is very good. Most of the cases that have been referred that way are already known to the department as ‘appeals’. There has been some questioning of the department’s involvement and that is a good thing as well. There has not always been satisfactory resolution of that obviously because the people have been going to the commission. I guess, in some cases, there never will be agreement by all parties.

I want to say, though, that the current management of the department is certainly very conscious of the reputation you referred to, which was there rightly or wrongly, and has been very consciously endeavouring to be as scrupulous as possible in examining each case. The director-general personally and the other senior people in the department personally have been re-examining cases to be sure that we have it totally right. Without being defensive, saying that maybe things could have been done this way or that way, I think it is always the case that there will be some people who are not satisfied and that is life. We try to do things in the best interests of the child and the family always.

As the submission says, and as Ms Elliott just mentioned, the interests of the child

and the family are always an overriding principle. That is reviewed continually to see that, if, for example, there is an alternative placement made, when a child can be returned to the family. That has been an issue in the past that has been subject to great debate as to whether that issue has ever been considered again. It has been, in fact, but there has been misperception there.

CHAIRMAN—We should point out at this stage that we have received, as you would expect with an inquiry like this, a lot of personal complaints. We do not intend, in this inquiry, to get into those individual complaints. To give you an example of the understandable emotion of some people, one that we received said something like this, ‘Family services have lied, cheated, committed perjury, falsified evidence, influenced and perverted the outcome of case meetings, et cetera’. We understand that some of these things become very personal. They involve close family members and all the rest of it and emotions can run away.

I think what Mr Bartlett is getting at is that we need to be assured that the department is coming to grips with this in the context of the legislation and overcoming a lot of these perceived, if not in some cases real, problems. Is that a fair comment?

Mr Culbert—Yes. Current management is determined, as I guess were previous managements, that there would be renewed effort—from the top down if you like—to work with people in the field. As Mr Martin mentioned, there has been significant upgrading of management arrangements in the middle management area. There is attention to all those sorts of things just to be sure that we have the best possible service there but at the individual case level there is still that ombudsman avenue.

The Children’s Commissioner is a new initiative and I guess that is a very significant opportunity for people. People can still write to the minister and the director-general, call to see them, have deputations and all those sorts of things as a way of following up on their particular cases. At the end of the day, there would still be things, I imagine, that people will not agree on but at least some new process has been followed and that is the important point.

Mr BARTLETT—You said earlier that you see the role of the commission as enhancing that greater scrutiny?

Mr Culbert—Yes.

Mr BARTLETT—Do you have any idea of what the annual budget allocation is for the commission and associated activities?

Mr Culbert—The line item has been consistent. Last year it was a half-year and this year, as I recall, it is something like \$1.5 million in a full year for the operation of the office of the commission, travel and other arrangements like that and the operation of the

tribunals. That is always open and if there were, for example, a run on the need for the tribunal to be convened, there are opportunities through the mid-year review process that Treasury has to augment if possible. Last year, I gather, it was quite sufficient and it will remain to be seen how it is this year. That decision, again, will be made separately from the department so there is no risk that the department is in any way going to nobble the budget of the commission. It was an allocation separately from Treasury.

Senator ABETZ—Following on with Mr Bartlett's line of questioning, can I explore with you whether you have a set of mechanisms or tests that you can apply to see how many children are removed from families so that you can see year by year whether you are developing successful strategies to leave as many children as possible within the family unit? Is that being pursued not only in words—which might not mean much? Are there some objective criteria whereby you can say, 'This year we only had to remove X number of children, whereas last year it was X plus 20 children.' Do you have that sort of criteria?

Ms Elliott—Absolutely. It would be very difficult to plan and evaluate how we were doing if we did not have full and thorough statistics, which of course we do. They are readily available annually in a number of sources, including the annual report tabled by the head of the department to parliament.

The goals set by the families program do include looking at the types of responses that are provided to children when we intervene and looking at the degree to which we are meeting our goal of supporting families as the first preference in terms of how we go about protecting children. The way in which we protect children in the first instance is to support their families to protect them and, if not their immediate family, we support their relatives or their extended family to protect them.

One of the significant goals that the program has is to reduce the number of Aboriginal and Torres Strait Islander children in the care of the department or subject to the intervention of the department. We are also not just looking at those sorts of statistics in a simplistic way. For example, one of the things that is being examined at the moment is the results for children of leaving children with families. But that goal in itself—the one that says that as many children as possible should be left with families—is something which is itself being evaluated continually, because the outcomes for children when they are left with families is something that we are interested in looking at closely as well.

The complexity of this area absolutely requires that you know what your goals are, but that you evaluate whether those goals are achieving the best outcomes for children and for their families, because in the end that is what we are really on about. Without the data we would not be able to do that. That data is continually being refined. Again there is a lot of work happening on a national level to look at that data and to look at the comparability of the data, which is always a big problem given the differences in the way that the states operate. There is a lot of work happening at the national level to look at

what the data is telling us about child protection in Australia, as well as the work we do in Queensland.

Mr Culbert—Can I give an anecdote regarding statistics in relation to the national comparisons? The figures on notifications of child abuse or neglect showed that Queensland was surprisingly higher for repeat notifications in last year's figures. We were puzzled by that because we thought we should not be all that different from other states. What turned out to be the case is that we had a system—and I do not mean to brag about this—which could separate out the initial notifications from the repeat notifications more than other states, which were not able to discriminate between those two and therefore put them all down as initial notifications.

Our repeat notifications look much higher compared to others. There was a simple explanation for that, but if we took the statistics on face value it could look as if we were hopelessly inadequate in the way we were providing for our initial notifications because they came back again, whereas in fact it was the simple analysis of the statistics and the way they were dissected.

Mr McCLELLAND—Do you think a federal commissioner for children would be of assistance in standardising that statistical methodology and in the information gathering tasks that you referred to as occurring on the national level?

Ms Elliott—The connection may well be in terms of providing further impetus or something. It is hard to see initially the direct connection other than the fact that of course that commission would be a spur to looking at increased—

Mr McCLELLAND—For instance, you have said that a lot of the information is occurring at a national level. Who is doing it on the national level?

Ms Elliott—At the national level it is happening under the auspices of the ministerial councils and the state coordinating bodies, the Standing Committee of Community Services and Income Security Administrators.

Mr McCLELLAND—Is there an officer that you could go to now and say, 'Look, what's happening with this information gathering?' Would you know whom to contact at a national level?

Ms Elliott—The coordination at a national level is not occurring with a particular permanent body. It is a standing subcommittee.

Mr McCLELLAND—If you wanted to contact someone now, would you know whom to phone up and contact?

Ms Elliott—Absolutely, yes.

Mr McCLELLAND—Who would that be?

Ms Elliott—It would be the person who was chairing that subcommittee that exists at the moment under the minister's council.

Mr McCLELLAND—How long do they stay in that office?

Ms Elliott—It is not an office, it is a departmental position where that person has been nominated as the chairperson of a particular committee working on that area.

Mr McCLELLAND—Is that a three-month appointment or a one-year appointment?

Ms Elliott—In each case it depends on the decisions of the ministerial council. In the case of the work which is being done in relation to data, it is something which is happening under an umbrella that is coordinated under SCCSISA and will be ongoing, presumably, but there is not a time limit on it at this stage.

Mr McCLELLAND—Do you think that is a bit higgledy-piggledy? Don't you think there could be a useful coordination role applied there?

Ms Elliott—There is coordination happening at the moment. It would be perhaps to bring in a duplication for it to be coordinated.

Mr McCLELLAND—But in terms of one officer who is overseeing the whole box and dice?

Mr Culbert—It is probably variable. Most of the issues come through that sort of network. The federal families department, for example, have responsibility for, and there is clear scope there that they are dealing with, those sorts of things, but the more general collation of statistics is always subject to that network.

Ms Elliott—It happens under the Australian Institute of Health and Welfare, too, in terms of an actual permanently existing body in Canberra.

Mr Culbert—Groups like the Institute of Family Studies are federally funded research bodies and they have a lot of statistics too. It is always the case that if there is a strong advocate for the rights of children, that can help coordinate things in a better way. It will help make the rights of children more paramount in the busy life of public administration. With the best will in the world, often these things get buried in the competition of issues.

Because children do not advocate for themselves, very often in every field of children's endeavour—whether it is health, welfare or whatever—they come stone

motherless last. Anything that can help the rights of children in that sort of context should be useful.

CHAIRMAN—The standard planning ministerial committee arrangement ties in with Kevin Lingard and Judi Moylan, does it?

Mr Culbert—And the other states, that is right.

CHAIRMAN—Both of those ministers have an officer on the staff or within the department dealing with it?

Ms Elliott—It is a bit more complicated than that.

Mr Culbert—There is a secretariat nationally, as Anne mentioned, and then there is the administrators group which falls behind that—the chief executives, and that is SCCSISA. They are behind that and, again, that is a network and there is a secretariat for that, which I think is shared with the ministerial one. All of those are networks, they are not statutory agencies.

Ms Elliott—With relation to data, the chief coordination of that occurs through the Australian Institute of Health and Welfare in Canberra, but that is a body which again takes its instructions from the ministers council.

CHAIRMAN—Over the last couple of days, particularly yesterday, we have had some discussions about the associated legislation which might or might not flow from CROC. It links in with the Tasmanian legislation. Yesterday, we heard from Dr Cronin from the Law Reform Commission, from Chris Sidoti, a commissioner in the Human Rights and Equal Opportunity Commission, and Brian Burdekin in a private capacity, albeit with a lot of experience, as you would know.

It was interesting because both the Law Reform Commission and the Human Rights and Equal Opportunity Commission felt at the hearing, although they will follow up with some further written comments, that some sort of umbrella legislation reflecting the spirit and the intent of CROC was not possible because, as we found, the convention means different things to different people, whereas Brian Burdekin had a slightly different view.

Do you have a view as a state government of whether some sort of umbrella legislation in this convention area is appropriate, or do you think it should be left to individual legislative packages like the one that you have talked about?

Mr Martin—The state legislation that I referred to earlier will not be encompassing anything like that.

Ms Elliott—Its principles will be entirely consistent; the principles upon which the legislation is based will be entirely consistent with the principles of the UN convention. It is very difficult to comment upon what the state government's view is on this matter as such.

Mr Culbert—Yes. My initial reaction would be to caution whether any legislation could guarantee that the provisions of an international treaty could be followed to the letter by each state—or even the Commonwealth in fact. We would all support the sentiment of being in line with conventions like that. That is a lead and can be some critical mass because we are all in this business together influencing the rights of children and that is useful. But to mandate that through legislation I think would be a little optimistic.

CHAIRMAN—Does that piece of legislation you referred to in any way refer to the convention on the rights of the child? The Tasmanian legislation does.

Mr Martin—It is only in drafting instructions form at the moment. So it is a bit hard to say what the final wording would be. Certainly the principles are there.

CHAIRMAN—In the explanatory memorandum or something like that. Can you recall whether they are specific or not?

Ms Elliott—The words 'UN convention' are not in the drafting instructions for the legislation as such. It was very much in the instructions relating to the production of the draft bill that the principles that had to be incorporated had to be consistent with the UN convention. So they were part of our instructions, but the actual words are not used in the proposed legislation itself.

CHAIRMAN—I do not think they are actually in the Tasmanian legislation, although we understand they are in the explanatory memorandum.

Mr Culbert—Yes, in the explanatory note as we call it here. It would certainly be referenced as a context and in the minister's second reading speech for example there would be certainly a lot of description about that sort of context and the principles which underlie the legislation.

Senator ABETZ—In this whole debate—as with any other community debate—it seems to be that the squeaky wheel gets the most oil. Listening to Brian Burdekin yesterday basically the bottom line is that the best possible thing you can do for children is to have them in a functional family. That is the best possible thing you can do for them, irrespective of whether there is poverty in the family or all sorts of other problems that the family might have.

Yet we seem to have a convention focussing on children's rights instead of a

convention or a holistic government approach to the family. We want to stress the rights of children, rather than saying that if we had good functional families who were properly looked after by government with the appropriate tax breaks, et cetera, then that is the best possible thing government could do for children. It seems to me that having a commissioner for children and a convention on the rights of children has become one of the issues of the day. We are all busily working on this particular issue, but not with a holistic approach.

I would be interested to hear what your department is doing about that. We are told that this department is the Department of Families, Youth and Community Care which sounds good, yet we look at the department's vision and we are told it is:

A community which values each person and provides positive responses to individuals and families.

Families are listed last in the vision. I then noticed that the goal of the families program is as follows:

To provide prevention, statutory and support services in a caring, responsive and accountable manner to children, youth and families. . .

Once again families are put last. It might not be surprising in the youth program, but if you do believe that the best thing you can do for youth is to have functional families, I would have thought you might put the emphasis on the family. The strategic plan talks about providing services, et cetera to young offenders and their families. The families are last.

What concerns me is that up front in the convention we have families in the preamble. We are told that this is a department for families, but then in the vision statement and all the various aspects of the divisions within the department, families are always listed last.

Mr Martin—Certainly the value and importance of the family is held very, very strongly. As Mr Culbert indicated before, very often children cannot speak for themselves and that is why the rights of children are given some prominence. Certainly we are concerned, in the families program, about the protection of children. The statistics that we talked about before indicate a rising number of notifications about children who have been abused physically, sexually and emotionally. I suppose it is because of the need to protect children, to ensure their future safety and to ensure that, as much as possible, they overcome the emotional scarring and the physical problems associated with any abuse or severe neglect that the focus is pretty strongly on children because they are the most vulnerable. That being so, the focus is also strongly on reuniting children with families and strengthening families so that families can operate effectively.

From the department's point of view, the clients presenting who are most in need are the children at risk. I suppose that is why our terminology and our services seem to be

more directed at children. But our strategy is a family focused strategy.

Mr Culbert—Could I thank the senator for the analysis of our documentation. We must have a look at that. In defence of it, could I say—

Senator ABETZ—It was the three-minute or five-minute analysis that I did when you gave it to me.

Mr Culbert—Very perceptive. In defence, I would say that they are all equal references—children, families and youth are all equally important. If you think back to issues like the homeless children, we shared the concern about homeless children's allowances when there was an examination by the Prime Minister, and then others in government, to ask if it was going too far. We support the notion of a homeless child's allowance but if it is working against the family that is counterproductive and not desirable and it must cease.

As we have said in our comments, the goal is always to keep a child with its own family, if possible. Sometimes one's personal values mean that one would perhaps like to find a 'better' family because it seems the child might be better off, but the reality is that children are best with their own families, as you have said. The efforts, therefore, are to support that family and the child in the family context. Everything we do is designed to do that. If, in extreme cases, as Ms Elliott mentioned, there are a small number of children who are actually removed from their families, the question is always asked: 'Can the child be reinstated with their family as soon as possible?' So we take your point about the importance of that family and that the best way of looking after children is in the family context and, in the Aboriginal example, even in the extended family context where there is a lot of support.

These days, with nuclear families, that is very difficult for a lot of families who are very much on their own. With mobility in society there are not extended family members there. I think we all have a lesson from those indigenous cultures where the extended family is far more prominent and far more important. It would cost governments a lot less if extended families were able to support their children to a much greater extent.

Senator ABETZ—What is the department's attitude in relation to that? In general terms, most departments are now conscious of the extended family for our indigenous community.

Mr Culbert—Yes.

Senator ABETZ—But with our non-indigenous community, quite often when there is a dysfunctional family there will be circumstances where uncle, aunt, grandma or grandad might put up their hand and say, 'We are happy to take him or her in.' Do you facilitate that?

Ms Elliott—Our standards are not that we wait for them to put up their hand. We go out actively seeking if a child has a family member that could care for them.

Senator ABETZ—Good.

Ms Elliott—So it is not a matter of maybe taking into account a request; it is a matter for any particular child of actively seeking in the first instance a family placement as the first preference, if they have to be removed. I might just comment on the use of the words ‘family’ and ‘child’ and on sometimes separating them out. Certainly from our practice philosophy there is really no such thing as working with a child that does not also mean working with a family. They are one and the same thing, in the sense that no child is able to be worked with independently of their family. Obviously one can find particular examples where a family is not involved with a child or where those activities are too dangerous for the child, but I am speaking of the vast majority of cases.

Senator ABETZ—It is very reassuring to hear that that is the practice you try to adopt. What has occurred within the community at large is that they see that there is the Convention on the Rights of the Child, whereas you say that, from your own experience and what you are trying to do, you cannot really work with a child outside of its family context.

Ms Elliott—You cannot separate the child from its family.

Senator ABETZ—Therefore, a greater emphasis on family is something which I unashamedly promote and it has caused some concern within the community at large which has been commented on.

CHAIRMAN—Brian Burdekin, I meant.

Senator ABETZ—I do not want to draw you into any policy comments. If you can answer this quickly, well and good; if not, I do not want to put you in an embarrassing position. What is the state government’s view in relation to the Teoh decision? Did they welcome that decision, or did they think it was a mistaken decision of the High Court? You may be unable to comment on that.

Mr Culbert—I will pass, on that one.

Senator ABETZ—All right.

Ms Elliott—I have not heard any comment on it.

Senator ABETZ—It seems to me that that was a situation where the High Court looked at the convention and talked about the best interests of the child—and it is great that they did that—but they did not look at the context of the best interests of society. We have a drug pusher convicted of heroin peddling who might have been responsibility for

the deaths of a number of young Australians, yet we are allowing him to stay in the country because it is in the best interests of his child.

There seems to be that focus on individualism rather than on family or, indeed, as in the Teoh case, on whether the Australian family as a whole deserved to be protected and on sending to the international community the message, 'If you try and pull that stunt, don't think you'll be looked after.' Basically, the Teoh message to the international drug pushing community is 'Make sure you have a child in Australia before you get caught and then you might be right.' When you are looking at Australian youths as a whole, the Teoh decision is an horrific decision. Unfortunately, the Commissioner for Children in this state says, and other people say, that the Teoh decision is a wonderful decision.

Mr McCLELLAND—In all fairness to the witnesses, they have not wanted to comment; and there are issues in the Teoh case, I note, regarding what appropriate procedural fairness is. I for one would not suggest that the witnesses should be obliged to make any response to those comments.

Senator ABETZ—My remark was more of a comment than an attempt to draw them out.

CHAIRMAN—They are obviously not in a situation to respond. I want to come back to Brian Burdekin's comments about the family. Yes, he made the point about the optimal situation with the family, but he also said that the vast majority of children—and perhaps these are the ones that your department deals with—are of a dysfunctional type. We can talk about the ideal, traditional, nuclear family or whatever you want to but, seemingly, in departments like yours, are you dealing with the dysfunctional type in the main? What is the mix? Have you got any feel for the mix?

Ms Elliott—We are dealing across the board, right from the point of those families who merely need some parenting advice in order to do a good job—and that includes, potentially, you and me and everybody else. Those families merely need help and support. As you go along the continuum, the level of support that they need becomes more and more, and you get to the more dysfunctional families that are not necessarily within the norm, through to the point where a child cannot be left within a family because it is too dangerous for that child. You are dealing there with dysfunction which cannot be easily fixed by putting in some supports for the family and, in fact, where a child needs to be provided with an alternative source of care while you work intensively with that family.

At the far end of the continuum, you have some situations where a child will not return home to their family, because the level of dysfunction is such that the community would not tolerate a child being left directly in the care of that particular family. This is not to say that you do not continue to work with that family and have the child aware of and in contact with the family, but maybe you do not actually leave the child in the daily care of that family. The department sees itself as having a responsibility from the point of

providing parenting advice to every family right through to the point of dealing with those families who, unfortunately, could never parent a child.

Mr Culbert—We are talking here mainly about the families program, but there are other programs within the department. In the community care program, for example, we have child care. We license child-care operations in the states and we are dealing with all children, potentially; we try to keep that balance. We have the Aboriginal and Torres Strait Islander program, so there is that specific cultural emphasis, and we are always pleased to have that program within the department, because there is a lot we can share across other programs from that, and vice-versa. We have a disability program, and there are a few lessons there, too: children with disabilities present some particular problems.

One of the reasons that the department's name is now the Department of Families, Youth and Community Care rather than the old name of Department of Children's Services is a significant shift in this regard: the Children's Commission is very conscious of, and its full emphasis is on, dealing with the child in the family context. That is a very positive and deliberate move.

One of the difficulties that departments and agencies have is in defining 'family'. There has been a huge debate about same-sex families and all sorts of things like that. Maybe that was one of the cautions in focusing on children and not on families. Maybe there is a difficulty in defining what 'family' is, and that is a problem. While it is agreed that children and their welfare are the focus of it, and most people would agree that it should be in a family context, maybe defining 'family' is a problem in extending it beyond that.

CHAIRMAN—We have had substantial oral and written evidence, both statistical and anecdotal, to indicate that of those children who are abused a substantial proportion are so-called wards of the state.

Ms Elliott—Children being abused while in the care of the state, do you mean?

CHAIRMAN—What is your experience in Queensland?

Ms Mulkerin—It is true that there is some incidence of abuse of children whilst they are in the care of the department. We deal with that with a response similar in lots of ways to how we deal with children within their families. Their care and their interests are paramount. The processes, practices and procedures are exactly the same for protecting children.

We are currently in the process of looking at the care providers that we place children with and at the way in which we support, train and recruit them. As you have already said, the sorts of children who come into care often come from difficult families. The sorts of behaviours that they exhibit when they come into care are extremely

challenging for any family. Care providers are recruited and trained to care for children with those challenging behaviours. However, it certainly happens that children can be re-abused while they are in care.

We have recently upgraded the initial training for care providers, and that will be accredited training. We are working with peak bodies in the state to look at better ways in which we can support our care providers in order to decrease the incidence of abuse of kids while they are in care.

CHAIRMAN—When the commissioner gave evidence he made reference to his ongoing investigations into paedophilia, many incidents of which were occurrences in the past. What is the contemporary experience? Is there an increasing incidence? Are you able to say?

Mr Culbert—We would be naive to say that it never happens, because it can happen anywhere; but certainly there should be—and we believe there is at the moment—more vigilance in the case of children in care, so that the risk of that sort of thing happening should be much less than in the wider community.

Ms Elliott—Of course, there is always a tension in the efforts made to place children with their wider family in that, if you are placing a child within their extended family, you are sometimes placing a child with a family that may be a little dysfunctional but is nevertheless the child's family, and so their carers are not being put through the same degree of rigorous examination and training that foster parents are put through; nevertheless, the extended family is the desirable place for the child to be. In all of this there is a balancing, in terms of the actual investigation of the family, of what seems best in family terms and what seems best in order to ensure the child's safety. It is sometimes a difficult balance.

Mr BARTLETT—I have a question in relation to page 10 of your submission. It relates to Department of Justice issues. I do not know whether that is off the track.

Mr Culbert—We may need to take it on notice but we will endeavour to comment on it.

Mr BARTLETT—At the top of page 10 you said that the Department of Justice will consider it an offence to harm a child before its birth—an offence that is actually punishable by imprisonment for life. This refers to article 6 of the convention. I am wondering whether there has been any thought to extending that to the whole issue of abortion. It would seem to be quite interesting that this approach is taken in this context if it is not actually extended to abortion as well. On the one hand it seems to be saying very clearly that the death of a child before birth is an offence that is so serious that it warrants imprisonment for life, yet on the other hand perhaps it is not being taken to include wilful

destruction of that life by its parents.

Mr Culbert—I would be brave to comment on behalf of the Department of Justice or the government, but I could say with some confidence that the reason that was included to that extent was that there was a case in the courts where nothing could be done about a person who abused a woman to the extent that the unborn child was killed. This was specifically put into the criminal code.

Mr BARTLETT—I am pleased to see that this is a clear statement of the value of the life of the unborn child.

Mr Culbert—I do not know the reasons why they did not go as far as abortion, but I imagine one of them would have been the complexities of the abortion debate; it would have been too hard.

Senator ABETZ—That does seem anomalous. For example, somebody could be charged with a crime for leading to the death of the unborn child when, possibly in two days time, that woman had an appointment with an abortion clinic to have the foetus aborted, anyway.

Mr Culbert—It would be an interesting legal debate because the age is not specified here. The other parts of the criminal code which regulate abortion in this state do still apply. I imagine that issue is covered there.

Senator ABETZ—It is an interesting aside. I suppose it is one of those chicken and egg questions: was this developed as a result of the convention, that we have got article 6 behind it, or would that have happened in any event given the case that you have just referred to? That is one of the things which is very difficult to put your finger on: would certain developments in the law have happened anyway, with or without this convention?

Mr Culbert—My guess would be that the prominence of the case would have been the main motivation, but obviously underlying that, having article 6 there would be a good reason for having that. It highlights the difficulty that such conventions have.

Senator ABETZ—A good reason or a support?

Mr Culbert—Both. There is the difficulty that such conventions have in maintaining prominence, whereas a case in the media and in the courts is much more prominent. That was the reason in the first instance, but I guess the principles underlying that were as espoused in article 6. Who knows whether one caused the other, but certainly they are reinforcing the support.

Senator ABETZ—Of course, those principles existed before the convention was

written.

Mr Culbert—That is right. I guess it was one of those examples where it had not been thought that there was a problem. Until this case came up, the principle was acknowledged by everybody and people thought the criminal code actually supported that principle, and vice versa. But this case indicated that more needed to be done because someone was not able to be charged with an offence.

Mr McCLELLAND—I note for the record that on page 10 of your submission you talk about parental responsibility in the context of something arising from the treaty. In that sense, I gather you do not see the treaty as being all one way; there are also acknowledgments of parental rights and parental responsibilities.

Ms Elliott—Absolutely. As I said before, we would see that the rights of a child are well and truly enmeshed with the rights of families. They really cannot be separated.

Mr Culbert—We would become very concerned if the rights of the child were pursued at the expense of families. I mentioned the homeless child allowance. If children were able to achieve decisions in the courts, for example, which were too much against the rights of parents, I am sure there would be concern about that, in the department and in government.

Senator ABETZ—Are you aware of international developments in relation to the interpretation of the convention which do seem to be undermining the role of the family in relation to the child?

Mr McCLELLAND—I think that is unfair to the witnesses. I think they are intelligent and articulate people and they would be entitled to be referred to the facts.

Senator ABETZ—I think they are articulate and intelligent enough to answer my question.

Mr Culbert—As Ms Elliott said, we are aware of that.

Senator ABETZ—You are aware of international developments?

Ms Elliott—I am aware of comments that occur. For example, the United States has arguments against the United States' ratification of the convention, if that is the sort of thing you are referring to.

Senator ABETZ—No, Sweden, the United Kingdom—are you aware of those developments or not?

Mr Culbert—We would not pretend to know about all of them but we are

generally aware of that sort of issue and some of those specific issues. I guess we would favour an even-handed approach. I believe the government would favour an even-handed approach.

Senator ABETZ—So a sensible interpretation of the convention which is family friendly is what you would favour?

Ms Elliott—Absolutely. When we say ‘family friendly’, the dichotomy is usually between parents and children. What we argue is that a family is something that incorporates the children. You cannot talk about a family as something which is opposite to children.

CHAIRMAN—Does anybody want to make a final comment before departing?

Mr Martin—When you asked me before about the legislation, we had been talking about national coordination of data and things like that. I thought you were asking me whether the Queensland legislation took that into account. I think the question was more about the United Nations convention principles.

CHAIRMAN—Umbrella legislation.

Mr Martin—I was responding in relation to the data, whereas I think the question was directed to the principles.

CHAIRMAN—Yes, it was.

Ms Elliott—Could I add for the record one matter that we did not comment on, in relation to one of your opening comments, where you said it has been alleged that a large proportion of those children who are seen as abused and neglected are abused and neglected in the care of a state department. I would just refute that—

CHAIRMAN—I was hoping you would.

Ms Elliott—I would refute that allegation that a large proportion of the children with whom we deal who are assessed as having been abused and neglected have been abused in care. That is absolutely not the case at all. The proportion who are abused in care is a very, very small proportion of those children with whom we deal as having been abused and neglected.

Mr Culbert—With all due respect to our media colleagues, it would not do for such a headline—there is no risk for children being in care.

CHAIRMAN—No, it would be fair to say that there are views around, anecdotal and otherwise. Thank you; that is what I was hoping you would clarify as a result of that

question.

[10.08 a.m.]

CHURCH, Ms Carol, President, Australia African Children's Aid and Support Organisation, PO Box 1319, Milton, Queensland 4064

MELIT, Ms Therese, Secretary, Australia African Children's Aid and Support Organisation, PO Box 1319, Milton, Queensland 4064

CHAIRMAN—Welcome. Your written submission was received on 30 March. Are there any amendments, omissions or errors in the written submission?

Ms Church—I do not believe there are any omissions.

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

Ms Melit—We noted that the definition of 'child' did include children not just from Australia but from other countries. Our organisation recognises and actually supports the notion that children should be raised within their own biological family if that family is a loving and caring family. If that is not possible, the next best option is for them to be raised by relatives who love and care for them. If that is not possible, we think that children should ideally be raised within their own culture.

But should circumstances mean that none of the above are viable, we think that international adoption is a realistic and good alternative. We also think that, as well as international adoption, the country should be supported through preventative and supportive programs for the children. We would also like you to note that sometimes these paid institutions may lack physical and medical resources and the children being raised in an institution by paid workers may not be catered for in their emotional, social and perhaps physical development and perhaps international adoption is a better option.

From a personal perspective, photos and anecdotal stories I have had have convinced me that a child raised in this situation does not learn to appreciate the richness of their own culture and sometimes the children may not go far from the institution where they are raised, so they may not learn about the richness of their own culture.

Again from a personal perspective, I have noted that when children have been adopted internationally often their families will become members of the ethnic groups from where the children have been adopted. These children may become members with their Australian families of Korean, Sri Lankan or Ethiopian ethnic groups within the wider community. They may attend language schools, functions and dance schools within that ethnic community. Perhaps the children who are adopted internationally in many cases are exposed to a lot more of their own culture than they may be if they were raised within their own country as opposed to culture.

International adoption began after the Vietnam war in Australia, but there are more

longitudinal overseas studies that indicate that the development and adjustment of children who are adopted by loving parents of another culture compares very favourably with their peers who are raised by biological parents.

We would also ask you to recognise that it is a complex process. We have laws, governments and welfare authorities of two countries with different cultures, attitudes and resources. There may be two non-government organisations involved in both countries. There are children and individuals from different cultures and then you have to also deal with the migration and immigration laws. The complexity of this process means that those who are operating and implementing this process need to be very specialised workers.

If you add to this that government agencies who are offering their children for international adoption in Australia have to deal with each state and territory organisation because they have their own set of laws and they also have to deal with the federal government regarding immigration, migration and health and medical clearances. We would also like to state that we do have the full support of the general principles of the convention.

Ms Church—Just leading on from that, with specific reference to article 21 which relates to inter-country adoption, we do strongly support all the criteria that are identified there. However, we have some concerns generally about the future of inter-country adoption in Australia and some of the barriers that may be being put forward at the present time.

Specifically, there seems to be a general unwillingness on the part of state departments to initiate or support the development of new programs through bilateral agreements with other countries for inter-country adoption. For example, there have only been two additional agreements set up in the last seven years and they relate to the Ethiopian program and the Romanian program. I understand that progress on the development of other programs has stalled during the last few years. While I appreciate that resources in state governments are limited, there are organisations such as ours and other non-government organisations who are willing to do a lot of the footwork in regard to establishing new programs that can then be taken up by government.

There are a number of legislative requirements and administrative processes which seem to be making it increasingly difficult for inter-country adoption. Legislation, which is obviously well intended and which relates to general adoptions here within Australia, seems to be sometimes unreasonably applied to inter-country adoptions. That has led to some state departments demanding information about a child available for adoption which simply cannot be reasonably provided, for example, information about the family heritage or family history of an abandoned baby, and there is simply no knowledge available on that. Allocations have in fact been delayed while departments have made demands of other countries for information.

Currently there is a review of the Western Australian adoption legislation. An issues paper was produced suggesting that perhaps adoption plans should be negotiated for inter-country adoptions. An adoption plan, from what I understand from the issues paper, relates to an agreement between the birth parents and the adoptive parents. In an Australian situation that is quite feasible, but it simply would not be feasible in most inter-country adoption situations.

Obviously AACASA recognises that where it exists, our children have a right to any and all information that is available to them about their heritage and about their family situation in their country of origin. Parents do make considerable efforts, when they go to the countries to meet their children, to acquire that information. But I believe, and AACASA believes, that the adoption legislation should have some flexibility in the application of inter-country adoptions.

There is also a concern that these unrealistic demands for additional information mean that the Australian adoption program seems to be going out of favour with the Ethiopian government authorities. They see that they are doing the best they can with the limited resources they have to provide good families for their children, and it makes it difficult for them as well.

AACASA also perceives that there are some inconsistencies between the domestic jurisdictions, in that citizens are restricted regarding the countries that they can adopt from. As an example, I am aware that if you are a citizen of New South Wales it is possible to adopt from Brazil, whereas as citizens of Queensland we are unable to adopt from Brazil. There are some inconsistencies there.

Senator ABETZ—How does it come about that you have those inconsistencies? Is there a schedule that each state has saying you can adopt from such and such a country?

Ms Church—Yes, I understand so.

Mr McCLELLAND—The adoption laws are state laws.

Ms Church—Yes, that is right. In Queensland there is a list of countries which—

Senator ABETZ—Yes, but the adoption laws usually do not have such a schedule in them. There is not a schedule in the back of the Tasmanian adoption act, for example, saying you can only adopt children from these countries. That is why I am trying to explore how that decision is made and by whom.

Ms Church—I understand that which countries they are prepared to deal with is a decision made by each state department.

CHAIRMAN—You referred to Ethiopia and Romania. Are they country to country

bilaterals or are they state government to country bilaterals?

Ms Church—With Ethiopia it is a state government arrangement.

CHAIRMAN—Which state government? Is it each state government?

Ms Church—The Queensland government department has the agreement with Ethiopia, and they act on behalf of all the other states. All states in Australia deal through the Queensland department for adoptions with Ethiopia.

CHAIRMAN—What about Romania? Is that another state government?

Ms Melit—I do not know which state administers Romania. I believe that Queensland only does Fiji and Ethiopia. When an allocation comes from Ethiopia to Western Australia, for example, the allocation for that child or group of siblings or whatever is forwarded to the Western Australian department, but the Queensland department is the department that actually administers the umbrella group for the whole organisation; whereas in Queensland we can adopt from Korea, but the Queensland government is not the umbrella organisation for all of Australia. It liases with the state that is the umbrella organisation. So there is a discrepancy between the states.

CHAIRMAN—What about the churches? I remember I dealt with one of those some years ago in Toowoomba, with Korea. That was done through the Catholic church—but from interstate, I think.

Ms Church—I am not aware of that.

CHAIRMAN—I agree with you that there are inconsistencies.

Ms Church—Yes. In Queensland you can only adopt if you go through the Department of Families, Youth and Community Care.

Ms Melit—Was it through the Catholic church in Korea?

CHAIRMAN—Yes, it might have been.

Ms Melit—Perhaps it may have been a Catholic missionary situation in Korea. I do not know.

CHAIRMAN—I know it took a long, long time and a lot of red tape, with a lot of aggro being generated in the process.

Senator ABETZ—Perhaps the secretariat could write to the various state departments to see what countries they have scheduled, for want of a better word, and the

reasons and the rationale for it. I was not aware of what you are saying until right now, and it would be interesting to take that further.

CHAIRMAN—I think that is important. It is related to that article; and I think what you have said is almost the only evidence we have had on adoption so far. We will do that and we will get back to you. Are there other groups interstate like yours?

Ms Church—AACASA is a national organisation, but there are a number of inter-country adoption NGOs.

CHAIRMAN—Where is the national body? Is the national body in Canberra, Sydney or where?

Ms Church—There is AICAN, the Australian Inter-Country Adoption Network, which represents all the NGOs for inter-country adoptions, but there are a number of groups down south. Here in Queensland we have the Australian-Korean Friendship Group, which supports families—

CHAIRMAN—That might have been what I was dealing with.

Ms Church—There is IAFQ, International Adoptive Families of Queensland. There are groups like this in all states.

CHAIRMAN—We thank you, and we will take that up through the secretariat.

Ms Church—They are on the public record. If you wanted a list of the associations I am sure we could provide that.

CHAIRMAN—Who would have the total picture? AICAN?

Ms Church—Yes, they should have a list of all the groups within Australia.

CHAIRMAN—We will undertake to write to AICAN and get a summary of the state government agreements. We deal with bilateral and multilateral treaties, so we will also check whether at the national level there is anything that gets into that area. I doubt it. We are going to look at the treaties that are extant, and there are a thousand of those, but we will just have a look.

Ms Church—I will provide you a copy of some notes I have here, if you would like to have those for reference. Basically, we are recommending that state departments that have responsibility for adoption be encouraged to actively support the concept of inter-country adoption and the development of additional bilateral agreements, and that the adoption legislation in the various states be reviewed to ensure that it does provide flexibility with application to inter-country adoptions.

CHAIRMAN—We will accept those as evidence.

Ms Church—That is all I intended to say. I am quite happy to answer any questions.

Senator ABETZ—You have mentioned cultural environment, and the preconditions that children cannot be cared for by their extended family and that there are not any adoptive parents within their country. Moving children from Ethiopia to Australia or from Romania to Australia is a pretty major shift, in anybody's language. But you are telling us that even if children are taken from their homeland and their cultural environment, if those children are provided with a loving and caring family environment they grow up in general terms to be part of society and not dysfunctional individuals.

Ms Melit—Yes, definitely.

Ms Church—One of the things about inter-country adoption is that there is no concealment. It is obvious to everyone. They know right from the beginning that they are adopted, and that they have come from somewhere else. Obviously they go through stages, depending on how old they are when you adopt. Let us say you adopt a baby. The literature says they go through stages in their early years, when they are two to four years old, when they want to be like their mother and father. They want white skin, for example. But they come through that with the support of parents who really care about them and who can express that. When you are going through the adoption process you obviously get a lot of counselling during the home study period. You are talked to about this, so you have a good understanding of what to expect.

Ms Melit—You do not just decide on Thursday to undertake an international adoption and complete it the following Monday. It is a very long process, and people do not do it lightly. It is not done lightly, because the people have to make an emotional and financial commitment. Many of them travel to their children's country to pick up their children and to learn about their culture, and it is recommended by support groups like our own that parents become involved in the ethnic groups within their own communities and things like that. Also, when the family go out as a family, it is obvious that the children are not their biological children. You cannot ever conceal it like a domestic adoption. When you go and buy your children a pair of shoes and when they call you mum, it is assumed that you are married to a black man. It is always there. I think that is good and I think that is healthy; it is never concealed. I have read some studies—I am sorry, I cannot quote them to you now and I do not know if I could even find them—where international adoption has compared slightly more favourably than domestic adoption. I wonder if it is because the concealment is never there.

Senator ABETZ—That is an interesting point. Amongst adoptive parents, is the desire to adopt an international child, for want of a better term, because they want to help a child in, say, Romania? Or is it because they want a child or have a child within their

family structure and there are none available locally for adoption?

Ms Church—During the process we go through with the various state departments, that issue is really thrashed out very well. Rescuing a child is not a motive for adoption and that is made very clear. I think you will find that the process is quite adequate in sorting that out. The reason that people adopt internationally is that they very much want a family or they want to add to their family and are unable to do so by any other means. The requirements for inter-country adoption are a little different.

Senator ABETZ—When you say ‘by any other means’, is that because there are none locally?

Ms Church—Yes. They are unable to have a child biologically, usually, and to adopt locally the waiting period is something like eight years in Queensland. Because of that and because the legislation requires that parents have to be quite young when they first apply, a lot of people are past that age requirement by the time they realise they are unable to have biological children. There is a little more flexibility in the age requirements for inter-country adoption and the process is faster for most countries. Anything from two to four years is probably about the norm.

Senator ABETZ—How many children, by way of adoption, come into Australia each year? Do you know that?

Ms Church—No. I can tell you that there are approximately 86 Ethiopian adopted children that have come in in the last few years.

Senator ABETZ—Into Queensland or Australia?

Ms Church—Into Australia.

CHAIRMAN—The secretary has just drawn my attention to the fact that we have a list of those protocols, treaties and conventions that are in the course of preparation. This committee, as of last year, has been involved with the signature, which is the moral intent, and the ratification, which is the legal intent. There is a 1993 protocol on the protection of children and cooperation with respect to inter-country adoption, which is still in the system but has not come to us. Under the new arrangements, what is termed an NIA, a national interest analysis, is carried out. From what the secretary has just told me, apparently there are a lot of problems with this at the bureaucratic level. Maybe this NIA is about a year away from coming to this committee.

Whilst it has relevance in terms of a CROC and that particular article, it is probably more appropriate when we can look at the detail of this. Just to give you warning, we will undoubtedly look at this in due course when that NIA and the associated treaty are tabled in the parliament, after which we have 15 sitting days to report back in

terms of ratification. If you want a contact, if you are not already aware of this—

Ms Church—That is the Hague Convention?

CHAIRMAN—Yes. The contact is in the family law branch of the Attorney-General's department. Our list indicates a Mr Richard Morgan. His telephone number is (06) 250-6367 and his fax number is (06) 250-5917. The person may have changed but that number should still be the same. If you want to chase it up in a little more detail, please do.

Ms Church—One of the concerns of the inter-country adoption community generally is that there has been, to this point in time, very little consultation on the Hague Convention.

CHAIRMAN—That is a multilateral and that makes it far more difficult than a specific bilateral, some of which we have dealt with, not in terms of adoption but in other things.

Ms Melit—In relation to that, I am speaking from a narrow knowledge base but from what I have read and from what I have discussed with other people I understand that another adoption group to whom I was speaking has some concerns that the criteria that you were talking about in respect to inter-country adoption may have gone further than the Hague Convention in the principles regarding the qualification of staff and things like that. With some of the things set down they felt that it was doing more than implementing the principles of the Hague Convention. I cannot say much more than that. I would be very interested to hear.

CHAIRMAN—I understand from the secretary that we have actually signed it which means that we agree generally with the principles but we need to work through the detail of it. The detail of it and the preparation of an NIA would be done, in this case, in conjunction with NGOs like yourselves. If it was not done in conjunction with organisations like yourselves, we would want to know why when it came to the hearings. We have already found, in relation to a double taxation agreement with Vietnam, that the peak accounting bodies were not even consulted. That is what this committee is all about. If you just bear that in mind and if you want to chase up on progress on that protocol with the Attorney-General's Department, that is the fellow to get in touch with.

Ms Church—Thank you very much for your time.

CHAIRMAN—That has helped us as well.

[10.33 a.m.]

MUSTAPHA, Mrs Shifa Lynette Vivienne, Founding Member, Adviser and Member of Management Committee, Independent Islamic Sisterhood Incorporated, PO Box 707, Mt Gravatt Plaza, Queensland 4122

CHAIRMAN—We have received your written submission dated 25 June 1997. Do you have any amendments? Are there any errors, either typing or fact, of which you are aware?

Mrs Mustapha—No, there are not.

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

Mrs Mustapha—First of all, it is an honour for me to represent an Australian Muslim women's organisation. Apart from 10 per cent of our members who are Australian born, we come from 14 different countries. I wish to bring before this committee their goodwill, as well as some of their concerns regarding this convention.

We have based our submission on aspects regarding responsibilities of parents and the state, education, morals, health and wellbeing of the child, as interpreted by the UN. We also wish to bring to your attention information regarding question 30 on page 4 of the list of issues to be taken up in connection with the implementation of the convention.

CHAIRMAN—Before we get into that, you are aware that various Islamic countries have ratified this treaty—some without reservation, some with reservation. A number of issues have been brought to our attention in the context of this hearing.

First of all, let us take the reservation of the Islamic Republic of Iran. Other countries too have ratified, but with a strong caveat in terms of reservation subject to Islamic laws and other international legislation in effect. One thing that concerns the committee is that some of these countries have ratified, particularly where they have not reserved their position. In other words, they have accepted everything in there in the interests of children. Yet in some of these countries, to be very candid about it, they practise female genital mutilation.

Does your group here in Australia support such an approach? Do you see that as something that is driven by the Islamic faith and therefore, as a result, flies in the face of what the convention is all about?

Mrs Mustapha—Definitely not. We, as an organisation, welcomed the fact that female genital mutilation was to be legislated against. The reason for this is that 700 years ago our scholars actually went against that. It is not Islamic, it is cultural. It is definitely not Islamic from that point of view. This is one of the problems that we have had to face

in this country.

I am a third-generation Australian from a northern European background. I became Muslim after study. I am very committed to Islam, but this does not prevent me from being a committed Australian—in fact, quite the opposite.

Particularly at the end of 1993-94, when many of us did not even know what female genital mutilation was, we had to study and find out what exactly this thing was. I had people calling me from all over Australia. At that time I was a journalist for the *Australasian Muslim Times*. I had people from all over Australia contacting me and saying, ‘What on earth are they talking about?’ They did not know. The majority of Arabs do not have any of this. They do not even understand what it is.

It has come in mainly through the African tribal situation. What I have found, and it has really worried me tremendously, is the fact that it has been pushed on to Islam as being mainly Islamic when, if you look, you will find that Christians and Jews, as well as Muslims and tribal peoples, have all had this. It has gone in culturally either over the religious aspect or even before the religious aspect. This is really quite a problem because, when it hit here in Australia, we had guys on the Internet sending messages saying, ‘What on earth is this thing?’ They did not know.

My women’s organisation since that time has had two Somali women join us. One of these young women—

CHAIRMAN—I interrupt you for a moment. Is your group just in Brisbane or is it state wide?

Mrs Mustapha—It is state wide, but we have isolated members in Western Australia, New South Wales and Northern Queensland.

CHAIRMAN—So it is a national body but headquartered here at Mt Gravatt.

Mrs Mustapha—We have only been going for the last 4½ years and we had not intended for it to be a national body.

CHAIRMAN—And your membership is what?

Mrs Mustapha—Over 70 now. As I said, we have 14 backgrounds, all Australian but from different countries. When we did find out about clitoridectomy, we studied it and found out that there is no reason in the world why it should be put with the Islamic religion. Firstly, we were interested to find out that clitoridectomy, or FGM, was carried out in Britain from 1822 until World War 1, and in the USA from 1869 until 1943, for conditions such as hysterical convulsions. We refer to the book *From Paralysis to Fatigue: A History of Psychosomatic Illness*, by Edward Shorter.

The Islamic position, if we look to Sheik Al Albani, he says in *Fayd Al Kadir*, volume 3, page 503, that we have the evidence that the practice of female genital mutilation was not acceptable even back 700 years ago when Al Thabi, Al Bahaqi and Al Hafiz all spoke against it and mentioned that this was not acceptable. So it is not Islamic.

CHAIRMAN—It is not a religious thing; it is a geographic cultural thing.

Mrs Mustapha—Exactly, it is cultural.

Mr McCLELLAND—What countries in the geographic sense still practise?

Mrs Mustapha—I sent—but you obviously have not received it—information from the Egyptian consulate that it has not been acceptable as an Islamic practice in Egypt for quite a number of years. There are still some, I believe, in Egypt who would be practising this but mainly, believe it or not, it is Coptic Christians. From the entire African scene you can say that this would be prevalent.

CHAIRMAN—In fact, I did not realise it but question 30 refers to that where it states:

In the light of information provided in paragraph 879 of the report please specify how the federal government is encouraging states and territories that have not yet enacted specific legislation to ban female genital mutilation?

With reference to the education program designed to prevent female genital mutilation, paragraph 878, please specify how it is being implemented by the states and territories or authorities and what the first results are?

I would have thought that the answer to that is fairly simple: it is outlawed in Australia.

Mrs Mustapha—It is, and that is fine. We have sent papers to the Family Law Council, and also to the Law Reform Commission of Queensland, which you will probably get when you return, saying that we are for that. We have been educating our people, not so much telling them not to do it but explaining to them what it is for the majority of people and that it is not Islamic, which is enough for most people to understand. As I said, we have since that time had two members from Somalia. One of the young women had this performed and she has since had reconstructive surgery. The second woman came from just a few kilometres from the first one and she did not have it done at all. In fact, the whole region did not have it done because they thought it was a Christian practice. They did not associate it with Islam so this is just one of the issues there.

When it comes to what happened here in Australia during 1993 and 1994 and right up, we went through the most incredible and horrendous time with regard to the media. I cannot explain just how bad this was. To walk in the street we were jeered at and we were

mocked. Very nasty things were actually said as soon as they saw us. This actually impacted on Muslim children here in Australia and Muslim students from the universities and from the high schools. This was something that was really incredible. It says in article 17 about the media and how important the media are. The media can also cause a great deal of harm and we have found that. There is no redeeming feature in this. FGM could have been legislated against, it could have been advertised and everything could have gone on without the persecution of Muslims in this country.

CHAIRMAN—A lot of people would say that that is not restricted to Islamic women. There are particularly a lot of views that elements of the media have in lots of areas that we do not agree with from time to time. I am not belittling what you are saying. It is a very disturbing thing to have happen nevertheless.

Mrs Mustapha—Yes, it was very disturbing. It actually contradicts article 2 where it says about discrimination. Because it was a worldwide thrust we were under the impression that it was actually coming from the UN itself.

CHAIRMAN—Coming back to Iran again, regarding their reservation, they say that they ‘reserve the right not to apply any provision or articles of the convention that are incompatible with Islamic laws and the international legislation in effect’. Are you aware of the view, for example, on female genital mutilation in Iran?

Mrs Mustapha—No, there is definitely none. It is completely absent in Iran. You will only find it really in Algeria, Egypt and countries that have very definite African tendencies.

CHAIRMAN—I see. So it still happens in Ethiopia and in Somalia?

Mrs Mustapha—I do not know, to be truthful. I would think it is possible. We have actually asked that the legislation cover the fact that we do not want the children to be taken back to any of those areas where they might have this performed.

CHAIRMAN—Are there contemporary Islamic scholars who have expressed a view?

Mrs Mustapha—Sheik Al Albani—

CHAIRMAN—How contemporary is he?

Mrs Mustapha—He started his writings in 1948.

CHAIRMAN—Is he still alive?

Mrs Mustapha—Yes, he is still alive. He is living in Oman.

Mr McCLELLAND—Your organisation would be satisfied to preserve, for instance, article 30 which talks about those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist and then it talks about respecting and acknowledging the rights of children to be brought up and complying with their cultural and religious identity?

Mrs Mustapha—Yes, I understand.

Mr McCLELLAND—Would you be concerned if, for instance, Australia denounced the treaty and that clause went with a denunciation?

Mrs Mustapha—No, because I believe there are laws in place in Australia, are there not, that would cover aspects of child protection?

Mr McCLELLAND—I am talking about respect for culture and the right to pursue their religion.

Mrs Mustapha—Is not section 116 of the constitution allowing for religious freedom?

Mr McCLELLAND—Yes. What about for culture? You are aware of social pressures from some minor political persuasions to kill multiculturalism, for instance?

Mrs Mustapha—Yes.

Mr McCLELLAND—Do you not think that killing that clause would be something that they may well desire?

Mrs Mustapha—I do not actually know. I have met some of these people who are against multiculturalism and their general attitude is that provided a person is law abiding, and so forth, they are accepted. But, on the other hand, you have those who want each person to be shipped back to their own country. It is a very difficult situation.

Mr McCLELLAND—But don't you think these international acknowledgments of the right to respect your own culture and religion are beneficial to that whole international tolerance of different cultural and religious identities?

Mrs Mustapha—Yes I do, but I wonder with regard to article 24 of the convention, on the same basis.

Mr McCLELLAND—I am sorry, I do not understand your point.

Mrs Mustapha—If you look there you will find it is about traditions.

Mr McCLELLAND—Equally, of course, there is article 29 which talks about religious institutions and that their kids have to be educated having in mind their cultural backgrounds. Don't you think they are all desirable as adding to the development and progression of cultural and religious tolerance?

Mrs Mustapha—They appear to be. I would wonder also about male circumcision, because while we—

Mr McCLELLAND—I am not touching on the issue. I think you have covered that.

Mrs Mustapha—No, I have not covered that. I have covered female circumcision, but male circumcision is vastly different because that traditionally is something religiously—

Mr McCLELLAND—The point of my question was: are there provisions in the treaty which are beneficial to cultural and religious tolerance?

Mrs Mustapha—There are many beneficial areas in the convention. I would not hesitate to say that. By the same token, it is a wonderful thing to have peace, but when it comes to freedom as well I really wonder sometimes how far we are going. I have been in Sweden three times and during my visits there I have seen things with regard to children, for example, that I think are rather pathetic.

I have been in the street, walking through the main shopping areas, and I have seen children start to cry and the parents walk aside and walk away from them. The first time I was there I said to my daughter, who lives in that area, 'What on earth is happening?' I was informed that they have to do that because if a child cries, they must walk away or they can be accused of causing that child to cry. I looked at the little child there and I wanted to go and put my arms around her, but then, of course, I might have been put in the same position. Sometimes we throw the baby out with the bath water.

Mr BARTLETT—Do you think that trend in Sweden is the result of the convention or do you think that had been going on anyway?

Mrs Mustapha—It is a result. Also, now that Denmark has signed the same thing is happening there.

CHAIRMAN—You have said in your written submission that the restoration of family values is basically what you are on about.

Mrs Mustapha—Yes, exactly.

CHAIRMAN—I think all of us, irrespective of party political views, would agree that there has been an erosion over the past 25 years or so. It is a question, in the context

of this convention, of what we do. How would you react to some sort of declaratory statement being made by Australia even though we have ratified it, because there are constraints as to what we can and cannot do now that we have ratified? We can withdraw or de-ratify. That is an extreme situation, and maybe that is an option. But if we were to make some sort of declaratory statement, which we can do subsequent to ratification, to re-emphasise that what is in there is not at the expense of family values, or something like that because I know 'family' means different things to different people, how would you react to that?

Mrs Mustapha—I think that would be a wonderful thing. I think that is something we would have to do.

Mr BARTLETT—I would like just to follow on from where I was before. You said that, in your opinion, the problem that parents face in Sweden is the result of their ratification of the convention. Do you have any substantive evidence of that, rather than just this anecdotal evidence?

Mrs Mustapha—No, I do not, I am afraid.

Mr BARTLETT—I would appreciate it, if you could send us a copy of that sort of information, as that would be very helpful.

Mrs Mustapha—I will try and do that.

CHAIRMAN—Your daughter lives in Sweden, does she?

Mrs Mustapha—She lives in Denmark, but we went over there several times.

Senator ABETZ—I would like to follow on the line of questioning of Mr McClelland in relation to article 30, and highlight to you what I think is one of the real problems with this convention. Mr McClelland put to you the good interpretation of the convention—article 30. But article 30 says that, in those states in which ethnic minorities exist, a child belonging to such a minority 'shall not be denied the right . . . to enjoy his or her own culture'.

What would happen if a person, not of a particular religious belief about FGM but a cultural belief, were to say, quoting this, 'I am a member of an ethnic minority and this is a cultural practice that we have had for centuries, back in'—for example—'Somalia, where my family comes from. We have a right to practise our cultural activities, which include FGM'? This is an example of where article 30 could be used to uphold FGM practices.

Is it that sort of possibility in interpretation of the convention that concerns you, that, depending from what point of view you come from, you can interpret it for good or

for bad—as, for example, Denmark and Sweden seem to indicate as well?

Mrs Mustapha—Yes, it is a problem. There does not seem to be any complete guideline there. There are a lot of very good things but when you look at some of them they are not so good. For example, if you look at the preamble you find that the child is protected before birth. But what is happening with regard to abortion? There is nothing specific.

Senator ABETZ—But none of the people pushing the convention have come before us saying that this is a breach of the convention, which I find very interesting and which I think again confirms that this convention can mean whatever you want it to mean.

Mrs Mustapha—It does look like that. But then, on the other hand, they may say that article 24 balances up article 30. Once again it depends on who is there and who is going to be the one to say. This raises another big problem: it mentions morals and all the rest of it, but when it comes to the point where are the criteria coming from? Here, in schools and things like that, even now there is nothing really when it comes to health and morals. I think that is in article 13.

Mr McCLELLAND—When you referred to article 24, were you referring to clause 3? It states:

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Mrs Mustapha—Yes, that is right. That could possibly be used to balance it up, but then the thing is that it depends on who is actually viewing it at the time.

CHAIRMAN—Thank you very much. That has been very helpful. We need to look a bit more closely at the FGM issue, which in previous evidence has tended to be a bit of a throwaway line. We need to have a look at the cultural dimension to it rather than seeing it as a strict religious thing. Thank you very much indeed.

Mr BARTLETT—Information on Denmark and Sweden would be helpful.

CHAIRMAN—Yes, if you could get that to us.

Mrs Mustapha—I will certainly try for that. Thank you very much.

[11.00 a.m.]

McCARTHY, Ms Kathlyn Ann, Vice-President, Queensland Paediatric Nurses Association Inc., PO Box 337, Red Hill, Queensland 4059

MASON, Mrs Karen Ann, Member, Executive, Queensland Paediatric Nurses Association, PO Box 337, Red Hill, Queensland 4059

NIXON, Dr James William, Friend, Queensland Paediatric Nurses Association, PO Box 337, Red Hill, Queensland 4059

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

Dr Nixon—I am a social worker at the Royal Children's Hospital and a friend of the Paediatric Nurses Association.

CHAIRMAN—The committee has received your written submission dated 20 June, and the attachments thereto. Are there any errors of omission or inaccuracy that you want to correct on the record?

Mrs Mason—No.

CHAIRMAN—It is all 100 per cent, is it? Would you like to make a short opening statement?

Mrs Mason—As an organisation that represents nurses in Queensland who work with children and families, we are very supportive of the convention being accepted. We see that there is potential for this to support legislation in child health policy that has been lacking in Australia. It is only very recently, even here in Queensland, that we have had an advisory committee in child health formed to advise the state government. We feel that it is an area that has been lacking particular focus and that something like the convention can add strength and support to that.

CHAIRMAN—Was that an initiative that came from Mike Horan, or was that an initiative from the bottom up?

Ms McCarthy—I do not think that Mike established this one, probably.

Mrs Mason—It has been something that people have certainly been pushing for for some time, so we are certainly very pleased to see it happening.

CHAIRMAN—You relate back to the actual application of this convention in December 1990. Can you make some sort of judgmental comment as to how primary

health services for children have fared since 1990? Has there been an erosion? Has there been an improvement? Has it been the direct result of this convention, or has there been a combination of factors?

Mrs Mason—I dare say that I do not believe that it has had anything to do with it at all. That is my personal perspective. As we compete for the health dollar, because of the fact that children are a smaller percentage of the population today than they have been in the past we get a smaller piece of the pie.

CHAIRMAN—How many in your peak body, apart from those like yourselves who may or may not have been informed on the Convention on the Rights of the Child before this inquiry came up, would be aware that the convention even existed?

Mrs Mason—Very few people on the ground, I would suggest.

Senator ABETZ—You have indicated that you are supportive of the convention. I just want to tease that out with you a bit. What does that mean? Do you support the general principles of the convention that we ought to be doing more for our kids, or do you agree with every word and letter in the various articles?

Ms McCarthy—Probably it is more that we are trying to do more for our children. I think the important thing, which health departments forget about, is that children are not mini-adults. They are children. Therefore, we need to treat them differently from adults. I think that is the way we support it, in trying to do more for the child.

Dr Nixon—Also, we see that the convention provides some opportunity at least to put children's issues on the map. In times when there is less money around, it is too easy to reduce services to children, to close a children's ward rather than to keep it open and rationalise other wards. We think the convention can add to the strength of children being an equal part of the community.

Senator ABETZ—So you would not have any problem with us reading through the convention and saying, 'This is a good article but this one is not too good' and implementing on a domestic basis on that sort of a level?

Ms McCarthy—That would be perfect.

Senator ABETZ—We would make our own value judgment about the convention rather than saying, 'It is an international convention; therefore, it must be good and therefore it must be implemented.'

Mrs Mason—I think there are also local issues in every country that would be driving the way people seek to interpret the convention, whether we are talking about Third World countries or our own Aboriginal communities or wherever. I think everyone

has their own agenda as to how they want to see the convention support them.

Dr Nixon—My reservation with your suggestion is that I would want to see the principles on which we were going to accept or reject things before we set out to do that. I would want to see the process by which we were to decide what was included and what was not.

CHAIRMAN—You are involved at the grassroots in a hospital situation. What about the two ladies? Apart from being members of the peak body, are you both practising professionals?

Mrs Mason—Kath works in acute care and I have worked—

CHAIRMAN—Acute care with children?

Ms McCarthy—Yes, at the Mater Children's Hospital.

Mrs Mason—My experience is as a child health nurse in the community. I have worked in acute care in paediatrics. I have also worked in rural Victoria and central Queensland. I am currently a lecturer at the Australian Catholic University where I teach a graduate diploma in child and adolescent health, so I have a foot in Academe and in practice.

CHAIRMAN—So a wide range of experience in children's matters.

Mrs Mason—Yes.

Ms McCarthy—To clarify it for you, the Mater here is a separate children's hospital whereas the Maters interstate just have a children's ward. We are a tertiary referral hospital.

CHAIRMAN—Even as a Queenslander, I did not know that.

Mr McCLELLAND—You have mentioned that perhaps since 1990 things have not improved or improved dramatically. Is that because the treaty has been useless or because not enough has been done to implement those relevant areas of the treaty relating to children's health issues.

Dr Nixon—I agree with the view that very little is known formally by people in the community about the convention. I am sure that some aspects of the convention have influenced decision making in government in deciding which are important areas to pursue. I think I can see some changes in the way child abuse is managed but I doubt whether they are driven entirely by the—

Mr McCLELLAND—Those arguing against Australia remaining a party to the convention would say, ‘We have had this convention since 1990 and no real improvement has occurred.’ Are they right, or is the fact that improvements have not been as dramatic as we would hope the result of lack of education, information and implementation of relevant areas?

Ms McCarthy—I think there has been a lack of education and information. Most people would not know about it and I think that has been a big lack.

Senator ABETZ—That is in the health area.

Ms McCarthy—Yes, that is what we are talking about.

Mrs Mason—I would say it is probably the general public too.

Senator ABETZ—The area that concerns me is children with disabilities. There are some conditions which require intensive assistance, let us say, for the first three years of life because, whatever developmental stage they reach by their third birthday, that is about it for the rest of their lives. There seems to be a lack of concentration of resource in some of those areas. I would have thought, just from a humane point of view, with or without a convention, that leaves a society that will be pursuing the provision of such facilities to those children. Do you see that there is a huge lack or just a small lack?

Ms McCarthy—I would agree that there is a huge lack. I would take it to the older age in the fact that—

Senator ABETZ—I used that as an example.

Ms McCarthy—With the older children, the head injuries recovering ones are very disabled. It is really very difficult. Even for the kids of about nine or 10 who need disposable nappies, it is a whole two months before they can get official supplies through. It is really very financially draining on the parents. Unfortunately, in this day and age, the hospitals cannot afford to tide them over. The budget is so tight that it is very difficult. I agree with you. It is very difficult to get day care relief for disabled children. Those parents are entitled to a life too and it is not there. I agree totally with you.

Senator ABETZ—Are you aware of the Marion decision by the High Court in relation to child sterilisation? The evidence before this committee has been that, if the parents had had appropriate support, chances are that case would never have found its way to the courts.

CHAIRMAN—Sterilisation would not have taken place. It would not have been necessary.

Senator ABETZ—It would not have been necessary. There seems to have been, in

my view at least, an unfortunate concentration on the headline grabbing rights of children, on divorcing their parents or uniforms or standing up for their rights to be able to associate with whom they want to. We, as a community, have been spending all the scarce community resources on those sorts of things which, at the end of the day—in my simplistic opinion—count for nothing. Whereas there is this huge area of need that is ignored. When you start talking about human rights, I would have thought the area in which you people work is a lot more fundamental than whether a kid has to wear a school uniform or not and whether you are going to employ a lawyer to argue the case at public expense.

CHAIRMAN—Dr Nixon, I am not getting at you personally. The poor old social worker cops a bit of a bagging in this inquiry and that is the judgment between the rights of children, the rights of parents and the rights of families generally. In a hospital situation it is a little different, I know. Do you, as a practising social worker, always have to balance that up? Sometimes you come down in favour of the child or sometimes in favour of the parents. How do you make some of those judgments?

Dr Nixon—Normally we make them with the family at the point at which I see children's rights not being balanced. The situations I have worked in have been institutional rather than at individual levels. For example, on the burns unit, children have to wait for treatment that they are requiring because the hospital is focusing on liver transplants, another high tech thing that really closes the hospital down while they are happening. Because of the organisation of the hospital to save money, it does not have money or services on tap all the time. Those children with immediate treatment needs can miss out because of the focus of the hospital.

CHAIRMAN—Do you find yourself in a situation in the hospital setting at times of having to say that the rights of parents in situation X really have to take a back seat to the rights of the child patient for a number of reasons?

Dr Nixon—Certainly in the child abuse area, yes.

CHAIRMAN—Where you have a child who has been punched, kicked and damaged—

Dr Nixon—Or not even as obvious as that, and they are the cases that are probably more difficult to make decisions about. Certainly, you must come down on the side of the child, initially.

CHAIRMAN—It would be fair to say that we have had quite a lot of evidence, written and otherwise, to indicate that social workers at times tend to take a fairly hard view when it comes to the rights of the child, and a lot of parents feel a lot of frustration as a result of that.

Dr Nixon—I can understand that.

CHAIRMAN—That would be a fair comment, would it?

Dr Nixon—I think it would, yes, but I would not apologise for that approach because I think there are many occasions when the welfare of children is not considered in a situation, whether it is a community situation or an individual situation.

CHAIRMAN—Thank you very much indeed; that was very helpful.

[11.36 a.m.]

CARR, Ms Penny, Policy and Research Coordinator, Youth Affairs Network of Queensland, PO Box 70, Brisbane, Queensland 4003

FERGUSON, Ms Susan, NESB Youth Issues Coordinator, Non-English Speaking Background Youth Issues Network, PO Box 70, Brisbane, Queensland 4003

CHAIRMAN—We have received your written submission dated 4 June. Are there any amendments to that written submission or omissions that you would like to put on the record before we invite you to make a statement?

Ms Ferguson—No.

CHAIRMAN—Any additions?

Ms Ferguson—I have got supporting evidence.

CHAIRMAN—We will cover that when you make your opening statement. Would you like to make a short opening statement?

Ms Ferguson—We are here to talk to you about the Convention on the Rights of the Child and from the perspective of young people from a non-English speaking background.

CHAIRMAN—Is there any additional documentation that we need to reflect in the evidence as exhibits?

Ms Ferguson—Yes.

CHAIRMAN—Could you read out what they are, so that we know exactly what you are talking about.

Ms Ferguson—There is an excerpt from *Our homeless children*.

CHAIRMAN—That is the Burdekin report? That came up yesterday in Sydney; Brian Burdekin appeared before us yesterday.

Ms Ferguson—There is the *Voice of Muslim youth*, which is a needs analysis about young people from a Muslim background. There is a consultation about the needs of young people from NESB in Cairns and Atherton called *Like being on the moon*. This is a document called *Mission impossible*, which is a summary of a whole lot of research done in the south-east corner of the state about young people from non-English speaking backgrounds. This is a journal called *Transitions* which the Youth Affairs Network

publishes and it is about NESB young people. These are just photocopied things that I did for you.

This is a report called *Interpreters in the courts* which was done by the Bureau of Ethnic Affairs. There is also a report called *Accommodating difference* which is about the experience of homelessness and young people from non-English speaking backgrounds.

CHAIRMAN—Are they all documents to give to us or do you just want to refer to them?

Ms Ferguson—I will give them to you. I might refer to some of them as we are talking. I have photocopied bits of some of them and others I will give to you complete.

CHAIRMAN—They will be accepted as exhibits. Do you want to make any other general comments before we go to some questions or are you happy to take questions?

Ms Ferguson—I am happy to take questions.

CHAIRMAN—We have just heard from an Islamic women's group and of course, predictably, the question of female genital mutilation has come up and there was a very interesting discussion. It has come up in just about all of our hearings. Now as that relates to youth—and particularly Islamic young women—is that a problem? The point the lady made this morning is that it is a cultural thing rather than a religious issue. How do young Islamic women react?

Ms Carr—I actually cannot tell you how young Islamic women feel about that because I have not talked with them about female genital mutilation. I have read information about it, but I cannot give you a young woman's perspective on that. From what Islamic people in the community say, that kind of practice is a cultural practice rather than a religious practice enshrined in the Koran.

CHAIRMAN—But is it something that women with an Islamic background in Queensland see as something that they abhor, or do they see it as still part of their cultural background?

Ms Ferguson—I think there is a huge diversity of opinion about that actually. There are extremes of view on it, depending on which culture the woman is from and the traditions that they hold. So I cannot really say to you that there is this opinion. It is very diverse.

CHAIRMAN—The lady said this morning that it may well be—and this is your experience too—that the background of an Ethiopian young woman might be different to an Iranian or someone else. Is that your experience?

Ms Ferguson—Absolutely, yes. But just to add, it is certainly not an issue that I have heard raised by young Islamic women. There are many other issues that I think would come in ahead of that, but I think that for the Islamic women's community it is an issue.

Mr BARTLETT—The Queensland government argues that, with the new legislation that they are putting into place and with the establishment of the Children's Commissioner, they are largely applying the articles of the convention. What assistance have you found the Children's Commissioner in addressing the issues that you have with children from non-English speaking backgrounds?

Ms Ferguson—From my perspective I have not heard of any assistance from the commissioner in advocating for the needs of young people from non-English speaking backgrounds.

Mr BARTLETT—Have you taken any particular cases to the commissioner to be addressed?

Ms Ferguson—No, I have not. It is possible that other members of the non-English speaking background have. But I have not heard of those cases and I think that I would have because it is an important step for people to take. I am sure that that would have been raised.

Ms Carr—In relation to the Queensland Children's Commissioner there are a number of reasons why that office alone cannot ensure that the obligations under the United Nations Convention on the Rights of the Child are adhered to in Queensland. That is because primarily the role of the commissioner is limited to child protection issues and there is a range of other issues that are covered in the Convention on the Rights of the Child which the Children's Commissioner does not have any say over, including juvenile justice issues, education issues and any other issues that are not involved in child protection legislation.

Mr BARTLETT—Were they excluded from its charter?

Ms Carr—That is right. There are a number of other reasons why there is some limitation to the Children's Commissioner's role in Queensland and those would be that in its current form it is inaccessible to children themselves, which I think is a huge oversight in the role of the Children's Commissioner. The other thing is that it is attached to the Department of Families, Youth and Community Care.

It is the Youth Affairs Network of Queensland's view that the role of the Children's Commissioner should be independent and not report to the minister. The way it is attached is that, if there were a complaint about some circumstance or treatment of the child, that complaint would be directed to the minister and it would be up to the minister

whether that complaint was tabled in parliament. It would be our view that the report from the commissioner should be tabled in parliament direct.

Ms Ferguson—Can I add to that also? It is the experience of the members of the NESB issues network that young people and families from NESB actually do not access many of those sort of formal advocacy type positions, for instance, the antidiscrimination commission. There is a real gap in reporting of discrimination from NESB community groups, largely because of barriers like language. Many of the community people, especially young people, do not know that these things exist for them. So it does not surprise me.

Mr BARTLETT—How is that issue best addressed in your mind?

Ms Ferguson—I think that there needs to be information given in community languages about the Children's Commissioner and the role of the Children's Commissioner. Further than that, I think the state government actually needs to make contact with ethnic community groups. Because you may have something translated into a certain language, but it may not still get through. In my experience, personally saying, 'This is what we're doing' and using interpreters is a more effective way, in addition to translated information. To my knowledge there is no translated information about the Children's Commissioner.

Ms Carr—I would just like to add though, that the Children's Commissioner role is in its infancy in Queensland. It has not been around all that long yet.

Ms Ferguson—It may be used more.

Mr McCLELLAND—In my electorate I have quite a high percentage of people from non-English speaking backgrounds. My experience is that there can often be tensions in those families with the youth naturally wanting to move towards Australian cultural mores, whereas their parents very much want to preserve their own cultural heritage. As a result, the anecdotal evidence to me is that there can often be a sense of loss or conflict between the youths and their parents. Has that been the experience of your organisation and, if so, what things are being done or what should be done to try and decrease that level of tension?

Ms Ferguson—That inter-generational conflict is a crucial element of the experience of NESB young people within Australia based on being caught between cultures, wanting to move with Australian young people and their peers and then having to live a split life between the Anglo-Australian culture and their own culture at home. You are right. There are many research projects that document the conflict between parents and young people, leading to young people leaving home or an experience of homelessness. So it is an issue that we have tried to do a lot about as a network and which needs a lot more work.

One of the things that is happening at the moment is a new service called the youth homelessness pilot program, which was funded through federal government funding and was set up to work specifically to support NESB young people in that situation and to come up with ways of working. Many mainstream youth workers do not actually work cross-culturally, because of barriers within their service. Historically, young people from NESB have fallen through the support nets and we are trying to advocate for different sorts of nets being put into place.

There is certainly a huge role for youth support workers and government departments to ensure that funded services work cross-culturally and have access and equity policies in place and implemented. Because as it stands at the moment, many youth services just do not work with NESB young people. I think it is a crime, because these people also pay taxes and are entitled to the same kinds of services and rights as other Australians.

CHAIRMAN—Your recommendation no. 1 deals with asylum facilities, for want of a better word. Are you aware that one of the reservations by Australia back in December 1990 when the ratification took place was in relation to article 37(c)? It was that, because of the geographic and demographic position of Australia, Australia could not guarantee that young people would not be imprisoned with older people.

I understand what you are saying in terms of the construction of more appropriate facilities, but would you as a group favour the withdrawal of that reservation? In other words, not have that reservation—which we can do, of course, if the government agrees—and to withdraw that reservation?

Ms Ferguson—Can you explain what the reservation is?

CHAIRMAN—The exact wording of 37(c) is:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

In ratifying, Australia's reservation was with the exception of 37(c). The government at the time said that, because of geographic and demographic constraints, it was not always possible to do that. Getting to the Villawood type situation or whatever it might be—maybe the Port Hedland type situation—sometimes it was not possible, because of obvious physical constraints, to accord with that particular article. In the last couple of days we have had some evidence that indicates a recommendation to withdraw that reservation; in other words, to put more pressure on to ensure that governments do whatever is appropriate to more fully comply with that article.

Ms Ferguson—Yes, that would be my opinion. I have to say that I have not read

this before and I would like to talk with other members of the network who understand more about the whole situation of refugees arriving in Australia.

CHAIRMAN—That is something that would be helpful to us. You are dealing with non-English speaking youth, some of whom—perhaps many—have been in a refugee type situation. It would be helpful to us if you could take that no notice.

Ms Ferguson—I would be happy to do that.

CHAIRMAN—The other one is in relation to recommendation 5. You make the rather general comment—and I would be interested to know what it really means—that:

the Federal Government review these changes to eligibility criteria for Department of Social Security payments in order to ensure that Australia is in line with the CROC.

As you know, my government has implemented some fairly strict rules in terms of eligibility criteria to extend it to two years. Is what you are saying is that we should reverse—

Ms Ferguson—Yes.

CHAIRMAN—Do you want to say something more about that? Bearing in mind that lots of other countries do not even have social security payments anyhow, as an individual I have some difficulty in accepting your thesis that simply because we introduced those administrative measures, we are flying directly in the face of CROC.

Ms Ferguson—Again, it is a really complex issue and I will make some comments now, but it is something that I would like to take on notice.

CHAIRMAN—Sure. If you want to take it on notice and give us some more detail on that you are quite welcome to. Would you like to make some comments?

Ms Ferguson—I would really like to, but just preliminary comments. The fact that other countries do not provide social security benefits is kind of irrelevant to me in terms of the CROC submission because it states quite clearly that people should have access to social security benefits to enable them to live in this country or in whichever country is a signatory. So I would say those countries are probably contravening the CROC as well.

CHAIRMAN—Lots of those countries have ratified it though.

Ms Ferguson—Yes. So just in terms of the membership of the NESB Youth Issues Network, it certainly makes life harder for people if they do not have access to social security pensions and benefits within the first two years. I believe it is a discriminatory

practice because people migrating to Australia will be living here, most of them, for the rest of their lives and hopefully finding work and paying taxes like other Australians who are eligible for the same kinds of payments that migrants are not eligible to get in that first two years.

Senator ABETZ—Which migrants are you talking about?

Ms Ferguson—People who are not refugees. Refugees are excluded.

Senator ABETZ—Haven't they come here on the basis that they would look after themselves for that period of time and that they have sufficient funds and resources to do so, or somebody else has signed the bond on their behalf that they would do so? Not looking at the refugee humanitarian side, but for those others, there are literally hundreds of thousands of people wanting to come to Australia. Because we can only take a few, we pick a few and say, 'These are the conditions, and if you cannot abide by them we will pick and chose others.' Does Australia not have the right to put down criteria for those who are not in a humanitarian or refugee situation but just want to come out on a voluntary basis for a better lifestyle? Why should the taxpayer of Australia have to fund this sort of change of lifestyle from the United Kingdom, Germany or South-East Asia to Australia?

Ms Carr—Those people who have arrived in Australia have met eligibility criteria, and in some circumstances—

Senator ABETZ—Part of which is that somebody signed a bond to look after them for two years.

Ms Carr—It used to be for six months. Those people have come and they have met those eligibility criteria, and in some circumstances, for unforeseen reasons, their circumstances change. The Youth Affairs Network of Queensland would argue that in those circumstances they should be eligible for social security, in the same way—

Senator ABETZ—These extreme situations are looked after.

Ms Carr—The converse argument to yours is that those people who come here for the first two years are actually subsidising the social security system, because they are paying taxes and they are not getting the same benefits that other people who have citizenship rights have.

Mr BARTLETT—They are not paying taxes. That is the group of people that are being discussed.

Senator ABETZ—I have to say, with respect, that they are using all the infrastructure in Australia—roads, public facilities et cetera—so they would not be

subsidising as such; but if somebody falls on really hard times there are hardship payments available in those extreme circumstances.

Ms Ferguson—I would just like to comment on that briefly. Some NESB young people that I know who did come through the refugee program are trying to be reunited with their parents or other relatives from their countries who do not actually fit the criteria as refugees. They have a legal difficulty fitting into those criteria. They are people who have been through war trauma and that sort of thing but may not fit the refugee category. There is plenty of research—by Immigration and Multicultural Affairs, for example—about the importance of the family for successful settlement in Australia by migrants. It is extremely difficult for young people to bring their parents over, but that would in the end cost Australia less, because they would have further support and emotional ties and that sort of thing; whereas at the moment some young people are here completely by themselves. It is really difficult to sponsor people within that time.

As I said, there is a lot of research that the federal government has done over the years about the cost to Australia being less in the end if family members can come to Australia and join people. They can work and support each other then, whereas a migrant arriving by themselves, with very little family support, is more likely to require social security payments in the long run. I would really like to comment further on that.

CHAIRMAN—You can take it on notice. I am sure you can document this to whatever degree you would like to.

Mr McCLELLAND—In your submission you have indicated a number of areas where things could certainly improve. Despite the fact that things have not moved as far as you would like, is it nonetheless the case that you favour Australia remaining a party to CROC?

Ms Carr—Definitely. Absolutely. It is one of the few ways that we as a network can argue for the rights of young people from non-English speaking backgrounds, who are often not acknowledged in the mainstream of Australian society.

Senator ABETZ—Are you saying that the only way you could argue for the rights of these people is because of the convention?

Ms Carr—No, it is not the only way, but it is certainly a very useful and important way that we could do that.

CHAIRMAN—Thank you very much. We look forward with bated breath to your written comments.

Ms Carr—Thank you for the opportunity to give evidence.

[12.01 p.m.]

BALL, Mrs Donna Joy, Member, Queensland Parents of People with a Disability, PO Box 470, Paddington, Queensland 4064

DYKE, Ms Jeanette Christine, Executive Officer, Queensland Parents of People with a Disability, PO Box 470, Paddington, Queensland 4064

KINSELA, Mr Bradley John, Advocacy Worker, Queensland Parents of People with a Disability, PO Box 470, Paddington, Queensland 4064

SEYMOUR, Ms Sandra Joy, Member, Queensland Parents of People with a Disability, PO Box 470, Paddington, Queensland 4064

CHAIRMAN—Welcome, again. The committee has received your written submission dated 7 July 1997. Are there any amendments, omissions or errors that need to be reflected in the *Hansard* record before we invite you to make an opening statement?

Ms Dyke—No.

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

Ms Dyke—Yes, just a brief opening statement. Thank you for the opportunity to speak with you about our views on the implementation of the UN Convention of the Rights of the Child. As a state-wide parent organisation which since 1981 has come together to speak about injustices and the welfare of people with disabilities, we are pleased to be able to put forward our thoughts and experiences in relation to the rights abuses of children.

As you are aware from our submission, there are a number of issues we would like to discuss further with you. They include the concept of perceived ownership of the child versus the best interests of the child; the impact of disability on the attitudes towards a newborn child and the abuses which occur as a result of medical devaluation of the worth of the child; the lack of appropriate supports to families, making vulnerable children more vulnerable and resulting in the current rate of approximately 30 per cent of children who are child protection clients being children with disabilities; the legacy of abuse resulting from institutionalising children as the first and often the only option, without other supports being available; the exclusion of children with disabilities and their families from becoming residents of Australia, and the devalued images which this allowable discrimination portrays; the continued linking of resources to systems of support which can segregate children on the basis of their disability, with particular emphasis on the education system; and disability as the last bastion of rights abuses.

CHAIRMAN—Are you going to cover each of those areas?

Ms Dyke—I was unsure whether you were going to actually question us or—

CHAIRMAN—We are very happy to listen to what you have got to say in relation to each of those areas. For obvious reasons, keep it as brief as you can, and then we can have some questions.

Ms Dyke—I will briefly start off. On the concept of perceived ownership of the child versus the best interests of the child, one thing that we have become very aware of as a family based group is that you sometimes get the whole concept of ownership of a child being seen as a family or the state or a service—particularly when the child has a disability—owning the child, or the medical profession.

We did not want to talk to you about that concept of ownership at all but rather what is in the best interest of the child. Often those are the sorts of arguments that are put forward around ownership rather than best interest. The things that we will be talking about follow on from that, taking that perspective.

The first one was the impact of disability on the attitudes towards a newborn child and the abuses which occur as a result of medical devaluation and worth of the child. We can give you a couple of examples that can be fairly concrete ones.

CHAIRMAN—Yes, do that.

Ms Seymour—My experience as a mother of a child with a disability is we had a choice of growth hormones for my son, a gastric button to feed him or a nasal gastric tube that I would put down every night. The surgeon who was treating my son said that his life was not worth the \$12,000 to give him the growth hormones. He perceived that my child was not worth that much money in treatment.

Mr McCLELLAND—Did he have to give a recommendation before you could access Medicare benefits for that?

Ms Seymour—No, he had to write the script to apply for the growth hormones and he did not think that Cameron's quality of life justified that amount. We will have the same conflict again when Cameron will require a kidney transplant. People will say that he does not have a sustainable quality of life to spend public funds on a kidney transplant. Then you have the other dilemma, I suppose, where they do liver transplants on alcoholics. There are a lot of dynamics to that kind of—

CHAIRMAN—What age is Cameron at the moment?

Ms Seymour—Cameron is seven years old at the moment. This was said to him

when he was five.

CHAIRMAN—Was this condition apparent at birth?

Ms Seymour—Yes, Cameron only has one kidney and it is at one-third function, so it will be inevitable that at some stage in his life he will require a kidney transplant.

CHAIRMAN—Is he on dialysis?

Ms Seymour—No, not at the moment. At the moment he is doing really well and—touch wood—that will continue for some time.

CHAIRMAN—What does this treatment of the tube into the belly button involve?

Ms Seymour—The other problem that Cameron had was that he was a child who failed to grow. For probably three years, he sat around four kilograms of body weight, and it was very hard to increase his weight. We needed to decide how we were going to increase Cameron's growth.

But the other comment that was said to me by the doctor at this stage—this is a leading surgeon in Queensland—was that Cameron knew he was not a valuable member of society and was not seen by other children in society as a valuable person. So it would not matter that he remained small.

CHAIRMAN—Was there no other medical solution?

Ms Seymour—They were the three medical solutions we were presented with.

CHAIRMAN—Was the ultimate to let him die?

Ms Seymour—No, it would not have been. We decided not to do anything and Cameron has progressed and done very well.

Ms Dyke—It is around who owns the child and not for the medical profession to make those decisions because they feel that they own the child.

Mrs Ball—My son also has a physical disability. He will be 15 this week. When he was born in a small private hospital in Brisbane, it was obvious that he had spina bifida. He obviously needed surgery immediately if he was to survive. Initially he was removed from the hospital I was in and taken to the Royal Children's Hospital. I was discharged the next day to go and be with him.

When it came time for the surgeon to start the surgery, we were given the decision about did we want to bother. I thought, if it had have been a child without a disability,

they would have really bent over backwards to ensure that child's survival, whether it be a heart transplant or whatever. But my child needed significant medical care, which has cost us a lot of money over the years. We have chosen to stay in the private sector because I feel that we, at least, have some better rights as parents to choice and decision making.

Senator ABETZ—So that question, about whether you wanted to bother, basically was: 'Should we let the child die?'

Mrs Ball—Yes.

CHAIRMAN—How extreme is the spina bifida?

Mrs Ball—He has been described as 'moderately severe', whatever that means. He is wheelchair bound and he has the other problems associated with—

CHAIRMAN—You have to totally—

Mrs Ball—Yes, but in fact he is a remarkable child.

CHAIRMAN—That can happen, of course.

Mrs Ball—It just amazes me to think of the choice we would have—

CHAIRMAN—Is total intellect there for a 15 year old?

Mrs Ball—Yes, but he could not have survived this world, just through a decision.

CHAIRMAN—How has he progressed educationally?

Mrs Ball—He is in year 9 at a very valued Catholic college.

CHAIRMAN—They were happy to take him?

Mrs Ball—They were. We left the state system because they had reservations about having my son, even though everything was there for the child—the ramps, the toilets, the teachers aides, what have you. Yet the whole time we were there there was a feeling that we were not wanted. We are Catholic, but the local Catholic school was totally inaccessible to us so we had chosen the state school system. We removed him from that system and went back to the Catholic system, which was totally inaccessible. But they were well aware of his value and contribution to society and said that they wanted him to be there. So he is in year 9.

CHAIRMAN—Have they made the appropriate provisions?

Mrs Ball—They have, but they were prepared to take him regardless of whether there was access or not.

CHAIRMAN—Only recently in Melbourne we have the exact opposite situation within the Catholic system, which we have raised with the federal minister. We are pleased to hear what you have said, but it is a bit mixed, isn't it?

Mrs Ball—It is ad hoc. It depends on the attitude from school to school. The school where my child was initially had everything laid on, but still—

CHAIRMAN—Okay. What was the next point you wanted to make?

Ms Dyke—The next point builds on that one and looks at lack of supports to families. We became very aware that the latest statistics in Queensland are that approximately 30 per cent of children who are child protection clients of the state are children with disabilities or with a significant behaviour problem.

Senator ABETZ—Just on that statistic, are you able to split up those who have a disability and those who have challenging behaviour?

Ms Dyke—No; the statistic that the state government has given has just been the one of 30 per cent.

CHAIRMAN—A combination?

Ms Dyke—Yes; but what they have done—

Senator ABETZ—It is not very helpful as a figure to say that people have a disability or a challenging behaviour, to put the two together—

Mr McCLELLAND—I suppose there is a blurring, though, isn't there? Does a child with attention deficit disorder have a disability or is it challenging behaviour?

Ms Dyke—Yes.

Senator ABETZ—Of course.

Ms Dyke—Often the child will have a label anyway. One thing we have become extremely aware of is that with that very high rate of children being child protection clients, money is going toward some of the child protection side of things but there is no money, particularly in this last budget, that is going towards any sort of family supports. If I can use both the examples that have been given, you can imagine how much extra time and supports families do need when they have a child with a disability. Particularly for those families who want to support children as part of the rest of the family, and have

them included in their communities, that does not come very easily. We are really concerned that, when you have vulnerable children and you do not support families, children become more vulnerable and you end up with those children in care and protection.

CHAIRMAN—In the federal budget on 13 May there were substantial additional carer facilities. Budgetary provision was made.

Ms Dyke—There has been some money, but you are probably also very aware of the unmet needs in this area.

CHAIRMAN—Sure, it is not going to pick up the unmet need. But it is a step in the right direction. I would hope you would agree with that.

Ms Dyke—Certainly, but our state unfortunately has not made similar—

CHAIRMAN—They have not in the last budget?

Ms Dyke—No; in fact there is no funding around at all for disability within the Department of Families, Youth and Community Care this year.

Ms Seymour—I guess, too, that it is how you look at those supports being applied to families. As the mother of a child who is quite young, I do not want my child taken to a respite centre. What I need, and what most young families want, is someone in their home to support them in whatever way they need. It might be that they spend some time with their child, or they might spend some time with their other children or have some time to themselves. Respite options are not necessarily what families are looking for.

CHAIRMAN—The next one is abuse.

Ms Dyke—That leads on to the whole area of abuse. I have permission to use, as an example of what often happens to people, the particular case of a young teenager who at the moment is in one of our centres, Basil Stafford, which we are most concerned about. There has been CJC inquiry into the Basil Stafford Centre and there are a whole lot of recommendations. We have copies of that for you if you would like those recommendations. The major recommendation was to close that centre. The state government has talked about putting additional funds into that centre but if you read the recommendations and realise the abuse that has been there—since the CJC inquiry in May this year there have been 11 instances of abuse that have been documented and there are possibly more now—

CHAIRMAN—I do not think you were here when I asked the Queensland government representatives about this very issue. We do have in our evidence, written and oral, some anecdotal and statistical evidence to show that a lot of young people who are

institutionalised or are in the care of the state are the ones that are subject to most abuse. And that was rejected.

Mr Kinsela—I was actually here when you referred to that.

CHAIRMAN—Do you agree with what he said?

Mr Kinsela—I would disagree quite strongly with that, especially in that the expertise that was around the table from the government did not appear to actually represent the interests of the disability area. Even from the submission of the government it would not appear that that particular issue was picked up in specific reference to people with disabilities.

CHAIRMAN—Bradley, if I might be very personal about your situation: you are disabled. Is that something from a birth—

Mr Kinsela—No. I actually had a car accident a number of years ago, so I have participated in society as—

CHAIRMAN—You have savoured both worlds?

Mr Kinsela—Yes. The attitude towards people with disabilities is very, very different. I came from being a very productive member of society who served in the forces and was very active to being treated as a person with a disability, which was an education, for want of a better word—not necessarily a positive experience.

CHAIRMAN—You were in the Defence Force when you had the accident, were you?

Mr Kinsela—I had just left. I was medically discharged from the Navy for sleepwalking, of all things.

CHAIRMAN—You are talking to a ex-navy fellow here.

Mr Kinsela—Exactly. They said that I would never fix that, but these things happen. The attitude towards people with disabilities is very different. People treat you very, very differently. They devalue your input. I recently completed a university degree. This is a very public university and yet when it came to my graduation they wanted me to come in the back door. So the attitudes towards people with disabilities are still there. If they had asked for other minority groups to come in the back door, there would have been great public outrage. But there was not. Fortunately, that position was rectified for my graduation.

Mr McCLELLAND—Was that because of access problems or because they—

Mr Kinsela—It was because QUT chose a venue that was inaccessible. It is the whole attitude. Accessibility is not just about physical access; it is about the attitudes of people, it is about access to information, resources, support. Whilst Queensland and Australia have come a long way in addressing some of those issues, there is still a great unmet need and there continue to be abuse and neglect. There always seems to be one group of people with disabilities, with high support needs, who seem to be treated as too hard.

CHAIRMAN—What did you do at QUT—social work or something?

Mr Kinsela—I did a social sciences degree.

CHAIRMAN—With a major in what?

Mr Kinsela—Disability studies.

CHAIRMAN—Surprise, surprise. So you disagree with what the department said?

Mr Kinsela—Very strongly.

Ms Dyke—Perhaps I could just give an illustration of that. We were talking before about how families get split up when there are no supports. This particular person has a son at Basil Stafford at the moment and has been working ever since he was put in there, at the age of five, to get him out. The reason that child went into Basil Stafford was that she had a young baby. Instead of her having any sort of supports, the child welfare people came in and said, ‘Either you place your child with a disability or we put your other child under care and protection.’ It was a no-win situation, no way at all to win, and yet there were no supports actually given to that family.

That son was the person who was separated from the family. He has been in Basil Stafford for all those years; he is now a teenager. He is wanting to move out, his family is wanting to move him out. There is no money, in spite of the fact that there has been promised support so that that could happen. And the abuse continues. There have just recently been a number of issues that have been raised: there was a talk-back radio program the week before last where abuses, again, were raised.

CHAIRMAN—In the context of that legislation that we discussed with the government, are there any improvements in this area?

Ms Dyke—What Justice Stewart said was that there was a culture of abuse and that it was very difficult to actually change that culture. I think there is evidence of this all around not only Australia but the world, that when you put people together and you have people who cannot speak for themselves, and you also get a culture of abuse ingrained within that, it is very difficult for the people who live there.

Certainly the state government has put in a complaints mechanism, but with all these issues of abuse still occurring it has not actually dealt with the situation. The government did say that they would allow those families who were wanting their sons and daughters to move out to actually start to do that, and the deadline that they have put by parliamentary agreement was that by the end of next year people could move out. Yet in this current budget of 1997-98 there is no money at all that we can find has been allocated. People like this young man I was talking about, whose family is really wanting him to move out, are still there and still being abused.

CHAIRMAN—Is the federal disabilities services legislation generally appropriate? There has been a lot of criticism. I go back to 1989, as I recall, when there was a very large public outcry as to whether what was happening was appropriate—in other words, the institutionalisation as distinct from general community orientation. Is the emphasis about right?

Ms Dyke—If you look at the actual legislation, by both the state and the federal government, you see that the rhetoric is good. The difficulty becomes that, if you are talking about people being supported either in families or in community, in neighbourhoods, or whatever, that also costs. One is not necessarily cheaper than the other.

I suppose you are quite aware of what has happened sometimes when people have looked at trying to de-institutionalise people. They have thrown them out and virtually expected them to support themselves. That is at least just as bad as the abuse that happens within an institution.

CHAIRMAN—That was a personal view of mine at the time. I felt that there was perhaps a bit too much of pushing people out when some people really were not capable of being pushed out.

Ms Dyke—I think it is more that if you push people out without supports then you set them up to fail. But if you support people to move out, certainly our experience over many years has been that when people are supported in community that is a far better lifestyle.

CHAIRMAN—That is why at the federal level surely the carers enhancement is the way to go, isn't it?

Ms Dyke—It is one of the ways to go.

CHAIRMAN—Yes, one of them.

Ms Dyke—But I think that, from our organisation's perspective, what we see is the legacy of that abuse in childhood. When people grow up they have actually lived away

from families, away from their neighbourhoods and away from community, and have learnt all of these other sorts of behaviours that make them so much more atypical. So it is much harder to do in adulthood. I guess what we are saying is: do not put them in only to get them out.

CHAIRMAN—The next point you are talking about is exclusion. We have gone on from abuse, haven't we? Have you covered the exclusion of children with disabilities? That is a general comment.

Ms Dyke—The exclusion of children is under the anti-discrimination legislation. The Migration Act is still exempt.

CHAIRMAN—The next one is to link of resources. Again you have covered that, haven't you, in many ways?

Ms Dyke—We would like to speak a little bit more about that one, particularly in relation to what we mentioned in our submission about the Salamanca statement, which is the UNESCO document which we believe Australia has not even looked at. We did not even send a delegate to that.

The basis of that is looking at how children can actually be part of their local communities. One of the big difficulties—and perhaps you might like to speak a bit more to this—is that people are welcomed over here but they are never welcomed over there, and all the resources are over in one part. You cannot transfer resources from, say, a special setting to a regular setting, because they are locked in to particular settings. So you have to be a very strong family member to say, 'I will go where I am told I am not wanted. The resources are not there and the teachers do not have the skills. But over here everybody welcomes me with open arms.' That is one of the major issues.

Ms Seymour—That is something, having networks of young families, that I see constantly. The families that I work with now that are looking to getting their children into mainstream education are treated very differently to anyone else that goes into a school and enrolls their child. There are very significant obstacles put in place for those families and very separate criteria that apply to those children and not others.

Mr Kinsela—That is the very common experience of all parents; when they go into the special education system they are welcomed. But there is also an issue, when they talk about special education, that education is not the priority. If you look at the time that people spend in actually doing the reading, writing and arithmetic and other learning, most of their time is tied up with therapies, whether that is dressing therapy or travel training and those sorts of issues, so the education loses priority. It is about why do we go to school.

It is not just about disadvantaged children with a disability going to a special

school, it is about the broader community accepting difference. If children grow up with people with disabilities and with people from different cultures, they learn that that is just part of being people. We are all different—that is just the way it is.

Ms Seymour—I had quite a struggle to get my son into his local school community. The big thing that I see is that he is an equally valued member of that school community now, even though we had to jump a lot of hurdles to get in there. I was viewed as the mother from hell within the system because I was very clear about what I wanted for Cameron. The advantage for Cameron is that I have a non-verbal child who we had been told would never speak who is now starting to talk because of the interaction with other children. He is developing numeracy and literacy skills.

We had a family this year come to QPPD and say to us, ‘Our child is in a special school. There are no readers. They do not even teach reading or writing.’ That is about value. They see that that child is not valued enough to be taught those skills. But the implications, lifelong, are huge for people because who are the most devalued people in the community? Those who do not have numeracy and literacy skills. So it is a legacy that is carried for all of their lives.

CHAIRMAN—Unfortunately it is a legacy that Australia generally bears at the moment and governments can only do so much. We are trying to do something about literacy and numeracy, despite some elements of the Queensland and other teachers’ unions who do not seem to want to be involved in this. That is a separate subject.

At our first hearing in Canberra on this convention, ACROD appeared before us. They supported the convention but their comment was that they felt quite strongly that Australia—amongst many other countries, but Australia in particular—fell short in terms of article 23, which is the point that you are making in broad brush aren’t you?

Ms Dyke—Yes. We also have a copy of the *Disability discrimination in schools* report, which is a nationwide one. A number of people from our organisation actually worked hard on that. This is an April 1997 report from the National Childrens and Youth Law Centre. The other one is the *Salamanca statement and framework for action on special needs education*, which came from the United Nations Educational, Scientific and Cultural Organisation. That conference was held in Salamanca in Spain in 1994.

CHAIRMAN—They will be taken on board as exhibits.

Ms Dyke—Also, we have for each of you a copy of the summary of the major conclusions and recommendations from the report of an inquiry conducted by the Hon. D.G. Stewart into official misconduct at the Basil Stafford Centre by the Criminal Justice Commission in March 1995.

CHAIRMAN—We will include that in the list of exhibits as well.

Mr McCLELLAND—In a broad sense, where does the CROC fit in with the evidence you have given? Are you in favour of Australia remaining a party to the convention? Should it be doing more to implement the convention? Or has it been a totally wasted exercise?

Ms Dyke—Our feeling would be that, yes, it should, mainly because if you have different points in the system saying that these things are rights then you are more likely to get other points in the system also having to look at that, so you would get practice occurring as well. You need it at all points throughout the system.

One of the other things, based on the thought that we had about who owns the child, is that if there were some sort of overview at a federal level then you could look at some of those major issues. Those issues are never looked at—some of those really critical issues around life, around medical ownership, around state ownership and also, sometimes, even family ownership. That would be something that we would see as being very important.

The other aspect would be looking even wider than some of the conventions. If things like the Salamanca statement could at least be looked at by the Australian government, we feel that would be a step in the right direction.

Mr Kinsela—There is also the important issue that children with disabilities be first and foremost treated as children and not seen as disabilities, which is the common experience of many people with disabilities and children with disabilities.

Senator ABETZ—That is something I want to explore with you: the way that people with disabilities and, in this case, children with disabilities are perceived. Depending on your interpretation of the convention, one reading of it would suggest that a child is before and after birth and that we ought to be looking after children with disabilities. Do you want to comment on the concept of aborting a child for the sole reason that it may be born with disabilities? Do you think that is in breach of the convention, which talks about the rights of a child before and after birth?

Ms Dyke—This is a very difficult area, but if you are looking at valuing people as people then that obviously does become an issue. If we are talking about children with disabilities, that immediately says that they are of less value than any other child. So if it is on the basis of disability, that certainly does give that opinion.

Senator ABETZ—During the euthanasia inquiry—without going into the issue of euthanasia—one of the witnesses told us that she supported the euthanasing of children up to one month old that were born with disabilities. If that mind-set is taking hold in relation to the abortion of foetuses that are disabled, and then children, it is little wonder that doctors say, ‘Is it really worth \$12,000? Do you really want to bother?’ It is quite a horrendous way of looking at human life.

Ms Seymour—I was a registered nurse before I had my son, Cameron, and so I had both sides of the fence in my life. When I was 16 and I was working in a country hospital, I remember a child being born with a disability. That child was left in the pan room—not the nursery; the pan room—for 18 hours to see whether it would survive before they fed or nurtured the child, because it had been born with a disability.

CHAIRMAN—Did it survive?

Ms Seymour—Yes.

Senator ABETZ—That sort of discriminatory practice, which we hardly ever hear about in the community, is an issue that ought to be illuminated in the public arena rather than whether children have to wear school uniforms or not. It just seems a perverse set of priorities that public money is allowed to be spent on youth advocates arguing whether kids should or should not wear uniforms when there is such gross abuse and devaluing of human life.

Ms Seymour—Yes. I also know of a family whose young child with a disability died last year. This child had a very open cleft palate and lots of facial abnormalities. I would have thought it would have been a very fundamental thing to tell the family to prop the child up after a feed, so that the child drained. That family was never told that and that baby drowned at three months old, after a bottle feed.

Ms Dyke—Those things also happen in institutions, where people are fed on their backs and they develop pneumonia and die.

Mr BARTLETT—To what extent do you think the establishment of the office of commissioner for children can even start to address these sorts of issues that you are discussing?

Ms Dyke—We are very unsure about what that position is going to hold. It is only a very new position here in Queensland. As you are aware, it is attached to the Department of Families, Youth and Community Care, so there could be quite distinct conflicts of interest, in relation to a commissioner particularly, investigating a department that actually runs services. A lot of the things that we are talking about are usually state government run. You are talking about some of the health professions and the institutions that are state funded.

CHAIRMAN—And a very large measure of his time at the moment has been taken up with the paedophilia investigation, hasn't it?

Ms Dyke—Yes, of course. It is an untested area at this stage.

CHAIRMAN—But, basically, you are saying you would like to see independence?

Ms Dyke—Yes.

CHAIRMAN—Thank you very much for that evidence.

Luncheon adjournment

[1.35 p.m.]

FLAVELL, Ms Bryony, Training and Project Officer, Child Care Management Training and Support Unit, Queensland Council of Social Service, 22 Victoria Street, Red Hill, Queensland 4159

CHAIRMAN—We have received the written submission dated 1 May. Are there any amendments, additions or errors that have to be picked up at this stage?

Ms Flavell—I would just like to make some additional points.

CHAIRMAN—Would you like to make an opening statement?

Ms Flavell—With regard to the first point in the submission—the domestic ramifications of Australia having ratified the convention—I would like to add that it is important for the children of Australia to be recognised by the federal government by way of the Convention on the Rights of the Child. The convention recognises the basic and essential requirements of children. These rights must be legislated for and implemented by the state and territory governments. Just as education has become compulsory for children for approximately 10 to 12 years of their early lives, so, too, it should be recognised in federal law that children have the right to a standard of health care, legal care, economic care, including housing, nutrition and safety, emotional and social care, cultural care and community care. Disadvantaged children and youths need to be supported within their communities by laws and rights that are universally accepted as fair, equitable and just.

With regard to the second point in the submission—federal and state progress in complying with the convention—it is critical that a federal commissioner for children be established to ensure that the Convention on the Rights of the Child is implemented. To further ensure that the articles are upheld, the states and territories would also need to establish a commissioner for children.

Queensland has been proactive in establishing a Children's Commissioner. One of the many tasks the commission is to undertake is that of developing strategies to ensure that the Convention on the Rights of the Child is reflected in the administration and execution of laws relating to children. The federal commissioner for children would be supported by an office for children, a minister for children and a national agenda on children.

With regard to the fourth point—possible inconsistencies between domestic jurisdictions and the need for agreed national standards—there is a need for all states and territories to uphold a consistently high national standard of jurisdiction. It appears to be incomprehensible as to how the federal laws and state and territory laws related to the same areas of jurisdiction can be lesser than one another. Federal acts, such as the anti-discrimination act and the Human Rights and Equal Opportunity Commission Act, must

set benchmarks for the states and territories. The Convention on the Rights of the Child is a benchmark from which higher standards can be achieved.

Finally, with regard to the seventh point—the adequacy of programs and services of special importance to children—in addition to the original statements as identified above, a federal commissioner for children would be able to monitor and advocate for all children to lead a worthwhile life. Currently, the federal program supporting children's services programs is being reviewed. A number of recent budgetary initiatives under competition policy have seen millions of dollars taken out of the children's services budget. These short-term economic practices can only be truly assessed years later as these reforms impact on social and welfare infrastructures. Present impacts are affecting services and families economically. It may be true to say that the competitively strong survive. However, in a sprint to the finish line there are many losers and only one winner. Children are not even in the race.

CHAIRMAN—Thank you very much. In terms of the legislative solution to which you refer, do you envisage, at the federal level, some sort of umbrella legislation encompassing all that is in the convention or do you envisage that it should be reflected in individual pieces of legislation, as occurs at the state level in various areas—child welfare, adoption or whatever? Do you see some sort of umbrella legislative approach at the federal level?

Ms Flavell—Yes, I do. I believe that it is an appropriate approach to take because at the moment we have inconsistencies in the state law. I think people in Australia should be seen as one people under one common law. To have these inconsistencies makes it difficult for people as they move from state to state.

CHAIRMAN—Do you concede that perhaps the convention means different things to different people?

Ms Flavell—Yes, I do.

CHAIRMAN—How difficult is it for federal authorities to develop a piece of legislation which can cover that?

Ms Flavell—I am sure it is going to be very difficult. However, I do see that we are one country of one people and children should not be discriminated against in any form by any one state or territory government. I see that the federal government has a role, at the minimum, of monitoring that the standards of the laws uphold the rights of the convention at a state level. However, I do believe that it should be monitored in a much more formal sense at the federal level.

CHAIRMAN—I am pleased you used the term 'one country' rather than 'one nation'!

Senator ABETZ—Whilst I understand your saying that we are one country, with various states, et cetera, even if the federal parliament were to say, ‘We’re going to have legislation’—forget the states—what are we actually going to legislate for? What does the convention actually mean? Does it mean, for example, that we need to have legislation banning corporal punishment? There is a wealth of considered opinion on both sides of the fence as to whether the convention bans corporal punishment or whether it does not.

Ms Flavell—I think that buys into some very emotive responses from people in the general public. I believe the convention says that children should have the right to not be abused. Individual people can debate for a long time what that means in terms of children. Corporal punishment may be termed a form of abuse. If that is going to be used as a universal definition, certainly the federal government has a role to play in determining those universal standards.

Senator ABETZ—The convention not only talks about abuse; it talks about physical harm or physical violence. If Mr Bloggs were to slap Johnny on the back of the hand, that is, if you like, a form of physical violence, no matter how mild it may actually be. Is corporal punishment to be deemed as physical violence?

Ms Flavell—I think that is up to people in higher legal institutions to determine. I think it should be universally held as a determination, once determined.

Senator ABETZ—If, let us say, the majority of world opinion were in favour of banning corporal punishment, you would say that it ought to be banned in Australia?

Ms Flavell—Absolutely.

Senator ABETZ—What about an Islamic fundamentalist country that might chop off a hand for stealing? If it were to be determined by a majority of the world community that that is an appropriate method of punishment and does not mean abuse, or that the Singaporean attitude that a few strikes of the cane is not abuse, does that mean Australia could then repeal its laws and say that it is okay for the law enforcement agencies to be in line with that majority of world opinion?

Ms Flavell—No, not at all. I think that we can accept that corporal punishment is something that we do not uphold within Australia. If other countries also acknowledge that, then it supports our position. However, I would be most distressed to think that Australia would go towards any other world view outside their own relationship to what it deems physical violence and abuse.

Senator ABETZ—At the end of the day, what you are really saying is that it is not for Australians to make up their own minds as to what are or are not appropriate actions in relation to disciplining of children without reference to a world majority opinion?

Ms Flavell—I think it is a very complex question.

Senator ABETZ—It is. But if, as you put to the committee before, the majority of world opinion is against corporal punishment then ought we to ban it? Does it not follow then that if world majority opinion is in favour of capital punishment that we should be entitled to reinstitute it? What weight should we as a community give to world opinion?

Ms Flavell—I do not think you have picked up on my first answer in that corporal punishment does not sit comfortably any longer with the way we view abuse and physical discipline in Australia.

Senator ABETZ—When you say ‘we’, what are you referring to?

Ms Flavell—To the Australian community.

Senator ABETZ—Are you saying that opinion polls will tell us that corporal punishment is not a desirable practice?

Ms Flavell—I would hope so.

Senator ABETZ—The former Attorney-General, Michael Lavarch—he came from this state—when that very argument on corporal punishment was put up, said, and he is the father of young children, that there was nothing wrong with corporal punishment, that the convention does not stop the corporal punishment of children. It is interesting that you think that that is the Australian view yet the then Attorney-General, who was dealing with it, was of a differing view. I suppose, with respect, and I am not blaming you for this, it does not provide any real assistance to the parliament as to which way it ought to jump in relation to legislation.

Mr BARTLETT—I would like to take that one step further. Let us say there was a conflict between a parent’s view about how they should raise their child in terms of a smack on the bottom and the convention being interpreted as ruling that out. Would you admit that there would be a potential conflict between right of parents to raise their children the way they see fit and the rights of the child to be raised in a different way?

Ms Flavell—I think for a time there would be a misunderstanding about what parents and society, and the community at large, interpret the convention as saying around discipline. It is a very emotional issue.

Mr BARTLETT—You are suggesting it be put into legislation. A decision then has to be made about where the rights of the parents end and where the rights of the state begin.

Ms Flavell—There are many educational processes that need to take place around

these issues in our society.

Mr BARTLETT—Before legislation is applied or concurrently or instead of legislation?

Ms Flavell—It depends on which way the government deems this to be implemented. Given the circumstances, I would suggest prior to it. We can see some of the issues already being raised, which people attach to, which raise people's emotional distress and the issues around their right to bring up their children the way they deem fit. A lot of people are not perhaps aware even of the processes they use in bringing up children.

Mr BARTLETT—Let us say there has been an extensive education campaign. If a large number of parents still felt strongly that it was their right to raise their children, in terms of discipline, in the way that they had done it previously, would you agree that they have a right to do that or would you see that the convention should determine that right?

Ms Flavell—It depends on how discipline is defined and abuse is defined.

Mr BARTLETT—A smack on the bottom for mischievous behaviour, for example?

Ms Flavell—That is for experts to determine.

Senator ABETZ—Can you see that the average mum and dad in the community would say, when you talk about 'experts determining', that that is all brave new world stuff to them. In generations past parents basically knew how to bring up kids. Sure, it was never perfect but look at the experts: social experts at the time told us to take children from their Aboriginal parents; told us that unmarried mothers who had children out of wedlock should be told that their kids died at birth. They were given a little coffin. They buried an empty coffin and the kid was adopted out without the mum knowing. Society is littered with examples of well-meaning experts getting it so very wrong, isn't it? The bottom line is that, for all their lack of expertise, mums and dads usually do know best.

Ms Flavell—According to whose opinion?

Senator ABETZ—History's opinion, judging from what has occurred.

Ms Flavell—That is your statement. I think we divert to trying to elicit emotional responses which individuals are going to have difficulty with—about bringing up their children, discipline and so forth. To me, the Convention on the Rights of the Child is about all children having access to equal rights, such as Aboriginal children having the right to a fair and equal education or lifestyle. This is diverging away into something which can become an issue to the general public, as abortion does. But to dismiss the

rights of the child around arguments like this at this stage is meaningless.

Senator ABETZ—The human rights commission in its paper on the Convention on the Rights of the Child did address the issue of corporal punishment. To dismiss it and say that it is meaningless is an interesting observation.

Ms Flavell—Yes, it certainly did. But there are so many other much more overriding and important issues on the rights of the child than getting caught up on these very emotive ones which we know parents will be very disturbed about. I have read some of the submissions, and I take their point, but I think this goes above and beyond those issues at this stage.

Mr McCLELLAND—On that point, is your experience of debating the merits of the convention that there are some sectors who hang on smaller but emotive topics?

Ms Flavell—Absolutely; yes.

Mr McCLELLAND—Has that impeded the rational analysis of the convention as a whole?

Ms Flavell—I believe so. I have been involved in forums where we have looked at youth justice issues—which are, to me, a very critical part of this convention. I think we have got to have some very strong laws, if not federally than certainly at a state level, that support a lot of the activities around the youth system.

Mr McCLELLAND—Have you found a situation where organisations that hold themselves out as the guardians of morality in society almost of necessity have to find something immoral in a clause in order to justify their existence?

Ms Flavell—Perhaps that is the case, but I think they are there for those causes because they have those fundamental beliefs as well. There is a place for all people to express those opinions, but they have to have an overriding understanding of what is fair, reasonable and equitable in today's world.

Mr BARTLETT—You mentioned in your introductory comments that you would like to see the establishment of an office of commissioner for children, an office for children and a minister for children, and I think you said a bureaucracy supporting that minister as well. That would be a fairly significant cost, I dare say.

Ms Flavell—I would absolutely expect it to be an enormous cost; yes.

Mr BARTLETT—You also referred in your opening comments to the financial pressures on children's services and so on. With respect, and contrary to what you said, child-care spending has actually increased over the past two budgets, by \$150 million last

year and \$45 million this year. Can you see that there might be a significant conflict? If there is a significant budgetary pressure on providing resources for families and for other children's services, spending a lot more on what could be a large bureaucracy may threaten the funding for some of those other areas.

Ms Flavell—I should hope not. I think that would be a very sad and bureaucratic way of looking at the rational economic dollar at the moment.

Mr BARTLETT—But it is a fact that a dollar can only be spent once and not twice.

Ms Flavell—Indeed, depending upon how many dollars you put against it. It depends on where you house this commissioner for children and all the other things that attach to that office. If you see it coming out of the Department of Health and Family Services and the children's program, then there certainly has to be additional budgetary allocation to that.

Mr BARTLETT—How would you respond to an alternative suggestion of establishing a commissioner for families and strengthening the whole area of families, given that the convention—and much of the evidence—points out that the best and safest way to raise a child is within the context of a family? How about allocating those resources to strengthening the family, with the appropriate back-up of a commissioner for families?

Ms Flavell—I do not have a problem with that if the infrastructure also recognises and advocates for children. I think there would be a danger in having just a bureaucracy for families where the issues around children could get lost into other issues that adults have control of and take over. What we are dealing with here for the first time is looking at children as individuals, as a group, that belong to the Australian community and society who do not have advocacy except within families, and not all families have the ability to advocate for their children.

Mr BARTLETT—Certainly there would need to be a back-up for children where they do not have a strong family structure. But it would seem to me that strengthening the family unit is getting to the root of the problem in many cases and strengthens the chances of protection for the child in most cases.

Ms Flavell—That is true in most cases, although I must say I have not thought about it in terms of the family. I am very much in favour of the child in this instance because I see that there is a place to achieve legislation or procedures that endorse the rights of children across the board rather than the rights of families who are able to access certain programs. At the moment, particularly in children's services programs, we see money well spent. However, we also see that, in some areas, it is not well accessed because families have difficulty working through those bureaucratic red tape processes.

Perhaps if we were dealing with a more simplistic notion of how children are going to manage some of these red tape bureaucracy procedures, we might make it fairer for families in the end.

Mr McCLELLAND—One of the previous witnesses was a mother of a disabled child. She said that her child's school probably regarded her as the mother from hell because of the advocacy she made on behalf of her child. Is it your experience that, unfortunately, there are many families where the parents are not prepared to be the guardians and advocates for the interests of their children?

Ms Flavell—Absolutely. I also feel that there are many families who do not know how to advocate for themselves. With these changes that we are currently facing in relation to the Centrelink process, in child care it is now the responsibility of the parents to inform Centrelink that they are disadvantaged. I have no difficulty with the way the system operates, but I do have concern that some families, because of the way we are as people, will have difficulty in crossing that threshold of pride and competence that they know that they should have in going into a bureaucracy and asking for support. Yes, I feel that when people are disadvantaged, they are disadvantaged on many levels.

CHAIRMAN—Just going back to the umbrella legislative approach again, yesterday in Sydney we took evidence from Brian Burdekin as an individual. We listened to Dr Cronin from the Law Reform Commission and Chris Sidoti from the Human Rights and Equal Opportunity Commission. Dr Cronin and Mr Sidoti both agreed that it would be impossible, and in some ways would not be desirable, to have umbrella legislation and it should be reflected at the state level in individual areas. Brian Burdekin did not necessarily agree with that. He took your line that it was possible but that it would be very difficult to do. Do you still think that it would be possible to have some sort of all-embracing federal legislation which would mean something, irrespective of the individual interpretation of this convention?

Ms Flavell—I acknowledge the difficulty in that, I truly do. But I come from the premise that I believe that we are one country and that we should have some overriding common laws that set a benchmark standard for the states and territories. There will be differences in interpretation and procedure around that within states. I would like them not to have differences. I would like there to be the highest possible standard.

CHAIRMAN—How would you react to a suggestion that, rather than do that, we have some sort of national declaratory statement which would amplify the ratification process? In other words, we have ratified and we cannot put further reservations in; we can put amendments in, but those amendments may or may not be picked up by other UN states. One avenue is to make some sort of declaratory statement to make it clear how, from an Australian point of view, the convention is to be applied. If the legislation were not possible, would you favour that sort of declaratory approach?

Ms Flavell—Legally, how would you ensure that the states and territories took that on board?

CHAIRMAN—It depends on what you include in the declaratory statement. My personal view would be that, if you did it, it would have to mean something to everybody, whether it be federal or state governments. It would obviously have to be something that would be discussed with state and, indeed, local governments. As you know, a lot of local governments in the child-care area are very important players because they can, in terms of some of their local ordinances, stop some of these child-care centres—as, indeed, some centres have been stopped.

Thank you very much for appearing before us today.

[2.03 p.m.]

DAVIDSON, Mr Jerome Charles, Research Officer, Boystown Link Up, 1 Mary Street, Kingston, Queensland 4114

CHAIRMAN—Welcome. We have received the written submission. I do not think there is a date on it.

Mr Davidson—There is a covering letter which is dated.

CHAIRMAN—I do not have a copy of the covering letter here. Are there any additions, amendments, deletions or errors?

Mr Davidson—Not that I know of.

CHAIRMAN—In making your opening statement, could you please advise us as to what exactly Boystown Link Up is? That is perhaps something that you should address first.

Mr Davidson—Boystown Link Up is part of the Boystown Family Care organisation, which has a number of programs. One of them is Kids Help Line, who are appearing later before the committee. The founding one is the Boystown School at Beaudesert in Queensland, which is primarily for young offenders and young people under care and control orders. I am not sure what the modern version of the care and control order is.

Boystown Link Up is an organisation which started fairly small in 1991 in Kingston as a youth drop-in centre. It has now expanded quite significantly. It has a number of programs. It has enterprise programs. For instance, it has a furniture store that employs long-term unemployed youth. It has a program called Glugor House, which is a program for young women—a place where they can get together, a place where they can have child care and where child-care training is provided for them. There are a great number of programs undertaken now, including an advocacy section and a research section, which is what I am part of.

CHAIRMAN—Does it have a board? Is it an incorporated body?

Mr Davidson—Yes. It was formerly Boystown National Community Projects, and is now Boystown Family Care.

CHAIRMAN—I think that was appropriate to lead in to whatever you are going to say.

Mr Davidson—The essence of our submission is that in order to give effect to the convention, Australia needs to formally implement it at a federal level. That could

possibly be in the form of an Australian children's charter, which has been suggested and drafted jointly by the Australian Youth Foundation and the National Children's and Youth Law Centre. On this occasion we are not presenting a technical, legal proposal to do that, we are merely suggesting that appropriate steps be taken to implement the convention through some form of federal umbrella legislation.

Having heard the debate previously today, I think it is important to know that we are coming from the standpoint that the convention should be implemented, quite simply because it represents an international standard. It was brought into existence through an international process, and that was a process in which Australia participated. There has obviously been quite a lot of debate as to whether the convention should be given effect at all in Australian domestic law. What concerns us is that in the past, at least, the government's approach has been to be seen to be attempting to comply with the convention, while really having no intention to give effect to the convention at the domestic law level.

The best example of that was perhaps Teoh's case, and the subsequent reaction to it of the federal government of the time. We had the government ratifying the convention in 1990, and in Australia's report under the convention which was prepared in late 1995 we had the government informing the United Nations, and I quote:

Australia does not propose to implement the Convention on the Rights of the Child by enacting the convention as domestic law. The general approach taken in Australia to human rights and other conventions is to ensure that domestic legislation, policies and practice comply with the convention prior to ratification.

Surely, that is a representation of some form to the United Nations that Australia intends that its domestic laws do or will comply with the convention, one way or another. Yet, as we saw in Teoh, as soon as we had a real conflict between the convention and Australian domestic law, the government took every possible step to ensure that domestic law prevailed, and was quite open about that. So Teoh was, at least in our submission, a clear example that the Australian government of the time had no real intention to ensure that domestic laws complied with the convention.

We have also endeavoured in our submission to point to a few examples of non-compliance of domestic law in relation to the convention. No doubt the committee has heard many more examples of that nature. In short, if Australia wants to comply with the convention, as previous governments would have us believe that it did, it needs to be formally implemented and overseen by a federal commissioner for children. If, on the other hand, the government does not want to comply, then we should give up this pretence and reject the convention, and let the debate proceed from there as to whether or not Australia should follow international standards.

Senator ABETZ—Is there no middle ground?

Mr Davidson—I think we have tried the middle ground. We have had the government ratifying it and even including it as an attachment to the Human Rights and Equal Opportunity Commission Act.

Senator ABETZ—Has it done that?

Mr Davidson—Yes. It has been annexed, but that has—

Senator ABETZ—The convention, or the declaration?

CHAIRMAN—The declaration only, not the convention.

Senator ABETZ—Would you agree that is an important difference—that it annexed the declaration? Was it 10 points? The declaration does not seek to be as prescriptive as the actual convention.

Mr Davidson—I think the convention might have been declared an instrument under the Human Rights and Equal Opportunity Act.

CHAIRMAN—That might be so.

Mr Davidson—But it does not have the effect of enacting it, so we have some sort of middle ground. But—obviously, I refer to Teoh again—when you see any real conflict, the government is quite openly—

CHAIRMAN—This where some of us—I think most of us—would diverge. Admittedly, your paper may have been written before the most recent action by the present government, which you could argue is similar to the Lavarch-Evans approach, although the new international instruments bill does make use of that word ‘parliament’, which has never been used before, in the context of this committee and all the revised processes. Teoh does not alter in large part the treaty making mechanism. You would know this better than I; I am not a lawyer, you are. What it really does is to express legitimate expectation in administrative terms. It is true of the Lavarch-Evans approach and, indeed, the most recent Downer-Williams statements and the subsequent bill which has been through the House and is about to be debated in the Senate; all it does is to make it very clear that until such time as the spirit and intent are ingrained in domestic law, that is it. That is what we have heard from a lot of people over the last few months and in the last few days—that this convention means different things to different people.

Mr Davidson—Perhaps I did not explain it quite clearly. When I talk about governments, you must allow for different governments over time, but referring to that report—

CHAIRMAN—I assume that you are aware of the latest developments in terms of the international instruments legislation in the House.

Mr Davidson—Yes.

CHAIRMAN—You have not mentioned that in the written submission. I am not sure what date it was written.

Mr Davidson—I do not think I had a draft at the time it was written. All I am saying is that we ensured that Australian laws complied with the convention prior to ratifying it, and surely that expresses an intention that Australia wishes to comply with the international standard, but it obviously does not wish it to have legislative effect. So there needs to be something to enforce the effect of it.

Senator ABETZ—Why shouldn't Australians be able to say, 'We uphold and we accept this convention in its general terms and principles, but when it comes to specific little details of the convention we Australians, through our domestic parliament, will determine whether we incorporate a section wholesale, or a bit here or a bit there'? For example, with the Teoh case, if your only view was the best interests of the child, I suppose you would say that was a good High Court decision; whereas if you take a holistic approach and look at all of Australian society, you must ask whether it is a good message to send to the international community that we will let somebody stay who is convicted of drug running. It was heroin, and the chances are that he was responsible for some kid's death in Australia, but we are going to allow him to stay in Australia because he happens to have a kid. Whilst it may have been good for his child or his children, I have got to say to you that the total wellbeing of Australian society has been prejudiced by Teoh being allowed to remain in Australia.

Mr Davidson—With respect, that was not so much the decision in Teoh. The decision in Teoh was to refer the matter back to the original decision makers for reconsideration according to law. That meant, in that case, that they had to take into account the interest of the child as a primary consideration, together with another primary consideration, which was the fact of the offending. It is a matter of balance, and as the convention also points out, it is desirable to have children and parents kept together. So it would be a matter of balance for the decision making body to weigh up your concerns about this druggie having killed someone with the interests of the child and the child remaining with his family. I suppose in that instance they drew that particular conclusion. I do not think you can really take anything more from the Teoh decision than that.

Senator ABETZ—If we had had a full community discussion on this convention before it was ratified—let us say we held a referendum on it—do you think it would have been passed by the people? We had people like the Minister for Justice, Senator Michael Tate, the member for Herbert—that is from the Labor Party side—saying that there would be substantial reservations placed on protecting parental rights, et cetera, before it was ratified. For some reason, it was ratified without doing that. People like Andrew Peacock, Robert Hill and Daryl Williams were saying that the convention goes too far.

When you say, for example, in your conclusion that Australia has recognised the importance of the convention, in international terms, yes, it has, but when I look out of the window at what I assume is the suburbia of Brisbane, I doubt whether the people out there were actually agreeable to aspects of this convention.

Mr Davidson—That is a very interesting distinction. What does ‘international terms’ mean? Does it mean, perhaps, as I have suggested, that the purpose of ratifying the convention was merely to be seen as being a good international citizen, and to have no other effect? What is the effect if it is just an international effect and has no effect on domestic laws? As to your other question, I really have no idea whether the convention would be passed by a referendum.

CHAIRMAN—We asked the question in Sydney yesterday as to whether, all things considered, it might not have been ratified the way it was. The general feeling was that perhaps it was questionable, at least without due consultation. As you would probably know, in 1988-89 there was almost no consultation in terms of that ratification process. We are now dealing with something that has been ratified rather than with something that has just been signed and is subject to ratification, which is where this committee comes in under the new machinery.

In moving from signature to ratification, that national interest analysis is picked up, and that picks up all the points that you and Senator Abetz are raising. Maybe, if we had our time over again—which we do not as it is now a ratified convention—with the consultative process we are having today, albeit in relation to something that has already been ratified rather than in relation to something that has just been signed and is yet to be ratified, we might have had a different scenario. Can you see that there is a question mark?

Mr Davidson—Yes, although that might be true with any law that the government passes. I suppose that a law of this nature would have major changes but, nevertheless, there are some major laws passed by parliament on the trust of the voters and their representatives.

CHAIRMAN—You are right that, on 22 December 1992, the convention was made an international instrument within the Human Rights and Equal Opportunity Commission Act.

Mr Davidson—Although I think it was expressly mentioned in Teoh’s case that it did not really have much effect.

CHAIRMAN—No, but it was made an international instrument.

Mr BARTLETT—Are there any aspects of the convention that you would not want to see enacted in domestic legislation, or are you convinced that every article is

appropriate?

Mr Davidson—No, when I say ‘umbrella legislation’, I am not saying there is not room for the parliament to adapt it to Australian needs. Indeed, the convention generally takes into account cultural differences. In substance, though, it needs to be given effect to.

Mr BARTLETT—So the principles of the convention need to be given effect?

Mr Davidson—I would perhaps go further than that: if there are individual articles that the majority of Australians find abhorrent for some reason, I do not think you could raise an argument that they should be included.

Mr BARTLETT—If we enacted legislation to apply the articles that did need to be given more weight, we could equally enact legislation to protect the rights of parents in those areas where parents feel that they are threatened by the convention, could we?

Mr Davidson—I do not see any reason why not. Indeed, article 9 of the convention takes the parents’ rights into account to an extent. Where people have been talking about the rights of parents and the department of family services, for instance, that article provides that children will not be arbitrarily taken away from their parents.

Mr BARTLETT—In summary, which do you see as the articles that most point to areas of deficiency in existing legislation?

Mr Davidson—Some of the ones we have pointed out in the submission, for instance, are juvenile justice related matters. A fundamental factor is a child being defined as 18 years old. Under Queensland criminal law, you are an adult when you are 17 years old. It is only one year difference. Nevertheless, if you have an international standard of 18 years old, then surely a person who is under 18 years old should be afforded their protection.

Senator ABETZ—Yes. But does not the convention also tell us that you ought to deal with children on the basis of their evolving maturation? If a child is capable of committing a crime and has the mental intent or understanding of what he or she did—all the ingredients of the crime—if they are that fully evolved and mature in relation to undertaking a criminal endeavour, why shouldn’t they then also be submitted to the consequences of the criminal justice system?

Mr Davidson—The adult criminal justice system?

Senator ABETZ—Yes. If they have reached that age.

Mr Davidson—You could say the same in Queensland about an 11-year-old. It is possible in Queensland, if you are an 11-year-old, to be found to have the knowledge that

what you are doing is wrong and found to be guilty of a crime on that basis. You could use the same argument to justify an 11-year-old facing the same penalties that an 18-year-old would.

I suppose the argument is that, although people over 10 and rising have an increasing capacity to understand what they are doing, nevertheless it is not the same as an adult. The defining level there is 18. It is not as if they do not face any penalties. The juvenile justice system up here is increasingly, if anything, increasing penalties. It is just that it takes into account that degree of immaturity that they have.

CHAIRMAN—Are you suggesting one age for everything? Is 18 it?

Mr Davidson—Yes. You are a child until you are 18. That is the definition of a child—under that.

CHAIRMAN—Yes. What about the maturation case? It was mentioned yesterday a couple of times. It was Gillick, wasn't it?

Senator ABETZ—Gillick.

CHAIRMAN—That was in family law, though, wasn't it? It makes the point that it is very difficult to have a specified age for everything because of the maturation point that Senator Abetz has referred to.

Mr Davidson—Yes. But the only other alternative is to examine the circumstances of each individual and come up with some degree of maturity, which would seem to be unworkable.

Senator ABETZ—A theme I get coming through a lot of the submissions is that, when it comes to children's rights, we are told, 'Treat them like adults. They have rights. They are independent.' When it comes to children being required to take responsibility for their actions, there is a quick flip done and we are told, 'They have not really developed sufficiently. They need special treatment or care.' The two do not seem to dovetail. When you try to put those that argue for rights and responsibilities together, it does not seem to dovetail.

Mr Davidson—I do not think the convention accords children the full rights of adults, does it?

Senator ABETZ—I am not talking about the convention. I am talking about people and organisations providing evidence to this committee. When they are talking about children's rights, they are always promoting them and saying that children are a lot more advanced.

Mr McCLELLAND—In fairness to the witness, he cannot comment on the evidence without seeing it. He cannot give quotes to the veracity of your account of the evidence or not without seeing it. I think that is an unfair question, with respect.

Senator ABETZ—But he can comment on it.

CHAIRMAN—Mr Davidson can answer it if he wants to.

Senator ABETZ—An example I found strange in your submission is on page 15, where we are told:

On the contrary, many parents or guardians put pressure on the child to confess their guilt to police.

I would have thought that was a good and wholesome thing for young people to do in general terms. Yet, reading this part of your submission, I am not sure that you are of the view that they ought to be doing that, but are sort of treating them as though they are adults and they should not be required to self-incriminate.

Mr Davidson—There is no point in giving someone a right if it is not enforceable. If you are going to give children their right not to self-incriminate, it takes away from it if they do not have knowledge of that right and they do not have the means to exercise it. They do not have the means to exercise it if they have a parent and a police officer in authority telling them that they should confess.

CHAIRMAN—If I could come back to the legislative umbrella approach, you heard what I asked the previous witness about some sort of declaratory statement. Yesterday, both Chris Sidoti and Dr Cronin, both of whom are pretty reputable lawyers, felt that it would not be possible, and in many ways would not be desirable, to have some sort of legislative umbrella approach. How would you react to some sort of meaningful declaratory statement, which the government can do?

After the ratification process, as you probably know, we are constrained as to what we can do in international law in terms of treaty making. We cannot, for example, make another reservation. We can comment on another nation's reservation; we can move an amendment, but that amendment is dependent on the degree to which it might or might not be accepted within the community; or, in the extreme, we can denunciate or de-ratify. Some people might take the view—indeed, we have had it put in evidence—that the latter might be the appropriate way. But if there is this varying interpretation of what it means, particularly the rights of children vis-a-vis the rights and responsibilities et cetera of parents, would you see some way round the mire by having some declaratory approach? Is that something the government can do after the ratification has been completed, even seven years later?

Mr Davidson—On the interpretation point which was raised before, surely it

would be a matter for the Australian courts, as it is with any other piece of legislation, to give the appropriate interpretation, bearing in mind Australian law, on the laws that were implemented for that purpose. With regard to a declaration, my concern would be that if there is not something that effectively has teeth, we will be left with the situation we have now where Australia has declared some sort of intention to follow the convention in spirit, if not in effect, but when it is tested by a conflict, then domestic laws prevail—or at least that has been the case in the past.

CHAIRMAN—If you go back to your earlier comments, about the reaction being, ‘Oh well, back to the Evans-Lavarch thing,’ all of it has been incorporated in domestic law. Under the new provisions involving this committee and the Treaties Council, at the heads of government level, for all intents and purposes that will have been done because of this national interest analysis. I know this is a difficult one: we are dealing with something that has already been ratified, rather than one that is in the process of being ratified.

Mr Davidson—If, after this process that you talk about, it is resolved to bring in this declaration—in whatever technical manner it is brought in—and we are left with a situation where we have a declaration but we are still left with the situation that the convention and its provisions cannot be given effect to, we will still be in the same situation that we were in prior to these procedural changes.

CHAIRMAN—All I am suggesting is that it is something like the Holy See. The Holy See’s reservation was subject to the maintenance of the family values or something like that. We would have to look very carefully at what that declaratory statement was. Eric, what was the Holy See’s—

Senator ABETZ—Yes. A very interesting one is the reservation from Poland, which was the country that started the whole process. For those who think the process was really good, Brian Burdekin’s evidence yesterday, I must say, made it look somewhat shabby, but that is beside the point. Poland said in its declaration:

The Republic of Poland considers that a child’s rights as defined in the convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority in accordance with Polish customs and traditions regarding the place of the child within and outside the family.

CHAIRMAN—The issues that are the ones on which people have varying interpretations are articles 12 to 16, read in conjunction with or in isolation from—depending on which way you want to take it—articles three and five, and, to a lesser extent, article 18. What Senator Abetz is suggesting is something along the lines that if Australia were now, in a post-ratification situation, to say something like that, it would put to rest once and for all this incessant argument—which I have to say occurred in 1988-89 and we are getting exactly the same, 6½ years later at this committee—that all of this has been done at the expense of the rights of parents. If you made a declaratory statement,

don't you think a lot of that would go away, rather than attempt to come up with some very technical—and it would have to be very technical—overarching legislation at the federal level?

Mr Davidson—Yes, I am sure it would, but it still would not give effect to any of the provisions of the convention, would it?

Senator ABETZ—Are you saying that that would be inconsistent?

Mr Davidson—I am saying that if you make this declaration, but without bringing in any—

CHAIRMAN—We have heard evidence, even today, that simply because the convention is in place does not mean that children's health is improved, or that adoption procedures have been enhanced et cetera. It is just another piece of paper in some people's view.

Mr Davidson—But that is the very issue. I am saying it should be given effect and that will not be achieved if we just make a declaration about reservations if we bring in legislation and incorporate those reservations in the legislation.

Senator ABETZ—I think you are at cross purposes. What is being suggested to you is, rightly or wrongly, that there is a fair degree of community concern about this convention undermining the rights of the family. That is why, for example, Poland put on its reservation. The Holy See put on a reservation and interprets the articles of the convention in a way which safeguards the primary and inalienable rights of parents, in particular in so far as these rights are concerned, and it then goes through articles 13, 28, 14, 15 and 16. A lot of people are saying, 'Look, this is nonsense. This convention does not impact on family or parental rights and responsibility.' If that is the case wouldn't it assuage a lot of the community concern by having a declaration such as the chair has suggested to you that the convention should not be interpreted in a way which is, to put it bluntly, anti-family or anti-parent? So that is what is being put to you because it would not be inconsistent with a convention as has been put to us.

CHAIRMAN—Rather than react on it, would you like to think about it and perhaps give us some supplementary comments, or do you think that what you have given is enough? Would you like to take it on notice?

Mr Davidson—Perhaps, yes. If I could I might add some written submissions about possible legislative technicalities.

CHAIRMAN—Sure. Please do that. Thank you very much.

[2.36 p.m.]

HAINING, Mr David Graham, Cooloola Ratepayers and Residents Association, c/- MS 177, Taylor Road, Gympie, Queensland 4570

HAINING, Mrs Helen Mary, Secretary, Cooloola Ratepayers and Residents Association, c/- MS 177, Taylor Road, Gympie, Queensland 4570

WAKELIN, Mr Derek Rodney, Committee Member, Cooloola Ratepayers and Residents Association, c/- MS 177, Taylor Road, Gympie, Queensland 4570

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

Mr Haining—I am Helen Haining's husband, and I am a concerned citizen and ratepayer.

CHAIRMAN—We have received your written submission dated 17 June. Are there any amendments, omissions or errors of fact that you want to be reflected in the *Hansard* record, before we invite you to make a comment?

Mrs Haining—No.

CHAIRMAN—In inviting you to make an opening statement, could we just have it clarified as to exactly what the Cooloola Ratepayers and Residents Association is. Is it just the usual ratepayers association? Does it have a specific agenda? What is the ratepayers and residents association all about? I ask that, bearing in mind that we are dealing with something here which—you are all parents, I know—it is a bit unusual for a ratepayers and residents association to raise with us. Can you cover that?

Mrs Haining—I will try. Our members have agreed that our association can deal with any interest or issue which affects residents in our shire. Because children in our shire can be affected by this convention, it was decided that we had the right to put in a submission.

Mr BARTLETT—How many members do you have?

Mrs Haining—We have got 25 financial members, and many more who come to meetings but are not financial.

CHAIRMAN—Would you like to make an opening statement?

Mrs Haining—We were just thinking of reading the first page as an opening statement.

CHAIRMAN—It is already in the evidence, so we are going to repeat that. What we are basically seeking from you in an opening statement are a few one-line major points that you want to make in relation to this convention. Can you do that? What serious reservations do you have? What are the main points that you want to make? Then we can open it up to questioning.

Mrs Haining—The main point that members keep reiterating is that the federal constitution makes no allowance for international treaties to create internal law. They are upset about this convention having laws created which affect people of Australia who have never voted at a referendum to allow the United Nations or international law to control Australian law.

CHAIRMAN—That is the bottom line, is it?

Mrs Haining—That is one.

Senator ABETZ—I have a degree of sympathy with that point of view but, unfortunately, the High Court has made a ruling that basically the federal government can do that. So that is basically the given from which we—unfortunately—have to operate.

CHAIRMAN—If I might interrupt there: it is not only the High Court. It is under the constitution. Section 60 of our constitution allows the treaty making process to be exercised by the executive.

Senator ABETZ—Yes, but under the external affairs power which is being used, it would be fair to say that when the federation fathers wrote the constitution they were thinking of defence matters and trade, and not things that might, let us say, impact on corporal punishment. But the High Court has basically said—

CHAIRMAN—We made it very clear as a government that we would not exercise 51(xxix), the external affairs power, in domestic law—or, if it were, it would be done only in exceptional circumstances and then those exceptional circumstances would be tested. But constitutionally we have a right to enter into conventions.

Perhaps I should clarify this, to start off with. The point we have made to a number of other groups like yours is that perceptions are out there—and again I used this on Monday and I am sorry for other committee members to have me go laboriously through it again—that, simply because Geneva and New York cough, Australia necessarily gets a treaty cold. That is the analogy I draw. They are the perceptions that a lot of people like yourselves have, that, simply because New York or Geneva says X, Australia slavishly follows. We do not.

In fact, legislation has been through the House of Representatives and is currently with the Senate which will make it pretty clear that that is not so after Teoh's case. I think

you made mention of Teoh's case in your submission. Teoh is a High Court test case and the government is about to make it very clear—as, indeed, to be fair, the other side of the political fence did when they were in government. Were it not for the proroguing of the parliament for the general election it almost certainly would have gone through in a very similar way.

I just think you need to understand this. I am not being critical of you as a group, but there are some knee-jerk reactions out there, for a number of reasons driven by a number of agendas around the community, that this is being done ultra vires and without any constitutional basis. That is untrue.

Senator ABETZ—Not on the legal technical side, but I think a very strong argument is being made by many eminent silks and, indeed, High Court judges who were dissentients in the dams decision and some other cases, that it goes against the spirit of the constitution if not the black letter of the constitution.

CHAIRMAN—Sure, but many on this side would disagree. I have some difficulties with the dams, but it is a precedent set by the highest court in our land and, until such time under common law and under precedent arrangements that is changed, unfortunately that is the law in our land. What we have said from the present Prime Minister down is that, in administrative terms and political terms, we would not exercise that 51(xxix) to the extent perhaps that it has been used in some cases before, certainly in ingraining stuff into domestic law.

Mr Wakelin—Mr Chairman, you are saying that it is a perception, that there is concern that the ratifying of the treaty is going to be causing problems. It is not just a perception, it is a worry. So the fact that these things we are uncomfortable with in these conventions are being ratified goes further than a perception that they might affect us domestically when we have not got control over it and we have not made specific rules and laws to cover some of the aspects. It is a worry that we might be influenced to do things that our federation, our constitution, our legal system and our parliament have not dealt with in the way of rulings of how we are to work as a society. We have got influences coming in under this that are a worry, that might influence us in ways that we do not want.

CHAIRMAN—We are dealing here with a convention that has already been ratified. What this committee deals with in general terms, quite apart from those that have already been ratified and, in technical terms, in parliamentary terms, deemed to have been tabled—which means we can have a look at anything we want to that exists—is such that under the new mechanism exactly the problem that you raise is overcome in very large part. There will always be things that slip through the cracks, but there is the Treaties Council, which is headed up by the Prime Minister and is at the level of premiers, including of this state, and chief ministers. Then, in between the signature, which is the moral intent, and the ratification, which is the law intent, this committee takes over.

We get together with people like yourselves, Mr and Mrs Citizen, and we hear what you have to say. In the context of that, we consult with state governments, with local governments, with non-government organisations. And as a result of that we make recommendations to the parliament, albeit on a very short fuse—15 sitting days. We have dealt with nearly 80 of these since September; that will give you a feel for the number of treaties and covenants and protocols and all the rest of it.

Mrs Haining—But most of them would be non-controversial.

CHAIRMAN—I think they are, but there are major issues that are not. The Minister for Foreign Affairs and the Attorney-General have both agreed that the government would not move to ratify until such time as we report. We are dealing here with the Convention on the Rights of the Child—something that has already been ratified—whereas in general terms we deal with them prior to the ratification process. What we are attempting to do is to get, from people like you, perceptions, concerns, worries—whatever you want to call them—so that we can inject them back into the system via what will be a very extensive parliamentary report with recommendations to government.

In terms of this treaty, at the very extreme we can recommend de-ratification or denunciation—in other words, we can say ‘Let’s pull out.’ That has to be done, in the terms of this treaty, with a year’s notice. That is at one end. The big problem with this one, as we have found today, yesterday and in recent months during our sittings in Sydney, Hobart, Adelaide and other places, is that there is a great concern, as a result of varying interpretations of this convention, as to the rights of children vis-a-vis the rights of parents. That is a point that you made.

What can we do about it? We can make various recommendations to the parliament and debate it before it goes to government, but we cannot make further reservations. We only made one reservation back in December 1990. Technically, we cannot include any further reservations because that is not allowed under the rules.

Mrs Haining—This is once it has been ratified, is it?

CHAIRMAN—Yes, but we can withdraw that reservation, which some would argue we might recommend. It will take a while for us to conclude those sorts of things. We might recommend some amendment to the ratification or an amendment to the Convention on the Rights of the Child, which then has to go back into the UN machinery and may or may not be picked up by the member states, or we can make some sort of declaratory statement. I do not know whether you came in on the end of what we were discussing, but it is very technical and it is debatable in political and legal terms as to the effectiveness.

We could make something to get over this major perceptual problem that this is

all being done either by some external factor not relevant to our domestic situation or, particularly, that it is upsetting the normal relationship between the parent and the child.

Mrs Haining—We were told that, once it is signed, the government goes about making the laws and the policies that set it into place, and then it is ratified. We were told that there would be a national interest analysis of this treaty available on the Internet. We searched for hours and hours.

CHAIRMAN—Not with this one. Under the revised procedure, these things are tabled. We have got a list of 25 to be tabled on Tuesday fortnight.

Mr McCLELLAND—This was probably ratified before the Internet became available.

CHAIRMAN—That is right, yes.

Mrs Haining—Yes, but it is only recently that any of them have been put on the Internet.

Senator ABETZ—This is one of the changes of the new government.

CHAIRMAN—We now have a web site and people can go in and have a look.

Mrs Haining—Each time we turn it on, more has been added.

CHAIRMAN—There will be more and more, but under the previous arrangement there was no consultation and no parliamentary debate, except that individual members got up and talked about it.

Mrs Haining—I think everyone is agreeing that it is much better the way it is now.

CHAIRMAN—Under the revised arrangement, as you say, there is a national interest analysis. You will not find a national interest analysis for the CROC, because it does not exist.

Mrs Haining—It has not been put together yet.

Mr BARTLETT—Because it was ratified under the former system.

CHAIRMAN—On Tuesday fortnight, one of the 25 is a major boundary delimitation treaty, which has been signed by Alexander Downer and by Ali Alitas, in regional sea delimitation between Australia and Indonesia. That is one that, as I am sure most of us agree here already without seeing it, is going to create a lot of discussion in

the public arena. There will be a national interest analysis associated with that tabling which you can then get hold of to look at. We will be advertising so that you can come along, as you have done with this inquiry. But instead of coming along after the event, you can come along before the event.

Mr Wakelin—Are you comfortable that we say we are in agreement with this? We have come in at the end of the point you are making, on the rights of the family and the rights of the parents. We would like to have it on the record that we would support that, if you are making a bit of a checklist of who is for and who is against. We definitely would encourage that there be that declaration and clarify that as opposed to it being left loose, with all the conjecture which can run riot.

Senator ABETZ—There is another option which I have been putting to people, just to test the water. In my simplistic reading of the convention, I think there are a lot of good things in it. I also see—

Mr Haining—At face value they are all good.

Senator ABETZ—I also see some things about which I have some concern. Therefore, because we cannot add further reservations, the only thing we can do is renounce the treaty. To do that, you have to give 12 months notice. In our letter of denunciation to the United Nations, we could say we are only renouncing it so on the very next day we will re-sign but with these following reservations which will be declaratory, if you like, of parental rights and obligations; basically seeing children not as children stuck out there, but as a family. I do not think that talking about children, as this convention does, in isolation from parents and family, is very helpful or useful. I am very much into talking about family, which happens to include parents and children, and all the good social workers in the world will never be as good as parents.

CHAIRMAN—Technically, that is another option.

Senator ABETZ—That is another option as well.

Mr Haining—It is a very good option, actually.

CHAIRMAN—We need to debate that.

Senator ABETZ—We will discuss that and, for what it is worth, I just wanted to bounce it to you.

CHAIRMAN—Technically, it is possible, let us put it that way.

Mr Haining—Is there any reason why we cannot adhere to the parts of this document that Australia generally is happy with, without having an international

agreement about it? This is ridiculous. Why do we need an international agreement about it? Surely, you are talking about a different agenda.

Senator ABETZ—What some people would argue is that if we, for example, want to put moral pressure on a country that has child labour, so that children should not be forced down mine shafts or whatever, if we want to have some sort of moral, persuasive impact, we should be a signatory to this convention. The other argument, of course, is that if our record is pretty good, we will have that moral, persuasive effect whether we have signed the document or not. For example, if some of the countries which have signed the convention were to try to argue that child labour is bad when they allow it in their own country, they would be dismissed out of hand, irrespective of the fact that they had signed up to the convention. There, I suppose, are the two lines of argument as to the benefit of signing—

Mr Haining—It does not do anything for the children.

CHAIRMAN—No, but the big difference, I would suggest, between Australia and some of these other countries—I will not name them—is that when we do these things, we do them with a moral, social and legal intent. We look at these things very carefully under our democratic principles. Some countries, as Senator Abetz has alluded to, will ratify. Earlier this morning we had some discussion with an Islamic woman which was quite illuminating and quite a different view from what we have heard in the past. Where you get an Islamic country that signs or ratifies and then practises female genital mutilation, it really does raise some big social and ethical questions as to what their intent really is. Some of them do not do it the way we do it. If we enter into a treaty, a protocol, a convention or whatever, we do it for a number of reasons, and I would suggest to you that one of the main reasons is the national interest.

Mr Haining—Economics.

CHAIRMAN—No. That is one element of it.

Mr Haining—Or is it that trade sanctions are the only weapon that you can use against anybody who does not deal in this way?

CHAIRMAN—Trade sanctions, in the extreme. I hear what you are saying.

Mr Haining—With respect to most of these treaties, the main concern at the moment seems to be that, if these treaties are not adhered to, there will be trade sanctions.

CHAIRMAN—Again, we come back to perceptions and concerns.

Mrs Haining—That is what the media is pushing.

Senator ABETZ—There seems to be a lot of misinformed comment in the media that if we do not do certain things, we will be looked on with disfavour by the international community. Let me just remind you that the United States has not signed up on the Convention on the Rights of the Child and I am not sure that that has necessarily impacted adversely on their trade capacities around the world. I think we get a bit excited.

Mr McCLELLAND—Mr Wakelin, you have indicated that there are a number of beneficial things. For instance, there is protection of children against narcotics; protection against prostitution; protection against exposure to pornography; protection against exploitation of child labour; and even protection of their health—in enhancing children's health. I think humanitarians—or human beings generally—would say that they are very good things to encourage, not only in Australia but in humanity around the world.

On the other hand, as a contrast to those good things, there is apprehension or anxiety because of ambiguities or uncertainties that exist, in particular, in clauses 12 to 16 and, I think, also in clause 19 which deals with the issue of corporal punishment. It seems to me that if you look at the baby in the bath as being the good things and the bathwater being cloudy or muddy because of these ambiguities, if you can filter out those ambiguities so that the bathwater itself becomes clear and transparent, isn't that a package which, overall, will be beneficial?

Mr Wakelin—Indeed. Are you gentlemen confident that our Australian federal system is going to be clearing and keeping clean the bathwater so that we are not mired in the ambiguities of this that a lot of people are worried about? Are you personally comfortable?

Mr BARTLETT—That is the intention, but that intention seems to be disappearing.

Senator ABETZ—That remains to be seen.

CHAIRMAN—We have got to prove that.

Mr BARTLETT—We have got to find a solution that will solve that problem.

Mr Wakelin—As this gentleman has identified, that is why most people are here. We are not confident of—

Senator ABETZ—Many people have come before us saying that there is no murky bathwater.

Mr Wakelin—Sorry, not counting those people.

Senator ABETZ—So there is a debate as to whether there is murky bathwater to

start with.

CHAIRMAN—Warren Truss, who is your local federal member, and a member of this committee, has been to a number of the meetings and has made some contributions to the committee. What I would suggest that you do locally is get Warren in to go through some of these things with you and discuss your concerns. If he cannot answer some of the questions, we can, as a committee, just to correct some of the views. They are understandable views, but some of them are inaccurate.

It is a bit like—and I do not want to get party political or mention that woman's name again—Pauline Hanson when she talks about conventions. In her one contribution to the parliament—her first speech—she said, 'I'm going to do away with all these treaties and all foreign aid.' Yet, only two weeks ago, she said that we need to increase foreign aid to North Korea.

People will learn about these things if they get involved and I think it is very good to see groups like yours wanting to be involved in some of these broader issues. So, Warren is the first one. I cannot give you a carte blanche assurance that as a result of this committee everything will be hunky-dory and that everybody will agree with everything. But I can assure you that the review process at the public level will take place. We are required to do that under the joint resolution of the parliament.

Mr Wakelin—We have already had a public meeting. Mr Truss was the main guest speaker. He is very confident that there will not be ambiguities and problems for Australia from this convention. But a number of us are not happy with him being so positive from that direction.

Senator ABETZ—This area is developing in relation to Australian law and anybody who says there are huge misconceptions one way or the other is, I think, being very brave. Let us take the Teoh decision, for example, and the effect of CROC in the Teoh decision. The federal government went to the High Court absolutely confident that they would win and they lost. Before that, the federal government said that international treaties have no impact whatsoever on domestic law. Some of us argued that they may well do—in fact, I was one of those and I was ridiculed for it at the time. The Teoh decision came down saying, 'It can have some impact.'

Mr Wakelin—You would have liked to have been wrong.

Senator ABETZ—I would have liked to have been wrong.

CHAIRMAN—If you are unhappy with what Warren has said, I would be prepared to come along and talk to your group—and this is no criticism of Warren. Even though he is an attendee, he has not been to every meeting of this committee because of his other commitments. I live in Toowoomba so I am reasonably close. As long as we do

not have Mr Doring, Mr McLevin, Mr Tony Pitt, and a few of those around the area, I would be very happy to come and talk to your group about the issues rather than the emotional perceptions of one or two of those people. I offer that to you, if you want to get me along to talk about it as Chairman. I have to take responsibility on behalf of the committee for what this committee does, and I do not take that lightly.

Mr Haining—What powers does your committee have? Does it make recommendations?

CHAIRMAN—Yes. It is not a determining committee. It is a recommendation committee. It would be a very brave government that would ignore the recommendations, particularly after those recommendations have been debated through the parliament.

Mr Haining—Have you had indications from the parliament as to what your recommendations should be or which way they should be coloured?

CHAIRMAN—Absolutely not. As I have said to other groups in relation to this specific inquiry, this committee does not have an agenda. Some groups on both ends—poles apart—have indicated through the media that all we are is a mouthpiece of government: we are not. We are a joint parliamentary committee, cross-party, from both houses. We look at the facts and make recommendations accordingly. If the government does not like it, they will say so and they will make their decisions.

The treaty making process rests with the executive, under section 60. The international instruments legislation, which you may have heard me talking about when you came in, is to make quite sure that all these things are picked up in the process and that some of these perceptions hopefully are put to bed.

Mrs Haining—You were saying before about there being no national interest analysis because it was made by the previous government. Does that mean that there is no way to trace whatever legislative, administrative, social and educational measures were put into place to bring this into law?

CHAIRMAN—At the parliamentary level there was nothing—I can tell you that right now. There was a lot in the media. I made some fairly strong comments in a private capacity in Toowoomba at the time about 12 to 16 and other things. My views may or may not have changed slightly since then, we will talk about that. But there is nothing at the parliamentary level. Under freedom of information, you would be able to get some information. Bob McClelland, my deputy, is a member of the opposition. We should not get party political on this, because in general terms this had been a very apolitical committee; and so it should be, in the national interest. But without putting words into his mouth, I think Bob would agree, even though he was not in the parliament at the time—and a number of his Labor colleagues have said this, in the parliament and in this committee—that insufficient consultation took place.

Mr Haining—Indeed, virtually nothing.

CHAIRMAN—The now Prime Minister and the now foreign affairs minister made it very clear that we would correct that, and we have. This committee has been in place for a little over 12 months, and I can assure you that already a lot of people in the bureaucracy are sitting up and taking notice.

Mr Wakelin—We appreciate and realise that.

CHAIRMAN—I just wanted to get the real picture across to you, rather than having you get some cack-handed views from some other people.

Mr Wakelin—Yes. I have been ALP for years, and I was one of the ones critical of the lack of talk and all the rest of it. It is common knowledge that things have improved.

CHAIRMAN—The other thing you can do is to get a copy of Australia's report under the Convention on the Rights of the Child. We cannot give you our copy, but you can write to the Attorney-General's Department in Canberra. It is one of two reports, dated December 1995. That will, I assure you, give you some reading to do, and keep you busy for a little while, but you will see the genesis of a lot of this.

Mr Wakelin—We had not known about that.

Mrs Haining—You were talking before about the water being muddied, and one of the points I raised was that teenagers can leave their families and Social Security will give them money to go away from home, but they will not tell their parents where they have gone. I wondered if there could be a policy—

CHAIRMAN—That has been covered. We have had specific cases on that. We will not get into the detail, but it certainly has been covered. The youth homeless allowance has featured very highly on the agenda of this committee over recent months. In fact, changes have already taken place in that, but not to the extent that some people would want. There may be further changes in the pipeline. There is a lot of concern about the degree to which the child has privacy, which is what some of the social workers use. We have got lots of evidence that some social workers fly in the face of what some parents are about in specific cases, but we cannot be any more specific than that. I can assure you it is something that has been introduced into the evidence, both written and oral.

Mr Wakelin—So, in effect, we are endorsing that declaration and we would also like to be known to be suggesting that there might be lobbying on the committee's behalf that there be more flexibility in the reservation. There should be a lot more scope for Australia to lobby that there be changes et cetera; so we want to be on record as

suggesting that aspect, and more flexibility being incorporated. Did you say you can record just one reservation per year?

CHAIRMAN—No, there was only one reservation that was introduced. Back in December 1990, when this was ratified, the government at the time introduced one reservation to it. That was in relation to article 37C, which is about the imprisonment of children with adults. That is not on under the convention, but the government said at the time that because of geographic and demographic constraints in Australia, that may not necessarily be possible, so we inserted that as a reservation. Once a country has ratified, which happened then, it can no longer insert further reservations. We can remove that reservation, we can put in amendments, and we can do the sorts of things that Senator Abetz and I talked about before.

Mr Wakelin—I will say, to simplify it, that we are unhappy with the lack of flexibility, and that if there is the opportunity for more flexibility to be lobbied for, we ask that we be on record as being one of the ones supporting that. Is that a briefer way of putting it?

Mr BARTLETT—And am I right in saying that you would support reservations or statements that enhance the role of parents and the family?

Mr Wakelin—That is definite. We have made that pretty clear in our submission. That is the dirty water.

Mr Haining—We cannot step away from the fact that we have been sent here to call for the authorisation of it to be rescinded. The underlying condition of the whole thing was that we did not need to be told by anybody from anywhere else how we should run things. If things needed to be changed they could be changed here in Australia by the Australian government, without having to put in any further 12-month requests for this or that, or seeking somebody else's how do you do and having what is perceived in the community as outside interference in domestic affairs.

CHAIRMAN—The fundamental point I make is that we are not being told that we have to do this. It comes back to perceptions.

Mr Haining—Then we do not need to have ratified this convention. We could have done all of these things without ratifying this convention. We have not been given a real reason for ratification of the convention.

CHAIRMAN—That is a view you have.

Mr Wakelin—With two developments today, our group might also soften that approach on account of where we have come from; so that might not be as powerful a point, now.

Mr Haining—That is quite right, yes; but the point has to be put. That is what we undertook to do.

Mr Wakelin—We will look into that.

CHAIRMAN—Thank you very much indeed.

[3.13 p.m.]

BLOOM, Adam, Student, Booroobin School, PO Box 660, Maleny, Queensland 4552

INGRAM, Aaron Robert, Student, Kedron State High School, Park Road, Woolloowin, Queensland 4030

McCARTHY, Ben, Student, Kedron State High School, Park Road, Woolloowin, Queensland 4030

RAWSON, Rebecca Maree, Student, Marymount College, PO Box 2144, Burleigh, Queensland 4220

REID, Ms Wendy Kathleen, Manager, Research and Publications Unit, Kids Help Line, PO Box 376, Red Hill, Queensland 4059

SHEPPARD, Adu, Student, Booroobin School, PO Box 660, Maleny, Queensland 4552

SHEPPARD, Mr Derek Carey, Staff member, Booroobin School, PO Box 660, Maleny, Queensland 4552

SHEPPARD, Isaac, Student, Booroobin School, PO Box 660, Maleny, Queensland 4552

CHAIRMAN—Welcome. We have received your written submission, dated 30 April. Are there any amendments, errors or omissions that you want to inject into the record?

Ms Reid—Yes, on page 3, where I address the terms of reference. The second sentence of the third paragraph down starts: ‘On the contrary, governments continue to introduce new legislation policies that’, and then there should be the word ‘undermine’.

CHAIRMAN—Okay, so insert after ‘that’ and before ‘children’s’ on the third line of the third paragraph on page 3 the word ‘undermine’. There are no other changes to that?

Ms Reid—No.

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

Ms Reid—From what I have heard today I feel really strongly that the United Nations Convention on the Rights of the Child provides us with an opportunity and a framework to examine and rework legislation and policy that impact on kids’ lives and that enhance the wellbeing of our young.

CHAIRMAN—That is the only point that you want to make at this stage?

Ms Reid—Articles 12 and 13 in particular are of most interest to me in terms of how we can get young people's views in the process.

CHAIRMAN—After you have finished, we are going to hear from some young people.

Ms Reid—We are.

CHAIRMAN—Would members like to ask Ms Reid a few questions first?

Ms Reid—Can I table some information?

CHAIRMAN—These are further exhibits, are they, that you want us to have?

Ms Reid—Just further information about the service that we provide and a summary of the statistics that we collect.

CHAIRMAN—That is fine. The committee accepts those as exhibits. You are not directly connected with the young people we have appearing, are you?

Ms Reid—No, although we do know each other because they were part of a conference on children's rights that I was involved in organising.

CHAIRMAN—Right. Firstly, I would like to ask the children to give us their ages and the grade they are in at school.

Ben McCarthy—I am in year 10 and I am 15 years old.

Aaron Ingram—I am in year 10 and I am 15. We not only come with the opinions of our school, we also come with our individual opinions and opinions from extensive research.

Isaac Sheppard—I am 14 years old.

Adam Bloom—I am 14.

Adu Sheppard—I am 12 years old.

CHAIRMAN—We have received a submission from Aaron and Ben. We have only just got it, so we have not had a chance to look at it. It is an erudite piece of academic genius, is it?

Aaron Ingram—We got to it slightly late; we were delayed by some of our research.

CHAIRMAN—All right.

Aaron Ingram—There are a couple of corrections we have to make.

CHAIRMAN—First, we will formally accept as evidence the paper by Aaron Ingram and Ben McCarthy which is their detailed assessment of the United Nations Convention on the Rights of the Child. The Boorobin School group also has a document which is a summary, is it?

Isaac Sheppard—It is a conversation between two students and an impatient staff member about their opinions about the state system.

CHAIRMAN—Right—that is as good as any. It does not have a date on it and there are no amendments to it. Aaron, what were your corrections?

Aaron Ingram—There were some typing errors that could alter the meaning of our submission. On page 1, line 5, the third word—

CHAIRMAN—Which is ‘know’.

Aaron Ingram—It is supposed to be ‘now’. On page 2, in line 1, the seventh word, which is ‘that’, is supposed to be ‘there’. On page 6, under part F, where there are quotes, the third word in the second sentence should be ‘help’. On page 19 part 5A, line 3, the 11th word is not ‘chanced’ but ‘changed’. The final one is on page 23, in the conclusion. In line 4, the word which I think is the 18th in that line should be ‘for’ and not ‘all’.

CHAIRMAN—So it should read: ‘ . . . by the UN for us to follow’. Okay. Let us hear from you now, and keep it very brief because we will want to ask a few questions. We will start with you, Aaron.

Aaron Ingram—Our submission, and what I am going to talk about here, is that we feel that information channels and information structures that supply information about the convention and children’s rights should be made more accessible because accessibility is a key to getting information through to the general public and to young people. These structures should be made more accessible, not only to the general public but to youth in particular. This information, particularly the convention, is something that they should be made aware of.

Within our submission we have proposed a new information structure that successfully passes information between the federal government and grassroots

organisations. The existing structure—

CHAIRMAN—This is your pyramid, is it?

Aaron Ingram—Yes. The existing structure is on page 11. On that existing structure, it states that information makes it up as a big misconception which comes down and does not always reach the general public because the current structure creates a very narrow range of opinion. Our proposed structure, which is on page 14, gives a wider approach and takes the arrows, which you can follow up and all the way down, and it can go through more bodies of the general public and government systems.

CHAIRMAN—It looks like the structure of this committee.

Aaron Ingram—We believe from our research as well that publicity and the media can play a big role in promoting the convention. But in this respect, the promotion has to be positive because the media participates in monsterring. What happens is that they create a big misconception. They link issues that appear to have nothing to do with each other. They link these issues and create a huge misconception and that can mislead the public into believing something that is not true. So if the media can actively participate in promoting the convention and children's rights issues in a positive way, this can increase information channels and sources, which is an important thing. The media is covered in part 2 of our submission which begins on page 4 and ends on page 8.

CHAIRMAN—Who is going to do the second one? Just give us a broad summary of what those two or three pieces of paper mean.

Mr Sheppard—The process that they wanted to follow was that they wanted to do a conversation. It will only take about three minutes at most and, effectively, it is just running through this.

CHAIRMAN—Okay. Go on.

Mr Sheppard—I participate in a very tiny way. This piece, by the way, started out of a process where staff and students got together to talk about their experiences of state education compared to where they are at in the Boorobin School, so it comes out of the students.

CHAIRMAN—But it basically reinforces some of the points you made in your appearance.

Mr Sheppard—Absolutely. I listened to them. The students will now present their piece.

Adam Bloom—So they tell us what we must learn, what we can wear and do in

school, where we can go outside of school, how long we can stay out and what we can say or do.

Adu Sheppard—But what about our rights—our rights to say what we think and to find out about things that are important to us?

Mr Sheppard—Can we start now? I think others are waiting.

Adam Bloom—Some adults always go on about how they learned such big facts and how to spell ‘Mississippi’ and other useless stuff, but they never actually use it. What use is that? What sort of future is that?

Mr Sheppard—Are we ready yet?

Adam Bloom—Schools are so outdated. They work on ideas that have been around for more than 100 years. People have changed, so have people’s lives, but schooling has only changed its appearance, not how it deals with you. They cannot treat you like that.

Adu Sheppard—Some teachers weren’t like others. They will be people who ordered you around. When teachers meet adults they change so much, they are friendly, but really they force you to learn. It goes in one ear and out the other.

Adam Bloom—They would go on about one subject over and over for weeks. Some people would learn something in 10 minutes and others would take weeks. Even if you already know it, you have to go over it again and again. You get so bored that you just want to muck around. It is very difficult for a teacher to teach 30 kids, but if they fail to do it it is the actual kids who suffer.

Adu Sheppard—Often teachers just teach a subject because the curriculum says so. It is treated just as something for you to do. Kids can learn basic things for themselves. The education system teaches you a lot of irrelevant stuff—just so long as it is hard.

Adam Bloom—I want to be treated like an equal. Some adults treat you like a kid. They do not treat you like a person. This used to make me feel rather limited. In the state school I felt there was no future. You were bombarded by pressures and teacher demands. You did not get any time to think about who you were or what you wanted to do. Our ideas are supposed to be listened to in schools. Honestly, what are they so worried about? What do they think would happen? Everyone is scared about letting kids try to make decisions for themselves. Initially, kids would want no rules and no teachers and then they would eventually work out something. Because they have lived with so many rules, they would initially want none. All kids need experience in making important decisions.

Adu Sheppard—Kids have a say in schools—I don't think so. You never get to make any decisions. Kids want to make major decisions, like what we learn. Most teachers do not respect who you are and who you want to be.

Adam Bloom—The student representative council is crap. They only deal with stupid stuff like standing up for a new drinking fountain—big deals over nothing. They are only allowed to make trivial decisions. To outsiders it looks like there is student decision making, but those people judging schools should really look at the types of decisions being made. Other decisions are based on popularity. Kids are encouraged to vote as a group and not to think for themselves.

Adu Sheppard—Most kids do not have the confidence to do it. I suppose it is peer pressure and a lack of confidence. Some kids do not even know what to do for themselves because parents do everything for them. They have no chance and therefore they do not know what to do. Give them a chance.

Adam Bloom—In some ways teachers see learning like the desk. It is focused on one surface. Christopher Columbus knew that the world was round and not flat. Kids know that learning is not just that one thing. It is no surprise to them. My desk is not the centre of learning any more.

Adu Sheppard—At the Boorobin School you get used to standing your ground and really choosing stuff for yourself. At first, I thought, 'What am I going to do?' There was no-one telling me what to do. Other students helped me to try out new things.

Adam Bloom—I do things because I want to and not because I have to.

Adu Sheppard—Schools like Boorobin let you get more confidence in yourself. Part of the process is that you have time to think who you are.

Adam Bloom—It is scary for some adults because they believe kids cannot learn to be capable and responsible without teacher direction and control. Kids get no real experience of true self-direction and responsibility until they reach 18. At Boorobin School, kids learn about these things from age four.

Adu Sheppard—To use the words of Mem Fox, an adult who understands:

If we allow children to show us what they can do rather than merely accepting what they usually do, I feel certain we would be in for some grand surprises. As adults, our feeble expectation of children's capabilities puts brakes on their potential.

CHAIRMAN—Before we go any further, Wendy, have you read the Ingram and McCarthy epistle?

Ms Reid—No, I have not. I would like to comment more about my own epistle or that of my organisation. We have found that ever since the convention was ratified, the public debate has been hijacked into a debate about parents' rights versus children's rights. In fact, reading the convention it states very clearly that parents do have number one responsibility for their children. I believe that the debate has been mishandled very badly, to the point now where there is a lot of defensiveness amongst adults about the convention itself.

I would like to say that at Kids Help Line we talk to around 400,000 kids every year. We have 80 or 90 counsellors, all paid, working round the clock.

Mr McCLELLAND—Is that just in Queensland or Australia?

Ms Reid—That is a national service operating out of Queensland. All of our counsellors are located in Brisbane and there is a 1800 number, so no matter whether the kids are in the Pilbara, Palm Island or Hobart, all the calls are taken in Brisbane. We have found, across six years of delivering the service, that kids are very committed and take a lot of responsibility, especially about relationships in their own families. That is the main reason they phone us and they work really hard to make those relationships better.

The public debate and some of the submissions I have heard today are really demeaning of children. I guess in many ways that sums up where our society is about this convention. There has been an automatic assumption that kids, firstly, do not know enough and, secondly, have to be looked after. I know through our experience at Kids Help Line that kids will try new things, they will learn new skills, they will find different ways of relating to their parents, their care givers, their teachers and other important people in their lives. In fact, a proper implementation of the convention would not end up in a bunch of anarchist, anti-parent children in Australia. Children tell us they value their parents and their families above all. We also run a service called Parent Line, for Queensland parents, and they tell us that they value their children and families.

The convention does not lay out rights for the child that are mutually exclusive of rights for the parents. What I find when I read the convention in a positive light and talk to literally millions of kids, as I have across the last six years, is that the convention lays out a plan or a framework where it can become a support for parents, teachers and the main people in kids' lives. It is not anti-parent, it is not anti-society and it is not pro-children. I see it as a really beneficial convention, especially if we do implement it in legislation and policy, just to create a framework that makes our society better because it will involve children in a non-tokenistic way, particularly articles 12 and 13.

Briefly, article 12 states that kids have a right to express an opinion on all matters that affect them. We undertake surveys at Kids Help Line. In a survey, for example, on children who have been sexually or physically abused and been through child protection agencies—no matter in which state; it was a national survey—we asked them about their

experiences of going through that process. The feedback that they gave to us about that is really valuable to hand back to those workers so that they can improve their services.

I guess where we are coming from is looking at all of those organisations or services that are there for children, so we are talking about schools, child protection, juvenile justice. Quite often, kids will not seek help or are not happy with the processes when they go through those organisations or systems because they are not consulted, they are not asked. In fact, when people do stop and ask, the information they get is incredibly valuable, and cheap and easily implementable.

CHAIRMAN—With all the information that you get, is everything on the end of a telephone, or do you have face-to-face discussions as we have had here today?

Ms Reid—All of our work at Kids Help Line is on the telephone. We do not dial out, so it is children dialling in. Every week there are 25,000 attempts from young people all around Australia and we answer about 8,000 to 10,000 calls.

In the last few years, though, we have implemented what we call peer counselling. That is where our counsellors are trained and there are trained people in different states going into schools, because what we find is that when kids are in trouble, and they feel they cannot talk in their families, the first people they go to for help are their peers. We had a lot of kids ringing up and saying, ‘My friends are in big trouble and I don’t know how to help them.’ So we are now going into schools and delivering basic skills to kids so that they can help each other.

CHAIRMAN—You may not have a feel for this but how many would phone in simply because they have a problem as compared to those who specifically say, ‘The Convention on the Rights of the Child says X, and therefore, I’m phoning in.’ How many young people who phone in are aware that the convention exists?

Ms Reid—I would say, virtually none.

Mr McCLELLAND—Do you have about 400,000 calls a year?

Ms Reid—Yes. No young people that I know of state that to counsellors. I do not know the details of every call about the convention. Is it article 13 that says that children have a right to know? Is that the one about information?

Mr BARTLETT—How would you implement article 13?

Ms Reid—I think Aaron summed it up. What kids do say to us over the phone, and when we go out to schools, is that when they write letters to the editor or they ring up talkback shows they don’t get heard because they are kids. When they try to use those channels to find information or to express their opinion in the public domain, they do not

get the opportunity to do that.

CHAIRMAN—How many of the young people here were aware of the Convention on the Rights of the Child?

Isaac Sheppard—I was.

CHAIRMAN—How did you know the convention existed? Was it simply because Mr Sheppard came along to appear before us last time?

Isaac Sheppard—No. It was raised at the school meeting at our school.

Mr McCLELLAND—When was that?

Isaac Sheppard—I cannot remember exactly.

Mr BARTLETT—How was it raised?

Isaac Sheppard—During the school meeting, which is held every week. Whoever attends gets to do all the school rules and that.

Mr BARTLETT—Did you discuss the articles, the general thrust of the convention?

Isaac Sheppard—Yes.

Mr McCLELLAND—Was it last year, the year before, or several years ago?

Isaac Sheppard—It wasn't that long ago.

CHAIRMAN—Was it in the lead-up to Mr Sheppard's appearance before this committee a few a months ago?

Isaac Sheppard—Yes.

Mr Sheppard—It was before that. It might have been at the first Asia-Pacific sitting of the Children's Rights Conference.

Mr McCLELLAND—Which was when?

Ms Reid—April of this year.

Mr Sheppard—That is the first that they probably would have heard about it.

CHAIRMAN—What about Aaron and Ben?

Aaron Ingram—The convention was made aware to us at the same time as this group here. We were made aware at the conference but we had never before had any knowledge of the UN Convention on the Rights of the Child.

Ben McCarthy—I had heard of the UN Convention on the Rights of the Child but I did not know exactly what it was.

CHAIRMAN—What about you, Becky?

Rebecca Rawson—I had absolutely no idea. My counsellor at school approached me because she knew I was interested in it. But, other than that, our school was not told. I was the only one in our school who was told and that was back in April.

CHAIRMAN—Did you attend the same conference?

Rebecca Rawson—Yes.

CHAIRMAN—So is that where you are all coming from; the common thing being the conference. What was the conference, again?

Ms Reid—I would like to add some clarification. The Kids Help Line is a member of Defence for Children International, which you would know about.

CHAIRMAN—Yes. The alternative report.

Ms Reid—Our Brisbane chapter decided we would run a conference on the rights of the child for the Asia-Pacific region. My role in that as one of the organisers was to ensure the participation of children and young people because, once again, we did not want to have another bunch of adults standing around talking about the rights of the child and not engaging children. By doing that, we are in breach of article 12 and 13.

CHAIRMAN—Sheryl was at the conference, was she?

Ms Reid—That is right. It was very difficult to ensure the participation because no-one wants to give money for kids to go to conferences. There is very little support for young people to actually attend. So our organisation put up \$10,000 and flew kids and supported kids for those few days with food and accommodation. I mailed out information to all schools in the south-east Queensland area explaining what the conference was about and inviting participation. Then we put a day aside to teach kids how to be conference delegates.

CHAIRMAN—But, in doing that, you made specific reference to the convention?

Ms Reid—That is right. And that was, I think, probably how the young people here today first heard about it.

CHAIRMAN—I see.

Mr McCLELLAND—We have heard evidence—which unfortunately has been hearsay on hearsay more often than not—that society is at risk because more and more children are finding out about the convention concerning the rights of the child. They are ignoring their parents because they are saying, ‘You are infringing my rights.’ Are you saying that in some 400,000 calls that you have received rarely if ever was there a mention of this convention or their rights under the convention being infringed?

Ms Reid—That is right.

Mr BARTLETT—The bulk of the calls you receive are they about issues of requiring help, protection or advice or are they young people wanting to express their opinions about different things? What is the main thrust of the calls?

Ms Reid—That is in the information I gave you. Last year we responded to about 400,000 calls. Three-quarters of those are what we call ‘soft calls’ where kids ring up with no significant problem. They ring up to chat, say hello, check out the service and see what we are like. However, they only account for about 10 per cent of time. So 90 per cent of the counsellors’ time is spent counselling the other 100,000 kids who had immediate and significant problems.

Mr BARTLETT—Was there an overwhelming feature of those with problems?

Ms Reid—We collect non-identifying data about every call to which we respond, that is, age, gender, area in Australia, what the problem was and how severe it was. Almost 40 per cent of our calls are about relationships. Most of those are about family relationships and usually kids are phoning about getting on in families, being able to talk to mum and dad, having more time and affection from parents or anxiety over disharmony between parents. So these kids are actually phoning up to express how they feel and during the course of counselling, counsellors generally work with them about different strategies or options they can use in their lives to improve relationships, which is totally the opposite of some of the arguments that I have heard here today.

CHAIRMAN—How long have you been involved in this?

Ms Reid—I have been involved since it was set up. I was part of the original team.

CHAIRMAN—For seven years?

Ms Reid—That is right.

CHAIRMAN—Can I ask you a very personal question? Are you a mum?

Ms Reid—Yes. I have a 17-year old daughter.

CHAIRMAN—So you have seen it from the age of 10 or thereabouts. Is she still at school?

Ms Reid—Yes, she is in grade 12.

CHAIRMAN—Let us just come back to Becky. Would you like to make a very short statement? You tell us what you want us to hear.

Rebecca Rawson—I just want to say that I have relatives like uncles and aunties all around the country. When I told them about the conference that I attended in April, no-one knew about it. There was nothing in the media that signifies where it ranks with the media and with society in general. I just feel that, if it is ever going to change, as a whole the nation has to work together to change it. It is not going to change if no-one knows how they can help, what they can do or that a conference like that even occurred.

My uncle is very passionate about the issue. He lives in Taree in New South Wales and he did not hear a word of it. He did not read about it and he would have come up for the conference. He would have come up from New South Wales to the conference, but he did not hear about it. I just thought that no-one knows that these things really happen. My principal did not even know it was happening. He asked me the next week how it was and what did I attend; and I represented the school. At our school alone I do not see that many Kids Help Line posters or help posters of any description.

On the Gold Coast I think it is very important—where your looks determine a lot about you—that there are institutions that can help children. Because a lot of children on the Gold Coast are very insecure about the way they look or how much money they have and there is nothing there really to help them because the counsellors even in schools are not that good. They are good, but I have found in my experience—because I have had an experience—that they do not really help and there is not really much help there. There is one clinic at Miami and there is one psychiatric unit somewhere on the Gold Coast. I am not quite sure. I just think there needs to be more community awareness so that people can work together to change something.

CHAIRMAN—As a result of you going along to this conference, how many others at your college are now aware of what the help line, the Kids Help Line and the convention are all about? Is there interest?

Rebecca Rawson—Yes, there is interest. A couple of weeks ago there was excellence expo Griffith University and I think there were five groups from our school

that entered with the theme of child's rights. They are from grades eight to 12. There were five groups from there, so that is some people. But in year nine—and my brother is in year nine—he has a lot of his friends who are interested and that is quite young. In year 12 there are also a lot of them.

CHAIRMAN—And how do they relate those kids' rights, as you put it, to parents' rights and parents' responsibilities?

Rebecca Rawson—Obviously there are a lot of children who think, 'I'm allowed to do what I want because I can.' But I have found in my experience that you have to work with your parents, because your parents do have rights. My mum was saying that to me the other day. She said, 'We have rights, too. We have to work together.' It has got to be a group effort with parents and children. But that is what children have got to realise too, that they do have to work with their parents.

CHAIRMAN—But, as a result of this increased and enhanced knowledge of the Convention on the Rights of the Child or CROC, how has that changed young people's intentions on some of these things, like attitudes to family situations and to their rights at the expense of everything else?

Rebecca Rawson—From the conference alone, given that so few people knew about it, I do not think the conference has made any difference with children at my school. Because no-one knew about it, it could not make any difference. I do not think that children are that interested.

CHAIRMAN—What about you, Ben? What about your school?

Ben McCarthy—At school many people are aware of the conference. There are three; me, Aaron and Brook.

Aaron Ingram—Yes, and Brook. Four representatives from our school actually went to the conference itself. We were aware and half of our school is aware. This conference that was held on an international level and it was recognised, but on a national level in Australia it was not. Someone came from Japan and the majority of people she knew at her school knew about this conference because she actually went around and told them. Her organisation, which is DCI, actually did that. On a national level, not many people in Australia were aware and children were not aware in Australia that they were having this conference.

CHAIRMAN—As a result of all of that, has there been any attitudinal change? Let us take Ben, for example. Are you now saying to mum or dad, 'You can't come into my room' or 'You can't tell me to do this' or 'You can't tell me to do that'? Or is it a two-way process?

Ben McCarthy—No. I have always been amazed that my parents shelter me. I respect that and I respect their privacy and they respect mine. So I do not really have any trouble with that. Some people abuse the convention itself by saying, ‘You can’t do this or this.’ It just gets out of hand. The small majority who do abuse the convention itself do wreck it for the majority of people.

Mr McCLELLAND—Do you know of anybody who has abused it in that way? Do you know first hand?

Ben McCarthy—At school, yes. I knew some people. The teacher gave them detention and they raved on about the convention. They came to me and told me about this problem and I said, ‘That is not what the convention is used for.’ They were talking in class when someone was talking. I was always brought up that you should respect it when someone else is talking. They were wrong.

Mr BARTLETT—And did those students have the same sort of problem with their parents as well?

Ben McCarthy—I do not know about their personal life, but they do muck around in school, they do misbehave and they do take that opportunity away from others.

Mr BARTLETT—Do you agree with what Becky said that that is a matter of respecting the rights of parents as well and that it needs to be worked out together?

Ben McCarthy—Yes, I do.

Mr BARTLETT—How about you guys? Adam, would you agree with what Becky said about needing to work out your rights by discussing that with your parents and looking at their rights and responsibilities as well?

Adam Bloom—Partly. Both parents and kids have rights and there has to be some sort of balance.

Mr BARTLETT—Have you had a situation with your parents—or has any of you—where there has been a strong disagreement about rights, what rights you have and what rights they have?

Adam Bloom—No.

Adam Ingram—In my household my father, who is a lot older than my mother, has been brought up to think a father is the head of the family and a father can do what he wants. This has been a very strong point within our family. Because my father was brought up in one religion and my mother was brought up in another religion, their beliefs have clashed; and because they have been brought up in different generations there have

been different points of view, so we have had to work these problems out.

Mr BARTLETT—Have they been worked out in the context of the way the family has generally worked to resolve those questions of conflict, or have they been worked out in a different way because you are now aware of the convention?

Adam Ingram—When I was made aware of the convention, a lot of problems were made easier to solve from my level, but I also have to bring the convention across to my parents. For me it is a lot easier to communicate with my mother than it is with my father. Getting a message across to one parent is one thing, but getting it across to both parents so they can move together and help their kids grow up with this knowledge is a harder thing to do, especially if parents come from different religious backgrounds and different generations, because both parents have got to agree.

Mr BARTLETT—So the convention has not actually changed that.

Adam Ingram—It has helped. Our family has resolved a lot of problems with some assistance from the convention.

Mr BARTLETT—How about you, Becky? Has it impacted at all on the way your family has tackled disagreements or tensions?

Rebecca Rawson—My mum is a single mum, so there is not the dad's input there. I have got an older sister and a younger brother. My sister and I do not really have a problem with agreeing with Mum, because she is quite young herself, but my brother tends to think that because he lives with three females he has rights that we do not have as girls. They are just basic things like, 'I should not be doing this, I should not be doing that, you should be doing it.' I talked to Mum about it and she has put across to Rohan the point that parents and children have to agree. That is what I said to her from the conference. That was one of the main things I got from it: that it is a two-way stream, and it is not going to happen—

CHAIRMAN—Are these the sorts of interpersonal things the Kids Help Line gets from kids like Becky or Aaron, that they ring up and say, 'Help, what do we do about this?'

Ms Reid—Almost exactly. They are just ordinary Australian families working out their problems. In this case it is the kids who are recognising the problem and initiating the help.

I would like to say something further about the conference that the kids are talking about. There were 250 adult delegates from the Asia-Pacific and 50 children from the Asia-Pacific. The children had a day on their own to work out how to be delegates and what they were going to do in the opening and closing ceremonies. There were no adults

present, except for Derek. They talked and discussed the convention and they came up with rights and responsibilities. When they presented that information to the conference, it was the responsibilities that they had worked out for themselves that got presented first. This was 50 kids aged 12 through to 20.

Mr McCLELLAND—On that issue, we heard evidence yesterday from Chris Sidoti that in his view articles 12 and 13 of the convention certainly gave children a right to be heard in matters affecting their interests, but that does not mean the same thing as children having their way. It was fundamentally different from having a right to be heard as opposed to having your way. Is that a fair analysis of those clauses?

Ms Reid—I think it is a very fair analysis. As adults we look at articles 12 and 13 and we think of participation and consultation, and we think that is too hard. How do we have children participate in something like this? How do we consult with children nationally about this piece of legislation? It seems very hard, but it can be done. There are lots of different avenues like Kids Help Line over the phone, and there is Internet in schools.

CHAIRMAN—So you are on the Internet?

Ms Reid—Yes. But still it feels like a hard job to do. Also, there is an underlying attitude that kids do not know, so why bother? They may not know the details of the convention, but they are experts on their own lives. They know what it is like to be in a school where there is bullying. They know what it is like to be in a family where there is abuse. They know what it is like to go to child protection agencies and not have their wishes listened to. Kids actually do have knowledge about those areas of their lives. We cannot let the fact that they do not know the big stuff, the policy or the legislation, put us off actually consulting and having them participate in decisions that, on the ground level, will impact on their lives.

CHAIRMAN—Let us take up the point with Adam. Let us say I am Mr Bloom, your dad, and I say, ‘Adam, your hair is too long, get your hair cut.’ How do you handle that?

Adam Bloom—I would say, ‘What’s wrong with having long hair?’

CHAIRMAN—Is that all you would say? How would you go about negotiating? I am a pretty hard taskmaster and I say, ‘Get your hair cut.’

Adam Bloom—I would say, ‘Why should you have control over what my hair is like? Is it your right?’

CHAIRMAN—Maybe as a reasonable parent I might accept that, but maybe I might be totally unreasonable and say, ‘Get your hair cut.’

Mr McCLELLAND—Perhaps I could add another question. If you did not get it cut and he had given you an ultimatum that day would it be appropriate, in your view, for him to administer corporal punishment when you got home?

Adam Bloom—No.

Mr BARTLETT—If there was a disagreement and you spoke to your dad and said, ‘I like it long. I cannot see any reason I should get it cut,’ et cetera, but he still insisted you get it cut, would you accept that you ought to comply with his wishes, or not? Would you think your father had a right to tell you to get it cut?

Adam Bloom—No.

Mr BARTLETT—So you would think it reasonable to refuse to get it cut?

Adam Bloom—Yes.

Isaac Sheppard—Can I say something? Adam’s dad has long hair.

Mr BARTLETT—Adu, you are in the same situation. How old are you?

Adu Sheppard—I am 12 years of age. For one thing, they would not say that; and also I would probably just say no.

Mr McCLELLAND—You can see that your parents would have a right to express their view on your having long hair.

Adu Sheppard—Yes, they can say that if they want, but I am not going to listen to them.

Mr BARTLETT—They can say it, but it would be your opinion that they do not have a right to require you to have it cut.

Adu Sheppard—No. It is just like telling them to get their hair cut. They would not listen to you if you said that to them.

Mr BARTLETT—So you do not think you should listen to them on that issue.

Adu Sheppard—Yes, that’s right.

Mr BARTLETT—At what age do you think it is reasonable that they can tell you to get your hair cut, and at what age should they not be able to tell you that?

Adu Sheppard—You should have a choice at any age.

CHAIRMAN—I am not referring to you specifically, but do you not think that as a 12-year-old you are not as mature as a 17-year-old, and therefore maybe some decisions that have to be taken are better taken on your behalf when you are 12; whereas perhaps Becky, at 17, might have a slightly different view and her parents might have a different view as well?

Adu Sheppard—Yes.

CHAIRMAN—Do you see that to a certain extent maturity comes with age—in some ways, but not altogether?

Ben McCarthy—Can I butt in? Say you are 15 and you have got a job. You work at McDonald's. You work with heavy machinery and you have long hair, and that is a hazard and the manager asks you to get it chopped. Would you turn around and say no?

Adu Sheppard—It depends how desperate I was for a job.

Adam Bloom—If there is a need for it to be chopped because your hair could get caught in the machinery, then you might put it up. But if you dad just comes along and tells you to get it chopped for no reason, there is a bit of a difference.

Mr HARDGRAVE—Could I try for a reality check here? I do not know, maybe I am an idealist, but I do not see many parents going to the wall on the haircut thing these days. I know it is just an example but do any of you guys know of any friends who find their parents are pushing and shoving them around on these things or values in particular? I will use a phrase which I would like you to think about: values which you inherit from your parents and people who influence you are more caught than taught. In other words you pick them up from what you see of their actions rather than necessarily from having them belted into you or pushed upon you like the length of the hair and the way you talk to others. Is that a fair comment?

Aaron Ingram—I know someone like that.

Mr HARDGRAVE—You know of a parent who actually enforces something?

Aaron Ingram—My parents do exactly the same thing. They say to me—my mother especially—'You can choose to learn this'. There are certain things I can choose to learn but there are certain things I have to learn like common courtesy and manners and the standard things to act in normal society and participate in being courteous. You say thank you. You say please. You say how are you today and all those sorts of things. There are certain things you will pick up from your parents. Sometimes your parents will let you know, 'I say this but I don't want you to say this and please don't pick this up.' Then I would always come back with, 'If you say it, why can't I say it?' Of course I have got out of that at my age now but I have a younger, five-year-old brother. They pick up the bad

things more than they pick up the good things, obviously.

Ben McCarthy—As teenagers we probably speak three different languages. If we want to have a conversation with you we would not be saying, ‘F this and F that’. If I talk to someone normal who reacts that way, I probably would use that kind of language. You have to respect the other people and their wishes. I think ‘respect’ is a key word in how you react around older people and different people in the community itself.

Mr HARDGRAVE—There are a lot of older people. I do not know—I feel like I am still 19. I am 37 but I still feel like I am 19.

CHAIRMAN—Wait until you are my age.

Mr HARDGRAVE—A lot of older people tend to think younger generations are crashing and falling and the whole society is going to fall apart. Obviously you guys feel a lot more confident about it. Do you sit about trying to prove that confidence?

Ben Ingram—There are some people at school about whom you wonder what they are going to be like when they grow up and how they are going to turn out and what is going to happen to them. Then you think to yourself, ‘Well, I am not exactly perfect, am I?’ You have to look at people and you have to say, ‘Now, what has this person come to teach me? Why has this person done this certain thing that I really don’t like or behaved in a certain way?’ You think to yourself, ‘I should not behave like that,’ but you should also have the integrity to go up to this person and say, ‘Is this the way you normally behave or are doing this blah blah?’ Some people get offended by this. The majority do. There are others who take it and look at their problems and see ways in which they can mend them. You have to weigh up what you can do and how you can consider yourself among different groups and in the end how you feel society is going to turn out for you.

Ms Reid—This sort of debate about haircuts has gone on for thousands of years. Just because we have ratified the convention it does not mean that is going to change, does it?

Mr HARDGRAVE—I am glad you brought the convention up. I was just going to make one last contribution to this which was to ask the question: do you—the younger folk present—believe that tools like conventions are absolutely vital ingredients in ensuring your survival as individuals or is it just a measuring stick that is convenient to have? Do you think that they are absolutely vital?

CHAIRMAN—Would you excuse me? I have to catch a car. You have been terrific.

Aaron Ingram—I can only clarify my statement here.

Mr HARDGRAVE—Does anybody here see that the convention is a vital instrument?

Ben McCarthy—I think the convention is vital.

Mr BARTLETT—Why do you see that?

Ben McCarthy—Because it is like a tool, I guess. We were discussing before that not many young people know about the convention itself. Conferences like this are to make people more aware of it. People from all over Australia who are there go back to the organisations and tell them, so it gets around word of mouth and, in two or three years, you have people aware of the convention.

Mr HARDGRAVE—Is it going to be a measure in future years of a pre-convention child and a post-convention child?

Mr Sheppard—Can I comment on your question whether the convention really makes enough difference and whether it is absolutely necessary that there is some sort of foundation? In our terms, from the Booroobin School, it has not been so necessary because we have locked in to the company which operates the school. Within the school rules, there are natural rights that accompany every child and, in fact, they are equal to every adult in the school.

The sorts of hypothetical questions you were throwing at these fellows before do not exist within these families because they have already recognised the rights. They have to because they are a member of this company that recognises the rights of children right from the beginning, without having the convention necessarily there. I believe in some way there needs to be some legal framework to provide those rights and that is what we have done within the school.

Mr BARTLETT—Isn't that the case though generally in society: those inalienable human rights we uphold are there regardless of the convention, and having a piece a paper saying they are there does not actually change what we, as a society, uphold?

Mr Sheppard—No.

Mr HARDGRAVE—And in some ways restricts your rights because it codifies them?

Mr Sheppard—No, I do not agree. You say inalienable human rights. I do not necessarily agree. Effectively the laws of Australia are generally set by precedent. We do not have a charter or a bill of rights in Australia that provides that even to adults. You cannot say that.

Mr BARTLETT—But those laws set on that precedent are set on an understanding of our society and the way it works because we accept those rights as being fundamental.

Mr Sheppard—But only when the precedent is set and when someone takes it all the way through the High Court to prove it.

Ms Reid—I will just back up what Derek is saying. Also, those laws and rules are very adult centred. When applied to children, they do not necessarily work well for children. I think particularly a federal commissioner appointed for children and an office for the status of children would have that oversight role and be able to look at new legislation and policy, do a child impact statement like we do current environmental impact statements on trees and bush, and look at how that would affect kids, consult with kids, and go through the old laws currently in place that do impact on kids' lives. It is vital that we have a federal commissioner for children. Whether states have them or not is irrelevant. Federally that appointment would raise the status of children in Australia tremendously.

ACTING CHAIR—In terms of the controversial clauses, we have 12 to 16 primarily and then 19 dealing with corporal punishment. We have dealt with comments on 12 and 13. What is the view of any of the youths of your right to express your freedom of religion and thought? Do you think your parents can or should be able to compel you to go to a particular church or scripture?

Rebecca Rawson—I have been brought up in a Catholic background my whole life. Because I attended church at such a young age and have been to a Catholic school all my life, I would not want to change. Personally I would not want to change my religion. But children might want to join a different religion.

I believe that children should be able to do anything, but until up to 10—even 14—parents should be able to choose the best decisions for their children religion-wise because, up to that age, children do not really have much experience to know what religions are like. They could say something like Buddhism sounds good. At the moment a couple of my friends are saying, 'I'm going to join that when I am older because that sounds really good', but I think that is because a lot of the stars do. People are influenced by the wrong things.

Maybe there should be programs for their parents on where they can influence the children about the right decisions for them, because children cannot really make up their own minds on religion. I know that I would not have been able to at 10 years of age.

ACTING CHAIR—So it necessarily relates to the maturity of the child?

Rebecca Rawson—Yes.

Isaac Sheppard—I would go against that. At 14 years of age I have got a very strong view on what religion I want to have and all the things that I want to do, so what you have just said is very wrong.

Rebecca Rawson—There are exceptions to everything. Of course, there would be exceptions. I know that my brother and his friends are at that very radical age at the moment where they would do anything. They would not even think about things like religion. I am saying that it is only for children like that, not for ones like you. You obviously care, because you are here.

Isaac Sheppard—People learn through their experiences and mistakes.

ACTING CHAIR—But your parents have a right to try to stop you from making what they believe are going to be mistakes.

Isaac Sheppard—They can try, but they will not succeed.

ACTING CHAIR—It depends, doesn't it? It depends on whether they are going to attempt to persuade you or induce you on the one hand, or whether it gets to the point where they try to exercise coercion such as corporal punishment. Is it appropriate or inappropriate, from your point of view, for a 14-year-old to receive corporal punishment?

Isaac Sheppard—I think it is pretty inappropriate.

ACTING CHAIR—Regarding freedom of association, if your parents tried to restrict whom you associated with, would they succeed or, if you were out of the purview of your parents, would you associate with them anyway? Adam, did you want to answer that?

Adam Bloom—You can look at it from the other way around. Can the children say who their parents can associate with? It is that sort of question. I think nobody should have the right to tell other people who they should associate with.

ACTING CHAIR—They could express a point of view on it, though?

Adam Bloom—Yes, they could express a point of view, but they should not have the be-all and end-all say.

Mr BARTLETT—Do you think that applies at any age? Adam, at what age do you think that really should apply?

Adam Bloom—Say if a five-year-old was associating with teenagers doing drugs or something—which is not very likely anyway, but say that is the situation—I think the parents should be able to stop them at that age.

Mr BARTLETT—What about at 10 years of age?

Adam Bloom—If you are talking about friends—this has happened to me before—when I was a bit younger my parents might have said, ‘So-and-so is a bad influence on you, so you can’t hang around with them anymore.’ These were people my age. I think you should still have a choice at that age.

Mr BARTLETT—Even if your parents really thought that they knew from their experiences that those friends were not good for you, would you still think that they would not have a right to tell you not to hang around with them?

Adam Bloom—They would not have the direct right to stop you, but they would have the right to recommend.

Mr HARDGRAVE—Who could influence you on that sort of thing? None of us likes to be told that we are wrong, no matter how old we are. I go back to my ‘caught rather than taught’ line, which may not have been fully understood. That is, your parents’ values and the importance that parents place on whatever decisions they make that they think are for your welfare is something that you would pick up anyway, I would imagine—influenced by your parents—providing you had had the experience of good parenting.

If your parents had been good and you felt a bond with them and they said, ‘Hey, look, we really think that so-and-so is the best person to hang around with,’ you might well take that as something that you should listen to in one instance, depending upon the type of approach. But if they came down hard and said, ‘Clear out from that person,’ then you are going to buck. Nobody likes to be told they are wrong, so could your parents influence you in that sort of way, depending on their approach? Or is there somebody else who is more influential for you: a teacher, a social worker, a youth club worker or somebody like that?

Adam Bloom—As you were saying, if a parent does try and talk it over with the child, that is a lot better than if they just say, ‘You can’t be with that person’. Usually, if they talk it over and tell them why they think that way, it turns out a lot better than if they say directly, ‘No, you can’t hang around with them anymore.’

Mr Sheppard—This issue of parenting raises some fascinating questions. I see that there are real challenges from the committee members about this issue of parents and children. If there are mechanisms by which anyone could ever be taught to be a good parent, I would love to know about them. I do not know of any. Churches have tried to do it and there are all sorts of counselling processes but, even in dealing with the issue of saying ‘You shouldn’t associate with that child’, I would question—and I have in the past—the parents’ ability to actually judge the person in that process.

Every time you come up with two people coming from opposite directions with a yes/no situation and not looking for a win-win situation, you are always going to have conflict and you will always have reactions, and the reactions will be that those people will end up smoking because their parents told them not to, or that those people will take drugs because their parents told them not to. What do you do? Are you going to shut them in their room and turn the key? It will not work. It never does. The only way is through good communication, and that is the sort of stuff we try to do all the time. It is consensus: that is what we should be aiming for.

Mr HARDGRAVE—Is this why we have things like the treaty on the rights of the child, because bad parenting has led to some of these bad outcomes? Perhaps some of the very worst examples of parenting have caused a decision to be made that it is important in Australia that we have some standards on parenting.

Mr Sheppard—I do not know.

Ms Reid—The convention is largely looking internationally. There are countries in the world at war: obviously, the convention applies to children in those countries really differently from the way it does here. Really, the majority of Australian families are living quite normal, functional lives, and we have every reason to be optimistic about our young people. But there is that small group of kids who have missed out in one way or another, and it really is important to enshrine and protect their rights—not so much by forcing families or parents to be different but more by a top-down thing, so that we do recognise their rights and force services and government to be different.

ACTING CHAIR—So the convention, in other words, extends to far more than simply butting up children's rights against parents' rights?

Ms Reid—The impact of a convention, if it is implemented effectively, is in more of a top-down approach so that we start having family- and child-friendly city councils, where there are places where kids can assemble together more than three at a time without everyone getting worried. The social change of getting that sort of legislation right can only be beneficial for all of us.

ACTING CHAIR—Wendy, early in the piece, to get the participation of everyone, we may have cut you off from some submissions that you wanted to make. Are there any other points that you would like to expand on?

Ms Reid—I know that every time we at Kids Help Line decide to run some research—and we have looked at, as I said, kids' views of statutory child protection and also at how kids feel about being at home without adult supervision—we are in a great place to do it, because kids phone us and, if they have not got an immediate problem, we say that we are doing some research and ask would they like to contribute. The participation is made easy for us, but it is not the only way. There are lots of other ways that could be used by government and decision-makers very easily.

Too often, the excuse is used that we cannot really consult or get participation because it is too hard. Kids really are very keen to participate and have their say about things. I cannot reiterate strongly enough how valuable their information feedback is, from a very young age.

Consulting with kids is not a parent-bashing exercise. For example, when we asked kids about how they felt about being home alone, it was merely to see how they felt and to find out what was happening. We discovered that 75 per cent of kids did not know what to do in the case of an emergency, and so we were able to go through the media to call on parents to sit down and go through basic safety strategies with their kids. We called on workplaces to open up the telephone lines so that parents could phone home or kids could phone, just to check that they were safe. We called on parents to natter with their neighbours as follow-up if anything did happen. When you do consult like that, the outcomes are good for everyone.

ACTING CHAIR—Yes. Does anyone else want to add anything to their submissions or to other points they have made?

Ben McCarthy—On the issue between the parents and children, a good solution is to get the parents and the children together to try to work out some kind of agreement—and the convention itself applies to children and parents—so that a child cannot say, ‘You can’t touch me,’ and a parent cannot say, ‘You can’t do this,’ and you do not have that split with two laws but you have a law which applies to family. They should try to act together to get a convention that works together as one.

ACTING CHAIR—As opposed to coercion.

Aaron Ingram—Where are the clauses in articles 12 and 13? I have been following it today, but it seems to me that articles 12, 13 and 14 are some of the most important articles outlined in the convention, because they outline children’s rights to free speech, children’s right to correct information, and children’s right to practice the religion of their own choice in their own manner. Can you outline for me where the clauses are in these articles?

ACTING CHAIR—They are those ones. The controversial ones, I suppose it is fair to say, are 12 through to 16 and also 19, from the point of view of the evidence we have heard.

Mr Sheppard—I want to say something on the issue of consultation and process. You are proposing a process of getting information through so that there can be dissemination and people can get involved and discuss it.

Aaron Ingram—You can reach a majority through mass processes.

Mr Sheppard—Yes. The process that we employ in the school—and so much of

the stuff that is being talked about here, and the last time I was at the inquiry—is all about growing and learning about these things, about understanding and being able to comprehend information that comes through. I do not believe the Convention on the Rights of the Child has been anywhere near well publicised. We said last time that we were here—or at the conference, I think—that one of the school staff checked with libraries in the area. There are four council libraries, and not one of them had anything on the convention at all.

To exhibit the sort of processes that we employ in the school, all information within our school is available to anybody: anything that comes into the school. People run with the things that they are interested in. A couple of staff ran with an interest in the Asia-Pacific Children's Rights Conference, and the students became engaged in that because we advised them of its existence and what it was about.

Recently, a group of students—nine students from our school and four staff—went to Yeppoon to assist with another school that is starting up, utilising the same model of education. In Yeppoon we stayed for a week and had a great time, but the students were totally involved in the public meeting that we held in the Yeppoon library to talk about the model of education. They were fielding questions from people ranging from councillors from local government to deputy principals of high schools to student councillors out of high schools and to a whole range of parents. So a consultation process was what that was all about. In terms of the fact that one person does not assess another person, there could not have been a better exhibition of people who were aware of themselves and what they wanted to do with their lives than came out of that meeting.

The whole thing of consultation, to me, is something that has to be proactive and has to have an integrated approach, and not necessarily just amongst children themselves but amongst people of all ages. The issue of dissemination of information is a really important one in Australian society, because the media does not do it anywhere near well enough.

ACTING CHAIR—As there are no further questions, we thank you very much for your input. It has been very useful and very informative.

Resolved (on motion by Mr Bartlett):

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

Committee adjourned at 4.30 p.m.