



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE ON TREATIES**

**Reference: UN Convention on the Rights of the Child**

**CANBERRA**

**Monday, 29 September 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	Ms Jeanes
Senator Neal	Mr Tony Smith
Senator O'Chee	Mr Truss

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.

**WITNESS**

**RAYNER, Ms Moira Emilie, Private Citizen, PO Box 1401, Collingwood, New  
South Wales 3066 ..... 1544**

JOINT STANDING COMMITTEE ON TREATIES

*UN Convention on the Rights of the Child*

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Monday, 29 September, 1997

Present

Mr Taylor (Chairman)

Senator Abetz

Mr Bartlett

Mr Laurie Ferguson

Mr Hardgrave

Ms Jeanes

Mr McClelland

The committee met at 11.31 a.m.

Mr Taylor took the chair

**RAYNER, Ms Moira Emilie, Private Citizen, PO Box 1401, Collingwood, New South Wales 3066**

**CHAIRMAN**—Welcome to this committee hearing. As you probably know, we have been taking evidence on the Convention on the Rights of the Child now for six months. The reason why I might be looking a little bleary is that I am still jet-lagged after having come back from Geneva late yesterday afternoon. I spent two full days of last week appearing before the committee, which was a very useful experience.

Before we start, I would like to mention a couple of things. First of all, I understand that there has been some criticism by Senator Woodley of the Australian Democrats of Australia's appearance before the committee. I would like to make the point, very strongly, that I am surprised that John Woodley has got it all wrong. I am surprised that he put a release out—

**Mr Hardgrave**—Why does it surprise you?

**CHAIRMAN**—I did refer to them as fairies at the bottom of the garden this morning on ABC radio. That is true; they just have no idea of what was discussed, which was pretty obvious from what he had to say in criticising Australia.

The second point I would like to make of Australia's appearance before the committee—it comes back to the Woodley comment and some negative spin that has been put on some of this by Defence of Children International, DCI, by Helen Bayes as the Australian representative—is that Australia's submission to that committee was very well received, irrespective of some of the ABC reporting in Australia early last week. At the end of the hearing on Thursday night, the chair and all members of the committee who were there—six of them—were very congratulatory of Australia's written submission, of the linking in with the alternative report and of the oral responses to the hundreds of questions that they had of the Australian delegation.

I have no doubt that, when their written response comes in a couple of weeks time, there will be one or two barbs for Australia in that in relation to the result, I guess, of our federalist approach to some of these issues. In fact, they pale into insignificance in terms of Australia's overall commitment.

Ms Rayner may have other views this morning, I do not know. I want to put that on the record before we start because there have been a number of negative spins put on the committee appearance last week. I wanted to put the situation as it really was rather than as a figment of some people's imagination.

Thank you for appearing before us. Before we begin, we have received your written submission of 17 June, and it has been received into evidence. Are there any errors

of fact or omission that you want to correct in the editorial?

**Ms Rayner**—I am not aware of having made any grievous errors.

**CHAIRMAN**—Would you like to make a short opening statement in relation to that.

**Ms Rayner**—I will be very brief. It is a personal submission that I have made. I am a member of a number of child oriented and children's rights organisations. The point that I would like to emphasise is simply my view that the adoption of the Convention on the Rights of the Child in 1990 was a tremendously significant symbolic act which has made very little difference to the way in which governments—state, territory and Commonwealth—have dealt with the rights of children other than the brief episode in which the High Court found that at least the administrative responsibilities of bureaucrats administering Commonwealth law included an obligation to consider the rights of children as they were exercising discretionary judgments. That seems to me to have been a highly appropriate outcome of our ratifying the Convention on the Rights of the Child and the response to it.

The requirement by the immigration department and subsequent to Attorneys-General and appropriate ministers seeking to ratchet back that domestic effect of the international treaty seems to me to have been a gross overreaction. It was, in my view, only a due process requirement, an appropriate due process requirement for the 1990s.

My submission and the papers I have written in the last 10 years have not recommended, as I am commonly misrepresented as recommending, the establishment of a children's commissioner as the cure to the poor status and poor emphasis given to the rights of children throughout Australia. Though a children's commissioner would also be a symbolic act, I have, for the last five years at least, recommended that at the minimum we should have a policy about children that is a national policy, a direction from the Prime Minister down—in other words, top down, which is the best way to make policy on ethical matters to meet the demand coming from the grassroots—a top down commitment to having a policy about children, and the coordination of those policies so that children are not overlooked in the range of other adult responsibilities.

What I am arguing for is simply a respect for the status of the convention, a commitment to at least requiring consideration of the rights of children when governments are making decisions that will affect them directly or indirectly and a mechanism for putting the rights and responsibilities of and towards children at the centre of our economic and structural planning at a government level—minor matters, I would have thought.

**CHAIRMAN**—Thank you. On page 5 of your submission you say, in part:

It—

that is the Commonwealth—

can do this best through its own policy administration without necessarily setting legislative standards or encouraging mandatory reporting requirements on government departments.

Sandra Mason, the chair of the committee, actually on the record on Thursday evening, conceded that it is not expected that Australia would be able to come up with some umbrella legislation to cover all elements of the convention. As one member of this committee—this is a personal view again—I agree with that. A lot of the evidence we have taken over the last few months has indicated that it would be very difficult.

The other point is that Professor Kolosov, the deputy chair, on the record before this committee and again in Geneva last week, conceded that this convention means different things to different people. Can you elaborate a bit more on that policy and administration initiatives you would like to see come from the Commonwealth in terms of this convention?

**Ms Rayner**—I agree that there is no point trying to get a single piece of legislation about children's rights, but we do not even have a consistent policy about children that cuts across portfolio areas.

In the report that I did for the Institute of Family Studies in 1994 I pointed out that it had been virtually impossible even for the Australian Institute of Family Studies and its then acting deputy director on research to find out just what we do for children directly and indirectly. It was far easier for those who we telephoned to say, 'That is a matter for the Child Protection Council' or 'It is a welfare matter.' They had no understanding that things like housing, counselling, provision of legal and other services and so forth directly affecting the wellbeing of children and the prevention of child abuse.

In the report that I wrote for the Commonwealth, which was a fairly pragmatic one I thought and thus it has sunk below the level of anyone's interest because it does not say anything scandalous or outrageous, I suggested that the Commonwealth could establish at least an interdepartmental committee which identified all issues which went to the prevention of child abuse—in other words, the promotion of child wellbeing—and which had sufficient authority because of its placement in the administrative structure to require those bodies with such policies and programs to report to it, and it could then coordinate it. It did not require any legislation. It simply required, as I suggested in my report, the consent of the Prime Minister, the Minister for Justice or the Attorney-General and, in that case, the minister responsible for health. It would be an excellent interim measure, which nobody of course took.

**CHAIRMAN**—Just to interrupt you—hasn't that first step been taken by Judi

Moylan?

**Ms Rayner**—Only within that department. My point is that if you continually regard children's matters as just a matter of health or just a matter to do with the Family Court, you do not see the overall effect of the decisions you make.

**CHAIRMAN**—But her review is going to go far wider than just health.

**Ms Rayner**—She hasn't got the authority of the Prime Minister and the Attorney-General to do so, so it will not go very much further. Her committee is not reporting to those bodies. What happens, as has happened here, is reported to the then minister for the health for the Institute of Family Studies, and that was that. The next step would simply have been seeing whether or not you could get support from the Prime Minister to, say, the idea, eventually, of establishing an Office for the Child, within his own office where the authority should remain.

I have also recommended that there are some things which could have been done which did not require even the establishment of a committee but would have changed at least our administrative structure, and that would have been a direction from the relevant ministers to their officers that, in considering matters within their portfolio, they should include specifically the fact that Australia has signed the UN Convention on the Rights of the Child which guarantees certain things, such as the right of a child to be brought up in a family atmosphere of love and understanding, such as certain minimum standards of life and quality of life which will enable them to grow up and take on an independent role in the future, such as the support to their parents—putting the focus on those conventions as a matter of practice. All that really required was an acknowledgment that administratively Australia's international obligations must at least be thought about, which is what the theme of Teoh was—not that it would direct all the decisions you make.

My experience has been that, when it comes to administrative, infrastructure and other matters, the rights of the child are not thought of for an instance. The priorities of the department do not require them to do so. This would simply require that it have a role. I think that sort of symbolic role, that process step, is probably more important than anything else, but it can only happen with the authority of—

**CHAIRMAN**—The federal government's view at this time, subject to whatever might emerge from the Moylan study, is that the Commissioner for Children is not appropriate because of the bureaucracy that that would generate. Children's commissioners mean different things again to different people. It depends on whether you look at what might happen in Queensland, in Tasmania or in New South Wales—they all are doing it differently.

The point I am making is that I think that the Moylan study will go a little wider. My personal view would be that it will go a little wider than perhaps you are suggesting.



Clearly, on the record last week in Geneva, we made the point that at this point in time, the commissioner for children at the federal level, depending on what that all means, is not seen as the appropriate solution to the problem. I presume, from the way you are nodding your head, you agree with that.

**Ms Rayner**—You are hearing me say that that would not change anything; that these matters have to take place before?

**CHAIRMAN**—Yes.

**Mr Rayner**—I have been a commissioner, Mr Chairman, and I do not know that being a commissioner changes anything.

**CHAIRMAN**—Sure.

**Mr McCLELLAND**—That is what I was going to focus on. I suppose there are really four levels as to the extent to which Australia could implement or abide by the treaty. I suppose the highest is an overall legislative umbrella implementing the terms of the treaty. The second level would be, I suppose, a commissioner for children. The third level, I suppose, would be an office for children within the Prime Minister's department. The fourth level would be an administrative code or guidelines. In terms of best down to worst, how would you rank those options?

**Ms Rayner**—I am terribly pragmatic, I would start at the bottom. I would say the administrative instructions would make an enormous difference if they are unambiguous—that you must think about the rights of a child in what you do; and this is not just child protection legislation we are talking about, it is all portfolios.

**Mr McCLELLAND**—Is that as a start to implementing it, or is that all we have to do you think, end of story?

**Ms Rayner**—No, you have to do more than that, because no officer in the Public Service is going to take that particularly seriously unless they are accountable for doing it. So you have to have an accountability mechanism. I am open as to how that should be done, but this is why I am quite strongly supportive of the concept of both an inter-departmental committee—the administrative side—and an office of the child in the Prime Minister's department, because that would actually focus national attention there.

That is really why everyone wants a commissioner. What they are really saying is, it is a portmanteau word for, 'We want children's rights to be talked about; we want a national thrust; and we want somebody who is respectable enough to be taken seriously at the top level of government and it is not just relegated to child protection.' I think an office of the child could be headed up by an office, or you can call it a commissioner, I care not. The idea is that it has to have some profile.

**CHAIRMAN**—An office of child, rather than office of family?

**Ms Rayner**—I am quite happy to accept, as I think I said in the Institute of Family Studies report, a child in the family. I think you have to have ‘child’ in it, otherwise we talk about family in an amorphous sort of way, which makes us feel warm and wonderful.

**Mr McCLELLAND**—This will be my final question. My only concern with simply having an administrative structure to coordinate various Commonwealth departments, is that there is clearly greater coordination required between the states as well. For instance, the Premier of New South Wales wrote to the Prime Minister the week before last, saying that in light of the findings of the Wood commission there is a need for a register of paedophiles, for instance. I would imagine that there is a range of things that runs across state boundaries which can only be appropriately coordinated at a federal level. That is why my personal view is that mere federal administrative guidelines arrangements between departments would be inadequate from the totality of governments within Australia.

**Ms Rayner**—I do not disagree with that. I have suggested in an article I wrote for the *Sydney Morning Herald* last year, that in fact you need to have, and what I would like to see is, the Commonwealth running a program of wonderful services for children, which was funding the states to deliver. Funding arrangements are one of the best ways to get a national approach, in fact, to services for children.

Can I just comment on the Wood Royal Commission report which I have read with some interest and note their recommendation for its children’s commissioner. It is very much a child sexual abuse paedophile commissioner, unless it develops into something worse. Quite frankly, that is—though an appalling crime against children—one of the least of our worries in the sense that far more children are dreadfully miserable because they are poor or wretched, bashed, neglected and unloved. There are far many more thousands of children in that condition than simply people who are likely to be picked up by a paedophile in the school toilet, which is relatively small.

I do not want to downgrade it, but my grave fear is that the New South Wales government may find itself encouraged to believe it has dealt with child abuse by setting up a paedophile register and making us all feel better about the dark stranger in the overcoat, when it is far more likely to be somebody in a family or close to a family.

**CHAIRMAN**—Gillian Calvert, who heads up the office in New South Wales, was representing the states and territories before the committee; in terms of Rob’s question of the machinery, how do you see her set-up in New South Wales in relation to a partial solution for the Commonwealth?

**Ms Rayner**—There is an office for the child. It is a bit of an odd situation that she has got there, as a matter of fact, because it is sort of a policy office close to the Premier,

which is an excellent idea. I do not know what it actually has done—it has not had very much time to do anything—and I would think that its continued existence would be a little problematic if there is also to be a children's commissioner on a parallel, unless in some way there was an excellent communication link between the two. Hence, this is why I am saying that if you had administrative coordination and a high profile office as well, you need to be very clear about what the interconnections are. It is a start, but I think you might have some strife if you have two people strongly trying to promote the rights of children, both claiming one ear each of the premier—you might not like it much.

**CHAIRMAN**—Over to you, Susan, and I did note the motion in the house which was faxed to me in Geneva last week.

**Ms JEANES**—Ms Rayner, as the chairman said, a commissioner for children means many different things to many different people. It has been my view that a commissioner would do as you suggest—place children's issues on the national agenda. One of the most alarming things I think is, as was previously said, not only across federal government departments, but the major gaps that occur between state and federal government responsibilities for children.

I would see that a commissioner for children was a very good starting place to say, 'Look, we, the Australian people, take children's rights very seriously and we are going to appoint somebody with considerable clout to investigate the reality of Australia's children and to look across all government departments and state territory federal responsibilities for the gaps.' So I see it more as a starting point and I was wondering whether or not you saw that the children's commissioner in Queensland had made any sort of major service to children by raising the stakes in Queensland.

**Ms Rayner**—Two things I would say. One is the children's commissioner as a symbolic rallying point for the rights of children is a great idea. I simply know from my own experience that to appoint a commissioner is to appoint somebody who will, within two years, be shot by the government that appointed them because they are necessarily going to be critical, they are necessarily going to challenge given practices, they are going to become unpopular with the government departments and agencies or funded bodies that they comment upon, and they will have enormous expectations placed upon them.

It is an extremely difficult situation to be in unless they have an established position, where they will not find eventually their resources and so forth gradually removed and controlled by the very bureaucrats—I do not mean that nastily—by the various administrators they are seeking to comment upon. Being outside the system means you are very vulnerable, so you end up not doing an awful lot over a period of time.

Secondly, I think that you can work towards a commissioner for children, but just having a commissioner without authority will not make any difference. You can have a commissioner who reports to parliament on things like whether the Commonwealth is

coordinating and reporting on policies for children, and that is a useful public interest matter. But they may also be expected, unrealistically, to do things like solve problems between parents and children or make determinations. You see, that is what Norm Alford has actually slipped in to doing—or started to do—when he was first appointed, which was not appropriate. To raise issues, as he has done, about the extent of sexual assaults on children—is important—it is a policy issue—but again I wonder just what resources he has to enable him to make a convincing case that there is a tremendous outburst of sexual assault on children in Queensland that is worse than anywhere else.

**Ms JEANES**—I do not think anybody believes that it is worse than anywhere else, but he has managed to get the issue on the national agenda which is something that was not there before.

**Ms Rayner**—Which is why are useful, as long as they last. My experience has been that commissioners are popular for about two years, then they start to be attacked by the bureaucracies whose departments are being underfunded and who look with some envy at the resources of that commissioner. Then the agencies themselves, and ultimately governments too, get somewhat fed up with being constantly criticised—as they perceive it—and want them to be a little bit quieter. And over time they may remain as a shell.

**CHAIRMAN**—Norm Alford has a very limited area of responsibility. We have taken evidence from him and we have had subsequent evidence in Brisbane. Of course, you are quite right that the initial thrust of his investigation, as the commissioner, was into paedophilia. To carry on with your point, I agree with you that what has happened is that now his position in Queensland is being questioned by the political process. It is a very difficult chicken and egg situation.

**Ms Rayner**—It happens all the time. If you just had a commissioner without the administrative support and the direction from above that the rights of the child must be considered by all departments and accountability—they will be picked off; can't help it.

**CHAIRMAN**—What about the decision of the government to reduce the deputies from six to three within the Human Rights and Equal Opportunity Commission? Do you feel that that, which was a view that was taken by the Australian delegation in Geneva, concentrates the efforts into one of those commissioners in terms of children?

**Ms Rayner**—I do not think they would be able to deal with children. The responsibilities of the human rights commission under the bill presently being dealt with by this parliament will be to receive the complaints and seek to resolve them in the hands of the president, and the deputies will simply really be relegated to public education.

**CHAIRMAN**—Do you agree that it is not appropriate, nor would it be efficient or administratively attractive to you, for a commissioner within the Human Rights and Equal Opportunity Commission to deal with children specifically?

**Ms Rayner**—I do not think it is possible, given the funding arrangements. It is as simple as that. There would be so much emphasis on sex, race and disability that to have another commissioner there to compete for scarce resources will simply not be effective. It may have seemed so in the old days when specialist commissions were going to continue. It is clearly not the case, in the present environment anyway.

**Ms JEANES**—Where would you see a commissioner appropriately placed if it was to be part of the package?

**Ms Rayner**—That this committee would recommend?

**Ms JEANES**—Yes.

**Ms Rayner**—I think if you were going to have a commissioner, it would be as head of a specific office of the child—more office of the child than of the family, but not an office of the family. I would make that very clear. I would think that it should be self-standing and small. It may have other agencies reporting to it and may have the capacity to fund other agencies to do certain things, as the New South Wales model apparently, under the Wood recommendation, would be setting up—an extraordinary, but nonetheless apparently necessary in that state, mechanism for checking out whether paedophiles are trying to get into child-care services and so forth. That is one particular function. I think it needs to be a small office whose role is to seed other agencies to do a lot of things to do with children and to focus on the rights of children and to report to parliament on the rights of children.

**Mr LAURIE FERGUSON**—You would be aware that CROC was probably the main source of the push to form this committee and the controversy around it. In 8(iv) and (v) you profess alarm at misinformation and talk about the need to get some information. Have you clarified what you think is the main reason this particular treaty has engendered this kind of campaign? At the same time, could you clarify whether you have statistical evidence for the statement, or whether it is just rhetoric, that there has not been a rise in children running away from home save for abused children and state wards?

**Ms Rayner**—On the latter, yes, but I did not bring it with me. There has actually been no demonstrated rise in wilful children divorcing parents or, indeed, a rise in non-abuse related abscondments at all since 1990.

**Mr LAURIE FERGUSON**—Who collects that evidence?

**Ms Rayner**—All the welfare departments. You can get it from—

**Mr LAURIE FERGUSON**—Delineating those into two separate groups—those abused and those not abused?

**Ms Rayner**—Yes. Are you challenging and you would like to have the evidence?

**Mr LAURIE FERGUSON**—I am just interested as to how that kind of statement can be made. I would like to think it is true.

**Ms Rayner**—I will provide you with the evidence if you like. It was dealt with by the Western Australian, Victorian and New South Wales relevant departments dealing with child abuse and neglect. I remember talking to Des Semple when he was head of DOCS about the claims that wilful children were likely to become street kids and claiming the right to run away from home, and his response was that there is absolutely no evidence to show that children who hid in the streets in Sydney are other than sexually, physically and emotionally abused children, as they always have been. Indeed, many of them are wards of the states whom the state has failed to provide homes for or any other support services.

**Mr LAURIE FERGUSON**—Obviously this is the argument of some people.

**Ms Rayner**—But I think those people who raise that argument actually have to provide some evidence. They have, by their own rhetoric, caused the family to break down.

**Mr LAURIE FERGUSON**—Sorry, I might not agree with them. But you made a statement here yourself. I would like to see substantiation of that as well.

**Ms Rayner**—Okay.

**Mr LAURIE FERGUSON**—I might not sympathise with their point of view, but I find this a very strong statement and I would be interested in the statistical background of it.

**Ms Rayner**—The statistical evidence that I would expect of those who say the family has broken down because Australia signed the Convention on the Rights of the Child would be an elevation in the numbers of children absconding from home or being found to have committed offences while their families had not contributed to their neglect around the country, of which there is no evidence. But if you want me to provide it or do a small research paper, I am sure I can do so.

**Mr LAURIE FERGUSON**—I would be interested in what you can provide.

**Ms Rayner**—It is probably already available to you from the Australian Institute of Health.

**CHAIRMAN**—Could you take that on notice?

**Ms Rayner**—Yes, I will do that. I think it would be quite a useful paper to publish

anyway, as a matter of fact.

**CHAIRMAN**—Could you give that to us fairly quickly because we are in the home straight with this committee.

**Mr LAURIE FERGUSON**—The other point is the question of how you combat this kind of campaign and what you think led to this particular treaty getting this kind of interest.

**Ms Rayner**—I think it comes; it is not just Australia. I think there is a very strongly held and passionate belief by many parents that they have a right to bring up their children without any interference by anybody whatever, and that includes things that their neighbours might find abhorrent or unacceptable, such as high levels of physical control or violence towards children to do so. There is an almost religious belief, even if it is not associated with religion, that interference with that is a fundamental attack on the human rights of people to form families without any intervention by other people.

I know from my own experience during the 1980s and 1990s that people are easily frightened into thinking that if you give a child a right you take away a parent's right, that if you say a child should be consulted about a decision it means that the child dictates what the decision is, and that if, for example, you give the child a right of religious belief they will turn into a satanist and lock you out of their room while they sacrifice the family pets.

**CHAIRMAN**—That is a worthwhile quote.

**Mr HARDGRAVE**—I was hoping you were going to say that.

**CHAIRMAN**—I am sorry, I am interrupting you.

**Ms Rayner**—What is really interesting is that those fears have not been realised. We signed the convention in 1990 and ratified it at Christmas time that year. Since that time, in spite of the alarmism and the same rhetoric coming from those people who still believe the family has broken down, there has not been a related rise in children doing any of those things or, indeed, in any of the so-called divorces.

**Mr BARTLETT**—How do you think we counter that perception?

**Ms Rayner**—I do not think you can. I think you have to accept that it is very passionately and deeply held, and that some people can never be persuaded out of it. I have certainly come to that conclusion. But when people of that belief tell me passionately that to give a child a right is to take away a parent's right, I can only demonstrate that this is absolutely not the case. It is a bit like love really. Just because you give some to one person, it does not mean to say you have not got some to give to another. Similarly, if

you respect a child's right to be treated with dignity and respect, it does not take away a parent's obligation to ensure that others do that too for their children. It is simply a question of cutting down on the alarmism.

One of the major problems about not having a commissioner or any other officer responsible for the Convention on the Rights of the Child, other than Brian Burdekin barnstorming around the country, is that there is very little information about the convention and that there is virtually no information about the effect that the convention has in domestic law—none, apart from due process. There is ample room for people who do not know what international law means and are not aware of its virtual ineffectiveness in the country—except symbolically—to set their fears to one side or to give them information. If you did have an Office for the Child, there had been a commissioner in the human rights commission at that time responsible for it, and there had been resources and a commitment from government to tell everybody about what it meant, I am sure we would not have the same level of alarm which, in my respectful opinion, is unjustified alarm.

**CHAIRMAN**—Brian Burdekin has appeared before this committee; in fact, he sat in on most of day two in Geneva. He said to me afterwards that he was quite pleased with Australia's approach in most of these areas.

**Mr HARDGRAVE**—It seems like everybody in the country has been to Geneva except us.

**Ms Rayner**—Yes, I didn't go to Geneva. I wanted to go to Geneva because in fact we had done another alternative review of the Convention on the Rights of the Child.

**CHAIRMAN**—You might have balanced Helen Bayes.

**Ms Rayner**—I wanted to do that. No-one was prepared to fund me to go.

**Mr HARDGRAVE**—After your evidence this morning, it seems like that was a very big mistake. With regard to the children's mechanism, whatever we might call it, how would that work in a practical sense? Across all departments? What interest would there be in, say, the Department of Defence and their day to day workings for that sort of mechanism?

**Ms Rayner**—It is interesting you should say that, because I actually do a bit of work for the Department of Defence. One of the things that affects children is the career management policies of the ADF and whether or not they have family friendly policies and whether they separate. They do not think about that, but if there is a children's rights focus, they may have to. Treasury and other economic ones would say they have got nothing to do with it, they are above such things. I can only say that, when you make decisions about the allocation of resources to the states, you affect what the states can



provide for families. And who is the most vulnerable member of the family? The kids are. They do not even think about the effect of the policies, and the consequences may be unintentionally dramatically poor.

I think that those sorts of issues just demonstrate that even the organisations that had policies and programs for children did not think that they had anything to do with preventing child abuse because they have never thought about it, when we started doing the phone around.

**Mr HARDGRAVE**—I found that an interesting comment. The other one that might beg to be asked—and this is perhaps going to the heart of some of the urban myths and, for that matter, some of the basis for these myths—concerns departments like the Department of Social Security and officers that might well be involved in literally breaking up families by advising children to get out of a family situation and giving them allowances and benefits and that kind of thing. Have you seen evidence of that through your experience? Do you honestly believe that that does occur? If so, why?

**Ms Rayner**—I did some work for the Burdekin inquiry into homeless children in Western Australia at that time, and the evidence at that stage was that children were prostituting themselves because they could not get any money and the majority of those children were the victims of serious abuse in their homes. I had no evidence, but plenty of anecdotes, about this being the case.

Subsequently, I had reason to be grateful for the fact that a child who has run away from home when she should not have nonetheless had access to money so that we did not have a recurrence of that risk to that child until I could get her back into my home. I speak of a foster child of my own.

I know very well from experience what it is like to have an adolescent child say all sorts of terrible things about their parents which are not true and to run away from home when there is no need and to do extraordinarily self-destructive things while they are in that phase of childhood which says, ‘I will live forever, no matter what I do to my body.’

I heard all the manipulative stories that were told by her and her friends. Nonetheless, I would still say very strongly to you that it is important that children who have absconded from home, for whatever reason, should have some forms of financial support so that they do not fall into the hands of exploiters and rapists and others of that nature. There should be resources in the community available everywhere to ensure that those children may at least resolve their relationship with their parents, even if they do not come immediately home.

My child did come home, and I am immensely grateful for it, but I also believe that she should not have been forced back to home by starvation or having to earn her living in an inappropriate way. I think that there are some urban myths about this and that

most social workers would not dream of making it easy for a child to leave home, because they know perfectly well they cannot cope well outside it.

Also my experience has been, from dealing with a lot of homeless kids as a lawyer, that they are almost invariably totally unable to get access to allowances to support themselves financially because they are homeless and emotionally and socially inept. Even if they had wanted to rort the system, they usually cannot; they end up thieving instead.

**Mr HARDGRAVE**—So for most of the kids that are out on the street, it is fact in a bizarre way safer for them on the streets than in their home environment?

**Ms Rayner**—There is no question. Some of those kids I had—most of the children that I acted for in the Children's Court and many of the kids that we advised at the National Children's and Youth Law Centre—are victims in every way, not only of parents who could not cope, putting it at best, but also of education systems that did not allow them to stay in school and, worst of all, state welfare systems that did not provide services for them at all, made them wards, took them away from home or did not get them back into homes and did not provide another home.

**Mr HARDGRAVE**—So you are saying there is ready evidence that perhaps the system is not generous; in fact, it is quite lacking in the reality of—

**Ms Rayner**—I have got no questions about that. It underlines a lot of my feelings, quite powerful feelings, of anger about the fact that we are talking about children's rights when there are far too many of them, thousands of them, who have not got any in practice.

**Senator ABETZ**—Can I summarise what you have said. The signing of the convention was a significant symbolic act but little has actually changed?

**Ms Rayner**—I did say that, and I would say in fact that we have gone backwards since 1990 in a number of ways, not least of which is the reduction of services to many families with dependent children in them and restriction of access to other services that would benefit children and of course—I am not going to go into it—some of the sentencing laws in use in Northern the Territory and Western Australia which were taken in deliberate knowledge that they did not meet the requirements of the convention.

**Senator ABETZ**—When we signed up, what the Australian people were told by Gareth Evans and whoever else was in charge at the time was exactly that we comply in every respect, in every regard—nothing is going to change in Australia, no changes have to be made. That is what I am trying to come to grips with. Those that were promoting the convention just before ratification were saying, 'Everything is okay in Australia. Stop running this fear campaign, nothing is going to change.' As soon as we were ratified, in

come the people who tell us that we are not allowed to circumcise little boys, we are not allowed to engage in corporal punishment, et cetera—the list goes on.

**Ms Rayner**—Can I just address that. I hear what you are saying.

**Senator ABETZ**—Yes, and I would be interested to hear your comments in relation to that.

**Ms Rayner**—In law the only change it actually made was the Teoh matter, the administrative obligation to at least consider the UN conventions.

**Senator ABETZ**—I am aware of that.

**Ms Rayner**—That is the only actual change. Because the ratification of the convention was a symbolic act, it has been used by people like me and many others who say, ‘The convention is a benchmark by which we should measure our compliance. You should do X, Y and Z.’ It has made no change to the law whatever.

We can say as much as we like that you should not hit your children. I still say you should not hit your children, having hit my own and been hit myself, because it is an inadequate way of dealing with children and does not teach them anything. It still is perfectly legal to do so, but it is a benchmark for us to use to say to governments, to agencies and to parents, ‘This is something you should strive to attain.’ It has no effect unless and until the people of Australia decide they want to have a law to put that into effect.

Similarly, I am not aware that anyone says you cannot circumcise little boys. I think the Jewish community would have something to say about the acceptance of children into the community through that symbolic act, and the welfare aspects of children as well.

**Senator ABETZ**—Aboriginal communities as well.

**Ms Rayner**—Same thing.

**CHAIRMAN**—And what about FGM?

**Ms Rayner**—I actually put that in a different category, because female genital mutilation is actually so damaging physically to the children. Some die and certainly many have major physical harm subsequently. There is plenty of evidence to demonstrate that there are other ways of dealing with it. But, there again, I am not actually an advocate of saying you should make that a serious crime in every country. It will simply drive it underground and it will not address the absence of respect for children on which it is based.

**Senator ABETZ**—I hear what you are saying, that technically it has not changed the law, but what has happened is that those that were promoting the convention said, ‘Australia complies; there will be no changes necessary.’ Now people who promoted the convention are saying—

**Ms Rayner**—‘Change is necessary.’

**Senator ABETZ**—‘Change is necessary.’

**Ms Rayner**—Yes, change is necessary but not required. Both situations were correct, in the sense that it changed nothing about the law, but it does give us somewhere to stand and say to those who would say there is some cultural relativity about children’s rights that in fact the signing of the convention has obliged us to look at children’s rights as a national priority. It has not actually changed anything.

**CHAIRMAN**—But won’t the international instruments legislation get around that?

**Ms Rayner**—Yes it will.

**CHAIRMAN**—It will make it very clear that it has no internal effect until such and such a time. So you agree with the international instruments legislation?

**Ms Rayner**—I do not actually. I am really unhappy about it because I believe that the Teoh decision was quite correct in that it said at least you must consider the rights of children. I do not think that was a frightening thing at all. I think the response by governments by Michael Lavarch and Daryl Williams was an extreme overreaction to what was only a procedural requirement.

**Senator ABETZ**—Can you understand that reaction given that the alleged wisdom of the day was that nothing changed and then all of a sudden you had the High Court saying, ‘Yes, things do change as a result of signing up to a convention’.

**Ms Rayner**—I understand why the immigration department insisted that any obstacles to their preventing the exportation of undesirable immigrants should be taken away. It was the next step that surprised me. Daryl Williams says himself that there is no need, because the Convention on the Rights of the Child has not been used to challenge administrative decisions in any meaningful way since the Teoh decision. Nonetheless, there has been what I might describe as an over-emotional response.

**Senator ABETZ**—That was the executive statement though wasn’t it? That the executive statement has forestalled any further challenges.

**Ms Rayner**—No it has not, actually. It does not have that effect, but I do not want to get into it.

**CHAIRMAN**—The international instruments legislation—if and when it gets through the Senate—surely will take away these question marks. You might disagree with the government actually doing it that way but, what you are saying, as I understand it, is that the practical effect of that legislation will be to correct any misconceptions. Is that what you are saying?

**Ms Rayner**—It certainly will. The effect of that legislation will be—

**CHAIRMAN**—Is that Australia does it?

**Ms Rayner**—We sign it and it means nothing. That is actually what it will say. As I think Sir Anthony Mason said, ‘You may dance with joy in the Halmaheras while we sign the Convention on the Rights of the Child, but it has no effect whatsoever in Australia’. I find that quite extraordinary and not really a statesmanlike approach to take. So, no, I do not agree with that. I would also point out, and I have done in correspondence, that that legislation may also invalidate a number of other pieces of legislation they have not thought about which depend on the treaty’s power for their validity and you need to think about that—what effect it may have.

**Senator ABETZ**—It seems to me that the vast majority of children that need protection seem to come from a dysfunctional family situation where they have been abused or not appropriately protected et cetera. If we are committed to the preamble in the convention and elsewhere, and not just paying lip service, that the family, in fact, is the best place to bring up kids—and, as you said, there are the unloved children that you came across—surely, rather than having an office for children and picking up the problems, we would be better to start right at the beginning and try to ensure that we have the least possible number of dysfunctional families and look after our families properly. The consequence would be fewer kids that are abused and unloved, as a result of which, the demand for protection of children outside of the family unit would be decreased. Shouldn’t we be looking at trying to fix up families rather than pick up the pieces with the broken children afterwards?

**Ms Rayner**—We are in furious agreement about the end result. You cannot talk about children without talking about their families, and they are best in families, not necessarily in the families they were born into may I say. I just spent this morning at a conference on genetics talking about that baby of a reproductive technology that was born in a surrogacy contract in the United States and ended up born with no parents—pretty odd.

The important thing is that if you do not focus on the child as having rights within the family—we often talk about families in a soft, subtle and fuzzy sort of a way without appreciating that children have to have a voice in them as well and that the focus has to be on them as well. That is why I do not think an office of families does an awful lot of good when you are trying to ensure that children’s priorities are the prime priority in the

family too.

**Ms JEANES**—What is your view on the application of the convention to unborn children?

**Ms Rayner**—I think it is an open story. I think that the right to life in the convention could well be interpreted at a future stage as the right to life of an unborn child—certainly a child that is capable of being born alive. That is why I am interested and somewhat confused to see that the Catholic bishops are thinking perhaps that the UN convention might not be a good convention to retain on a panoply of international instruments. It is the only instrument which could be interpreted as including the right to life of an unborn child. That would be very unpopular with some people, if it is so interpreted. That is why I am interested and somewhat confused to see that the Catholic bishops are thinking that the UN convention might not be a good convention to retain on a panoply of international instruments. It is the only instrument which could be interpreted as including the right of life of an unborn child. That will be very unpopular with some people, if it is so interpreted.

**CHAIRMAN**—We could have gone on a little while longer, I suspect, with this one but, because both houses, particularly the Senate, sit at 12.30, we must conclude. Just one other comment from Geneva: I will be circulating to committee members later today a copy of a paper by Judith Karp, the Deputy Attorney-General in Israel, who is a member of the committee, on reasonable chastisement. She and Mrs Palme, the Swedish delegate, of course, have some particular views; in fact, they see it as being central to this convention. Just quickly, do you think that those particular sections are absolutely essential to this convention?

**Ms Rayner**—I do not, actually. To me, article 12 is the one which gives the child the right to participate in decisions that are affecting them. That to me is more important than the right not to be beaten.

Resolved (on motion by Mr McClelland):

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

**CHAIR**—Thank you very much for coming along.

**Committee adjourned at 12.21 p.m.**