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COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 1 April 1998

CANBERRA

Monday, 1 June 1998

PROOF HANSARD REPORT

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CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Halverson
Senator Murphy	Mr Hardgrave
Senator O'Chee	Ms Jeanes
Senator Reynolds	Mr McClelland
	Mr McGauran

For inquiry into and report on:

Treaties tabled on 1 April 1998.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

Treaties tabled on 1 April, 1998

CANBERRA

Monday, 1 June 1998

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Adams
Senator Cooney	Mr Halverson
Senator Murphy	Mr Hardgrave
	Mr McClelland

Committee met at 9.07 a.m.

Mr Taylor took the chair.

BARRINGTON, Mr Jonathon Harold Sutherland, Assistant Director, International Relations Section, Fisheries and Aquaculture Branch, Petroleum and Fisheries Division, Resources and Energy Group, Department of Primary Industries and Energy, GPO Box 858, Canberra, Australian Capital Territory 2600

HARWOOD, Ms Mary Beatrice, Assistant Secretary, Fisheries and Aquaculture Branch, Department of Primary Industries and Energy, GPO Box 858, Canberra, Australian Capital Territory 2601

PIGOUNIS, Mr Anthony Nicholas Alexander, Senior Policy Officer, International Relations Section, Fisheries and Aquaculture Branch, Petroleum and Fisheries Division, Department of Primary Industries and Energy, GPO Box 858, Canberra, Australian Capital Territory 2600

HART, Mr Jeffrey Russell, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory 0221

POLSON, Mr Gregory, Director, Sea Law and Ocean Policy Group, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory 0221

SERDY, Mr Andrew Leslie, Legal Officer, Sea Law and Ocean Policy Group, International Organisations and Legal Division, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory 0221

BALKIN, Dr Rosalie Pam, Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

CHAIRMAN—Welcome. We are dealing, first of all, with the Headquarters Agreement with the Commission for the Conservation of Southern Bluefin Tuna. Mary, would you like to make an opening statement?

Ms Harwood—No, thank you.

CHAIRMAN—Would anybody like to make an opening statement?

Mr Polson—I would like to make a short statement from DFAT. In broad terms, I would like to say that DFAT welcomes the conclusion of this agreement. The CCSBT is only the second international organisation after CCAMLR—the Commission for the Conservation of Antarctic Marine Living Resources—to set up headquarters in Australia and the first organisation in Canberra. We believe the choice of Australia, in general, is fitting. Australia is strongly committed to sustainable management of southern bluefin tuna

in the fulfilment of our obligations under the UN Convention on the Law of the Sea and, when it comes into force, the UN implementing agreement. We believe the CCSBT is the best available vehicle for attaining that end. The secretary of the commission has been operating out of premises in Deakin for about the last 20 months and it has been working well.

Finally, I would note that the model for the present agreement is Australia's 1986 headquarters agreement with CCAMLR—as I mentioned earlier, the Commission for the Conservation of Antarctic Marine Living Resources—which is based in Hobart. One point to note is the difference between the CCSBT and CCAMLR—the CCSBT, unlike CCAMLR, pays full commercial rent. Thank you.

CHAIRMAN—Thank you very much. Mary, just before we start on this, I would like to thank the department for the response to our third report. We were wondering how long it was going to take for that to come. I know we raised a lot of fairly difficult issues in that, and I think there is general support for what we had to say, except perhaps on that 50 nautical miles in Tasmania and we understand the situation there. We need to walk before we run. Nevertheless, the committee felt that it needed to make some of those recommendations.

Can I just open the questioning on this. We did make mention of the headquartering situation in the third report. The NIA talks about the advantages of the commission being established here in Canberra. Can you just substantiate that comment in the NIA?

Ms Harwood—In terms of the economic implications of having the commission in Canberra, there is a small cost in some taxes foregone. Overall, there would be a net benefit of having the commission in Canberra in terms of the employment of local staff as well as the business that the commission brings to Canberra when there are large meetings with delegations attending, et cetera.

Mr McCLELLAND—It is quite significant for Australia to have it, rather than Wellington or Tokyo. It is quite a prestigious sort of thing, I suppose.

Ms Harwood—Sorry, yes. I thought you meant in terms of the specific site of Canberra. For Australia, yes, it is strategically significant for us. This is a very important fishery for us so, in strategic terms, having the seat of the commission here in Australia is advantageous.

Mr McCLELLAND—You do not think there will be any less inclination from Japan to have regard to the operations of the headquarters because it is based in Australia and not Japan.

Ms Harwood—No, I think Japan was supportive of it being in Australia and

recognises that the fishery is in the southern hemisphere and that Australia is an appropriate location.

Mr HALVERSON—Along with that, Australia, Japan and New Zealand are members of the commission. What is the likelihood of new membership? Are there any countries which you know are waiting? What sort of role could we expect from countries like South Korea, China and other major users?

Ms Harwood—The commission has as one of its major priorities bringing other countries that fish for SBT within the regime. In April this year, senior commission representatives went to Korea and Taiwan to discuss with them how they might cooperate with the commission more strongly—in Korea's case, to join, and in Taiwan's case, to form a more cooperative relationship with the commission. In terms of countries about to join, we have put proposals to both Korea and Taiwan on the relationship they might have, and the ball is in their court, essentially. We are waiting to hear back from them before the commission resumes in September.

Senator ABETZ—One of the benefits given for basing the commission in Canberra is the government's ready access to the commission. How realistic is it that there would be an actual physical presence required by the government to the commission, as opposed to telephone calls and letters?

Ms Harwood—It is important in that there are quite often matters which can be resolved by small meetings in the commission office in Canberra, with representatives from the embassies of Japan and New Zealand and with people from my department. It may be technical matters or it may be preparation for a meeting that is coming up, so physical contact is an important part of the commission's business.

Senator ABETZ—Who undertakes the most research on southern bluefin tuna in Australia from Australia's point of view?

Ms Harwood—The CSIRO is the main institution doing southern bluefin tuna research.

Senator ABETZ—Based in Hobart?

Ms Harwood—Yes.

Senator ABETZ—Which I suppose begs the parochial question of why didn't you set the commission up in Hobart as opposed to a land-locked capital city which is not really renowned for its fishing expertise?

Mr HALVERSON—That does sound a little parochial.

Senator ABETZ—It does. There is an election in the offing.

Ms Harwood—The commission is the policy body. It is dealing with the relations between governments and the management of the fishery. Canberra was seen as the more appropriate location, and that had the full support of the tuna fishing industry as well.

Senator ABETZ—Were other sites considered at all, or was it just Canberra because that is where the embassies, et cetera, are? Was there a short-list drawn up and detailed consideration given to other sites around Australia?

Ms Harwood—From memory, and it is quite some time ago, Hobart was considered, but the decision was made to go with Canberra.

Senator ABETZ—Thanks, Chairman.

CHAIRMAN—Dick, do you have any questions?

Mr ADAMS—Was there a public debate about where it was going to be, or did it just stay within department walls?

Ms Harwood—Yes, but it was also considered when the text of the convention was being considered by the government as a whole.

Mr HARDGRAVE—What is the percentage per nation as far as fishing for these particular stock is concerned? Who is the largest and who is next? Do you have some percentages to offer?

Ms Harwood—The most recent quota allocations amongst the parties were 6,065 tonnes for Japan, 5,265 tonnes for Australia and 420 tonnes for New Zealand. So Australia is about 44 per cent, from memory.

Mr HARDGRAVE—You mentioned Taiwan. It generally has difficulty being part of anything international because of the ongoing reluctance of most, if not all, governments around the world to recognise that the place actually exists, yet it is really a vociferous fishing nation, isn't it?

Ms Harwood—It has a large distant water fleet and is very active in tuna fisheries around the world.

Mr HARDGRAVE—So the best you can seek in communication with Taiwan is cooperation, rather than actual membership of the commission?

Ms Harwood—Yes, what the commission would be looking for is some form of relationship with Taiwan, perhaps under some memorandum of understanding, but

something where commitments flow between both parties in terms of securing cooperation from Taiwan to limit catches and to control its fleet.

Mr HARDGRAVE—Would you say they have proven to be fairly cooperative on these sorts of matters in the past?

Ms Harwood—At the moment, Taiwan is applying a voluntary catch limit to its southern bluefin tuna catch and it is also instituting a vessel monitoring system for satellite based reporting from its fleet so that it can monitor catches on a real time basis. In the last year or two, there have been some upgrades in the way it manages its distant water tuna fleet.

Mr HARDGRAVE—So the greet irony is that, while not a member of the commission, they are perhaps showing the way for other nations as far as their approach to limiting catch and putting vessel monitoring facilities in place. From what I understand, they have shown themselves to be quite eager to comply and to be seen to be good international citizens.

Ms Harwood—They are keen to cooperate with the commission, yes.

CHAIRMAN—What about the links with the Indian Ocean Tuna Commission, the one we talked about quite extensively in the third report?

Ms Harwood—With southern bluefin tuna?

CHAIRMAN—Yes.

Ms Harwood—In the most recent Indian Ocean Tuna Commission meeting, the primary role of the CCSBT in managing southern bluefin tuna was recognised by the commission. But the fact is that both bodies have competence over southern bluefin tuna.

CHAIRMAN—And the Japanese are still locked out?

Ms Harwood—Yes.

CHAIRMAN—So the moratorium still applies—no port access. Are negotiations on that going on in Tokyo at the moment?

Ms Harwood—Yes, there are ongoing discussions amongst the commission parties. We had an informal meeting in Tokyo at the beginning of last week to see whether there was some way of finding a middle ground or a point of compromise that would enable quotas to be reinstated under the commission and the matter of experimental fishing to be settled.

CHAIRMAN—So the experimental part is the sticking point still?

Ms Harwood—At the moment, that is the case—in that Japan is saying that it intends to initiate an experimental fishing program in July and the informal discussions were looking at whether there was sufficient change to the experimental fishing program that could make it acceptable to Australia and New Zealand.

CHAIRMAN—Are there anymore questions? It is fairly straightforward, as I see it. As there are no questions, I thank the witnesses. Mary, you got away very lightly this morning, although I was just told that you came in especially from holidays.

Ms Harwood—Yes.

CHAIRMAN—Thank you very much. ILO No. 9 is obviously not going to be next because the MUA witnesses are not here. I think we will put ILO No. 9 on the back-burner and we will deal with The Hague Convention on Intercountry Adoption first.

[9.22 a.m.]

BALKIN, Dr Rosalie Pam, Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

McGINNESS, Mr John, Principal Legal Counsel, Family Law Branch, Civil Law Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

MORGAN, Mr Richard John, Assistant Secretary, Family Law Branch, Civil Law Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

CHAIRMAN—Welcome. Sorry to bring you on as early as this but we have to be flexible. I have to leave in about five minutes to chair another meeting on Bougainville, so Mr McClelland will take over as Acting Chairman. Mr Morgan, would you like to make a short opening statement?

Mr Morgan—I would like to make an opening statement, but it may not be short.

CHAIRMAN—Keep it as long as you want.

Mr Morgan—There are four matters I would like to deal with in making this statement—a broad outline of the convention and its objectives, the arrangements currently negotiated with the states and territories on the implementation of the convention, the public consultation process that has occurred, and some NGO concerns about accreditation criteria under the convention.

This convention arises out of a decision taken by the 16th session of The Hague in 1988 to put convention negotiation on its agenda. That particular negotiation extended from early 1989 until 29 May 1993, when the convention was actually concluded. During that period, Australia played a leading role in the drafting of the convention of the 17th session. The meetings of the special commission were marked by large attendance. Over 70 countries did attend. The core countries, the developed countries, were all represented, as were in excess of 30 countries from the Third World, which traditionally have not been part of The Hague conference. That was done, firstly, because of the significant interest that those countries had in the results of the considerations but, more importantly, because the member countries contributed to the cost of sending delegates from those countries. At those special commission meetings, the Australian delegation was represented both by the Commonwealth, as the leader of the delegation, and by a representative of the states.

The attitude that the Commonwealth took in the particular arrangements was developed within the Standing Committee of Community Services Ministers, and the

Commonwealth and the state officer who represented the Australian delegation both participated in those particular discussions. In the course of the development of positions in respect of the convention, the intercountry adoption bodies in the various states and territories—that is, the NGOs and the interest groups—were consulted regularly by the states.

This convention has now got 19 members and, therefore, is in operation. It is significant that, in relation to countries which Australia currently has a bilateral arrangement for intercountry adoption with, the Philippines, Costa Rica, Romania, Ecuador and Sri Lanka are currently members of The Hague Convention and, therefore, arrangements for those countries will primarily arise now under the convention rather than bilateral arrangements.

The objective of the convention is to establish international procedures, standards and cooperative mechanisms between government authorities to safeguard the interests of children in the subject of intercountry adoption. You have seen the convention and you will recall that in that convention there is particular reference made to the prevention of the abduction, the sale of or the trafficking in children. Those themes have been around in the international community for many years. In fact, I have a document here which I have not previously provided to the committee but I will provide now. It is a summary of the paper that was prepared for the 16th session of The Hague conference, which sets out the background to the need for a convention and the rationale for it. Included in there are the very three factors I have just mentioned—the need for concern about the sale of, the trafficking in and the abduction of children.

The importance of the convention lies in the benefits of the internationally agreed minimum standards for the processing of intercountry adoption arrangements. In the convention, there are a number of very important chapters, but I bring your attention to two of those chapters. Chapter 2 deals with the requirements that both the receiving state and the sending state have to satisfy as a precondition to any individual intercountry adoption arrangement. They set minimum standards. Their focus is very clearly on the best interest of the child, but it is also followed with a very real concern to ensure that the interests of the relinquishing parent are well understood by that parent, that the process is understood by that parent and that there is a full and proper consent by that parent to the relinquishment of the child.

That issue was a major debating point in the development of the convention, because many children have been removed from their country of origin without proper consideration and arrangements, without the parents knowing. The parents thought the children were going overseas for a period of time to be raised, and then discovered that all the biological links were severed and the children were never going to return. In most cases, they did not even know that they could contact, and the kids did not contact, although under this convention there are arrangements for contact.

The second chapter I draw your attention to in the convention is chapter 4, which deals with the procedural requirements that both sides have to undertake in respect of an intercountry adoption. This chapter ensures that the former non-regulated abuses that used to occur will not be able to continue. There is a necessity in these procedures for the agencies in both countries who are undertaking a particular intercountry adoption to ensure that everything that is required under the convention has been satisfied before they go to a court or an administrative body and say, 'Please give approval to this particular adoption.'

The convention establishes legally binding standards and safeguards to be observed by the countries participating, a safeguard of supervision to ensure that the standards and safeguards are observed and channels of communication between authorities of the countries of origin and destination. By establishing uniform standards and predictability of procedures between countries, the convention will significantly assist parents in Australia who wish to adopt children from other countries, because the details of the processes will be available to them, they will know what is required and they will know the process that they need to go through to obtain a child.

When the convention was almost concluded, the Commonwealth, in early 1993, commenced negotiation with the states and territories for implementation of this convention in Australia. We have been negotiating with those states and territories for that length of time. Initially, we considered whether, because of the importance of this subject matter, it was a matter that the external affairs power ought to control and, therefore, the Commonwealth ought to take either the lone or the leading role.

We concluded that, because of the expertise currently available in the states and territories, it was not appropriate for the Commonwealth to take a leading role. The states and territories have built up over many years expertise which ought not to be lost and ought to be built upon. Nevertheless, the Commonwealth, by ratification of this convention, if that occurs, will have to run its obligations of complying with international arrangements. It will be solely responsible for compliance with the international arrangements. Therefore, the way in which the compact between the Commonwealth, states and territories has been developed and concluded is that the Commonwealth will have the international aspects and the states will do the case work involved.

Under the convention, there is provision for a central authority to be established, for the Commonwealth to be the principal central authority. There is also in federal systems the capacity for more than one central authority. In this case, it is proposed that, in each state and territory, the Department of Community Services will be a central authority for the purposes of the convention. Also, in articles 9, 10 and 11 of the convention, there is provision for certain aspects of intercountry adoption to be dealt with by accredited bodies on behalf of the central body. It is a question of the extent to which accredited bodies are to be given an operative power under the Commonwealth and state arrangements.

The criteria that were established by the Commonwealth and the states, primarily by the states, for NGO accreditation have been the subject of considerable comment and concern by NGOs. I make no bones about that. With the Commonwealth and the states having decided that the states will undertake the role of case management and operation, the question is to what extent those states feel they are satisfied that arrangements can be put in place which will enable persons outside the state system to undertake some of those functions.

Mr ADAMS—You are talking about state management, when the child is in the state they have a case management role; is that right?

Mr Morgan—That is right.

Mr ADAMS—What other work has to be done then? Who has to do something other than that?

Mr Morgan—Under the convention, there is a whole range of different actions taken over the period of the adoption between the two countries. So there are steps to be taken. There are some steps that we are saying could be taken outside the state system, if that is appropriate, and there are some that we believe cannot be taken outside.

Mr ADAMS—That is a good old way of getting a blue going somewhere in the future if we do not get that into some sort of protocol, isn't it?

Mr Morgan—That is a possibility. The states have set out very significant uniform accreditation criteria upon which they would accredit bodies from outside the state sphere to become involved in some of the processes of intercountry adoption. Those criteria have been developed with the view of satisfying the court in the foreign country, or the court in Australia, that whatever has been done by whoever performs the service satisfies all of the requirements of The Hague Convention. There is nothing in it that does not have as its focus compliance with The Hague Convention.

During these negotiations about accreditation, the Commonwealth has taken the clear position that, because the states will have the primary function, under its arrangements with the states and territories for the provision of case work services it is a matter for the states and territories as to whether they accredit anyone or not. Therefore, we have no specific interest in the outcome of those particular arrangements other than our assurance that, whatever arrangements are put in place, there will be absolute compliance with the requirements of The Hague Convention.

ACTING CHAIRMAN—Thank you very much for that comprehensive introduction. You have mentioned that a number of NGOs have concerns about the treaties, and we will shortly be receiving their evidence, but can you tell us what you understand to be their major concerns? What is your response as to whether those

concerns are valid or have been accommodated in the treaty?

Mr McGinness—There is quite a range of concerns that NGOs have expressed about the accreditation criteria. They have put them to the state governments in the last two or three years, and nobody is in any doubt about what they are. The states have considered them and they tell us that they have taken the view that the accreditation criteria are appropriate.

In that context, we have taken the view that adoption is their policy responsibility and they are the best persons to work out what are the appropriate accreditation criteria. In that sense, it is really their decision about whether they change the criteria or not. But, in the context of those discussions, they have told us what their position is in relation to some of the criticisms of the criteria.

I suppose the major criticisms relate to the requirement by the states that bodies accredited under the convention should employ professional staff and, in particular, should have a principal officer with social science qualifications. There are also requirements about having appropriate accommodation and biannual reviews by the state central authority to ensure they are complying with their obligations under state law and under the convention. There are also requirements that they be set up as non-profit bodies, that they be financially viable and that they not be associated with other businesses or not be involved in overseas aid programs. They are the main ones.

ACTING CHAIRMAN—Are those requirements of the treaty or of the state regulators, do you know?

Mr Morgan—They are a combination of both. Article 11 of the treaty sets out the objectives and the criteria very specifically about intercountry adoption. The states have built upon those in their own proposals in respect of accreditation.

Mr McGinness—The convention is expressed in very general terms in this area. It talks about general ideas of professional competence, integrity, experience and accountability.

ACTING CHAIRMAN—So the convention is intended to set standards, but how those standards are applied will depend on each nation or state?

Mr Morgan—The final nature of those standards would be a matter for each individual country, but there is a minimum. The whole convention is about minimum standards best practice.

Mr HALVERSON—The convention requires the creation of a central authority, which you have alluded to in your brief, yet we talk about a series of other central authorities, which is obviously embraced by the states. Does that involve the Northern Territory and the Australian Capital Territory as well?

Mr Morgan—Yes, it does. Under the convention, you have to have a central authority, and that is going to be the Commonwealth under this, if we ratify. Because we are a federal system, we are able to have more than one, and so we will have a central authority in each state and territory. It is not inconsistent with our approach in respect of The Hague Convention on abduction where we have the Commonwealth as the central authority and we have state and territory bodies—not necessarily community services because they differ from state to state—as central authorities in each state and territory which assist in the processing and case type work of that particular convention also.

Mr HALVERSON—Given the stress and the emotional challenges on the people seeking intercountry adoption, would it not be appropriate and administratively and organisationally far more efficient and effective to manage it centrally without this devolution to the states, notwithstanding the fact that the states have evolved over a number of years certain levels of expertise which you could readily absorb?

Mr Morgan—That was the initial premise that the Commonwealth worked off when they thought they might exercise their foreign external affairs power, but we realised that, firstly, it was going to be resource intensive and that, secondly, we did not have the expertise in intercountry adoption or in adoption itself. Under the Family Law Act, for instance, the Commonwealth has a very narrow view and operation in respect of adoption, let alone intercountry adoption.

It would have been a significant step by the Commonwealth to build up its own bureaucracy to do this particular function. The decision taken at the end of the day by the then Attorney-General was that we ought to go back to the states and make them the primary source because of their expertise on fulfilling the requirements under this convention.

Mr HALVERSON—If you adopt this very narrow perspective, what role will you play in the central organisation?

Mr Morgan—We will still play a very significant role in it because, under the arrangements, we have responsibility for the international aspects, not the case work but all of the matters for the Commonwealth—the cooperation, the safeguarding and the accountability mechanisms. We will have a responsibility, for instance, to investigate complaints about the states or operations, to repair damages and to repair damage with the international parties who are also subject to the convention. It is a governmental thing. It is not that we will not have a role; it will not be a significant case work role.

Mr HALVERSON—You do not see it as being overly bureaucratic and confusing to the applicants?

Mr Morgan—No, because the applicants will have a central authority, which is their case work thing, in the states and territories. They will go to those organisations—

they will mainly be community service departments—which will be a one-stop shop, unless the states and territories accredit particular bodies in their own state to carry out some of the functions.

Mr McGinness—That has been our experience with the child abduction convention—that is, Australian applicants much prefer to deal with somebody in their own capital city. Dealing with Canberra all the time is really an obstacle.

Mr HALVERSON—I could sense that. Thank you.

Mr HARDGRAVE—I guess it could be the lot of states to make the complaint, but what if the states do not have the resources to handle this? We have one submission that suggests that, in New South Wales, the state government does not have the resources to administer intercountry adoption programs. Have you taken that into account?

Mr Morgan—The question of resources was discussed in the community services ministers' conference, and assurances were given to the Commonwealth at the particular meetings where it arose that the states would have sufficient resources to meet their requirements. I cannot tell you at a particular time whether resources are adequate or not. If you go within the Commonwealth bureaucracy, for instance, there are always concerns that there is a lack of resources. We have been given assurances from the states, and one can only assume that those assurances are right.

Mr HARDGRAVE—Absolutely. If we see them walk out of a Premiers Conference over this, we will know for sure that perhaps they were not telling us all the truth. Will this convention actually make it easier for Australians aspiring to adopt children from other countries?

Mr Morgan—It will. What is more, it will broaden the source of potential intercountry adoptions by Australians.

Mr HARDGRAVE—But you have only 19 countries that are signatories.

Mr Morgan—That may be.

Mr HARDGRAVE—What is going to happen with the non-signatory states?

Mr Morgan—I accept that we have only that limited number. I will just go back in history a little. When Australia, on 1 January 1986, ratified and took up the abduction convention, we were the 7th country to do so. After 12 years, there are now 47. I expect this convention to be like that particular convention—that there will be very significant international acceptance of it and that the procedures under it will be seen by the sending state, because they have the major concerns about sending their children out of their country and out of their society and culture to other countries. In the past, those particular

sovereign states have been concerned about malpractices that occurred in an unregulated way, and they were very supportive of this particular convention being negotiated.

Mr HARDGRAVE—So the sort of baby broker's approach can be wiped out by this convention?

Mr Morgan—I think one of the classic examples given during The Hague Convention was the Texas billionaire who gets his Lear jet out, flies over the Pacific, picks up a kid and returns within 24 hours.

Mr HARDGRAVE—It is frightening. Last week was Reconciliation Week and, not wanting to throw too big a hand grenade into the middle of this debate, you cannot help but wonder that, if safeguards are not right, we could end up with an international version of having to say sorry to a war torn nation—children were offered up for adoption to another country, were taken out of their culture and, after 30 or 40 years, we are in a whole mess of trouble trying to reconcile to that adult what occurred. Are you satisfied the safeguards are sufficient for that?

Mr Morgan—I am satisfied that, in developing the convention, a considerable amount of work was done to ensure that the best possible minimum standards were achieved and that the best practices were developed. The convention requires a regular review of the operation of the convention and, if there are difficulties that either are shown up or may become apparent, I am certain that the international community—that is, The Hague Convention—will address those particular concerns and properly.

Mr HARDGRAVE—Just to finish that off, there is tremendous generosity of an Australian person, say, wanting to adopt a child from the Horn of Africa. I have met a few of those sorts of people who are unable by Australian laws because of their age to adopt an Australian born child and are looking overseas. I would just like to think that their good intentions are not going to come back to hurt either them or the child in years to come.

Mr Morgan—I would agree with you and, hopefully, that will not be the case. But, if this convention works, as I believe it should work and will work, we will not then get headlines like we got in the newspaper on the weekend. I will give you some copies of this.

Senator ABETZ—Can you just read the headline and tell us where it came from?

Mr Morgan—I can. It is from the *Weekend Australian* dated 30 May, and it is headed 'The market where $620 buys a baby'. It is a detail of some cases involving adoptions in New Zealand. The people involved were American citizens and they were buying children out of Indonesia. This convention should prevent that sort of abuse that was occurring at that time. I can only say that that is what the intention is. I can only say

that, at least on a theoretical basis, that should not be able to occur in the future.

Mr HARDGRAVE—So the vultures that prey in the remains of a conflict, national upheaval or whatever—people who prey on babies—they would be put out of business by this convention?

Mr Morgan—They certainly should be. I will just add one point because you are picking up that sort of refugee type situation. After the convention was in fact negotiated, there was a further consideration arising out of two particular things—Romania, in the early 1990s, and then Rwanda. A concern was expressed about refugee children and the difficulties in placing them and caring for them properly. Arrangements were made to treat those children under this convention, as long as proper safeguards about consent for intercountry adoption had taken place.

I do not know whether the Commonwealth government is at the stage yet where it is prepared to pick up those particular arrangements. I certainly would have some concern because, where you have large numbers of displaced people, as in Rwanda, it is quite easy for children to be separated from parents, and people with all the goodwill in the world, not being able to find the parents, readily saying, 'This child can be adopted,' only to have at a later stage a parent turn up and say, 'I want my child.'

Mr ADAMS—You spoke about the parents having to give consent. When children belong to the state or are under the control of the state, what does the convention say about that?

Mr Morgan—The convention starts off with a decision by the state that nearly all these kids are going to be in state care, or a lot of them are anyhow—a decision that adoption is in the best interests of the child and that international adoption is also in the best interests of the child. The convention itself places an obligation upon the state authorities in the country where the child is to see whether or not the child can get a proper life in their own country. It is when that cannot take place that the convention is supposed to cut in and say, 'Now we will look externally, and we have people in other countries with whom we deal who have parents who have been checked and would make proper, respective adoptive parents. Let's see if we can match a child with a parent.' It is not matching a parent with a child; it is matching a child with a parent.

Mr ADAMS—What is the criteria? With the situation of taking someone from their culture as a child and placing them into another culture, there is now some written evidence about the effect that that has in the long term. I have seen photographs of millionaires with 12 children from different countries, and you wonder what the reality of this is for the future. Are there any criteria? Was there any thinking in that regard when this was being laid down?

Mr Morgan—In the development of this convention, quite some time was spent

on dealing with the cultural issues. In the convention, there are specific provisions dealing with intercultural issues, including provisions—which, I must say, Australia was in the forefront of obtaining—such as the requirement to preserve the records of the adoption so that they are available to both the adoptive child and the biological parent at the time. It will facilitate, should it be desirable on either side, subsequent contact between those parents and the child.

Senator ABETZ—You have referred us to this *Weekend Australian* article of 30 May 1998 entitled 'The market where $620 buys a baby.' But, as I understand it, the people involved in that have been charged with criminal offences. How can you assert that, if the convention were in place, the people who would engage in criminal conduct would all of a sudden say, 'Oops, there is a convention in place. We had better not engage in criminal conduct'?

Mr Morgan—Senator Abetz, I cannot say specifically that human nature is such that the mere convention will prevent people from doing it. After all, we have had for many centuries now a criminal law which has told people, 'You will not do XYZ.' It has not prevented them, but it certainly places an obstacle in the path of people who are not hardened and predisposed to criminal activity to behave in a way which is acceptable within the community. I expect that this internationalisation of the arrangements in intercountry adoption will have the same effect, basically, in respect of this trade. I talk about a trade because I believe that quite a lot of it has been a trade in the past.

Senator ABETZ—But, if people are willing to engage in criminal conduct to effect the purposes outlined in that article, one wonders whether an international convention would, of necessity, stop them from engaging in like criminal conduct in the future.

Mr Morgan—I believe it will, but I cannot give you any assurance, nor can I give you any basis upon when that sort of illegal conduct might cease to operate.

Senator ABETZ—I was hoping to hear that the convention, in fact, may streamline things to such an extent that there will be a smooth and fairly clear path for people to follow should they seek an intercountry adoption so that they will not be tempted to go down the illegal route.

Mr Morgan—That will be the case where a person, or a couple, who wishes to engage in an intercountry adoption has been the subject of an assessment as to their suitability and appropriateness to be involved in that particular activity. If that is the case, the processes here certainly do streamline and certainly will make it reasonably quick to get intercountry adoptions finalised.

But there will always be persons who will not satisfy those requirements. There will always be some backyard person who, for money, will go and engage in the activity

of hijacking or taking a child. No matter what sorts of walls you put in their way, they will find a way around it. There are no sanctions in this convention, only the individual governments seeking to control their citizens not to engage in this sort of illegal activity.

Senator ABETZ—So the convention will not stamp it out but, hopefully, minimise it?

Mr Morgan—It should minimise it significantly.

Senator ABETZ—Who are the 19 countries which are parties to the convention? Is Australia at the moment considered to be a party to the convention or not yet?

Mr Morgan—We are not yet a party to the convention. Do you have a list, John?

Mr McGinness—Yes. I provided to the committee last week a list that was attached to the new draft of the regulations.

Senator ABETZ—There are 18 convention countries. Is that it, the very last one?

Mr McGinness—Yes, it is.

Senator ABETZ—That has 18 on it. So, undoubtedly, there must be another one there. If Australia is not on the list because we are going through this process, are you able to enlighten us as to how many other countries are in a similar situation to Australia—that, in every likelihood, they will have their signature to this convention by 30 July this year?

Mr Morgan—There is no specific time frame. There are a large number of countries that are not currently members of the convention that are in the process of considering their position. If one looks at the CROC convention, nearly every country in the world has now ratified that particular convention, and article 20 has provision for arrangements for intercountry adoption. Article 20 was focused in there because work was already going on in The Hague about this particular convention. So one would think that, where countries have already ratified CROC, there would be a fairly significant chance that they would ratify this Hague Convention in due course.

There is a significant departure or omission from CROC, and that is the United States of America. Notwithstanding that they have not yet ratified that convention, the United States did take a pretty high profile in developing The Hague Convention and, at an international conference in San Francisco last year, were indicating that they were working to ratify this particular convention. If the United States comes in, that will have a large bearing on a lot of source countries.

Senator ABETZ—Has any country lodged reservations? Everybody loves telling

us about how many countries have signed CROC but, like you, they never want to tell us about all the countries that put down very significant reservations. I wondering whether this convention has any reservations—I would doubt it.

Mr McGinness—No, the convention provides that there are no reservations allowed to the convention but there are certain declarations that people can make. Richard mentioned before the one about refugee children. I can provide copies of the notices of ratification, if that will assist.

Senator ABETZ—That would be very helpful, thank you. Can you just tell me, and I will try to follow, how does it work with the federal-state relations in this country? The Commonwealth will be signing off on this convention?

Mr Morgan—The Commonwealth would be signing off. We are in the process of getting Executive Council approval, subject to this committee's views about Australia ratifying the convention. If that is the case, once we have the views of this committee and we go to the Executive Council and get agreement to ratify, we will process the paperwork so that it will be lodged in The Hague later this year. It just depends, the timing might be a little out.

On the first day of the third month after Australia lodged its notice of ratification, the convention would come into effect for Australia. Thereafter, we would be in a position of being able to deal with, and obliged to deal with, every contracting state or every member state of this particular convention. There are some source countries that are currently ratified that we do not have relationships with. They would become available to potential adoptions from Australian parents.

Senator ABETZ—But that mere act would clothe the federal government with this responsibility through the external affairs power and thereby allow the federal government to legislate, should it so desire. The chances are it will not so desire.

Mr Morgan—We have already legislated in the Family Law Act to enable us to implement this particular convention and we did that back in 1993.

Senator ABETZ—Under what power?

Mr Morgan—Under the external affairs power, but we were not regulating a particular substantive law. It was a facilitatory law, the same as we did with intercountry adoption. We have a system of a primary power under the foreign affairs power in the Family Law Act with provision for regulations, and the regulations will not only proscribe the limited role that the Commonwealth will have but also indicate the role that the states have.

Senator ABETZ—Did I misunderstand you but I thought in the introductory

statement you were telling us that the federal government had decided not to proceed under the external affairs power?

Mr Morgan—Not to proceed with taking on the whole role.

Senator ABETZ—Right. But potentially it could—

Mr Morgan—It could at any time.

Senator ABETZ—Once it is signed up to this treaty—

Mr Morgan—Or even before that.

Senator ABETZ—Before that, how could they do that?

Mr Morgan—We could pass a substantive law to do that.

ACTING CHAIRMAN—I suppose you would argue CROC as one example that would give a head of power—

Senator ABETZ—Under CROC, yes. It would under the external affairs power that the federal government would claim it had the authority to legislate.

Mr Morgan—Because we do not have a separate head of power under the constitution.

Senator ABETZ—Yes. And the states all agreed—

Mr McGinness—There is a written Commonwealth-state agreement where it clearly sets out what the Commonwealth will do in its legislation and what the states will do in their legislation. That has all been signed off by the states and by the Commonwealth.

Senator ABETZ—How detailed a statement is that?

Mr McGinness—It acknowledges, for example, that the Commonwealth will make certain regulations dealing with certain aspects of the convention. It also talks about the states passing their own legislation mirroring those regulations, if they wish to. I think you would have a copy of the Commonwealth-state agreement. It was included in the earlier copy of the regulations we gave to the committee.

Senator ABETZ—All right.

Mr ADAMS—So if states did not live up to their end of the bargain on matters such as deaths in custody, the Commonwealth could legislate?

Mr Morgan—The Commonwealth could legislate. Within the framework of the community services ministers, if a state is not living to up its part of the bargain the Commonwealth can raise it there and get some remedial action taken in conjunction with other states where it is being properly regulated.

Mr ADAMS—So you are planning to regulate?

Mr Morgan—Yes.

Mr HARDGRAVE—The states could not easily abrogate their responsibilities without breaching the agreement and therefore having some sort of fiscal penalty imposed—

Mr Morgan—Whatever penalty.

Mr HARDGRAVE—And vertical fiscal imbalance strikes again.

Mr Morgan—Or the Commonwealth doing that dreaded thing of taking over their role.

Mr HARDGRAVE—Yes, but at the end of the day the responsibility finally rests with the Commonwealth of Australia to guarantee that certain action has been action.

Mr Morgan—Once we ratify this convention, the final responsibility lies with the Commonwealth.

Mr HARDGRAVE—Absolutely, thank you.

Senator ABETZ—Can I quickly follow up: this Commonwealth-state agreement was in the first lot of draft regulations but now the next lot of regulations does not seem to include it the agreement; why is that?

Mr McGinness—I can explain that briefly: it was included in the first set of regulations simply for information purposes. The regulations did not give it any legal force. Some of the NGOs were a bit confused by that and they said, ‘If it doesn’t have any legal force, why does it appear in the schedule to the regulation?’ So we talked to the states about it and they said, ‘Leave it out if they don’t want it in there.’ So that is the way we have drafted the regulations now. It does not make any difference to the implementation—

ACTING CHAIRMAN—It is sort of a code of conduct between the states?

Mr Morgan—The first draft provided a very good mechanism for the consultation that needed to take place with the community because they could see the whole framework, and the fact that the arrangement is between Commonwealth and state governments is a different issue.

ACTING CHAIRMAN—Thanks very much for coming along and giving us a very comprehensive presentation.

Mr Morgan—Do you wish us to remain in case you want to ask anything else?

ACTING CHAIRMAN—It might be helpful if at least one of you could remain. I now call representatives of Adoptive Families Association of the ACT and also Australian Intercountry Adoption Network.

[10.10 a.m.]

BRISSON, Mrs Ricky, National Coordinator, Australian Intercountry Adoption Network, Adoption Coordinator, Australian Families for Children, 240 New South Head Road, Edgecliff, New South Wales 2027

KARMEL, Ms Prudence, Member of Executive Committee, Adoptive Families Association of the Australian Capital Territory, GPO Box 1030, Woden, Australian Capital Territory 2607

ROLLINGS, Ms Julia, President, Adoptive Families Association of the Australian Capital Territory Inc., GPO Box 1030, Woden, Australian Capital Territory 2607

WALLS, Ms Anne, Vice-President, Adoptive Families Association of the Australian Capital Territory Inc., GPO Box 1030, Woden, Australian Capital Territory 2607

ACTING CHAIRMAN—We appreciate that you are representing two organisations but we perceive that the thrust of the evidence is going to be similar, so it is convenient to hear from both organisations together. You might like to each give a brief introductory comment on the thrust of your respective submissions. If I could call on you first, Ms Walls.

Ms Walls—First, we would like to briefly say that we represent the view of all NGOs who support, and always have supported from the outset, the principles and underlying intentions of the treaty. What we are extremely concerned about—and what all the NGO concerns have been about over this period of time where there has been a difference of opinion—are the perverse outcomes that we believe will flow from how Australia has decided to implement the treaty through its legislation here.

We believe that many Australians would be surprised when they compare how the other receiving countries have responded to implementing the treaty or their attitude towards the treaty. The states deny this but, since 1991 when they took over the intention to develop programs, they have had an extremely poor track record. Only two programs have become effective—Romania and Ethiopia. There has been an intractable process with China. There has been a reduction in the number of countries who are available to deal with Australia and who will work with Australia. They are not in a position to be proactive about it or to maintain links in the way in which NGOs believe you have to do. There has to be a conduit between Australia and the sending country. And not one program has been initiated by government.

In terms of what Attorney-General's has set up—the central authority idea—we understand how it is intended to work. There are models for it elsewhere in Commonwealth-state relations. But we believe that they have basically set up a phantom structure in the central authority. There appears to be no mechanism for accountability in a

practical sense. There is no strict overview or monitoring role that we have been able to identify through the draft regulations, which I should say arrived on Friday to us as an NGO. All NGOs around the country have not had an opportunity to see them redrafted. Although I would like to be assured by Richard Morgan's statements that the central agency will somehow be in a position to respond, I see no mechanism for it.

Also, the Commonwealth will not see the perverse outcomes, which we believe will eventuate from this, occurring because they have no mechanism to see when a country decides it will not deal with Australia—when a country decides that Australia is too hard or too difficult to deal with—or when a state decides that they will not cooperate with a request from an individual or an NGO that there is a program available. We may have been contacted about this in some country. It may be a country we have been dealing with for many years. New South Wales has a track record of having done nothing in relation to all inquiries that have been placed before it since 1991. Victoria and Queensland were assigned the task of Romania and Ethiopia respectively and also, in the case of China which Victorian government officials have been attempting to negotiate for nearly five or six years, there is no end in sight.

ACTING CHAIRMAN—Thanks for that. Mrs Brisson?

Mrs Brisson—I am speaking in my capacity as National Coordinator for the Australian Intercountry Adoption Network as well as the Adoption Coordinator for Australian Families for Children. I would first of all like to reinforce Anne's comments about the fact that AIAN members fully support the objectives of the convention. However, AIAN members have grave concerns about the way Australia is intending to implement the convention and the negative outcome that the convention will have on intercountry adoption programs in Australia. Our concerns are real and to have them dismissed completely by the national interest analysis shows a total lack of understanding and a lack of the will to cooperate by the policy makers.

Intercountry adoption in Australia has worked for the past 30 years. Over this period legislation, policies and standards in the states and the Commonwealth have been developed to a level much higher than the one intended by the convention. In reality, whether the convention is ratified or not, Australian standards comply with the convention requirements, and we can even say that they have surpassed the convention requirements already.

Our concerns relate to the practical effect of ratification and the uncertainty that still surrounds three major areas: the accreditation of NGOs, the development of programs with convention countries and the development of programs with non-convention countries. AIAN is particularly committed to ensure that NGOs are able to continue their role as service providers and that adoptable children from both convention and non-convention countries are given the opportunity of finding a home in Australia.

The final draft of the family law regulations reached our office last Wednesday, and it has yet to reach all our members. Its content revealed that the Commonwealth-state agreement which sets the scene and framework for the operation of the program in Australia has been removed from the regulations and, in fact, commenced operation on 9 April 1998 without public knowledge. Our concerns relate to the content of the Commonwealth-state agreement.

As we are yet to receive the final text of that agreement, my comments will relate to the version we were given in late 1997. As I said, we have three concerns. The first is that the proposed accreditation requirements are far too restrictive, well beyond the intention of the convention and totally out of line with internationally accepted standards. These requirements will force the majority of NGOs in Australia to discontinue their services.

In addition, once the convention is ratified, NGOs currently involved in providing the service will have to cease operation until such time as they are granted accreditation. We have not been made aware of any provisions being made by the states to allow NGOs the time to apply and to obtain accreditation. Our questions as to what will happen to pending applications made through NGOs or what will happen to programs currently administered by the NGOs remain unanswered. We still do not know what the intention is there.

Mr HARDGRAVE—I, like every member of this committee, am very concerned about the consultation process. Probably the major catchcry of this committee is that, on too many occasions in the two years the committee has been going, departmental officials have failed to come to grips with the fact that we exist and we are here to mop up the failures of consultation. You obviously have some grave concerns about that consultation process.

The documents you received last Wednesday we were given this morning, although the committee received them on Friday. I apologise for the fact that I got them this morning but the committee got them Friday. So I guess you are a couple of days ahead of us. Perhaps it is because of 30 years of existence and we have only been around for two years. You have raised a couple of issues—do you feel ignored as far as the NIA is concerned?

Ms Karmel—One of the issues is that the state department officials—who are the people we have had to deal with—have a odd view of what consultation is. They seem to think that consultation is telling other people what they are going to do. It does not matter what we say, what sort of documents we put to them or how we respond, it goes into a black hole. It is as if it has never happened. There is no dialogue; there is no acknowledgment that there may be legitimate concerns held by others. It is a very frustrating business.

Mr HARDGRAVE—Why is that? Do you think it is a legitimate concern of public officials that support groups in themselves may have an outcome that is not in the best overall interests; in other words, you are not as impartial as public officials are on these matters?

Ms Karmel—I have been a public official for many a year, and it is just easier if you can get on with it by yourself. I think that, despite a lot of developments in rhetoric, the reality in many areas is that public officials have a great deal of difficulty coming to grips with consultation and coming to grips with the fact that there are views outside government that may be informed and have legitimacy. I have seen this in a number of areas and, from my experience, it is particularly noticeable in this area.

Mr HARDGRAVE—The accreditation process seems to be one of the very big concerns. You are basically out of existence under this convention until you have satisfied the criteria?

Mrs Brisson—As soon as the convention is ratified, we are. The criteria that have been proposed are such that very few organisations will be able to comply with it, plus there is no time frame given to allow organisations to set up an accredited body.

Mr HARDGRAVE—What is the effect of that on people?

Ms Karmel—No children.

Ms Walls—No children.

Mr HARDGRAVE—What do you mean by that?

Ms Karmel—There will be no children being adopted into Australia.

Ms Walls—There will not be facilitation of adoption in Australia from overseas.

Mr HARDGRAVE—So you are suggesting that we are considering ratifying a convention that in itself is going to put the whole process out of business?

Ms Walls—That is right. We are saying that Australia has gone to a great deal of trouble about this. The reason we say that is to do with the unusual nature of intercountry adoption, how it is facilitated and how it is developed. Other receiving countries are far more receptive to the idea. At the macro level, many receiving countries—western countries—have a humanitarian view about it. But, of course, at the personal level it is not about rescuing children. The intention of the UN Convention on the Rights of the Child is that adoption is the last resort. NGOs firmly stand by the view that anyone here on this side of the table should only be representing the idea of an adoptable child.

ACTING CHAIRMAN—Let us look at the way forward, though. As I understand from the thrust of your evidence, you think the treaty itself is not a bad thing or is it a good thing?

Ms Walls—It is an excellent thing.

Mrs Brisson—We support the treaty.

ACTING CHAIRMAN—In one sense our job is to look at whether Australia should ratify it, but then your concerns come in about implementation—

Ms Walls—Yes.

ACTING CHAIRMAN—Let us look at this accreditation situation. I do not think it would be the case that any of you should say there should be no accreditation procedure; I think it is your evidence that there should be a more reasonable accreditation procedure. Is that the case or are you saying there should be no accreditation?

Ms Walls—There is a picture in here about the fact that state governments perceive that it is they who should have the knowledge, the background and the intent—

ACTING CHAIRMAN—A reasonable bystander would say that it is sensible to have some sort of accreditation procedure. It would be difficult to convince a reasonable person, I would suggest, in terms of this area that there should be no accreditation process?

Ms Walls—That is if an NGO is going to do the adoptions. If the state government continues to do it, which is fine if they would do it and do it effectively, then you probably technically would not need to accredit an NGO.

ACTING CHAIRMAN—What would be the role of an NGO in those circumstances?

Ms Karmel—The role that many of them currently have.

ACTING CHAIRMAN—Which is what?

Ms Karmel—To provide the link. What happens now is that somebody who wants to adopt a child goes to their state welfare department and goes through the processes to have them approved as an appropriate person to adopt a child. But then there is the issue of which child and where.

ACTING CHAIRMAN——Yes, sure.

Ms Karmel—The only way through that is via the non-government organisations who have the links with orphanages in various sorts of countries.

ACTING CHAIRMAN—Even a reasonable bystander would say that someone participating in that process should be accredited. I mean, you should have someone who knows what they are doing.

Ms Karmel—Yes.

ACTING CHAIRMAN—I do not want to lock you into a corner. But, just from a reasonable bystander's point of view, some sort of accreditation procedure would seem sensible and reasonable?

Ms Walls—Yes.

ACTING CHAIRMAN—It then comes to a question as to whether the accreditation procedure proposed as part of the implementation is unreasonable. That is your gripe.

Ms Karmel—Yes.

Ms Walls—Yes, that is very much the case.

ACTING CHAIRMAN—Then your second argument along those lines is that, in any event, there are no transitional arrangements for the organisations to achieve those accreditation standards?

Ms Walls—Yes.

Ms Karmel—The third arm of the argument is that the state departments are not in a position to fill the vacuum they are going to create because they do not have the expertise of dealing with programs in other countries. Their expertise is in approving parents; they do not have the expertise in dealing with programs in other countries. We have seen that with China and Romania and with a number of South American programs that have sat on the table—

ACTING CHAIRMAN—The NGOs have greater expertise in that. You say that the government authorities, both federal and state, should sit down and work out a reasonable accreditation procedure and provide some transitional arrangements for the NGOs to achieve that. Is that the thrust of what you are saying?

Ms Rollings—Recognising things like experience in the area, which I understand The Hague Convention does recognise, whereas in the accreditation standards it is stated that you have to have professional qualifications. I understood The Hague Convention

actually recognised experience as well as professional qualifications. Some of us have spent 20 years in the area.

Ms Karmel—One concern has been that the convention seems to have been, in a sense, hijacked by the states to put in place requirements which go far beyond the requirements of the convention itself, but they use the convention as the argument for doing this. The accreditation is an area where they have done that and the issue about links with aid programs is another area where they appear to have done that. It is this series of things and the way they build layer on layer—

ACTING CHAIRMAN—Is that because you perceive a disinclination by the states to get involved in intercountry adoption; do you go as far as that?

Ms Karmel—I have a particular view about that but, yes, I think that is the case.

Mr HARDGRAVE—Can I pick up on something that Ms Walls said earlier. I think you suggested that in Victoria there is a predisposition to handling Romania and in Queensland to handling Ethiopia. Are you saying to me that people in Queensland who are aged 35 or something cannot get a child born in Australia and they shoot you off overseas and suggest that you sell Ethiopian children to Queenslanders and Romanian children to Victorians.

Ms Walls—No.

Mr HARDGRAVE—What is happening? I want to get to the bottom of it because I know of people who have hit that kind of age barrier and been told to look overseas. I am from Queensland so that is why I have asked the question.

Ms Walls—Let me explain: in 1991 the Commonwealth-state ministers and officials mechanism agreed that only the Commonwealth and the states could negotiate programs bilaterally with countries and that NGOs could not develop them. How that mechanism had to operate was that a state official should be sent to a country. If a request was received from an individual or an NGO in the community to a state government and that was put to the Commonwealth-state meetings of officials, then they would charge one state with the role to develop and initiate that program.

What happened was that the Department of Community Services in Queensland was charged with negotiating a program with Ethiopia because all the initiation and groundwork had been done via an active NGO in Queensland. In Victoria—in Australia generally—people in the community were putting governments under pressure to develop something with Romania along legal lines, so therefore Victoria was charged with the responsibility to negotiate a program with the Romanian government in so far as it could and get it operational and up and running.

Mr HARDGRAVE—So the role of the NGOs has been to search for these agreements in other countries and then the public officials come through and take it over?

Ms Walls—Yes, often finding an actual institution that will want to work with Australia.

Mr HARDGRAVE—Is there an NGO-to-NGO relationship existing?

Ms Walls—Yes, a lot—historically, right from the beginning, from the days of Vietnam. You have seen the papers. That is how it started in Australia.

Mr HARDGRAVE—What sort of organisations are there in other countries—the Red Cross and groups like that?

Ms Walls—No. In America, Canada and other places there is usually the same mechanism. The most famous is the American one that started after the Korean War called Holt International, which was a couple of individuals who worked to take Korean orphans—children of American fathers who were orphaned by the war. They changed the American law by an act of Congress to process that. It resulted in a lot of NGOs then starting up in America. It is the same in other countries. It is the same in European countries—Belgium, Sweden, the Netherlands, Italy, and Germany. A lot of it is the same.

Mr HARDGRAVE—Can I paraphrase your approach to this by saying that you could handle all of this as NGOs provided you are accredited and you do not mind being accountable for your actions and your conduct, rather than a publicly funded bureaucracy?

Ms Walls—Yes. What would have worked is if state governments had been prepared to be in partnership with NGOs. NGOs could have continued the development part of it and the likes of the New South Wales government could have taken on the presentation of a program and then have taken on to do the bilateral agreement in good faith with the government, as has been presented to them on a number of occasions in the last few years, but there is no accountability beyond that for them to develop anything. They can let it sit on their desks. I know public servants involved who sit there. No-one asks any questions because it is one small group, it is one small set of parents, it is a disempowered community organisation, and they will be even more disempowered under this. After all, state governments are used to managing children naturally who come into their care in this country. That is a traditional and historical reason for their existence.

Mr HARDGRAVE—So there is an organisational culture.

Ms Walls—Yes, there is an organisational culture. I take the point that was made earlier: there is becoming in Australia a view of social taboo about adoption for a number of reasons, and we are also taking those reasons on board culturally in regard to the stolen generation. There is a culture of social workers out there, after all, who have been

involved for a long time with practices and others have criticised them greatly. Naturally there is great sensitivity about that. We understand that. We also see that they are often working that dual role.

ACTING CHAIRMAN—Another positive example is South Australia. It is more sophisticated.

Ms Walls—Yes, it is. It is best practice model.

ACTING CHAIRMAN—They have more of a partnership role, I understand, between the government and NGOs.

Ms Walls—The outcome is that South Australian adoptions to all countries are higher per capita than any other state in Australia. Out of all proportion, Korea, for example, allocates more children to South Australia, three to one, than it does to the ACT or Tasmania or somewhere like that.

ACTING CHAIRMAN—Is it the case that there will be an NGO or more NGOs in South Australia that will meet accreditation because they have been able to work with—

Ms Walls—I cannot speak for South Australia. We know that somebody has been working very hard to become the agency if China ever gets signed.

Mr ADAMS—Will we have a flood of children when we get this sorted out?

Ms Karmel—Not the way state departments behave, no. The assessment process for parents is a very gruelling process. I said to somebody one day, 'If somebody comes to you and wants to do this, give them a handful of prosaic and tell them to go away.' It is tough. So no, there will not be.

Ms Walls—I think one thing we have not made clear is that there will be two standing operating programs the day Australia signs and ratifies. Mr Morgan mentioned that there are five countries that Australia now claims to have on its books—Sri Lanka, Romania, the Philippines, Costa Rica and Ecuador. We have no operating program with Ecuador, Costa Rica or Sri Lanka now. Sri Lanka has fallen by the wayside after having been a very successful and operating program for a long time. In the end, I think in frustration, Sri Lanka said, 'Australia is too hard to deal with. We are not going to bother. We can send our children to other countries.' In other words, Romania and the Philippines, technically, will be the convention countries the day Australia signs. There is an allowance, though, for the bilateral arrangements to continue for three years. The issue about that is whether these non-signing convention countries will want to be bothered being required by Australia to come up to the standard of The Hague.

Mr ADAMS—Who pays the cost of a state official going overseas?

Ms Walls—The taxpayer. Victoria has sent a public servant to five or six countries in the last five years—how many times? They have been to China about six times.

Mr ADAMS—Who is going to bear the actual cost of the arrangements in the future if this convention goes ahead?

Ms Walls—There is no disclosure of that. There is a mention of it in the NIA, we notice. It is on top of the cost recovery costs involved for people who adopt. In Victoria, the up-front costs before anyone does an adoption and pays anything to an overseas authority is $6,500.

Senator COONEY—Does the county court still do the adoptions in Victoria?

Ms Walls—I do not know.

Senator COONEY—The reason I ask that is that some time ago there used to be some problems between the state and the Commonwealth about what the judge was going to do. How is that issue going?

Ms Walls—Sorry, I cannot comment on that.

Senator COONEY—One of the problems with overseas adoptions in Victoria was whether or not the court would approve of it and whether or not the Commonwealth could anticipate that. I was wondering whether that had been sorted out. Remember there was an inquiry into all that in about the early 1980s. I am wondering what has happened since then.

Ms Walls—There are some Victorians here who might be able to comment later on that, but they are not at the table at the moment.

Senator COONEY—Does that happen in other states, do you know? How are adoptions done in the various states that you represent?

Ms Walls—In the ACT they are done through the ACT Supreme Court. It is a very smooth process.

Ms Rollings—The children come into Australia at the moment either under a guardianship release order from the overseas country or a full adoption order. In the ACT, after the child has been here about six months, with the support of the community services department, the family either applies to the Supreme Court for a recognition of the original adoption order from overseas, because our ACT Adoption Act 1993 does recognise overseas adoptions, or for a full adoption order.

Senator COONEY—So if the adoptions are made overseas the court here will recognise that automatically, will it?

Ms Rollings—The adoption is supported by the community service adoption unit here and you go through a process of handing in the paperwork and various other things to the court, and they say, 'Yes, that was a valid adoption.' They recognise it and the child is given Australian citizenship.

Senator COONEY—They do not go through the process again.

Ms Rollings—They do not re-adopt the child in the ACT. They only do a full adoption order if the child has not come in with an adoption order originally.

Senator COONEY—Is that the same in other states?

Mrs Brisson—No, it is not. In New South Wales, we adopt the child again. Under the convention, my understanding is that orders made in convention countries will be recognised though other orders made in non-convention countries will not be recognised.

Senator COONEY—I was wondering how it is done here at the moment.

ACTING CHAIRMAN—Perhaps we can get some more information on that in the different jurisdictions. You can only speak for the ACT.

Mr HARDGRAVE—What about the children who come from other nations? Is there a deliberative support mechanism recognising that they will look, I guess, different to their parents in a lot of cases. Are they put in touch with cultural linkages or given a chance to learn a little about where they come from?

Ms Rollings—That is something all the state adoption units are meant to bear in mind very strongly when they are assessing an applicant. That is where NGOs do come to the fore because all of us do consider whether or not we have active involvement in programs. It is very important for our children because they do stand out in the community. I have children born in Australia to me and from Taiwan, Korea and India. We are a very visible family. It is very important that my children know other children in similar situations. We are encouraging our members to join associations like the Australian-Indian Association and the Korean Society in Canberra so our children know not only other adoptive families who have children like them but also nationals from their country so that they can learn about their culture and have continued involvement with nationals from their country as they grow up. We all believe very strongly that our children do have a very high self-esteem and grow up feeling good about themselves and their original nationality as well as their Australian citizenship.

Mr HARDGRAVE—What terrific people you are. Thank you very much.

Senator ABETZ—Were you provided with submissions of the other people and bodies making submissions to us?

Ms Walls—They were available to us.

Senator ABETZ—Have you availed yourself of that opportunity, or not?

Ms Walls—No, we have not seen all 17.

Senator ABETZ—Have you seen the submission by Cathleen Sherry?

Ms Walls—We understand that there is a copy of it there.

Ms Rollings—I read it very briefly this morning.

Senator ABETZ—In fairness, before you go, you ought to be given the opportunity to respond to some of the claims or assertions made in it so we get it on the record. In summary, the view is that you would represent the views of those wishing to adopt overseas and, as such, have a conflict of interest when considering the interests of the children involved. In the body of the submission on page 4, there are a number of statements which I will quickly read and, if I may, gain your response to them. It is on page 180 of the papers. In the second paragraph on page 4, the second sentence reads:

The current practice of intercountry adoption is substandard in that it gives undue power to unaccountable, non-professional and inevitably biased parent support groups.

In that same paragraph, the last sentence reads:

The parent support groups must stop being allowed to play an active role in intercountry adoption and restrict themselves to a true support role that is appropriate for private voluntary organisations.

The second last paragraph, about halfway through, states:

In my experience at the Commission—

Cathleen Sherry talking about her role in the Law Reform Commission—

many of the parent support groups, but not all, were unhelpful and not forthcoming with information. They did not seem to accept that the Law Reform Commission, an independent statutory body, entrusted by their elected government with the task of reviewing adoption, should be provided with the information that it requested . . . They indicated that some parent support groups were staffed by people with limited administrative and professional skills. One parent support group failed to fill in the survey at all, despite repeated requests . . .

The next paragraph states:

The unco-operative and suspicious attitude of some of the parent support groups led me to conclude that they would not be appropriate people to carry out an official adoption function.

That is not necessarily the most flattering of commentary.

Mrs Brisson—First of all, our organisation is considered as a parent support group. We have been involved in intercountry adoptions for the past 20 years. We have a written working agreement with the New South Wales welfare department, a written working agreement with the ACT welfare department and the Northern Territory welfare

department. Those agreements are approved by those departments, their legal branch and the ministers. Unfortunately, support groups tend to be all shoved into the one basket. We are different support groups providing different services. There are some that just run social functions, get togethers, picnics and so on where others provide a much more intense and full service.

Our involvement in intercountry adoption is probably one of the largest in the country other than the one in South Australia. We have established all our programs. We have facilitated placements of hundreds of children. We have negotiations with a number of programs in South America and have been facilitating the placements of those children via the state welfare departments.

ACTING CHAIRMAN—I suppose the argument—and there are arguments both ways—again strengthens that there is a need for some form of accreditation.

Mrs Brisson—We do not dispute for one minute that there is a need for accreditation and a need for accountability. However, the role that we perform is one of an administrative nature. We do not assess applicants. We do not assess the children. We basically act as a go-between for Australian authorities.

ACTING CHAIRMAN—It is still a significant role though.

Mrs Brisson—It is a significant role.

ACTING CHAIRMAN—You concede that some form of accreditation is necessary.

Mrs Brisson—Definitely. We are a supporter of accreditation and accountability, but we do not see ourselves as inappropriate to provide the service which we have successfully provided for more than 20 years.

Senator ABETZ—What about the other organisations?

Ms Rollings—The Adoptive Families Association is basically a support organisation in the ACT. We do not administer any programs. However, our membership does avail itself of the programs administered by NGOs interstate. So we have been the recipients of their services. I know that in my own case of my four internationally adopted children three of them were waiting children, which means the agencies overseas could not place those children. One was born blind and two were older siblings who had been abandoned. Those children were known to the state departments as well, but it was the NGOs who brought them to our attention, knowing that we were interested in adopting waiting children, and facilitated those adoptions. Without the NGOs support we could not have possibly have found out that those children were waiting or adopted them. I think Anne would say the same thing.

Ms Walls—I have not read all of the paper, but in just reading that bit clearly there are a lot of pejorative views there about parent support groups. The issue that has to be borne in mind is that I do not think anybody is salaried.

Ms Rollings—No, it is all voluntary.

Ms Walls—The view is that saying that they are parent support groups suggests that people in them are just acting out of self-interest or are opportunistic. Intercountry adoption has been legal for a long time. It has been supported and seemingly all the rhetoric says that it should take place. The issue for us is: who is helping it to occur? State governments have consistently refused to be pro-active. There is no initiative by them.

ACTING CHAIRMAN—With South Australia being the exception.

Ms Walls—Yes, but they have contracted it to an NGO to do that. The NGO does what it always did. State governments have not done that.

Senator ABETZ—Possibly you are the wrong people to ask this next question because the assertion would be made that the answer you give will be out of self-interest, but my experience or contact with adoptive parents has been that they do it out of a sense of commitment, dedication, desire of being of assistance to a child rather than for their own personal selfish reasons. Would you agree?

Ms Rollings—I think it is important the parents do it because they really want a child. You cannot do it even for the children I have adopted who are waiting children. You have to predominantly want to parent a child, otherwise you are just doing it with an attitude of rescuing the child, and that would not be fair to put on any child. Given that, if parents were coming with any other attitude, then I feel it is important that the authorities that are assessing, approving and hopefully educating those applicants will bring them to another state of mind before they would approve that couple and find them suitable to adopt. If the parents were not doing it holding the best interests of the child in mind, they should not be allowed to go ahead and adopt.

Senator ABETZ—Without putting too fine a point on it, one wonders what would be said about the activities of Mother Teresa in India. What would be the assertions or allegations against her? What motivated her to help those people? I suppose if you want to get to a bottom line somewhere everybody can be alleged or accused of having some degree of self-interest.

Ms Walls—I do not think it helps the model to see people like us as saints and then people like that New Zealand case as sinners. That is the absolute extreme. Australia tends to be very tough in terms of the self-selection program that goes on. People who are very opportunistic about this will not get anywhere. There are too many hoops you have to

go through. There is too much assessment. Australia has luckily, as we point out in our submission, been spared the very bad excesses. That is not to say that somebody is not going to sit here and tell me that they know of a case. We are aware of that, too. But largely we believe that, because it has been so restrictive, it has worked. As we say, it is well above minimum standards.

ACTING CHAIRMAN—The thrust of what you are saying is that you have been doing a good job. The system is working. Yes, there is a need for oversight and minimum standards, but let us sit down with the government and work out what is appropriate and balanced, and let us work out transitional arrangements to get to those standards. Is that the thrust of where you are coming from?

Ms Walls—So that there are not diverse outcomes.

Ms Karmel—We would really like to believe that what Mr Morgan says is true, that this will facilitate and make it easier and faster. That would be terrific. We would love to believe that, but all the evidence we have seen is that that will not be the case without a lot of work.

ACTING CHAIRMAN—Not because of the treaty but because of the implementation within Australia.

Ms Karmel—That is exactly right.

ACTING CHAIRMAN—Thank you very much for coming along and explaining your position.

Ms Walls—Thank you for giving us the opportunity.

[10.51 a.m.]

SHERRY, Ms Cathleen Siobhan, 12 Bellevue Street, Maroubra, New South Wales 2035

ACTING CHAIRMAN—Welcome. In what capacity are you appearing before us today?

Ms Sherry—As a private citizen.

ACTING CHAIRMAN—Would you like to give a brief introduction in support of your submission?

Ms Sherry—I am a lecturer in law at the University of New South Wales. I wanted to give one caveat to my submission—that is, I do not at all purport to be an expert in adoption law or intercountry adoption. My interest arose when I was working as a legal officer at the New South Wales Law Reform Commission. I researched adoption for 12 months. I spent six months working on the Adoption Information Act and six months working on intercountry adoption. I wrote the chapters on intercountry adoption and also Aboriginal and Torres Strait Islander children in the commission's discussion paper on the Adoption of Children Act. I have not worked in the area for a number of years, but I have been following developments.

I also want to say that my submission focuses on the problems in intercountry adoption in New South Wales, but I acknowledge that there is a great deal of diversity in intercountry adoption and there is a great deal of diversity amongst the programs. As is clear from the New South Wales Law Reform Commission's work, some criticisms that can be levelled at some programs are almost certainly entirely inapplicable to others.

My concerns with intercountry adoption in New South Wales arose after I had done some research on the review of the Adoption Information Act. Researching that act largely involved a historical study of adoption in New South Wales, because most of the people who were concerned had been adopted over 18 years ago, so we are talking about adoptions that happened in the past. The very clear impression that we all gained from that research is that adoption is not a straightforward solution to childlessness, and it is not a straightforward solution to children's needs for care. It is complicated and does not always produce satisfactory outcomes. A lot of adult adoptees will tell you that. In the 1960s, when adoption occurred, everyone assumed it would be very straightforward and produce very happy solutions. Those children grew up. They are adults now and they say, 'It wasn't that simple.'

I then came to intercountry adoption, and I was most disturbed to see that I did not think a lot of problems that had been revealed from the history of adoption seemed to be acknowledged, that adoption seemed to be being welcomed with open arms as a

straightforward solution to childlessness or children's needs for care. I did not see that there was often enough acknowledgment of the problems that can arise in adoption.

The general thrust of my submission is that I would suggest very strongly that we need a treaty, such as The Hague Convention. I think there is probably an assumption that conventions, like The Hague Convention, are necessary for Third World nations with underfunded bureaucracies in which abuses of children occur. I would stress to the committee that Australia is also a nation with a seriously underfunded bureaucracy in the form of, for example, the New South Wales Department of Community Services. It is extremely underfunded. That is where the New South Wales parent support groups come in. Essentially DOCS never has and still does not have the funding to administer intercountry adoption itself, so the parent support groups play a vital role. DOCS simply cannot do the role by itself.

For that reason, whether it is a treaty or whether it is legislation, we need something to govern that role because intercountry adoption developed in such an ad hoc way that, to a large extent, it is completely unregulated. That is what the New South Wales Law Reform Commission was so concerned with in its research, to see that there are parent support groups operating where some of whom play nothing more than a support role—they just organise activities for the kids, language classes, that kind of thing—and others play a very active role in adoption. That is a real problem if there is no legislative framework in which they are working and there is no accountability, and there a lot of parents not aware of that. When they joined support groups a lot of parents said to us that they assumed that the parent support groups were accountable to DOCS, and that is not the case. There is discussion and one group has an agreement, but there is no legislative accountability, and that is a real problem.

Overall, the focus of this my submission is to say that Australia has an obligation under ICROC, the International Convention on the Rights of the Child, in article 21(c), that the same safeguards and standards must apply to intercountry adoption as applies to domestic adoption. That does not mean that the same process needs to apply, because that is obviously not possible. The same safeguards need to apply, and I do not think we can say that.

When the Law Reform Commission did its research we revealed all sorts of practices that were extremely questionable. If you look at the commission's final report, you will see that the commission raised all sorts of queries about the way adoption processes sometimes happened. The fact that allocations may be made by sending countries and then some parent support groups would tell parents of that allocation before DOCS had an opportunity to do so. Those kinds of things may have changed in the meantime, but there were certainly some very serious concerns about what was going on. A lot of the concerns also, I should say, were raised by parents who had been through the process of adoption.

ACTING CHAIRMAN—The thrust of your submission is that a treaty is certainly a good thing and something Australia should ratify. Moving on to how it is implemented, you do not see any problems with the accreditation procedures or the regulation procedures in place?

Ms Sherry—Like everyone else, I have not seen the regulations. I was never sent them. So I do not know what the regulations say.

ACTING CHAIRMAN—That seems to be a flaw in terms of input as to who is going to work with those having a say in that.

Ms Sherry—My tentative conclusion from having looked at the operation of the parent support groups and the accreditation under the convention is that, as I think people from the parent support groups were saying today, it will be extremely difficult for them to qualify for accreditation. But my argument would be that if they cannot qualify they cannot qualify. The standards are not just simply ethical and in some circumstances professional qualifications; it depends on the role that the accredited body is going to fulfil. But, if you cannot qualify for ethical standards or experience in adoption—a number of the parent support groups probably would qualify for experience in adoption—or if you cannot qualify for the accreditation standards, then to me that says that you should not be actively involved in the process of adoption.

ACTING CHAIRMAN—Perhaps the answer is not decreasing the accreditation standards but allowing some transitional period for those organisations to achieve them.

Ms Sherry—Yes, if they can do that, absolutely. I do not know how the organisation in South Australia works, but if they could amalgamate and pool their resources that would be good.

In response to the part of my submission that was referred to before, when I worked at the commission we sent out survey forms to the parent support groups. It took a very long time for those to come back. Most of them were handwritten with very little information on them. One parent group simply refused to respond to us. It struck me that, if groups do not acknowledge that the Law Reform Commission, which, as I said, is an independent statutory body, has a legitimate role to play or that we may be genuinely trying to do something useful with the adoption process, they would have real problems with accreditation.

As the representatives of the parent support groups said today, one of the problems is that they are not paid. There are enormous pressures on their resources. But, again, from the point of view of children, if we are going to bring children to Australia, if we are going to put children through the adoption process, we have an international obligation to make sure that that is done with the highest standards possible and to be done in the same way as local adoption, and that is not what is happening in New South Wales today.

Senator MURPHY—With regard to the people who are involved in the process, how does the department do it better? It would seem to me that they do not.

Ms Sherry—The department cannot do it better. As a matter of reality, it cannot. It does not have the funding or the resources to do it. The point is that the department is staffed by qualified adoption workers who have experience in adoption. So, presumably, they are better qualified to be involved in the adoption process. One of the problems with allocation was that the sending country would make an allocation and parents would then be told about it. They should be told about it by a qualified adoption worker who can discuss with them the ramifications of taking those children if they are capable of fulfilling the parenting role. That should not be done by someone who is not qualified to have those kinds of discussions, and a person should not be told they have been allocated a child before they have had a chance to discuss it with a qualified adoption worker.

Senator MURPHY—I understand what you are saying about qualified people, but there is the problem, as you pointed out in your submission, that the department does not have the resources. You have people who are prepared on a voluntary basis to assist the process. It may be that they are not doing it in the way that it should be done. Can you just respond about the standards required for accreditation. What is proposed in the treaty is, it would seem, much higher than what is required elsewhere in the world.

Ms Sherry—I do not know that that is the case. I am not sure where that assertion comes from and, if the standards in the treaty are higher than other places in the world, that is very probably an extremely good thing. That treaty was negotiated by people who presumably are involved in adoption and can see the problems that exist.

Senator MURPHY—Is it a good thing if it does not allow any of the people who currently operate in the system—albeit the quality of the service they provide may vary—to continue working in the system, so they are taken out altogether?

Ms Sherry—If they are taken out of parts of the adoption process that should be performed by qualified workers, yes, it is a good thing.

Senator MURPHY—No, I am not asking that. If you set the standard so high—and I do not know whether the standard proposed is higher than various other countries in the world, but if it is—it would work against and/or eliminate the people currently operating in Australia and put them out of the game. We have got this problem where the departments do not have the money and, therefore, do not have the resources to deal with the problem and I would think we ought to try to look for some middle ground.

Ms Sherry—The difficulty I would have with that is that I do not think the standards are unnecessarily high. In the treaty, they are nothing more than to be qualified by professional standards, in some circumstances, or ethical standards. If it does push some people out, I do not necessarily think that would be an undesirable result in that at

the moment, as I said, Australia is not meeting its obligations under the Convention on the Rights of the Child.

ACTING CHAIRMAN—There did not seem to be criticism of the treaty but of the implementation. Perhaps there needs to be a stage whereby the NGOs can put in their practical experience and you can put in your legal drafting skills—or someone like you, I am not saying that you have the time to do so—so there is greater practical input with legal experience. Then you could come up with, as Senator Murphy said, some more practical sense that alleviates concerns about standards that are too draconian being applied. Again, we are saying it from the point of view of not knowing what these standards are, which has been part of the problem. We have not had time to review these regulations.

Ms Sherry—Sorry, I do not think I follow your question.

ACTING CHAIRMAN—What I am saying is that the criticism seems to be the lack of consultation in the development and implementation of these standards. Perhaps the NGOs need to have a greater input in the development and implementation of these accreditation standards and review procedures.

Ms Sherry—That might be the case, as long as that does not mean the accreditation standards are lowered so people can simply meet them. The accreditation standards still need to be there. We are talking about the interests of children in complicated situations, children who have already had very difficult lives so far. We have a moral as well as a legal obligation to make sure that we have the highest standards we possibly can. While children in the developing world have needs—and, obviously, we all know what they are, many are in desperate need of families—I would have thought, as the people from the parents support group said, from what we have learnt from the stolen generation, it is not good enough simply to say that you love a child and that you want to provide for them. We need legal standards. We need appropriate standards for the operation of intercountry adoption. Otherwise, I think we are inviting disaster on ourselves.

ACTING CHAIRMAN—Sure. Thanks very much for your time and for coming along to convey your experiences.

[11.06 a.m.]

HICKEY, Ms Jane, 65 Narr-Maen Drive, Croydon Hills, Victoria 3136

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

CHAIRMAN—Welcome, Ms Hickey, and welcome back, Mr Turner. You and I have met before.

Mr Turner—It is very good to be with you again.

CHAIRMAN—Would you like to make an opening statement?

Mr Turner—I would like, first of all, to say that I myself am not an adopter or an adoptee. I am, in a sense, neutral in this area. I have, however, written extensively on adoption, and I was also President of the National Children's Bureau of Australia, which published *Adoption Australia* by Peter Boss.

I must say that my view is that adoptive parents—and the whole concept of adoption—are the most marginalised and undervalued group in social work society. The demise of adoption in this country is a tragic development because adoption is, to my mind, the most secure form of alternative care for a child who, unfortunately, is unable to be kept and brought up in a satisfactory way by his or her parents. I think the anti-adoption culture is clearly exhibited in Ms Sherry's contribution and is also apparent in the New South Wales report—to which she contributed and to which I have written an article called 'Two more nails in the adoption coffin'—which exemplifies this anti-adoption stance which is current in social work circles.

These regulations which now form part of the Commonwealth-state agreements are typical of this anti-adoption stance. In fact, if these agreements are not vetoed or nullified, we will be in breach of The Hague Convention because, in my opinion, The Hague Convention is intended to facilitate intercountry adoption. It gives the imprimatur to intercountry adoption, as does article 21 of the Convention on the Rights of the Child. It is no longer possible, as apparently this New South Wales report thinks, to query intercountry adoption. Intercountry adoption is a valid and, indeed, in my mind, highly humanitarian service that is being provided for children who have the misfortune of not being able to be brought up satisfactorily in their own country.

The reality is that the state governments have a hopeless history behind them in their approach to intercountry adoption. I speak particularly of Victoria, and I again would like to submit an article which I have written. It is not actually too long so you might like to read it at your leisure. It is called 'Why don't you take more of our children?' in which I deal with the problems that a very bone fide Victorian couple had in adopting a child

from Colombo, Sri Lanka.

CHAIRMAN—We might formally introduce that into the evidence, if you could just tell us the date and reference.

Mr Turner—The article is called 'Why don't you take more of our children?' and was published in the *Law Institute Journal* of Victoria in June 1995. In this article, I dealt with the problems this couple had. In Victoria, in order to adopt a child, it is necessary to have at least $20,000. The Victorian government charges an exorbitant fee and in fact it has become an elitist service. It is not possible for the average person to become an intercountry adopter in Victoria, and the Victorian government of course has a vested interest in keeping it that way.

My organisation, Ozchild, actually applied for a licence to conduct intercountry adoption and we were knocked back. It is clear that it is a breach of natural justice to allow state governments to have full authority to accredit or not accredit non-government organisations, because in fact they make a lot of money out of intercountry adoption. That is manifestly a breach of natural justice.

The other thing that is unfortunate about this whole process is that we are missing a golden opportunity to make intercountry adoption uniform in this country. It is a very great pity that more attention was not given to the possibility of setting up a uniform agency—probably in Canberra as a central authority—and also passing national legislation, preferably at a federal level. I do not think enough attention has been given to this.

The fact of the matter is that adoption laws in this country are in an absolute mess. They are discriminatory. Some states allow de facto couples to adopt. Some states say, 'No, you must be married.' Some require five days for the parents' consent to be valid, others require 30 days. There is an absolute lack of uniformity and this, in my view, is discriminatory. There does not seem to be any reason why this matter should not have been regulated by the federal level. The Hague Convention would have been a glorious example to begin that process.

I just want to make several short points to backup what I am saying. I have spent a good deal of time in Third World countries, especially India and Sri Lanka. It is clear from my visits to both those countries—especially Sri Lanka, which had a very close association with Australia—that the authorities there have found those states in Australia which had non-government organisation representation far more satisfactory to deal with than those states which had a government-to-government relationship. South Australia is a classic example. I spoke to judges in Colombo about the relationship they had with Australia and they assured me that they were very happy to send children to Australia. Perhaps it is the cricket connection, I do not know. Australia is well thought of in South Asia. They did not take the view that they were being exploited.

CHAIRMAN—It may not be now.

Mr Turner—It may not be after Muralitharan, no. But, in reality, we do have a very close connection with Sri Lanka and India. We have millions of children who are displaced, who are the victims of war. Australia is making it so difficult for us. The attitude that Ms Sherry has exhibited is, in fact, quite contrary to the reality, as anyone who has spent time in the Third World, especially in South Asia, will appreciate. The idea that somehow or other you are taking a child out of his or her culture is completely unrealistic. They are concerned about the fact that they cannot provide enough services to look after the poor children who are orphaned, who are the victims of neglect and war. They are displeased in fact. I went back there last year. They are displeased at the way in which Australia has made it so difficult bureaucratically for children to be adopted.

The regulations which are still standing—they have, in fact, been transferred to a Commonwealth-state agreement—will, in effect, kill all non-government organisation involvement in adoption. Particularly outrageous to my mind is the embargo on any organisation which has any program in any foreign country getting a licence to conduct adoptions in any other part of the world. That is precisely what clause 14 of the original regulations provides. It says that any organisation which provides aid to any country should not be permitted to perform another humanitarian service. My organisation funds a program of family services in India. It funds a program in Bangladesh. Ozchild could not be accredited if this agreement is passed.

I think this is the key issue in the criticism that is being made about The Hague Convention's implementation here. It does seem to me that this narrow approach really is totally contrary to the spirit of the convention itself. I am not quite of the opinion that the Convention on the Rights of the Child says that intercountry adoption should be a last resort. I think that the convention is saying that every effort should be made to provide for children to remain in their own country. But, if there is no satisfactory alternative—that is to say, if a family cannot be provided in that country—it is better that the child be adopted abroad.

I will table two documents here, if I may. The first one is a document called *The plight of South Asia's children: Australia's role and responsibility*. I do not expect you to read this in its entirety, but the section on adoption may be of some interest. The second document is *Monitoring the United Nations Convention on the Rights of the Child in selected countries of the Asia-Pacific region*, dated 1996. I went back four years after I had been back initially. My view would be that the Sri Lankans have greatly tightened up their local adoption law to the extent now that it is virtually impossible for a child to be adopted without the most careful scrutiny.

Mr McCLELLAND—Are you saying the treaty should or should not be ratified?

Mr Turner—It most certainly should be ratified.

Mr McCLELLAND—So we are looking at how we implement it. We cannot do anything about how Sri Lanka implements it, but we can do something about how we implement the treaty.

Mr Turner—That is absolutely correct.

Mr McCLELLAND—So you are focusing on Sri Lanka as to how we should or should not implement it; is that right?

Mr Turner—I am trying to argue that the fear that has been expressed this morning and is expressed in hysterical articles such as the New Zealand one is completely illusory.

Mr McCLELLAND—What is the way forward, do you say? Cutting through and giving us some assistance, what is the way forward?

Mr Turner—The way forward is to encourage, rather than discourage, specialist non-government organisations to take it away from governments.

Mr McCLELLAND—Do you concede there needs to be some form of accreditation?

Mr Turner—I do, but I consider that the form that is expressed is disastrous.

Mr McCLELLAND—So your organisation would like to have more input into the accreditation requirements and the implementation?

Mr Turner—Indeed. I support exactly what the four women who were here before said, except I could not have said it quite so articulately.

Senator COONEY—You criticised Victoria where they have the court doing it, as I understand what the previous witnesses said. You would do away with that, would you?

Mr Turner—I think the convention obliges us to recognise automatically an adoption order made in a convention country.

Senator COONEY—But you would do away with the court having any part in it. I think you have been asked how you would change the procedures here.

Mr McCLELLAND—No, how would he implement the treaty procedures.

Senator COONEY—But that is in Australia rather than overseas, is it not?

Mr McCLELLAND—Sure.

Mr Turner—I do not think there is anything in the convention which obliges Australia to abolish courts in this area. The Australian courts certainly should have the power to make an Australian adoption order. I think that the present situation in Victoria is, for instance, that normally an adoption order in a foreign country will be ratified, unless there is a breach of natural justice. I think that safeguard is a good one.

One of the reasons this area is in such a mess is that the Commonwealth Department of Immigration and Multicultural Affairs still has the power to refuse a visa. Invariably, they will take the advice of the state departments, and this bureaucracy still gives the state departments an enormous amount of power. I have come across a case where, in fact, a Sri Lankan adoption order which was obtained legitimately in Sri Lanka was recognised in Australia but the department of immigration refused to allow the child into Australia because the Victorian department said, 'We don't think these people are suitable.' So the right of veto is still very powerful. This really is most unfortunate. There should be a lot less of this state government conflict.

Senator ABETZ—If a department says a family is unsuitable, surely we would not want a child to go to an unsuitable family. Therefore, how would you control the situation of ensuring that a child does not go to an unsuitable family?

Mr Turner—Under the convention, we do have the obligation to provide that information to the state of origin. We do have that, and we should continue to have that. I would like to see the whole of this area taken out of state departments because of the wide disparity of practices and also, of course, because it creates all sorts of bureaucratic hassles.

I would like the department of immigration to liaise, if you like. I would actually like to see what is being done in India. That is, have a central adoption agency in Australia with branches perhaps in every state to ensure uniformity rather than what is going on at the moment where there is a tremendous disparity of practice, and in some states there is a hostile anti-adoption culture.

I just want to finish by saying that there has been a suggestion that adoptive parents, people who want to adopt, are almost invariably frustrated, infertile couples who will do anything to breach the system to get that child. This is completely unreal and a cruel libel on people like Jane Hickey, who has come along this morning just to demonstrate what it means to be in intercountry adoption. Jane has four children whom she adopted from two different countries. I would like to ask if Jane could give evidence of the experience from her point of view.

CHAIRMAN—Please do.

Ms Hickey—Can I just add that that family was not known to the department. When they said they were unsuitable, they did not know of the family just by virtue of the

fact they had not been through. It was not that they had been assessed and were considered unsatisfactory.

In terms of my own situation, I am not a member of a parent group. I am not infertile. I have four adopted children who were very unlikely to have been placed. I have been a foster parent in Victoria for 20 years. I was a primary teacher before I adopted the four children, but time has not permitted going back to teaching. I have been involved in intercountry adoption now for 16 years. I went back and did a social work degree purely because I was so devastated at what I saw in our state, and I can only comment on Victoria because I do not really know about the other states.

I have just watched it get more and more expensive. I actually wrote a letter saying that I believed in fee for service because it would improve the standard, but the standard has got worse. The costs have gone beyond most people's range. If it is $20,000 or $30,000 to adopt one child, and that is not even including your travelling costs, and you want to have four children in your family, you are talking about $200,000 up-front to establish a family. Most people in Victoria are not earning that sort of money.

I have been to a few conferences overseas, and I was fortunate enough to meet with Hans van Loon. He commented to me that he was disgusted with Australia, that the two delegates they sent to The Hague Convention had undermined the spirit of The Hague Convention, that Australia had been the most troublesome country in preparing the document and that, when it was prepared to be ratified and everything, they never heard from those people again. The bureaucrats had moved on and someone else was in their place.

At that same convention, I met with the Romanian delegate who ran adoptions at that time for Romania. She was equally disgusted with the Victorian representative who had been sent. She said that she did not take any advice off the Romanian people, that they wanted her to deal with lawyers and other professionals. Instead, she decided to pay $5,000 per child—I think one fellow is a cab driver—and she was just shocked and thought, 'What on earth is Victorian doing?'

Not being aligned with the parent groups at all, all I think is that we need much, much, much higher standards, and the Department of Human Services is not able to provide that. We brought over professionals. We brought over someone on Saturday and they did some training with our department. I went up to our department and said, 'Is there anybody in this state who works in post-placement support?' and she said to me, 'No.' I said, 'And you take money to do post-placement follow-up and you are admitting there is no-one here who can, or is trained to, do post-placement support? What are you going to do about it?' and she said, 'We don't know. We don't have the expertise. We don't have the funding. We don't even have the people who want to do post-placement support.'

CHAIRMAN—What were the two countries you were involved with?

Ms Hickey—I have done two special needs local adoptions and two adoptions from Haiti. In terms of Haiti, to think that that country has the infrastructure to sign and ratify The Hague Convention and then to put in infrastructure that can attempt to find the birth mother and try to reinstate the relationship is just totally ludicrous. They cannot even sink wells to have clean water. It is totally unrealistic.

The only model that I have ever seen—and that is why I travelled to the US—is the Holt model. They were the couple the previous people referred to. They have a criteria and they put in place an infrastructure in that country where they attempt to reunify that child with its birth family. That often, with a few resources, is successful. Because I do not have any of the infertility issues or anything, I just think that there is a moral obligation to look at the reunification issue before anything else. Once it is established that the child has been abandoned or orphaned and that intercountry adoption is the only option for life for that child, then and only then do I think intercountry adoption should be the option.

I think that the assessment procedure, the follow-up procedure, the negotiations and the cultural follow-up—they all need to be of a much higher standard. Even the parent groups which I am not involved in are saying that they have vested interests, but they are all run by people who have finished adopting. I logically cannot see what they have to gain, except they spend a lot of their own resources and time that is taken away from their own children in trying to get a better system for more people to come in and ultimately to help the children.

CHAIRMAN—Again, you support the convention but you would like to see higher standards, as Mr Turner has indicated—

Ms Hickey—Yes, and I think it should stay at the Commonwealth—

CHAIRMAN—And a centralisation—

Ms Hickey—Absolutely, because we have the worst situation in Victoria. If you leave it with our state, they will probably double the fees again. We have no support; we have no follow-up; we do not have anything. It is just an abusive situation. The lady who runs it for Denis Napthine does not have any relevant qualifications and has no training. We do not know where she came from to get the position. In terms of objecting, I put a committee together of independent professionals who knew a lot about adoption and who were social workers, lawyers and so on. We have asked to meet with Denis Napthine time after time. He has refused to meet with us.

CHAIRMAN—Thank you very much for your evidence. It has been a great help. I authorise for publication submission No. 19 from the Premier of Western Australia, exhibit

4 and the other exhibit from Grace Child Placement Inc. We now turn to ILO No. 9 and I call the representatives of the Department of Workplace Relations and Small Business first.

[11.37 a.m.]

BALKIN, Dr Rosalie Pam, Assistant Secretary, Public International Law Branch, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

FFRENCH, Ms Jean Heather, Director, International Relations Unit, Standards Policy Branch, Workplace Services Group, Department of Workplace Relations and Small Business, Garema Court, Canberra City, Australian Capital Territory 2601

HART, Mr Jeffrey Russell, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory 0221

HAWGOOD, Ms Dianne, Group Manager, Workplace Services Group, Department of Workplace Relations and Small Business, Garema Court, Canberra City, Australian Capital Territory 2601

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

Ms Hawgood—No, Chair, I do not propose to make a statement. Anything that we would say in an opening statement is covered in the national interest analysis. We would be pleased to answer questions from the committee.

Mr McCLELLAND—I just note that there is some consideration given to ratifying ILO No. 179; is that likely? And I suppose the second question is: would it be desirable to refrain from denouncing ILO No. 9 until ILO No. 179 is ratified?

Ms Hawgood—Certainly the ratification of convention No. 179 is under consideration, but the government has said that it is unlikely to make a decision about that until the shipping reform process has been finalised. Given that the abolition of the seamen's engagement system, leading to the need to denounce convention No. 9, is part of the recommendations for labour market reform from the Shipping Reform Group, it is likely that any consideration of ratifying No. 179 would not happen until the process of the government considering those recommendations was finalised.

Mr McCLELLAND—ILO No. 9 sets up, as I understand it, a joint arrangement with representatives from the union and from employer bodies that allocates workers to different ships irrespective of what company that ship might be attached to?

Ms Hawgood—That is correct.

Mr McCLELLAND—So is the problem that the department sees the allocation of workers to ships rather than companies or is it the make-up of the employment agency

body?

Ms Hawgood—It is that the government supports a move to company based employment for all seafarers rather than the current arrangement of public employment. The seafarers, the ratings, in the shipping industry is the last industry sector in Australia where the large part of the employment is based on an industry pool arrangement.

Mr McCLELLAND—Where they are allocated to the ships rather than to the companies?

Ms Hawgood—Yes. The government supports a move to the company based employment which allows for a direct employment relationship between the shipowner and the seafarer.

Mr McCLELLAND—Has there been consultation with the ACTU and/or the MUA about the changes; and, if so, when did that commence?

Ms Hawgood—Yes, there has. The Minister for Workplace Relations and Small Business announced on 18 December 1997 that it was the government's intention to end the seamen's engagement system and that the Commonwealth would withdraw from administration of that system. As that scheme is intrinsic to Australia's compliance with convention No. 9, the minister also announced on that day that he had asked his department to commence the process of denunciation of convention No. 9. Because Australia would then not be able to continue to be in compliance with convention No. 9, the minister wanted to inform the parliament of this situation as soon as possible through the tabling of the national interest statement. Prior to that he consulted with the most representative employer and employee bodies—the ACTU and the ACCI—as well as the MUA, the Australian Mines and Metals Association and the Australian Shipowners Association and sought their comments regarding the denunciation of the convention.

Mr McCLELLAND—Do you know when he started that consultation?

Ms Hawgood—He wrote to them on 23 February 1998.

CHAIRMAN—What was the involvement of the Standing Committee on Treaties in terms of this denunciation process; was SCOT involved?

Ms Ffrench—No.

CHAIRMAN—So it was done at a departmental level; it was simply a unilateral Workplace Relations situation.

Ms Ffrench—Mainly because the convention is for Commonwealth action and

implementation only. The states have never been involved with this particular convention.

CHAIRMAN—Yes, but what I am asking in terms of departmental arrangements is: to what extent were other departments involved or was this just a straight unilateral decision?

Mr Hart—The treaty secretariat was advised and it offered some comments to the department of workplace relations but, because it occurred between two meetings of the SCOT, it never got drawn into the SCOT framework because of the timetable.

CHAIRMAN—What is the lead time from denunciation to formal implementation of that denunciation—one year?

Ms Hawgood—Twelve months, yes.

Senator ABETZ—Just one very quick question on that: if there is a change of heart, what happens in relation to a denunciation? We give notice for that to be implemented in 12 months time, what happens if we want to denounce the denunciation?

Ms Ffrench—We withdraw it before that 12-month period.

Senator ABETZ—And then it just keeps on.

Ms Balkin—Yes, it does not take effect.

Senator COONEY—This is a very old convention. Do you know when Australia ratified it?

Ms Hawgood—Australia ratified it in 1925.

Senator COONEY—And when did they put it in the Navigation Act, can you tell us that? It is in the Navigation Act—

Ms Hawgood—It is in the Navigation Act.

Mr McCLELLAND—I think I read something about the procedures being set up in 1964; is that right?

CHAIRMAN—1964 was mentioned.

Senator COONEY—Perhaps if you can check up.

CHAIRMAN—It has been a long time anyhow.

Senator COONEY—I wanted to ask: what was the thinking behind that amendment to the Navigation Act and what was the thinking behind the denunciation? I think you have explained the second one that it is a policy decision which has led to the denunciation on the grounds you want to make the labour market more flexible in this area; is that right?

Ms Hawgood—That is right.

Senator COONEY—What do we mean by 'more flexible'?

Ms Hawgood—As the national interest analysis mentions, there had been a number of reports which influenced the government's policy decision in this regard. One was from the Shipping Reform Group which mentioned a number of impediments that were caused by the seamen's engagement system such as inhibiting employment continuity for seafarers, increased training costs, prevention of transfer of ratings between each ship operator's vessels and so on.

Senator COONEY—Do you have the evidence that stands behind those statements—there was an inquiry?

Ms Hawgood—We can give you that report; we may have a copy with us.

Senator COONEY—Does that contain the evidence that you took or just the conclusions you have drawn?

Ms Hawgood—The report outlines the reasons for the committee's findings and recommendations.

Senator COONEY—I was not looking so much for the reasons but for the evidence you took. Just as there will be a *Hansard* report of this hearing today, I am looking for the transcript or the record of the hearings that were undertaken, if there were any hearings undertaken?

Ms Hawgood—If I may confer with my colleague. Sorry, Senator, I will need to take that question on notice. We did not come prepared today to answer questions on the report.

Senator COONEY—You have had an inquiry which has led to some conclusions. The conclusions are in this report, but I just want to find out the evidentiary basis for the conclusions. Could you get us that material?

Ms Hawgood—I will come back on that as quickly as I can.

Senator MURPHY—Paragraphs 33 and 34 of the NIA mention letters being sent

to the government from the ACTU—one on 27 February and another on 25 March—and one from the MUA on 20 March. Were they responded to?

Ms Hawgood—They were the responses to the government's letter. Did the government respond to them?

Senator MURPHY—For instance, it says that the MUA letter 'objected to the government's intention to denounce the convention without progressing all of the measures'—I would think that that would somehow invite a response.

Ms Hawgood—The government certainly responded to the ACTU letter. I would need to check as to whether we responded to the MUA letter.

Senator MURPHY—Well, there are two ACTU letters. The first one was about advice and the second one said that it objected to the denunciation.

Ms Hawgood—That is right.

Ms Ffrench—I had a phone call with an official of the ACTU and let them know that they would have the extra time frame.

Senator MURPHY—But it appears that the letter raised—

CHAIRMAN—Sorry, you are talking about the 25 March letter?

Ms Ffrench—No, I am talking about 27 February—

Senator MURPHY—There is the 25 March letter from the ACTU and the 20 March letter from the MUA.

Ms Hawgood—The earlier letter from the ACTU asked for an extension of time for consultation. They were advised then verbally that they could have that time. The ACTU's letter of 27 February was responded to by the minister.

Senator MURPHY—What about the 20 March letter from the MUA?

Ms Ffrench—I do not think the minister responded to that.

CHAIRMAN—Can you take that on notice and let us know?

Ms Ffrench—Yes.

CHAIRMAN—Thank you very much. Mr Sanders, I am sorry that I was away when you joined the committee. I formally welcome you to these proceedings. Hopefully

they will give you a background as to how we do it, and maybe you can take some similar system up in New Zealand.

[11.45 a.m.]

HAWGOOD, Ms Dianne, Group Manager, Workplace Services Group, Department of Workplace Relations and Small Business, Garema Court, Canberra City, Australian Capital Territory 2601

PAPACONSTUNTINOS, Mr Anthony, Deputy National Secretary, Maritime Union of Australia, 365 Sussex Street, Sydney, New South Wales 2000

CHAIRMAN—We have received the MUA submission of 27 May.

Resolved (on motion by **Mr McClelland**):

That this committee authorises publication of the MUA submission dated 27 May 1998.

CHAIRMAN—Any editorial amendments to that submission?

Mr Papaconstuntinos—No.

CHAIRMAN—Do you want to make a short opening statement?

Mr Papaconstuntinos—I do. I listened with some interest to the material that was provided to you by the departmental representatives who appeared just prior to me. A number of issues have arisen in light of the statements that were made that I would like to address. In terms of the consultation aspect, as I indicated clearly in the correspondence that I forwarded to the minister dated 20 March 1998—I take it that the committee has a copy of the correspondence?

Mr McCLELLAND—Is that attached to your submission? We do not have a copy of that.

Mr Papaconstuntinos—I would like to read it out to you, if I may.

Mr McCLELLAND—The letter or the relevant parts of it?

Mr Papaconstuntinos—It is fairly short. This letter is dated 20 March 1998, addressed to the Hon. Peter Reith—it was facsimiled to his office, in fact—re ILO Convention No. 9. It reads:

The Maritime Union of Australia (MUA) strongly objects to your Government's intention to progress Australia's denunciation of International Labour Organisation (ILO) Convention No. 9 allegedly to facilitate the implementation of the Shipping Reform Group (SRG) report recommendation of March 1997.

Whilst industry employers and the maritime unions are discussing various matters which will be beneficial to Australia's shipping industry including the concept of enterprise employment, such

discussions are predicated on commitments to be made by all parties concerned, including commitments by you and your Government for fiscal support for the industry as recommended also in the SRG report.

The Union views your actions as being totally irresponsible and in breach of the Government's responsibilities in the administration and implementation of ILO Convention No. 9.

You, as the Minister responsible, arbitrarily decided to withdraw AMSA from administering the Seafarers' Engagement System from 1 March 1998, knowing quite well that ILO Convention No. 9 is indeed still in place obliging the Government to uphold its legal and moral obligations until such time as the convention has been denounced.

Further, there had not been any discussion by you or your Department with this organisation—only advice that the Government shall withdraw from its obligation as of 1 March 1998.

The normal process of protocol for the ratification of ILO Conventions, ie consultation between all parties to the ILO including the consultative Federal/State mechanisms seems to have been conveniently bypassed.

The Government should not choose certain SRG recommendations which suit its political intentions or agenda, and conveniently discard the others—particularly the recommendations for Government fiscal support.

The MUA wishes to place its absolute objection for the denunciation of ILO Convention No. 9 and in so doing, remind you that the Maritime Industry Reform matters, which you are aware of, are absolutely predicated upon all three parties contributing to the process (ie Unions, shipowners and the Government).

The removal of ILO Convention after the Government has arbitrarily abandoned its responsibilities under the Convention is absolutely irresponsible, immoral and typical of this Government's treatment and arrogance towards people in the maritime industry.

I would like to table that letter.

CHAIRMAN—The committee accepts that letter as tabled.

Mr McCLELLAND—Did you get a reply to that letter?

Mr Papaconstuntinos—No, I did not. As I indicated in the correspondence to Minister Reith, there was not any consultation. There was an arbitrary decision by the minister. In fact, he informed us at a meeting we attended in Melbourne to talk about other matters, predominantly stevedoring matters. Off the cuff, he said, 'By the way, we are going to remove AMSA from any involvement of the engagement system and it will take effect as of 1 March 1998.' There was no consultation.

Mr McCLELLAND—When was that meeting, roughly?

Mr Papaconstuntinos—Close to the end of April—some time in April.

Mr McCLELLAND—The minister's office said they wrote on about 23 February.

Mr Papaconstuntinos—On 23 February they advised the ACTU. The ACTU advised us that they had received correspondence to the effect that the government had intention of denunciating Convention No. 9. We were asked by the ACTU whether we wanted to make any comments on it. We did. Consequently, we sent that letter to the minister, and I sent a copy of our submission to the ACTU to enable them to provide it to the committee. Unfortunately, for whatever reason, the representative of the ACTU is not in Australia; he is overseas and he was unable to attend. He had not submitted anything, so we were then asked by the secretariat to provide something, which I faxed the other day.

Throughout this whole situation we were never approached by the department or the minister for that matter and sat down and taken through the issues of why the government was going to denounce ILO Convention No. 9 other than being told about it. From then, we received the correspondence, which was the national interest analysis that was provided to us. In terms of any discussions or consultation from the minister or the department to get our views, under normal meeting processes, as we have always had with the government, that never occurred. We were merely told that AMSA was going to be withdrawn.

In response to the question that was raised by Senator Cooney whether there were any records of any hearings or evidence, the only evidence of any of the material is by way of what is in the recommendations of the shipping reform group report. I also add that the committee was informed by the previous minister for transport, John Sharp. We objected profusely about the way the committee was selected, because it excluded the unions from any involvement whatsoever. If you read the report, there are various recommendations made. They are basically the statements that were drawn on by shipowner representatives of why the engagement system, in their view, was an impediment to the industry, which we do not agree with at all.

In my submission, from 1964 when schedule 10 of the seafarers award came into being, there were always changes to the shipping industry whilst the engagement system was in place, and it was always done in consultation with the union and, in fact, with the cooperation of the union. I list in my submission the various changes that have taken place in the industry during this particular period. There was substantial retraining of seafarers and greasers to remove them from specific responsibilities of just deck for ABs and just deck for the engine room. Seafarers are now multiskilled and work both on deck and in the engine room. There was a substantial number of people made redundant in the industry as a consequence of these changes.

I am a product of the industry. I went to sea in 1965 and shipped out of Port Kembla as a deck boy. I have been on ships with 39-40 people on board where hatch covers were hatch boards and three canvass covers per hatch with all sorts of derricks and

so on. The industry has changed dramatically from that particular period by way of consultation with the industry and cooperation by the maritime unions collectively, particularly the then Seamen's Union of Australia which is now the Maritime Union of Australia. There have been substantial changes within the industry to the point where we have gone from those large manning numbers to crew levels of 18.

We are negotiating further reductions in manning levels, retraining, multiskilling of seafarers and removal of demarcation areas—where there were some seven unions before there are now three. The amalgamation of unions certainly assisted in removing the demarcation areas. Things are by far more effective and efficient. All of these things came about with the seafarers engagement system in place. For people to allege that it is unproductive, a detriment to the industry, an impediment, as was said by the previous speaker, to efficiency and inhibits the continuity of employment of seafarers, that is absolute garbage. There has been no inhibiting aspect of the seafarers engagement system within the industry—none whatsoever.

Mr McCLELLAND—How did it work, in a nutshell?

Mr Papaconstuntinos—It was intended, and it still operated up until the time this minister started to fiddle with it, to provide dignity to seafarers and to provide ability for seafarers to access employment in a fair and equitable way. Previously, seafarers had to queue up and the chief officer of the ship or the bosun, who was a company employee in those days, would come along and feel people's muscles. If you had a rose in your lapel because you had slung someone some money in order to get a job or had a newspaper under your arm with money in it and it was given to the officer in charge—that is how you got your job those days.

The engagement system removed all of that. It meant that seafarers were registered. They joined a roster arrangement, and they were provided employment opportunities in such a way that it provided dignity. For example, if you were top of the roster, and there was a job that was sought to be filled by an employer and the job would be put up on the board, you would be asked whether you wanted that job. If you declined it, it would be offered to the next person and the next and the next until the job was filled.

Mr McCLELLAND—Were those jobs short-term contracts, or when someone was allocated to a job was that a permanent arrangement?

Mr Papaconstuntinos—It was both permanent and relief. Relieving jobs were filled. If a person had an accident on board a ship or was ill or injured and there was a vacant position for a period of time, then that job would be called off the roster for a period of time. It would be called section 132, which is the section under the Navigation Act for sick and injured seafarers, for an unlimited period. So if it was for a week or 14 days or two months, you would join it. If it were a permanent job, it would be put up as a permanent job and people would stand for it. Failing anyone going through the roster and

accepting that job, the first person would be allocated to ensure that no ship ever departed without a full complement of seafarers. It was a fair system.

Mr McCLELLAND—It is argued that the system was an impediment to company based employment. Is that right, or when someone was allocated to a job did they stay with that company?

Mr Papaconstuntinos—Absolutely. I shipped out of Port Kembla, as I said. I spent a long time on ships principally because the ship suited me. The company suited me. It went frequently to my port, and that suited me. I spent 4½ years on one ship as a bosun. I spent another 3½ years in another ship.

Mr McCLELLAND—With the same company?

Mr Papaconstuntinos—With different companies. I spent 4½ years with BHP. You need a medal to spend 4½ years with BHP. Nonetheless, there are people who do. Other people have stayed longer periods. A mate of mine just recently finished on the Australian *Venture* when she terminated. He was there from day one, for nearly 20 years on one ship. There was not any impediment.

CHAIRMAN—In terms of your comment about the unilateral decision by Minister Reith to do what he has done, do you concede—bearing in mind that, in terms of treaties, it is an executive function—that from time to time there will be decisions taken for policy reasons which might be taken unilaterally? It is just like what the MUA did with the ITF in black-walling a ship on the Californian coast. It is the same sort of thing.

Mr Papaconstuntinos—No, no, no. Hang on a second. We had nothing to do with that. If the Americans sought to take action on that ship, that is a matter for them. It had absolutely nothing to do with us.

CHAIRMAN—But you did not consult the government on that before you started the pressure.

Mr Papaconstuntinos—We did not need to consult the government. That was a decision the Longshoremen in the United States made themselves.

Senator COONEY—You are saying that had absolutely nothing to do with you?

Mr Papaconstuntinos—It had nothing to do with us as a union. It certainly has got nothing to do with these matters.

CHAIRMAN—I am just making a point of principle that, from time to time, ministers of whatever political persuasion will make decisions that may not necessarily be pre-empted by some great discussions. That is the point I am making. You would have to

concede that—just like the MUA has done.

Mr Papaconstuntinos—We have never done that. You are alleging that we do that, but we do not. I would have thought that, if such an important matter as a convention that the government adopted back in 1920 was being denounced, there would have been an obligation on the government or the department at least to consult fully with those particular people who were going to be absolutely affected by the denunciation. In this case, it would have been the seafarers whom we represent.

Senator ABETZ—But can you see that, if the denunciation takes 12 months to come into effect and if the government has made a preliminary decision that that is the way to go and that it ought happen as quickly as possible, you ought to try to get the denunciation under way as quickly as possible and, if you want to change your mind within that 12-month period, you still can? Whereas, if you are going to negotiate for 12 months and then still come down with that decision and then lodge your denunciation, you will be two years down the track.

Mr Papaconstuntinos—I can appreciate that comment. I must say that, in order to denunciate something, as is the case with ILO convention No. 9, there is a period of 12 months obviously. The minister has already indicated the intention of the government to denounce the policy and he did so, according to the previous speaker from his department, on 18 December 1997.

Mr McCLELLAND—I think it was September, wasn't it?

Ms Hawgood—December.

Mr Papaconstuntinos—So they have already made that decision—arbitrarily, I might add.

Senator ABETZ—Arbitrarily or unilaterally?

Mr Papaconstuntinos—Or unilaterally, whatever the case.

Senator ABETZ—I think it is fairly different, quite frankly. To say something is arbitrary means there was some support for making that decision. Whether you say it was unilaterally without having had full consultation with you, that is a point that can be argued. But to say arbitrarily suggests that they woke up one morning and thought, 'Let's do it,' and they did not have any reasons for doing it. I would have thought there were good reasons for doing it, but you can argue about that.

Mr Papaconstuntinos—Let me rephrase my comment. They did it without any consultation with this organisation. I make that very clear. We were merely advised of what the intention was. There was no consultation, just advice. As I said, the first time we

were advised of that was at a meeting I attended with a number of other officers of the union with Minister Reith. He tabled the issue as a parting comment at the meeting, where we were supposed to be discussing stevedoring matters.

Senator MURPHY—The union never received a copy of the letter that was sent to the ACTU?

Mr Papaconstuntinos—We did subsequently, yes, but not at the time that we were advised.

Mr McCLELLAND—It has been argued that the abolition of the engagement system will enhance safety. What is your response to that? Is there any merit in that argument?

Mr Papaconstuntinos—It will because ILO convention No. 9 is being brought up-to-date, if you like, now with ILO convention No. 179 of 1996. Because the seafarers in this country were protected under the provisions of ILO convention No. 9, we obviously were protected by virtue of the convention and certainly because of schedule 10, which is under the Industrial Relations Act and the Maritime Industry Seagoing Award.

Because of the various changes in terms of award stripping—that is what I call it, but the government refers to it as award simplification—no longer will schedule 10 be part of it because it does not meet the 20 allowable matters criteria. That will be removed. So the protection that was in there for seafarers will go by the end of this month. If the ILO convention goes, there is no protection for seafarers.

So we are now moving into a state of company employment, per se, and the circumstances of company employment can take a number of forms. In a lot of countries overseas, there are crewing agents or companies that sprout up overnight—it is body hire, basically. We certainly do not want to be in a situation where there are such body hire arrangements that deny people their rights—particularly seafarers—or that charge seafarers for the right to go to work and all of the other things that are enshrined in convention No. 9.

Mr McCLELLAND—Just on safety, it is argued that deratification of the engagement system will improve safety. Is there merit in that argument?

Mr Papaconstuntinos—No, I do not think there is any merit in that argument at all. By and large, the shipping industry in Australia is safer than probably the majority of countries, primarily because of the role of the unions, the employers and the governments to date in ensuring there are substantial safety measures in shipping. That has happened for a number of reasons: firstly, the occupational health and safety regulations that apply; secondly, the environmental aspects of Australia, because it is an island continent; and, thirdly, the attitude of people in this country who do not take too kindly to employers

taking shortcuts that see people injured or killed. We do not take too kindly to that, as opposed to other countries that usually turn a blind eye to it. For example, the previous speaker was talking about Sri Lanka, Pakistan and India. Those countries really have no safety measures and the price of individuals or humanity really does not mean much in those countries.

CHAIRMAN—What is the MUA's view on ILO No. 179?

Mr Papaconstuntinos—I believe, and I have indicated it in my submission, that if convention No. 9 is going to be denounced, it should be replaced with 179 of 1996 to take effect from the date that convention No. 9 ceases to be in place. That would mean there is continuity of protection for seafarers.

Senator COONEY—We have had sworn evidence that there was consultation, and we are going to get, as I understand it, the record of those interviews. You, as I understand it, say there has not been consultation, so there will not be any record of these sorts of questions that we are now asking you having been discussed in consultation?

Mr Papaconstuntinos—Not to my knowledge.

Senator COONEY—It seems a bit of a worry that we have had sworn evidence that it was consultation. It would appear as if—

CHAIRMAN—The department has taken that on notice and we just have to wait and see what the department says in relation to that.

Senator COONEY—It is a bit of worry. Can we get that sorted out, as to whether there has been consultation? I would have thought consultation means there had been discussions and issues of safety and all that sort of stuff had been raised. If that is on the record, I think we have got no worries and we can look at that. But if it is not on the record, we ought to look at it further.

Senator MURPHY—Have we got a copy of the minister's letter?

Mr McCLELLAND—No, I do not think we have.

Senator MURPHY—Can we get a copy of that?

CHAIRMAN—Yes, sure.

Senator COONEY—I wonder when we can get copies of this transcript of the evidence.

CHAIRMAN—Do you mean in the lead-up to the SRG?

Senator COONEY—Yes.

CHAIRMAN—How long would you think, Ms Hawgood?

Ms Hawgood—After talking with my colleague, I understand that there was not a process of public evidence leading up to the writing of that report, so the report itself stands alone from the Shipping Reform Group.

CHAIRMAN—So it was done through a working group, was it?

Ms Hawgood—Yes, it was.

CHAIRMAN—Is there any documentation available in terms of the working group?

Ms Hawgood—Only the report.

CHAIRMAN—And that is it?

Ms Hawgood—Yes.

Senator COONEY—What about the consultation that you had with the MUA; where is the record of that?

Ms Hawgood—Do you mean leading up to the start of the denunciation process?

Senator COONEY—I thought there was some evidence before that there had been consultation with the MUA.

Ms Hawgood—I thought that what I had said is that the minister had publicly announced the government's intentions on 18 December. He had then written to the ACTU and to the ACCI as the most representative bodies, with copies direct to the MUA, the Australian Shipowners Association and the Australian Mines and Metals Association on 23 February—

Senator COONEY—There was no consultation in the sense of having a discussion about the sorts of things we are discussing today.

Ms Hawgood—I understand that, before the minister made the public announcement on 18 December, he had advised a meeting of the ACTU and maritime unions that that was the government's intention—

Senator COONEY—I can understand that. Mr Papaconstuntinos has been telling us about safety and has been putting issues on the record. We might not accept what he

says but we are consulting with him. Was there any consultation of that nature with the MUA before the announcement?

Ms Hawgood—I am unaware of that; I would have to take that on notice.

CHAIRMAN—Can we ask you to take that on notice. We would like you to refer to departmental briefing notes, file notes or whatever so that we can get some sort of feel for what the consultative process was all about.

Senator ABETZ—Mr Chairman, just for the record, that is not so exceptional inasmuch as a government says, 'This is our intention,' publicly announces it and then seeks the input. That may well modify what the ultimate outcome is.

CHAIRMAN—Understood.

Senator ABETZ—I have no objection to the course you are suggesting.

CHAIRMAN—The MUA representative is saying one thing and at this stage we are not clear what the department and the minister are saying.

Senator MURPHY—Can I just say that this committee has taken the view on every other issue where concerns are raised—certainly since I have been a member of this committee—where one party writes to another on the basis of another party taking a decision to do something and raises concerns; we have always had a view that, where concerns are raised, there ought to be some consultative approach. My question was about the 20 March letter that was sent to the minister and it was not responded to.

CHAIRMAN—We have had one before—if you recall the withdrawal from UNIDO—where it was a ministerial decision and, yes, we discussed it. But there will be unilateral decisions by ministers on a policy basis in a lot of areas.

Senator MURPHY—I do not argue that point. I guess from the committee's point of view on the consultative approach of government decision making—any government, it does not matter of which political persuasion—the very reason this committee exists is to ensure that a consultative process has taken place in relation to conventions or treaties that affect the people of this country where people have been invited to comment on matters that will affect them.

CHAIRMAN—That is right. That is exactly what the department is being asked to provide—any record of any consultation, if that is the right word, in terms of this whole process. You understand what we are, don't you, Ms Hawgood?

Ms Hawgood—Yes, beyond the exchange of correspondence.

Mr Papaconstuntinos—Can I just make a point. I would like to table this letter for the committee's assistance. It is a letter that was forwarded on 30 September 1996 to Mr Julian Manser who was Chairman of the Shipping Reform Group. It referred to his correspondence to us dated 10 September in which he had invited us to make any contribution to the SRG. There were a number of other groups that made submissions to the SRG in its inquiry—it was not even an inquiry; it was an assessment. The letter clearly states:

> In the first instance while appreciating that these Terms of Reference are those determined by the Federal government, and hence not something over which you have had responsibility for formulating, it appears to the Union that they are extremely limited which suggests there is not a real desire of the government to explore the range of complex and significant issues involved. This leads the Union to the view that the government has to a large extent a predetermined position in terms of the outcome the government considers appropriate. Nevertheless the Union believes it is important that our views are publicly enunciated to at least counteract government propaganda of our refusal to comment.

This is our submission to the committee.

Senator ABETZ—When was that dated?

Mr Papaconstuntinos—30 September 1996.

Senator ABETZ—So that was before the Shipping Reform Group came down with its decision?

Mr Papaconstuntinos—Yes, with its findings.

Senator ABETZ—Did I understand correctly that you made a considered decision not to comment on the terms of reference?

Mr Papaconstuntinos—No, that is a submission to the committee, to the SRG.

Senator ABETZ—I thought the last sentence said that you did not want to comment—

Mr Papaconstuntinos—No, it says in the letter that we want to make a comment to dispel some of the criticisms made by the minister who was saying that the Maritime Union of Australia refuses to participate in making any submissions to the committee to the SRG. We made those submissions. As I say, we were not invited to participate on the committee, which is unheard of in light of the involvement we have had in the industry. Secondly, the terms of reference were so limited, if you like, that they did not take into account all the other aspects.

In December 1997 the minister then made the announcement that they are going to

denounce ILO convention No. 9 because the shipowners document, which that is, indicates that they wanted company employment and that they wanted to move away from industry employment which is protected under ILO convention No. 9 and also that was linked into the 20 allowable matters of the award. In light of everything that has occurred and the lack of consultation—in fact, we were only informed of the decision that the department was going to take; we were not involved to participate in any of the discussions and we merely received advice from the minister—what this exercise proves to us as an organisation is that the government is seeking to remove various measures that recognise the union and its role in the shipping industry in this country.

Ms Hawgood—I just want to clarify, if I could, that the minister's letter of 23 February did seek comments from the industry parties.

Senator ABETZ—Which included the MUA.

Ms Hawgood—Which included the MUA.

CHAIRMAN—We will have a look at all that material. Thank you very much for your evidence today.

Resolved (on motion by **Mr McClelland**):

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

Committee adjourned at 12.18 p.m.