



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE ON TREATIES**

**Reference: United Nations Convention on the Rights of the Child**

**CANBERRA**

**Monday, 28 April 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

## JOINT STANDING COMMITTEE ON TREATIES

### Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

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

For inquiry and report on -

1. the domestic ramifications of Australia having ratified the Convention;
2. Federal and State progress in complying with the Convention;
3. the difficulties and concerns arising from implementation in its current form;
4. possible inconsistencies between domestic jurisdictions and the need for agreed national standards;
5. the need for a mechanism to promote, monitor and report publicly on compliance and to implement public consultation processes;
6. the adequacy of the administrative, legislative and legal infrastructure in addressing the needs of children;
7. the adequacy of programs and services of special importance to children; and
8. any further action required in relation to the Convention.

## WITNESSES

<b>ARTHUR, Dr Evan, Assistant Secretary, Literacy and Special Programs Branch, Department of Employment, Education, Training and Youth Affairs, GPO Box 9880, Canberra, Australian Capital Territory 2601 . . . .</b>	<b>65</b>
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<b>HERSCOVITCH, Mr Andrew, Assistant Secretary, Disability Programs Branch, Labour Market and Disability Programs Division, Department of Social Security, Box 7788, Canberra Mail Centre Australian Capital Territory 2610</b> .....	<b>53</b>
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<b>KEATING, Mr Paul David, Consultant Legal Officer, Regional Office of the United Nations High Commissioner for Refugees, 9 Terrigal Crescent, O'Malley, Australian Capital Territory</b>	
<b>LAMB, Mr Christopher, Legal Adviser, Department of Foreign Affairs and Trade, Canberra, Australian Capital Territory 0221</b> .....	<b>4</b>
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<b>WINZAR, Ms Peta, Assistant Secretary, Special Payments Branch, Housing and Special Payments Division, Department of Social Security, Box 7788, Canberra Mail Centre, Australian Capital Territory 2610 .....</b>	<b>53</b>

JOINT STANDING COMMITTEE ON TREATIES

*UN Convention on the Rights of the Child*

CANBERRA

Monday, 28 April 1997

Present

Mr Taylor (Chair)

Senator Abetz

Mr Bartlett

Senator Cooney

Mr Laurie Ferguson

Senator O'Chee

Mr Tony Smith

The committee met at 10.05 a.m.

Mr Taylor took the chair.

Resolved (on motion by Mr Laurie Ferguson):

That this committee authorises the publication of submissions Nos 1-29, 32-52, 54-78, 80-81, 84-88, 90-101, 103-113, 115, 117-140 and 7A and 11A and submission No. 30, with the identity of the individual in section 1, paragraph 3, deleted.

**CHAIR**—Welcome to the first public hearing on the status of the UN Convention on the Rights of the Child. I want to make a couple of opening comments. For the benefit of witnesses from DFAT and A-G's initially, we have with us this morning—you would be wondering why all these good-looking ladies are sitting around the room—students from the Canberra Institute of Technology who are just completing a diploma in child care. They saw the advertisement in the paper and they had 20 minutes with me before this hearing just to talk about the role of the committee and all the rest of it. Whilst we are going to get into some fairly technical stuff, it is important that they listen to what this convention is all about, as future practitioners in the child-care area. I officially welcome all you young ladies to the hearing.

There are a couple of points I wish to make in relation to the convention and the advertisement of these hearings. In less than the first week after we advertised the fact that this convention would be re-visited, we had requests for over 1,000 of our information booklets. That indicates that there is a lot of interest out there. Of course, that interest has been reflected in the 140 submissions received by this committee to date. It is a subject that is wide and it is a subject that still excites a lot of interest and a lot of bias, whatever part of the spectrum you belong to. I would like to take the opportunity to thank all of those who have submitted submissions so far.

We will be having hearings all day today here in Canberra and all day tomorrow in Canberra. On Thursday we move to Brisbane for a preliminary hearing. Next week we are having another hearing in Sydney and then later we will move to Melbourne. We are having to move around. There is a lot of interest right across the country on this.

What I would also like to say right from the word go is that this committee has no agenda when it comes to a review of the so-called CROC. There is some evidence in some quarters—aneecdotal and otherwise—that this committee is simply, in terms of this convention, a mouthpiece for the government. That is untrue. The reason and the rationale for this review was a unanimous, bipartisan decision by this committee that after nearly seven years since ratification and all sorts of things happening to children right across the world, it was appropriate for us to have a look at how we were going and, in particular, what might be helpful to DFAT and others in the lead-up to reports due later this year in international forums.

So I just want to emphasise and to reiterate that I, as the chairman, am under no pressure from any ministers. I am not here nor is this committee here to push any particular line. The paper, which at my direction on behalf of the committee was written

over the Christmas break, was an exploratory paper, and I emphasise that—a neutrally explorative paper, if that is the right terminology. So there is no agenda whatsoever. We are here to listen to all dimensions of the arguments. As a result of that, hopefully we can provide some information to government and to departments involved in the review process later this year.



[10.07 a.m.]

**BIGGS, Mr Ian, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Canberra, Australian Capital Territory 0221**

**IVKOVIC, Mr Damir, Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade, Canberra, Australian Capital Territory 0221**

**LAMB, Mr Christopher, Legal Adviser, Department of Foreign Affairs and Trade, Canberra, Australian Capital Territory 0221**

**STYLIANOU, Ms Helen, Human Rights and Social Law Unit, Department of Foreign Affairs and Trade, Canberra, Australian Capital Territory 0221**

**CAMPBELL, Mr Bill, Acting Principal International Law Counsel, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600**

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**SHEEDY, Ms Joan, Senior Government Counsel, Human Rights Branch, Attorney-General's Department, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600**

**CHAIR**—For the benefit of the students, these witnesses have been sworn or affirmed. They now have legal obligations, as witnesses before a parliamentary committee, and they have to adhere to the rules that are set down as a result of that swearing and affirming. Does DFAT and/or A-G's want to make an opening statement?

**Ms Jackson**—DFAT is making the lead statement.

**CHAIR**—Okay.

**Mr Lamb**—Thank you very much Mr Chairman and Ms Jackson; it is very kind of you to offer us that opportunity. We will not make a very long opening statement. We welcome the committee's interest in this convention. There has been a great deal of public interest in Australia and internationally in the convention and it is probably a good subject in looking at the range of international treaty activities that there are which command wide international attention. It is a good subject to bring forward at this time and I am sure that the committee's deliberations will be looked at with interest by other countries, including people in those few countries which have yet to ratify the convention.

As you have seen from the submissions, and as you would know yourselves from the Internet, there are now 190 states parties—or at least there were in February. On 24 February Switzerland became the 190th state party to the Convention on the Rights of the Child, making it the most ratified treaty in world history, if you can put things in such stark terms. It has more states parties than the Charter of the United Nations and more than the Geneva conventions of 1949.

The convention came, as our submission points out—and I will not go through everything in the submission—from earlier interest in the way the United Nations should work on the provisions of the Universal Declaration of Human Rights to protect the interests of children and of the child in particular. There was first of all a declaration on the rights of the child, followed later, after a drafting process that took 10 years, with the completion of the convention.

It is an interesting convention in that sense, too, because, although there was a substantial amount of Cold War fiddling around at the time that the convention was being negotiated, and I was in Geneva at the Commission on Human Rights for some of those drafting sessions, it was difficult to get countries to agree, because of the vicissitudes of the Cold War, on the way rights should be specifically enumerated in a convention of this kind. But, after eight years of fairly sterile negotiation, countries finally took the bit between the teeth with the encouragement of non-governmental organisations and groups in their own domestic constituencies and came forward and said, 'Enough of this; eight years of sterile negotiation is enough. Now let's finish the task and do it properly.' So, two years later, the convention itself was completed. The fact that it has 190 states parties seems to us to be good evidence of the widespread international support that there was and remains for the need for international, legally binding instruments to protect the rights of children.

That was followed in the relatively few years since then—and do not forget that the convention has only been in force for a relatively short time and to get that number of states parties in such a short time is quite an achievement by the international community—by a recognition of the need to pick up on specific areas that need greater clarity, at least in the minds of the international community of countries and non-governmental organisations. That is why there are now two protocols in drafting to the convention, one to deal with sexual exploitation, the other looking at the problems that children face because of armed conflict. Those two protocols are proceeding a little fitfully. We are of the view that the time may come when people will have to do what was done with the original convention and take the bit between the teeth and move ahead with a little more rapidity. But there are problems, as we will be explaining as we go through our process of consultation within Australia, in getting countries to agree on the minimum age of recruitment into the armed forces and on the way uniformity should be addressed in dealing with problems of sexual exploitation. Nevertheless, those two issues are going ahead and will result in protocols being done to the convention.

In parallel, and inspired in large part by the convention and the processes of the Commission on Human Rights as it works with the convention as a framework document, the world congress was held in Stockholm last year on the commercial sexual exploitation of children. We have referred to that congress here in the committee because, although it produced a document which was not a treaty, it nevertheless produced a set of guiding principles, dealing with the problem of the commercial sexual exploitation of children, which we think countries will take up in our region and elsewhere to provide much better protection for children outside their own countries and as they move around the world.

The Australian legislation on child sex tourism is part and parcel of that same kind of effort, and so we are playing our part as a country in doing what we can to help others and ourselves in dealing with the problem of the exploitation of children. The International Labour Organisation is also particularly interested in problems of child labour and exploitation through labour, and we play an active part with them in looking at how they, with their mandate, should improve the prospects of children and deal with the social problems that the exploitation of children can cause.

Turning very briefly to the committee, it has 10 members, as you would know. They are elected for four-year terms. We have the names of the committee members and the countries they represent and, although that is not part of our submission, it seemed to me, Mr Chairman, that you might like it if we read into the record the names of the committee members and the countries they represent.

**CHAIR**—That is important in terms of public perceptions.

**Mr Lamb**—Very well. There are 10 members. They are elected in their individual expert capacity for four-year terms. There were elections held last year, so the current membership of the committee is not the membership that will carry it forward as it goes to do the work ahead of it, because there is about to be a turnover of half the members of the committee. First, I will give you the names of the five members whose terms expire on 28 February 1999—these dates, by the way, are not selected at random, they have to do with the date of entry into force of the convention. The five members whose terms expire in 1999 are: Mrs Akila Belembaogo of Burkina Faso, Mr Thomas Hammarberg of Sweden, Mrs Judith Karp of Israel, Mr Yuri Kolosov of the Russian Federation, and Miss Sandra Prunella Mason of Barbados. The members whose terms expire two years later have not taken up their seats on the committee, so their names are not yet in a committee document. They are: Mr Francesco Paolo Fulci of Italy, Ms Nafsiah Mboi of Indonesia, Mrs Esther Margaret Queen Mokhuane of South Africa, Mr Ghassan Salim Rabah of Lebanon, and Ms Marilia Sardenberg Zelner Goncalves of Brazil.

It might be handy, especially as I am speaking to a group of members of parliament, all of whom have experienced the vicissitudes of election, to see the list of candidates that there were. The ones that are highlighted are the ones that won the election. You can see that about three times as many people ran for election as were

ultimately elected. They are a well-thought ballot. People pay careful attention to the qualifications and curriculum vitae of these candidates. The book produced by the United Nations just before the election produces a CV description for each of these candidates which is pretty interesting. I will give you an example of a successful candidate from the Philippines.

**Senator ABETZ**—How do these elections work?

**Mr Lamb**—The states parties to the convention—

**Senator ABETZ**—I was just joking.

**Mr Lamb**—I would never think there could be a joke about an election, not from a senator! The states parties meet and the elections are conducted by secret ballot. You have to get an absolute majority plus one divided by the number of candidates. It is rather like a Hare-Clarke variant, I suppose.

**Senator ABETZ**—That is a worry.

**Mr Lamb**—It is not easy to work out how these things are done, as opposed to the modified d'Hondt. It is not a one-metre long ballot paper, but it is a complicated voting process and there can be many rounds before you get down to the candidates that each have an absolute majority plus one. It is quite an extensive process.

**Senator ABETZ**—But your home country has to nominate you.

**Mr Lamb**—No, it does not have to nominate you. You can be nominated by a country other than your own. You are elected in your individual capacity. You do not have to be a citizen of a state party—unless you are from the United States, the Cook Islands or Somalia, which are the three countries yet to ratify. You could ask a question about whether or not the Cook Islands are a state party. Technically they are not, but you could argue that because of New Zealand's membership of the convention the Cook Islands are in a way covered. You could also argue that Somalia is a bit short on ratifying capacity right now. We know that the United States is looking actively at the way it might be able to handle the convention with its own congressional structure.

The successful South African candidate has a CV which is three pages long. She has been extensively involved in child welfare issues. She has worked in a school for the intellectually impaired. She has looked after issues of child safety and parenting. She has written books about the psychology of the disabled in schools. She has written a book interestingly titled *Marital Bliss or Marital Glory*. She has written about schools and disabilities. She is a clinical psychologist. She has the kinds of qualifications that usually come forward to a committee like this. It is not a run-of-the-mill committee full of people like me serving as diplomats in the UN—there are a couple of those people, but they too

have got a background—

**Senator COONEY**—Think of all the time served, Mr Lamb.

**Mr Lamb**—Senator Cooney, time has no measure, not when you are dealing with the problems of children. You can never allocate time to their solution. The countries have done a good, honest job of nominating people who have background, who have an interest in the problem and who can contribute as experts with a substantial basis for doing so as the committee meets. We feel happy about the way the committee has worked. We look forward to the presentation of our own report.

**Mr LAURIE FERGUSON**—Who casts the votes on behalf of the countries?

**Mr Lamb**—Countries vote according to instructions sent by their capitals. We always send instructions from here. As we send our instructions, we do so on the basis of what we think the individual will be able to give to the committee. You need to govern your decision a little by looking at the range the committee needs to have. To be credible around the world with only 10 members, you have to make sure that you have reasonable geographic and religious representation on the committee. We would look at that as we decide how to earmark our votes, but we are not governed strictly by that. If we thought that the only people from a religion which covered half the world's population who were running for election were hopeless or were unable to contribute to a committee like that, we would not feel shy about putting our votes elsewhere.

You can see from the list the large number of candidates and the kinds of qualifications that candidates come forward with. You are not short on expertise, and you are able to make a reasonably good judgment about the different geographic and religious considerations that ought to play a part. We also like to make sure that the committee has a—I do not want to use a term which would raise hackles—reasonably decent share of representation of men and women so that we get all sides of human endeavour in looking at children represented. We are doing our first report now, which will be able to be described by Bill Campbell from the Attorney-General's Department.

I will just make one other comment: the convention has been amended recently to increase the size of the committee. We are now in the process of consultation with our states and territories and with the non-governmental community. I hope that it will be possible for the government to make its own decision about whether Australia should ratify before too long. Then we will come back to you as a committee with a proposal about that.

**CHAIR**—What is the gender mix at the moment?

**Mr Lamb**—I will have to take that on notice because there is at least one name which I cannot quite sort out.

**CHAIR**—As to which gender?

**Mr Lamb**—I am not an expert on that. We may know within our team. We will get back to you on that if we may.

**Ms Jackson**—I believe the committee has the department's submission. I do not want to take up the time of the committee this morning going through that. I merely want to emphasise that, given the breadth of issues covered by the convention, the Commonwealth has very little responsibility for the direct implementation of the convention. It is a classic example of the cooperation between the states and territories on the implementation of our international obligations.

The states and territories have been involved in the drafting of the convention through the 10 years that that was in progress. The states and territories were also consulted before Australia signed the convention. They have a major input to our periodic reports to the United Nations. Mr Campbell might care to elaborate on the process that was involved in consulting the states and in the development of the non-government organisations' alternate report.

Our responsibilities as a department are mainly in the overall policy for the convention, which is in our human rights area, and for the international law aspects and the report writing, which are in the Office of International Law. Clearly, areas such as family law and criminal law have major implications for the convention and draw heavily for their policy on it. I think Mr Campbell wants to briefly address the question of the government's response to the Teoh decision.

**CHAIR**—Before you do, are you going to elaborate on what extent local and state governments were consulted prior to ratification and will continue to be consulted after ratification?

**Mr Campbell**—I was going to talk about, to elaborate on, the consultations that took place with the states and territories in relation to preparing Australia's first report under the Convention on the Rights of the Child.

**CHAIR**—Maybe I am jumping ahead a little, but I think this committee wants to be made aware of what the consultative process was before and what continues to be the process after ratification, not only with local and state governments but also with non-government organisations. We would like to know whether there is an ongoing dialogue or not. If you are not going to cover that, perhaps somebody else could in due course.

**Mr Lamb**—We engage ourselves with the non-governmental community and with the states and territories very frequently on this convention and on the issues that surround it because of the consultations now taking place on the two protocols, because of the work that was done on the world congress on the commercial sexual exploitation of children

and because of the wide non-governmental interest that there is. I think it would be fair to say that it is probably the most all-encompassing dialogue that we have with the non-governmental community in this area of human rights.

**CHAIR**—I think my colleagues and I would be interested in the community dialogue not just with non-government organisations per se or with governments but also with the community at large. Perhaps you could take it and come back later on to us to talk about what that consultation was prior to ratification and what it continues to be, particularly with Mr and Mrs Average in the street.

**Mr Lamb**—We might need to come back to you at another hearing with a bit more detail, if you do not mind. But I can say for your benefit now that we have done things—even at great personal stress such as in talkback radio—to try to reach the wider community on this. There is sufficient interest in this convention for it to be a worthwhile subject for even people like me to go on talkback radio. That is a strange experience—not for you, but for me it is different.

**Senator ABETZ**—And not even a grey hair to show for it.

**Mr Lamb**—You would be amazed. I will give you my statistic now: there are four men and six women on the committee.

**Senator COONEY**—What are their ages? That is a serious question. I would be interested. Do you know?

**Mr Lamb**—I could find out. Would you like them all, or would you like a sample?

**Senator COONEY**—I just want to see whether they are people with grace and wisdom.

**Mr Lamb**—The Italian is 67, which is graceful and wise.

**Senator COONEY**—I hope you say that seriously.

**Mr Lamb**—Not all of them, I am afraid, give their age; some of them are a bit shy. The South African does not disclose age here either, and I think it may be a bit much for us to work that out. You can sometimes count back from when they finish school, but it is a bit unclear.

**Mr Campbell**—I was just going to sort of flick past to Ms Sheedy to answer your question about consultation, if I might.

**CHAIR**—That is fine.

**Ms Sheedy**—Just for the record—and we will come back to you with more detail—the formal consultations that were undertaken with the states and territories, strictly government-to-government consultations, were: prior to or at the time the convention was being drafted they were done through the Ministerial Meeting on Human Rights, which was a forerunner to the human rights matters going on to the Standing Committee of Attorneys-General. Then the consultations continued through the Standing Committee of Attorneys-General. And post-ratification there is a standing item on the agenda of the Standing Committee of Attorneys-General on human rights matters. We report to the states and territories and the consultations occur formally through that process.

In terms of consultations recently with the non-government organisations in our area, the Attorney-General has established a non-government organisations forum. We have had one of those meetings so far, which was held in December, and we are due to have the next one shortly. That is the mechanism by which we will formally do this consultation—not just on this subject matter but on domestic human rights subject matters.

**CHAIR**—Does that involve the churches? Are the churches involved in that?

**Ms Sheedy**—No, I am sorry, I am looking at Helen Bayes, who is also a member. I would have to come back to you actually. There are 30 groups at the moment who are coming to the non-government forum. So I can get back to you on who attends that.

**CHAIR**—I think it is important for the committee that we understand the consultative process.

**Mr Lamb**—Churches do take part in our human rights consultations. I think all of them take part in one way or another. We also reach them through other types of forum. For example, we are connected with the Refugee Council of Australia, which has among its concerns the problems of refugee children or children who are displaced. Through them, we meet other people who have other interests.

For example, I have done a town meeting type of exercise in Campbelltown organised by a church group, and they brought all kinds of people. That is Campbelltown near Sydney, for the benefit of interstate people who are here. I met all kinds of people at a forum like that organised by the church. We are very open and willing to go and take part in these activities when people let us know that they are on or sometimes when they arrange them for us to do it.

**Mr LAURIE FERGUSON**—I do not want to put words in the mouth of the chairman, but it is possible that when you speak of churches and the Refugee Council that might not be part of the spectrum he might be getting. Is there an attempt to involve religious groups that are more critical of the convention, those parts of the spectrum which are understandably very concerned about it?



**Mr Lamb**—When people write to us and we detect critical views in what they write and say, we would usually respond and say, ‘We would be very happy to meet you and talk this through.’

**Mr LAURIE FERGUSON**—I think a Commonwealth formalised group of 30 was named?

**Ms Sheedy**—That is on domestic human rights issues, yes. It is different from foreign affairs.

**CHAIR**—I think it would be fair to say that, as I recall 1989 in particular, there was a lot of emotion generated in certain quarters, particularly in some of the churches—and I recall myself talking to a couple of church groups within the electorate who had some fairly strong perceptions about what it was going to do and what it was not going to do and that balance between the rights of the child and the rights of parents. If that criticism was there then, I think what this committee would want to be assured of is that they are in the dialogue loop as the result of the ongoing dialogue. Is that fair to say, or is that happening?

**Ms Sheedy**—I think that, in the same way as Foreign Affairs does, we receive correspondence obviously—or the Attorney does from time to time on this issue—and we attempt to answer the problems that are raised in those letters. Another mechanism by which people are made aware of the sort of benefits of the convention and what it can do is through the Human Rights and Equal Opportunity Commission, which has a function of promoting awareness of the convention because the convention is one of the instruments attached to the Human Rights and Equal Opportunity Act. So that is another mechanism by which issues are discussed with the community and with others.

**Mr LAURIE FERGUSON**—I think the concern is that groups that have criticisms perhaps will not be reassured by the environment of the Uniting Church or the Refugee Council or some Catholic social welfare group. I think that part of the reason we are having this inquiry and part of the reason this committee itself was generated was this particular convention. I think the concern is that in this process there might be all these establishment kinds of forces in this process, and these others groups that we do really have to give some information to, even by talkback radio, might not be in the process enough. They have more fears than they need to have and there is ignorance there that we have to counter. I am not even now reassured that these kinds of forces are really in the process.

**Ms Sheedy**—One of the problems for us in establishing our domestic human rights non-government organisation forum was to ensure that there was not just one issue that dominated the discussions. We wanted to have a discussion across the board so we did tend to invite what we saw to be peak organisations who could then disseminate to others information that came out of those.

So some of the smaller groups are not represented, necessarily. They may be one issue groups or it is just not appropriate in that forum to have them specifically attend. But we were hoping that the organisations that do attend would disseminate the information out to them and receive feedback and give it to us.

**CHAIR**—The high level of interest reflected in the stats that I gave to start off with, the thousand inquiries in the first 72 hours, I think it was, to the secretariat, together with the number of formal submissions to date of 140, to pick up Mr Ferguson's point, is indicative of people out there who are still a bit frustrated about the whole process.

I think what we are interested in is to what extent they are involved, even though a lot of them are reluctant to get involved because they say, 'It's all water under the bridge. Now that it's ratified, we can't do anything about it.' Some of them would have reservations; others would want to go further. I think we just need to be assured that the process is there at as low a level as can possibly be achieved. Is that a reasonable point to make?

**Mr Lamb**—I would say also that, when we get correspondence, we commonly send back to people with our reply the *Human Rights Newsletter* that we produce. The *Human Rights Newsletter* notifies of the consultations that we conduct. It is available for people to say that they want to take part. It is very hard for us basically to thrust consultation down people's throats, yet I recognise the reticence that people have. It is a really difficult problem working out how you make sure that you have properly conveyed your message to every part of the community that wants to hear it or would want to hear it if they knew what it was. We do work hard at it. I mentioned things like talkback radio because we have assessed, as I suppose every politician has, that there is a big audience for talkback radio and you can reach a lot of people that way. We try to make ourselves as open as it is humanly possible to be.

**Mr LAURIE FERGUSON**—Just for interest, which talkback radio program?

**Mr Lamb**—It was in Western Australia. It was a man by the name of Howard Sattler, who I do not think is employed by any station any more.

**CHAIR**—That is 6PR, well known, yes.

**Mr Lamb**—It is a pretty scarifying experience and, as Senator Abetz notes, I have not got a lot of grey hair and I have not even spent any money on Henna.

**CHAIR**—Bill, we will come back to you now.

**Mr Campbell**—Mr Chairman, I want to address three principal issues in some opening remarks. The first relates to the report which was submitted to the Committee on the Rights of the Child in 1995 and our role in that.

**CHAIR**—How many years late was that?

**Mr Campbell**—That was three years late.

**CHAIR**—I just thought I would get that out on the record.

**Mr Campbell**—Get it out early.

**Mr Lamb**—There is a fair point to make about this.

**Mr Campbell**—I have got a number of points to make about that. The second and third issues, which I thought I ought to mention because they come up in your inquiries in relation to a number of conventions, are the question of the Teoh case and the question of the external affairs power which might arise out of this convention. I do not want to deal with them at great length.

**CHAIR**—No, but I think with regard to Teoh it is important—that is why I made the point in opening this hearing—as there are perceptions that this committee is simply a mouthpiece to get around the Teoh decision. So I think it will help if you put on the record where the government is at.

**Mr Campbell**—Yes. The first issue which I wanted to mention was the question of the report to the Committee on the Rights of the Child. I should say in that respect that the coordination of that report rests with the international human rights section, which earlier this year was transferred to the Office of International Law, of which I am the head. It has responsibility for coordinating the report on the Convention on the Rights of the Child, and it did so. As I said earlier, that report was lodged I think in January 1996; anyway, it was three years late.

In that respect I should mention a number of things. The first, which has been mentioned earlier, is that this convention is very much one where reliance is placed on state and territory and Commonwealth legislation and practices to implement the convention. Therefore, in gathering information for the report it simply was not a case of gathering that information from one source. There was a process that was gone through involving the Standing Committee of Attorneys-General and in fact the information for that report came from a hundred different state, territory and Commonwealth agencies. In short, a draft of the report was then prepared from the information gained from those state, territory and Commonwealth agencies. A draft of the report was sent back to them for comment. After comments were received it was finally lodged with the committee.

The other thing I should mention in opening is that it is quite apparent that the rights of the child committee likes to hear the views of non-governmental organisations on the implementation of the convention. To that end, there was a report, which I think will probably be mentioned later, which was prepared by Defence for Children International—a

so-called alternative report, I think it was titled—on Australia's implementation of the convention. In fact, I recollect that I think a figure of around \$12,000 was provided by the Attorney-General's Department to at least partially meet the costs of preparation of that report. I understand that that report has been lodged with the committee also. That is really all I wanted to say in opening on the question of reporting.

Perhaps I ought to mention the availability of the report. I think there were approximately 1,200 copies of the report which were printed and that around 900 of those were distributed. It is available from the Attorney-General's Department or available for purchase at the cost of \$15. I am also informed that the report is available on the Internet, and I think that is free of charge.

The two other issues which I want to mention are the Teoh case and the external affairs power. I note that in the course of this committee's consideration of at least the desertification convention those two subjects loomed rather large in the committee's only hearing on that so far.

Mr Chairman, you wrote a letter to the Attorney-General which sought his views on the application of the Teoh case, and I understand you followed that up with another letter seeking his views in relation to the external affairs power and a couple of other aspects relating to that convention. That letter was sent some time ago. My understanding is that the Attorney responded on all three issues. He sent a letter last week which responded on the Teoh issue. I think that is probably in the post or is coming to you, but he certainly signed it.

The issue of the external affairs power is addressed in a paper which was attached to his letter. I will just say what the position is in relation to the Teoh case at the present time. As the committee may be aware, the previous government issued a joint executive statement on 10 May 1995 which purported to set aside the legitimate expectations arising out of entry into treaties by Australia. These were the legitimate expectations which the High Court found arose out of entry into treaty and gave rise to a procedural right to be heard on the question of the applicability of the obligations under the treaty to the administrative decision which was being made.

That executive statement was followed up with legislation which was introduced into the previous parliament. The legislation was passed by the House of Representatives. It had the same purpose of setting aside legitimate expectations arising out of the treaties, including legitimate expectations which might arise out of obligations under the rights of the child convention. The legislation was considered by a Senate committee but it was not passed by the Senate prior to the calling of the election, and therefore that legislation lapsed.

On 25 February this year, the Minister for Foreign Affairs and the Attorney-General issued a further executive statement which again set aside the legitimate

expectations which arose out of the entry into any treaty to which Australia was a party. The government also announced that that executive statement would be followed up by legislation to be introduced into the Australian parliament. As to when that legislation will be introduced, our department has made a bid to have it introduced into the forthcoming session of parliament, and the legislation is in the process of being drafted. That is what I wanted to say about where the Teoh issue lies at the moment.

**CHAIR**—Just for the benefit of the students, the Teoh case, as I indicated before the hearing, is the direct result of the ramifications of the Convention on the Rights of the Child. We will not go into the detail. It is all to do with an immigration matter, but it stems from the Convention on the Rights of the Child, so it is very germane to the problem.

**Mr Campbell**—The other aspect which I want to mention is the question of the application of the external affairs power to this convention. This convention, like any other treaty which contains obligations for Australia, potentially gives rise to federal constitutional power to enact legislation to give effect to the obligations under the convention. I do not think there can be any doubt that this convention would give rise to constitutional power to enact legislation to give effect to obligations under the convention.

There are a couple of points that I would like to make on that. The first is that the availability of a federal constitutional power to enact legislation, even under the external affairs power, does not mean that it has to be used. There are many instances where the Commonwealth has constitutional power to do things but relies on the states and territories to do them.

The second thing I wanted to mention is that, even if the Commonwealth were to enact legislation based on the external affairs power, based on this convention—and I am not saying that it does, but if it were minded to do so—it does not give the Commonwealth the legislative power to enact legislation with regard to children per se, on the subject matter of children. What it does do is give legislative power to implement the obligations under the convention.

So the Commonwealth could not enact wide-ranging legislation based just on the external affairs power that dealt with children per se. It would have to be related to the obligations under the convention. Those are the remarks I wished to make.

**Senator COONEY**—In regard to the joint statement on the Teoh case, what is the purpose of ratifying a treaty like the Convention on the Rights of the Child if it is not going to have an effect in the way the High Court said? Can you just tease that out? Is it worth while ratifying a treaty like the rights of the child if you have a statement like the joint statement that was made earlier this year that you were talking about and also that the previous government had pursued? To follow on from that, would it be better for this committee to be looking at treaties straight after signature rather than after ratification in

future?

**Mr Campbell**—Could I answer the second question first. The very processes that have been put in place mean that this committee will be considering treaties perhaps after signature, but certainly before ratification of the convention and the obligations on Australia. That is the purpose.

**Senator COONEY**—The third question is: if that is so, is there any need for a statement like the joint statement that this committee is going to look at things after signature but before ratification? So those are the three questions I would like you to answer.

**Mr Campbell**—I am sorry, I did not quite understand the last question.

**Senator COONEY**—There has been a change. This committee has brought around a change because now I think there is a bigger input from the community than there was before through its elected representatives. What people have been worried about up until now has been this issue of ratification and signature and the part that the High Court played in that with Teoh. What we have been doing is issuing joint statements under both governments. We are trying to get over Teoh.

What I want to know is: if this committee comes in, as it has now, do you think there is any need for joint statements in the future if we are going to deal with matters before ratification? Do you think it is now time to let Teoh have its force?

**Mr Campbell**—Can I say on the issue of whether Teoh should have its force or not and whether there should be joint statements or not, the government has made its position quite clear on that. It believes that there should be—

**Senator COONEY**—I am sorry, I am not asking you a policy question; I am asking you a technical question. Now that we have come in after signature and before ratification is there any technical need to have joint statements and to set the effect of Teoh aside?

**Mr Campbell**—I think there are two issues. The first issue is the political issue and it is one for the government to take. It believed that the Teoh case was not consistent with the proper role of parliament in enacting laws to give effect to treaties. That was actually a reason put forward by the previous government as well.

Also there are other reasons as to whether it is needed. The previous government and the current government were of the view that the Teoh case gave rise to uncertainty in administrative decision making. That uncertainty in administrative decision making would not be overcome by the setting up of this committee.

**CHAIR**—I think it would be fair to say that the big difference between the Lavarch-Evans joint statement and the Williams-Downer joint statement is that the former was concentrated on the executive and in the latter there is reference to the parliament. That is one dimension that has been brought out in the latest joint statement that was not in the former; is that right?

**Mr Campbell**—There are a couple of differences between the two joint statements. The first is that it was very much the view of the government that the decision of the High Court in the Teoh case was not consistent with the proper role of the parliament in the implementation of the treaties. That is the position the government took and that is emphasised in the new joint statement.

The second thing it did was make the application of the statement much clearer in relation to the states and the territories and how the statement actually applied in relation to the states and territories.

**Senator COONEY**—Can you see that there is a difference now? If you have the executive signing and ratifying the statement, that is the executive taking a particular action in regard to worldwide-made conventions. But, if you have got parliament introduced into the scheme, as you now have, can you see that that might make a difference? I am not trying to have a go at any particular government.

**Mr Campbell**—I can say that certainly parliament has a much greater role—that is why we are here today—in relation to the implementation of treaties and the monitoring of treaties, but under this government it is still the executive which actually enters into the treaties. It is not parliament that actually enters into treaties.

**Mr Lamb**—It might be relevant to just note that the Convention on the Rights of the Child and most of the treaties that people have been concerned about in the Teoh debate are treaties that were already in force for Australia before the Teoh decision was taken. So the question of what is done with a convention in the future will be able to be looked at at the time.

If we were to ratify, say, the Protocol on the Sexual Exploitation of Children to the Convention on the Rights of the Child, it would be open to the government under the new joint statement and the legislation, if the parliament enacts it, to consider whether it wanted to treat the Teoh doctrine, if you like, differently when it came to the point of ratification and coming to the parliament.

That is a question for the future, but at the moment we are looking at conventions basically almost all of which were done before the Teoh decision.

**Senator COONEY**—I understand that, but you have introduced Teoh in the joint statement between the two departments. You have talked about Teoh; you have discussed

it. I want to know whether it would be technically different. The High Court spoke about the executive ratifying. If in addition to the executive the parliament through this committee had an input—

**Mr Lamb**—In my view, it would not, Senator. The reason is that the Teoh decision itself is a narrow decision about administrative decision making and the way that should proceed; it is not about the policy questions that surround the convention.

**Senator COONEY**—I am taking up too much time. Teoh was saying that, because government had taken a particular approach, it was proper that those who worked for government took that into account. Here, under the new process, you are going to have not only government but parliament itself approving a particular treaty. I would have thought that the High Court then was in a better position to say, ‘This is not only the executive that is saying it but also the purely democratic parliament.’ In other words, parliament has an importance in this mechanism from now on.

**Mr Campbell**—Parliament has a much larger role in relation to considering treaties than it had before, but it still does not have the role of deciding whether or not Australia becomes a party to a treaty; that still remains with the executive. My understanding of what this committee does is that it examines all the treaties which have been tabled and then it does a report to the parliament, but parliament does not actually pass legislation saying that it approves.

**Senator COONEY**—Of course it does not, but it gives consideration to it.

**Mr Campbell**—That is right.

**CHAIR**—We have got to get it clear that this committee’s consideration of this particular convention deals with the intervening period between the signature and the ratification. But under the joint resolution of both houses, we are entitled to look at any extant treaty because they are deemed to have been tabled. That is the rationale in our exploratory paper for us having a look at this particular treaty. We can look as a committee at anything that is in force because it is deemed to have been tabled. That is in the joint resolution.

**Senator COONEY**—I will read this sentence and get off the topic because people want to get onto the other issues. In paragraph 3 it says:

The Government is of the view that this development is not consistent with the proper role of Parliament in implementing treaties in Australian law.

So what it does is it contemplates itself that, if parliament takes a greater role than it has up until now, and it is taking a greater role through this process, the sorts of sentiments that are set out in this joint statement and I think the other ones would change. But you



seem to be saying, or I have taken you to say, that even though this process gives parliament a greater say—parliament is not approving it but it has a greater say—it should make no difference to the way treaties are treated. And that is just an interesting sort of an approach.

**Mr Campbell**—What I am saying, Senator, is that certainly this committee has increased the role of the Australian parliament in considering treaties and I think it has also increased the community involvement in treaties. But the fact still remains that it is the executive which enters into treaties, and it is the executive act of entering into a treaty which gave rise to the legitimate expectation arising under that treaty. The view of the government is that the decision in Teoh's case gave too much credence to that act of the executive in giving rise to this remedy and it was not consistent with the proper role of the parliament and, therefore, that it wanted to set aside.

**Mr Lamb**—The subject comes up more vividly, I think, on this convention than it would in another one, if we were debating some other convention. It comes up more here because, in a way, the UN Convention on the Rights of the Child is a parent itself. It is the parent of the Teoh decision.

**Senator COONEY**—Would you concede that the process by which treaties are looked at now, under the able chairmanship of Mr Taylor, is different from what it was when Teoh was decided?

**Mr Lamb**—Indeed, it is, and the decision the government finally takes as to whether to proceed to ratification would be informed by the deliberations in this committee. So if the committee were to hear evidence and come forward with a recommendation that X should happen with respect to a particular treaty, I am sure that the government would look at that very seriously. It might even affect the way the government would go about the process of ratification. But, ratification having been done, that treaty is then an agreement which binds Australia at international law and the domestic ramifications of that decision to ratify are to be put through the parliament, if that is necessary, or whatever.

**Senator COONEY**—I keep talking about process and you keep talking about outcomes. You seem to think that process does not seem to matter terribly much.

**Mr Lamb**—It does indeed.

**Mr Biggs**—It is certainly true that one of the hopes that the government had, and still has, from the reform of the treaty process was that Teoh-type situations would become rarer over time. But, since the great body of treaties that are in force precede your committee's deliberations, it is not yet possible to rely on that having removed any big errors.

**Mr Lamb**—We also have yet to see a case in court in which a litigant brings forward the committee's report and waves it at a judge.

**Senator COONEY**—It will come.

**CHAIR**—Can we come back to the specifics of CROC.

**Mr BARTLETT**—In terms of monitoring compliance with a convention, does the UN committee simply accept the report that Australia presents or do they verify and investigate themselves?

**Mr Lamb**—They have a debate on the report. They hold the report and read it, put it out to their own research people if they need to do so, and it is available to others to see and receive comment. There was a question asked lightly about how late we were with our report. We were, of course, late with our report, but with the huge number of states parties that came on board soon after the convention was done, it simply would not have been practical to have got a report in at the earlier stage. It would have languished for years before being considered. Ours will take 1½ to two years to be considered in the course of which time people will build their impressions.

**Mr BARTLETT**—And the UN committee will try to verify the substance of the report by investigating—

**Mr Lamb**—Should they consider that they need to, or should messages come to them—Ms Jackson or others may want to elaborate on this—that lead them to ask for clarification, they are free to do that if they want. Otherwise, there will be a meeting at which an Australian delegation will appear. You might like to take it from there, as to how the Australian delegation would appear before the committee. Perhaps I could say that in meetings of the committee in the past to which we have sent delegations, which haven't been for consideration of our report, we have made as much information as we can available to others. If people from the states or the non-governmental community want to be there to watch what happens, they can be as well.

**Mr Campbell**—A certain amount of water has already passed under the bridge in relation to the committee's consideration of the Australian report. In January 1997 a pre-sessional working group of the Committee on the Rights of the Child met with representatives of Australian NGOs to discuss Australia's initial report. It is not the practice of the committee to invite government representatives to that meeting. Therefore, no representative of the Australian government attended. After that consideration, it has been the practice of the committee in certain circumstances to make follow-up queries in relation to the report. Follow-up questions have been made to the Australian government about issues relating to that report. Again, this means that the Australian government is in the process of going back to the states and territories to actually gather the information to enable those queries of the committee to be answered.

The final report is expected to be considered at the committee's September-October 1997 session. My understanding is that, at that committee hearing, there will be an opportunity for Australia to provide some update in relation to the report, given that it was done a couple of years ago. People representing the government will be asked questions relating to the report and the committee will, some time after the report has been considered, probably provide some comments on the Australian report.

**Mr BARTLETT**—Is the evaluation in general terms or is every article analysed one at a time in terms of compliance?

**Mr Campbell**—I am told that it is in general terms and not article by article.

**Ms Sheedy**—And also the committee's comments which come out after it has considered the report usually require the state party to report back on those issues when doing the next report. It is some guidance on the types of issues that the committee is concerned with.

**Mr BARTLETT**—Is it possible that Australia could be given a favourable report in general terms, even though perhaps one article was severely ignored?

**Mr Lamb**—Yes, that is possible. It is also possible for them to be, if you like, general in their summary of their findings, and then to go into detail and say, 'But having said that, on article X, Y and Z—

**Mr BARTLETT**—Has that tended to happen with many countries?

**Mr Lamb**—It is not uncommon.

**Mr BARTLETT**—What would be the implications for Australia of an unfavourable report?

**Mr Lamb**—They would be views, would they not? It is very hypothetical. I do not expect that to happen.

**Mr Campbell**—As Mr Lamb has indicated, the committee would give its views, but it would not be binding upon Australia to actually implement those views and the contents of those views. It is not a decision of a court in that sense.

**Mr Lamb**—They are often misread as decisions. The outcomes of these committees that exist under the International Bill of Human Rights—which is the two covenants, the convention on racial discrimination, the torture convention, and this one—all have committees working one way or another. None of them have the capacity under the convention to reach decisions which bind. They are sometimes misreported in that way and hence—

**CHAIR**—That is why it is so important. Public perceptions, as you say, are that simply because New York and Geneva sneeze Australia gets in tow. I think it is important we make the point that that is not the case. There is no legal import to what is being looked at.

**Mr Campbell**—They would be matters which would be considered by the Australian government.

**Senator ABETZ**—Can I pursue that very matter. If the international committee comes out with a view that we are in breach of the terms of the convention and, therefore, we are in breach of our international obligations under the convention, there might not be a legal sanction where Australia as a country gets locked up and put into gaol, but technically we would be in breach of our international obligations.

**Mr Lamb**—I haven't seen a view expressed in terms as stark as that by any of these committees. What you would commonly find is that the committee would have more questions about a point, so they would invite the government to more questions—more questions and more answers. The committee might still say, 'Look, we are not happy with this; can you elaborate further.' It is quite an extensive process.

If you wanted to short cut our own cross-table chat about this, eventually if the committee felt so moved it might decide that it needs to report to the states parties that it had a view that Ruritania was taking action which did not comply with the convention. That would be the most extreme measure that the committee could take.

What the Australian government would commonly do—other governments do the same thing—is some work looking at the way governments handle views which do not favour that country's national policy. Commonly, countries study these views, talk to each other about what their experience in compliance is and look at whether they need to make any changes. But it is rare that a country like Australia comes in for this kind of examination. We are well ahead of the world in most of the areas in the social policy agenda that we are talking about today.

**Mr Campbell**—Could I just make a couple of other remarks in relation to this. The first is that I think it is important to distinguish this process of submitting the report relating to Australia's compliance with the convention with the complaints mechanisms which are actually established, for example, under the International Covenant on Civil and Political Rights, where specific complaints are made by individuals to the committees in relation to a breach of the convention.

Even in that case where the committee makes a finding, the fact that it may find Australia or another country in breach of an article, it is the committee's view that Australia is in breach of that article. That does not mean that the Australian government necessarily accepts that view. It certainly does not mean that non-acceptance of that view

places Australia in breach of its obligations under the convention.

This process is a report on Australia's compliance with the convention. There is nothing in the convention which would indicate that our disagreement with or failure to give effect to a comment which is made by the committee on the report would mean that Australia is placed in breach of the convention.

**Mr Lamb**—Perhaps I could add to that. Article 43 of the convention charges the committee with the task of monitoring progress towards implementation. It is not one which enables you to draw black and white boundaries around compliance. As Bill says—and he is quite right—there is no complaints mechanism involved in this convention, but where there is one, it operates to produce a view through the process that I have described before.

But it would be possible for this committee to detect an absence of progress towards the implementation of the convention if they wanted to do so as a country, but that would follow an extensive period of questioning and assistance to the country to help it understand what it had signed on to.

**Senator O'CHEE**—So just for the record, which countries are on this committee?

**Mr Lamb**—I have done that earlier; it is on the record—all 10 of them.

**CHAIR**—You will have to read the *Hansard*.

**Mr Lamb**—I might just pick up Senator O'Chee on a point there. There are no countries on the committee; they are individuals elected in their expert capacity. They happen to come from countries, as we all do, hopefully.

**Mr BARTLETT**—While there is no legal obligation—no binding obligation—resulting from a criticism on any of those areas in the convention, it does give a fair weight to interest groups arguing a particular course within the Australian community.

**Mr Campbell**—There is no doubt that interest groups would use a committee's comments on a particular issue.

**Mr BARTLETT**—And therefore the selectivity of the process of evaluation by the UN or the report submitted by Australia can prejudice a response in Australia to compliance or the perception of compliance with the convention?

**Mr Campbell**—I would certainly agree that the way the committee handles its consideration of the report could affect the use made by that committee of the findings of that committee in Australia. I am not sure that the initial report would actually affect that.

**Mr LAURIE FERGUSON**—Turning from Australia being picked up on technicalities to the other extreme: you have talked about this consultation with NGOs, et cetera, in Australia. Assuming the people on this committee are fantastic and are not selected by political considerations and do not have orders from their government, what is the ability of this committee to monitor individual countries and question their reports? For instance, take Burma: I would not be too impressed with some meeting of NGOs there giving an independent view on how they are progressing. Could we have a bit more on the ability of this organisation to monitor country reports from a critical point of view where there is not really any internal debate and they are not structured NGOs?

**Mr Ivkovic**—The committee has its members and it has its secretariat. The Centre for Human Rights in Geneva actually has experts who work on servicing all the committees that monitor obligations. In the case of the Committee on the Rights of the Child, because of the huge number of ratifications and the strong interest in children's rights generally, the High Commissioner for Human Rights has drawn up a plan of action with a lot of support from, for example, the Swedish government, whereby expert legal, social, et cetera people augment the staff that already exist in the Centre for Human Rights. Those people go through reports very systematically. They have totally free rein to the information they will seek to cross-check that report. So, for example, there is a UN special rapporteur on sexual exploitation of children who travels around the world. They would have access to her reports, to information from UNICEF and its field officers and ILO reports on, say, child labour matters. The committee itself has set up a practice whereby it has meetings in different regions in order to get a grassroots appreciation of what is happening.

So this particular committee is just not the 10 people who are appointed and who, in much the same way as this committee, ask the questions and prepare the report. There is a secretariat comprising people with technical expertise who can cross-check all the information and help the committee in framing its questions and follow-up. The other thing that I would like to point out is that this committee has very much seen its role in terms of monitoring. It is not being judge and jury on how you are doing. A lot of the underlying problems to do with the convention are not fixable overnight or fixable by edicts or laws. So they know that in order to overcome certain problems it is a question of identifying them, defining them and then, in the jargon, providing technical assistance. So, especially in the case of developing countries, they have said, for example, 'You have a problem with child labour. We are not just going to rap you over the knuckles and say you are not doing well. If you want to fix it, let's work together.' Then they have the resources through the UN system, NGOs and UNICEF to, in coordination with the governments, set up the sorts of programs and processes which would help to overcome the underlying causes of the problem.

**Mr LAURIE FERGUSON**—I notice in our background notes that great play seems to be put on the fact that New Zealand was picked up for not having programs in force, or something of that sort. If we go through Africa and look at Angola, Mozambique

and Zaire—a whole lot of countries where you have forced involvement of young people in civil wars, and forced conscription by national governments—I question whether, even whilst not wanting to be the judge and jury, we would find, were we to get these reports, a similar kind of analysis of those Third World countries and the problems they have. Or is this group preoccupied with some technicalities in Australia, New Zealand and Sweden?

**Mr Ivkovic**—The committee obviously has to look at the context of each country. It is probably fair to assume that the richer the country the higher their standard of behaviour would be expected to be. I have not read many reports but I find that in each case they try to be as realistic as possible. The criticisms they would make of a developed industrialised country would be different from the criticisms they would make of a developing country just recovering from civil war. Their focus is on what you do to actually overcome the problem.

**Mr LAURIE FERGUSON**—I am questioning that line of thought to some degree. As I say, New Zealand did not, supposedly, have all these programs in place. I really cannot see, in the broad spectrum of things, that that is so devastating compared to a whole lot of countries signing up to these conventions and being about one-fiftieth of the process towards getting anywhere on them. On the basis of what I have seen in this background material and the emphasis on New Zealand's report, I really question that kind of logic. Yes, we do have to consider their state, but when countries are so far away from any of the required standards, should our emphasis really be worrying about western Europe, Canada and New Zealand? They need a woman's officer or something.

**Mr Ivkovic**—Look at it from the perspective of developing countries—this is in a broader context. Developing countries are very sensitive to the idea that somehow there is this standard set by the west and that it is being applied selectively. Clearly, for the committee to have credibility it has to be seen by all states parties as being equally rigorous in its examination of those parties' obligations. Again, in the case of a country such as Australia or New Zealand or a country in western Europe, the criticisms that would be levelled would be, as you say, probably highly technical, and in the scheme of things on the global level may not seem as serious, if you like. But the committee has to work with the realities that it is confronted with. It would do no good to the committee itself or the children in the countries concerned if the committee were to operate otherwise.

**Mr LAURIE FERGUSON**—You said that you have not seen many of these reports. Is it possible for the committee to get access to a few African ones?

**Mr Biggs**—All the reports and any observations by the committee are available on the Internet, and we can produce—

**Mr LAURIE FERGUSON**—For those of us who do not use the Internet, is it possible to get a—

**Mr Biggs**—We can certainly provide—

**Mr LAURIE FERGUSON**—I would like to see a selection on Angola, Mozambique, Afghanistan—

**CHAIR**—Could you take that on notice, Ian?

**Mr TONY SMITH**—I have a few points. First of all I want to clarify a very small matter. In your report, you talk about the \$12,000 grant to Defence 'of' Children International in Australia. Is that defence 'for' or 'of' Children International?

**Mr Campbell**—Defence for Children International.

**Mr TONY SMITH**—Not two different bodies—okay. My next area of concern relates to the question of the child sex legislation. That was a response, I presume, to various articles—34, 35 and 36. It is the recent example of the committal in Canberra that I want to take up. It is obvious to me—looking at it from a distance it is never altogether clear—that there were certain deficiencies in the evidentiary situation, that is, the taking of evidence in that particular case. It is no good enacting child sex legislation if we make it so difficult for a person to be convicted that it is useless. It do not know whether you have an equivalent to section 93A of the Queensland legislation—I think it is 93A, anyway. It allows the taking of evidence in chief on video such that that evidence can then be tendered at the committal hearing as prima facie evidence or at least as evidence in chief which generally establishes a prima facie case against the individual.

In Queensland, almost without exception, a person who has been charged with a sex offence is committed for trial because the prima facie case is set out in the video subject to any other deficiencies in the material. Have we got appropriate regulations and/or provisions in place for the taking of that evidence? It seems to me from the reports that the complainants in that particular case were very heavily dealt with in cross-examination and in their evidence in chief during the committal.

**Ms Jackson**—Mr Chairman, can we take that question on notice? We do not have criminal law experts with us, but we would be happy to provide you with a written answer.

**CHAIR**—Yes.

**Mr TONY SMITH**—I would say 93A. It was only off the top of my head, but there is a provision in the Queensland Evidence Act that deals with the taking of evidence of children by way of video. That is a very important tool in leading to convictions of people charged with very serious offences.

**Senator COONEY**—Can I just say one thing. It may help. I think the House of



Representatives Standing Committee on Legal and Constitutional Affairs did a report on that when it was introduced, so I think that may be of some help to you when you are looking at that. Mr Melham and Mr Williams are fairly eminent people. One, in particular, went on to do great things and did a report about—

**Mr TONY SMITH**—I want to turn to a couple of other points. You also make reference to legal aid for children, particularly in relation to the appointment of separate representation, and you refer to section 68L of the Family Law Act and the case of Re K. I have not read Re K. I presume it is from the full court of the Family Court. I do not know. It may be the High Court, but it says there that guidelines are outlined on when an appointment may be appropriate.

I take it that the importance that is placed on separate representation is drawn, in part at least, from various articles—I will not go through them—of the particular convention. However, I am aware of a case where the representation of a child is concerned. The mother passed away, and the child has been cared for by an aunt and uncle. The father has literally spent thousands and thousands of dollars trying to obtain access and/or custody—they do not call it custody any more, but I will use the old term—of that child and is on the point of giving up, because that child is being separately represented. There is no allegation of any sexual interference.

It seems to me to be an absolute abuse of process for legal aid to be extended in those circumstances, basically to wear out a privately funded father. If the convention is working against itself in terms of article 7.1, it would seem that it has to be looked at. It is not the convention that is doing it; I appreciate that. But you are referring to that in the context of the convention.

**CHAIR**—Would you like to take that on notice again or can you respond?

**Ms Jackson**—I can respond in general terms. I am not familiar with the case which is the subject of the question, but the underlying philosophy of the Family Law Act is that in questions of contact and residence the best interests of the child are the overriding consideration. Accordingly, where a child is of an age and a level of maturity to be able to express a view on the issues that are before the court, it is frequently the practice of the court to request that the child be separately represented. Alternatively, councils may prepare a welfare type report about the family situation. They may interview the child and refer in that report to the wishes of the child.

The case in question here clearly is one where the child's view conflicts with the father's, but that does not mean that the court does not look at the total circumstances of that extended family situation—education, financial and emotional support, and those kinds of issues—to determine what in its view is in the child's best interests. Section 68F of the Family Law Act sets out a whole range of factors that the court must have regard to in determining where the best interests of the child lie, and the wishes of the child are

only one aspect to be considered in that.

**Mr TONY SMITH**—What I am saying is that we have not even got to the core of this particular case I am talking about. I imagine it applies across the board that when you have this situation there is no trial but there is an exhaustive process where the child is separately represented. That, effectively, can exhaust the energy and resources of the prospective father. Is that not working against article 7.1 of the convention, on its face? There seems to be no basic point where you reach common agreement about something. The barriers are put up right at the outset, rather than at a time when the court should determine it.

**Ms Jackson**—Again, I cannot address the specific situation that you described but the normal philosophy of the Family Law Act is that there be mediation and counselling with the parents—and frequently involving the child as well—to try to amicably resolve questions of residence and contact without the need for the court to make a ruling. In some 95 per cent of cases, that is the way the matter is disposed of, perhaps reflecting that agreement through consent orders. It is only in a small minority of cases that the matter is actually taken to trial before the Family Court and adjudicated upon by that court.

**Mr TONY SMITH**—Thank you. I know it is a difficult question.

The next point relates to the operation of article 24.4. Having regard to article 24.4 and article 24.2, as well as articles 21(b) to (e), to what extent can the treaty facilitate cooperation between parties—say, between countries—in relation to uplifting the lives of children without parents, particularly children who have been orphaned in wars and in cases of international adoption? Has there been any movement in this country to provide greater facilities for international adoption of children which, in effect, will bring to fruition the sorts of aspirations that are referred to in those articles?

**Ms Jackson**—There is a special convention of The Hague that deals specifically with intercountry adoption and Australia has been examining the question of possible ratification of that convention for some years now, particularly through meetings of community service ministers. It is our understanding that that group is relatively close to reaching an agreement on methods of implementation of that convention should the government decide to ratify it. We are hopeful that agreement might be reached later in the year.

**CHAIR**—So we have signed but we have not ratified?

**Ms Jackson**—I do not think we have signed.

**Mr Campbell**—We have not even signed.

**Mr TONY SMITH**—Is it implied in those articles to which I have referred that

Australia has a duty to act on a multilateral basis where children are in jeopardy? In other words, with the situation in Africa at the moment, is there a duty to act—an international law—to help children in these situations?

**Mr Campbell**—I do not think that sort of implication, without an implied obligation to do that, would flow from the convention because the part you referred to, article 24.4, states:

States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article.

I would say that Australia has been involved in these forums but I do not think you can imply an obligation arising out of that to actually take in children from Africa.

**Mr Lamb**—What that term ‘international cooperation’ normally means in these kinds of documents, treaties and resolutions adopted by the UN General Assembly et cetera is that bodies like UNICEF, which would be a primary body concerned here, would look at ways of extending assistance to countries and perhaps do fundraising and run pledging campaigns to try to get money to help the countries over the problems that are identified. It does not mean that we have a particular responsibility with respect to individual children in other countries but we do take part multilaterally in looking at what we can do through the competent organisations to get something done about the problem.

**Mr TONY SMITH**—In terms of article 37 in so far as it refers to ‘other cruel, inhuman or degrading treatment or punishment’, is there any judicial determination of what that means in the context of corporal punishment in schools? And having regard to what was said before, it is capable, is it not, for the Commonwealth to enact legislation to determine what ‘cruel, inhuman or degrading treatment or punishment’ means and thereby limit corporal punishment in schools?

**Ms Sheedy**—There are certainly European Court of Human Rights decisions on that issue in the European context, and the wording is very much the same. It concerned corporal punishment in Scottish schools, I think. We could certainly get the details of that and supply it to you.

**Mr Lamb**—There is not an expectation from the convention that the convention necessarily applies in all circumstances in the way that you might describe. The European court, as far as I know, dealt with what it saw as a particular context in looking at this issue.

This was an issue that came to me in the exotic experience that I had on talk-back radio. I was told by the interviewer that a group of people in grey suits in Geneva had made it a crime for a Western Australian parent to spank a naughty child. I said, ‘No, that is not what the convention says.’ And I went into the fact that this convention is about

abuse.

**Mr TONY SMITH**—I suppose the question still remains though that the Commonwealth could legislate to determine what that means and, if it determined that corporal punishment amounted to ‘degrading treatment or punishment’, then that would necessarily limit the use of corporal punishment in schools, one would think, if ultimately it was tested somewhere.

**Mr Campbell**—Obviously, if the federal government were minded to enact legislation to give effect in other ways to this convention, its interpretation of the convention would be important, as would the interpretation which you place on that article. But I think that when that legislation was tested there would have to be some objective analysis. Somebody might challenge the legislation and the terminology might be examined to see whether, in the minds of those who were actually drafting the convention, smacking or that form of punishment actually came within the term which you are talking about. I do not think that you could necessarily say that this convention absolutely enables the Commonwealth government to outlaw corporal punishment in schools.

**Mr Lamb**—I might say that that was the gravity of the question, but I note that this language has also been in the Universal Declaration of Human Rights since 1948, it is picked up in the two covenants and it is the whole bulk and purpose of the torture convention; it is not special to this convention.

**CHAIR**—Before we move on, on a housekeeping matter, I apologise to Social Security and Health and Family Services representatives that we have gone over the planned time. We will let DFAT and A-G’s run on till midday, because I think it is important to get a lot of this evidence on the record, and we will put Social Security and Health and Family Services together and have the last hour of the first session with those two departments.

Before Senator O’Chee asks a question can I come back to 37 and the reservation that was in the ratification process in terms of children. In some of the submissions we have had and in anecdotal discussions that have taken place with the secretariat, there seems to be a perception—again, coming back to what this committee is all about—that the government intends through this committee to inject more reservations into the process. Can we get it on the public record why that is not possible legally after the ratification process. First of all if you can just talk quickly about the 37(c) reservation and then what are the practical objections to further reservations post-ratification. I think it is important.

**Ms Sheedy**—The reservation that we have in place, 37, mirrors the reservation we have to the similar provision in the International Covenant on Civil and Political Rights. It is there because of our geographic and demographic problems in that it is not always possible, even in the best interests of the child, not to have a child held in custody with an

adult, given where our prisons are, where our watch-houses are, where our police lock ups are, et cetera. It is just not geographically and demographically possible for us to comply with that. We have a reservation to that article and to the similar article in the International Covenant on Civil and Political Rights.

**CHAIR**—What about the broader issue of further reservation?

**Mr Campbell**—On the broader issue of further reservations, the time for reservations has passed. Under article 51 you can make reservations at the time of ratification or accession. Those reservations which you make at the time of ratification and accession can be subsequently withdrawn, but you are not permitted to make further reservations at a later stage. I suppose your option at that stage, which would be given the number of parties to the convention, would be to denounce the convention. There is a specific provision in article 52 relating to denunciation of the convention, but I do not think any thought was ever given to that.

**CHAIR**—I just wanted to get it on the *Hansard* record. I think it is important, because there are some perceptions out there of an agenda, particularly with this committee. You have counted that there are practical and legal reasons why that is not possible, irrespective of the views of some people about what we might or might not in due course recommend.

**Senator O'CHEE**—Did Right to Life score an invitation to the meeting of NGOs?

**Ms Sheedy**—No.

**Senator O'CHEE**—Why not?

**Ms Sheedy**—I do not know whether you were here when we were discussing before the basis on which we invited organisations to the first meeting of the NGO forum. We invited peak organisations which represented fairly broad constituencies in relation to broad human rights issues. It was not an NGO forum on rights of the child or specific issues; it was on domestic human rights issues.

**Senator O'CHEE**—I am concerned that we may not be giving full effect to the intention of the covenant. I am looking at the preamble where it refers to protection before as well as after birth. I am looking at article 6 about the inherent right to life. I am looking at article 18 in paragraph (1). They all seem to suggest that there are a whole range of issues on which Right to Life might well be entitled to a view and might certainly be entitled to expect that they would get an invitation to an NGO forum.

**Mr Lamb**—We went over this ground before you were able to be here. We circulate the information about the human rights consultations that we conduct from our department, which we do jointly with ministers present, to all of those who express

interest in the subjects that come to us. We invite them. They can respond to the invitation which is contained in the human rights newsletter. Those groups that you refer to did get the newsletter. They receive it regularly. If they want to come, they can come. It is open. It is available to them to come.

**Senator O'CHEE**—So this is the NGO forum we are talking about?

**Mr Lamb**—I am talking about the NGO forum that is run by Foreign Affairs with Attorney-General's taking part in it. There is a separate process which is constituted by the Attorney for looking at other issues that come before the Standing Committee of Attorneys-General. There are two different consultative processes that run. The one that we conduct has this issue on its agenda as well and the groups to which you refer are invited to be there if they wish to be there. If they want to put their positions forward, they are perfectly free to do so.

**Senator O'CHEE**—Mr Lamb that still does not answer the question.

**Mr Lamb**—Of whether they come?

**Senator O'CHEE**—No, it did not answer the question about the NGO forum.

**Ms Sheedy**—The domestic forum?

**Senator O'CHEE**—Yes, which people were invited. It did not answer that question, with great respect.

**Mr Lamb**—No, I am not answering the question about the one that the Attorney-General's Department convenes, I am saying that is not the only consultation that takes place.

**Senator O'CHEE**—I note that Mr Lamb. I just wanted to pursue this issue for the time being.

**CHAIR**—If I may interrupt: there are several submissions from individuals within the Right to Life movement to this committee. Obviously we will explore those in due course. While we are covering the general side of it here, it may be better if we take that up with those individuals when they appear before the committee. Certainly, in the volumes that we have got, there are at least a couple—maybe two or three—along the lines that you have alluded to.

**Senator O'CHEE**—I am just concerned to ensure that the operations of the department pursuant to this give full effect to the intentions. I would hate to think that the department might be acting in a fashion which is selective in its operation of the

convention. I am sure that would not be the case.

**Mr Campbell**—Senator, may I make a couple of points? There is the question as to whether this convention does actually deal with the question of abortion or not. I am just raising it; you mentioned it before. It must be said, if you look at the travaux préparatoires of the convention, that the issue has been virtually sidestepped. It is not one that was taken on head-on in relation to the convention. Mr Lamb has just told me that the Holy See is a state party. I just wanted to get it on the record that it is not clear under the convention that abortion is actually prohibited by the convention, in case that was thought to be the case. I am happy to provide that section—it is quite a short section—of the travaux préparatoires to the committee if they would like it.

**Senator O'CHEE**—But the travaux préparatoires do not exclude it either.

**Mr Campbell**—It certainly does not say that it is covered either. It goes both ways.

**Senator O'CHEE**—I am just reading the preamble and a number of these sections.

**Mr Campbell**—Sorry to interrupt, Senator, but there is one other question and that is the practice of the parties. If you looked at the practice of the parties, the 186 or 190 countries who are parties to the convention, the practice of the parties to the convention varies to a great extent as well.

**Senator O'CHEE**—Yes, but the practice of the parties in relation to the International Covenant on Civil and Political Rights in relation to homosexuality did not seem to be taken into consideration in the Croome and Toonen case.

**Mr Campbell**—The practice of the parties on that issue between countries differs as well.

**Senator O'CHEE**—Yes, exactly. Their decision was made in blithe indifference to the practice of the parties and that is why I just do not believe that the practice of the parties is a relevant factor here, Mr Campbell, when you talk about this. I have made my point, Mr Chairman.

**CHAIR**—I think we are digressing. It is all interesting stuff but I think we need to get on with some of the specifics.

**Senator ABETZ**—Can I put this question on notice: page 8 of the Attorney-General's submission refers to a list of questions drawn up by the pre-sessional working group. Could the committee have a copy of those questions? Could they be provided to us in due course, please.

**Mr Campbell**—Can we take that one on notice, Senator.

**Senator ABETZ**—Yes, that is how I prefaced the question. Can I just get it clear about the Teoh case. What was all that about in relation to Teoh himself? What charges was he facing and what was the situation? Was he about to be deported?

**Mr Campbell**—Teoh was the last case.

**Senator ABETZ**—Why was he about to be deported? What was the heinous activity that he had been engaged in that warranted his deportation?

**Mr Campbell**—Mr Teoh was convicted of heroin trafficking for which he was sentenced to time in an Australian gaol.

**Senator ABETZ**—That is all I need to know because it seems very strange to me that CROC could have been relied upon in relation to the child—his child—when he, by his activity of trafficking in heroin, undoubtedly put dozens, if not hundreds, of kids' lives in jeopardy. I think it is a very strange situation that the High Court could put the concerns of one child above and beyond hundreds of children, and indeed adults, throughout the whole community.

I just wanted to place that on record as to the circumstances in which Mr Teoh found himself because I think it adds another dimension to the whole debate over Teoh: whether we are concerned about one individual child or all those hundreds of children out there who might become exposed to heroin and the terrible life that results from it. The reason I have asked that is: what are some of the practical consequences of us having signed up to CROC? Teoh seems to be such an example where the lives and wellbeing of stacks of Australian children, I would submit, have been somewhat prejudiced by us not being able to deport Mr Teoh.

But where does it go? Senator O'Chee has mentioned the question of abortion on demand. Can I ask a question about corporal punishment? What is the definition of family? Do we know what the definition of family is for the purposes of this convention?

**Ms Sheedy**—Can we take that on notice?

**Senator ABETZ**—It is concerning, if I may say so, that those sorts of questions have to be taken on notice because we, as a government and a country, have taken on this convention, but we do not even know at this stage—and I do not blame the departmental officers for this—the exact definition of, for example, physical violence. Does that include me slapping a child for misbehaviour? Clearly that is physical violence. It is a question of whether or not it is appropriate in the circumstances. But article 19 of the convention tells us there is an absolute prohibition. It states:



State Parties shall take all appropriate legislative administrative, social and educational measures to protect the child from all forms of physical or mental violence . . .

I would have thought a slap around a child's bottom, for example for misbehaviour, may be appropriate in certain circumstances. I think Michael Lavarch, the Attorney-General at the time, said that he thought it was appropriate as well. But this article does not make it clear. It says 'any form of physical violence'. When is a slap physical violence and when is it not physical violence?

**Mr Lamb**—Can I make a brief remark on that. The Attorney-General's Department will obviously be giving a much more detailed response to the question. In brief, it is for the parliament of Australia to decide how, if at all, those provisions need to be enacted into Australian law at the Commonwealth level, before it is available for the states to do it at their level. The answers to the questions that you pose, Senator Abetz, are to be found in Australian domestic law, not in the convention. The convention invites the committee to monitor progress made by states parties towards implementation. If they were to find us wanting, or ask us questions about something that showed they did not consider that we were up there with the international game on any of these particular things, they would draw it to our attention. But it is for us to decide.

One of the key standpoints—or whatever the right word is—for Australian treaty implementation is that it is for the parliament to decide how these things are implemented in Australia. It is not for the committee nor for the convention secretariat to decide whether you can or cannot spank a child, it is for the Australian parliaments in their respective jurisdictions to make that decision.

**Senator ABETZ**—So it is for another parliament to decide that child brides and marriages at age 14 are appropriate for the culture and the society of that particular country and therefore—

**Mr Lamb**—There are certain things built into the convention here. There are certain minima built into the convention in some places, as you will have seen yourself.

**Senator ABETZ**—Where are the minima in relation to arranged marriages of young brides?

**Mr Lamb**—I am not sure where the particular figures are.

**Senator ABETZ**—All right; if you can take the minima for August—

**Mr Lamb**—There may not be minima for all provisions. There are some minima in there and there are other areas where the states are meant to be making progress. One of the objectives of the protocol on children in armed conflict is to introduce particular minima that matter in those contexts. They are not there in all but they are in some.

**Senator ABETZ**—The Family Court decision in the case of Re K, where there were separate representatives for children, as I understand it relied heavily on CROC. Did the Attorney-General's Department or Foreign Affairs, in their advice to government at the time, warn the government that CROC could lead to the consequence of the decision in Re K and the substantial burden that decision has placed on the legal aid capacity right around this country? Was the government prewarned that that might be a likely outcome and consequence and they ought to shake a few more million dollars out of revenue to assist legal aid in that area?

**Ms Jackson**—We would have to take that on notice.

**Senator COONEY**—I think in Re K the government submitted that the child should have representation.

**Senator O'CHEE**—Does a proposal to lower the age of consent to 10 give effect to the obligations under the convention?

**Mr Lamb**—Whose proposal is that, Senator?

**Senator O'CHEE**—This is a draft proposal that is floating around from the secretariat of the Standing Committee of Attorneys-General.

**Mr Lamb**—I have never heard of a proposal that would lower the age of consent to 10.

**Senator O'CHEE**—It is certainly in all the papers.

**Mr Lamb**—Maybe I could take it on notice.

**Senator COONEY**—Are we thinking of the age at which people are able to form an intention to commit a crime?

**Senator O'CHEE**—No, it is in relation to sexual conduct between minors.

**CHAIR**—Perhaps you could take that on notice because we are running out of time.

**Mr Lamb**—Could we get some detail of the question because one of my colleagues suggested that there is something happening, he thinks, in a New South Wales state context that may suggest that? If we could get some detail we would be happy to respond.

**Mr Campbell**—My understanding is that this is in a moral criminal code

discussion paper—

**Senator O'CHEE**—Yes.

**Mr Campbell**—which is being prepared between the states and the territories and the Commonwealth.

**Senator FERGUSON**—There is no connection with the convention; is that what you are saying?

**Mr Campbell**—No, there is no connection with the convention. I think the question being asked is: how is that consistent with the obligations under the convention?

**Senator ABETZ**—What is the cost of preparing that report: us sending delegates overseas to negotiate the treaty, the enforcement of it and you people talking to us today? It must be millions and millions of dollars, mustn't it, over the eight or nine years that we have been running with the people concerned about the implementation of CROC? We have spent that money domestically but what about internationally? Have there been any actual changes that can be pointed to by a government that were made because they have signed up to CROC and that they would not have made but for them signing up to CROC? Chances are they would have made those changes anyway, I would imagine, in their domestic law. There seems to be, as is the wont with these conventions, a lot of hot air and a lot of money spent. One wonders if it might not be better spent on providing welfare to the hungry children who are actually in need.

**Mr Lamb**—We would like an opportunity to respond to that. I know that Senator Abetz is inviting a response when he uses words like 'a lot of hot air'. I would actually, with the greatest respect, dispute that. There are things that we will be able to point to, when we return, that show how a country's experience from being a party to the convention has enabled them to look at what is being done in like societies to improve the lot of children. We would like to provide you with something on that. Whether you could say to yourself that life was different for a child in Dubbo as a result of Australia becoming a party to the convention is, I take it, not what you are asking.

**Senator ABETZ**—Possibly, but more in the international context, you know: how has the lot of the Indonesian child been improved by virtue of Indonesia being a party and in fact having a national representative on the committee?

**Senator COONEY**—Would it be possible for A-G's or for Foreign Affairs to give us a short paper—I know they are always being asked to give short papers—on what is involved in the language of treaties. With any treaty we get, whether it is a trade treaty or a labour treaty or anything else, it seems possible for us to scan them or put spins on words—I do not say that in a derogatory sense—which may or may not have ramifications. Could either department talk about the use of language in these treaties and

whether or not they are going to bear the meaning that people might give them when they read them?

**Mr Biggs**—To be all-encompassing on that, the interpretation of particular provisions becomes subject to what amounts to international case law and development of experience of international practice within countries' own jurisdictions and then in the findings and recommendations—

**Senator COONEY**—That might be what you put down, but I think there is a bit of a problem we face. We get a treaty we have to deal with and we look at it in terms of our own situation, which might be different from what happens in Thailand or France or what have you. Is it possible to give us some sort of jurisprudence about the interpretation of treaties?

**Mr Biggs**—Not that would cover the whole spectrum, but on particular points—for example, how the word 'family' has been understood in international tribunals—

**Senator COONEY**—There is no general jurisprudence about how treaties can be used as an interpretative tool for a particular state's law. If there is not, you cannot produce it.

**Mr Campbell**—I suppose there have been a number of things written on this about how the language of treaties actually evolves and the fact that frequently in the negotiation of the treaty you can end up with language that is satisfactory to all the parties but that thereby means that it can be given a number of different interpretations, if this is the sort of thing you are getting at.

**Senator COONEY**—Yes, it is. You see, Senator Abetz, Senator O'Chee and others ask these questions and Mr Smith did too. What we get in the committee the whole time, no matter what treaty is involved, is that you can put a particular interpretation on the words which leads to a lot of concern. I wonder whether you have any jurisprudence which you can put your hand on to explain all that.

**Mr Campbell**—I personally have written something on these sorts of issues in the past and I am happy to provide that to the committee, if that would be helpful. It is general material.

**CHAIR**—That is a good start anyhow.

**Senator COONEY**—Yes.

**Mr Lamb**—It is a fair question because these days the way treaty negotiations so frequently take place in Geneva, New York or the other places where it is most commonly done is in back rooms where they use what they call at best conference room papers but

sometimes what they would describe as a non-paper, so there is not a documentary record you can follow as you get to the words ultimately used. That is another reason why we thought it was a good thing to be able to have a committee like this one meet and go through treaties and actually explore the kinds of questions about the meanings of words in a way that would put on the public record the kinds of questions you have been posing. It is a good thing to have that happen. In the past, before the invention of the computer et cetera, when typing was a more laborious task and you had carbon copies around the place, there was, paradoxically, a better paper trail to support a treaty and the travaux préparatoires of the older treaties are much more extensive documents than the modern ones. We are talking about really the mid-1990s onwards. I think there is a dangerous development from the mid-1990s in terms of the paper that supports a treaty.

**Senator COONEY**—The High Court might have to interpret it, we have to interpret it, the citizen in the street has to interpret it. All I want to know is whether there is any jurisprudence to get some sort of finality.

**Mr Lamb**—There is not much jurisprudence that actually tells you what the meaning of the word ‘family’ will be. There is not that kind of jurisprudence. You would normally have to go back through the treaty. Bill Campbell’s article will explain all these things. It is a subject worth going ahead with one day.

**CHAIR**—We would appreciate it if Bill could provide his paper as a startling point; we will see where we go from there. We are running out of time. There are a series of questions which we still have to ask. We might ask the witnesses to take those on notice, rather than stretch out the hearing. Is it the wish of the committee that the questions be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The questions read as follows—*

**Mr Lamb**—Mr Chairman, are you wanting us to return later to go over issues again?

**CHAIR**—What I should have said to start off with is that this, of necessity, is a preliminary hearing. We are just testing the water at the moment on lots of issues. Yes, we will be coming back.

**Mr Lamb**—We would like very much to follow this committee as closely as we can, given the cost of hearings you will be having in Sydney, Melbourne and Brisbane and anywhere else you decide to meet. We found in the past, as you know, that following the committee means that we do meet interest groups that sometimes have been too abashed or unaware of the issues to come forward to us. If we can identify from your hearings more people with whom we should conduct consultation, that is good.

**CHAIR**—I highlight that one particular area we will bring out in questions on notice is the monitoring process. For example, on Thursday we meet with the Queensland Children's Commissioner. We will be looking at to what extent other states have this sort of practice; to what extent there is a departmental view in terms of a commissioner at the federal level; and, if that were the case, how that relates to the operations of the Human Rights and Equal Opportunity Commission and all those sorts of things. I think it is the monitoring process, bearing in mind that this treaty has been ratified, that this committee would want to home in on. How well are we doing? What are we doing to follow it through, et cetera? Are there possibilities to optimise our efforts down that particular track?

**Mr Lamb**—The Queenslanders supplied the representative of the states and territories who came with the Australian delegation to the World Congress on the Commercial Sexual Exploitation of Children. The person who they sent I think is the man who subsequently became the commissioner. The act was proclaimed while he was in Stockholm at the meeting. So press releases were put out while he was out of town. Each jurisdiction has the capacity, the way the convention is drafted, to look at what works best in its own situation.

**CHAIR**—The other dimension to that—we will bring this out in the questions—is that New Zealand has been doing a lot of work in this area. We have had some informal contact between the secretariat and their commissioner. I have not discussed it with committee members yet, but we are giving serious consideration to bringing that commissioner to Australia to talk to us. We have not discussed it in detail yet. It seems that they are doing some things over there that perhaps we need to be aware of. So we will look not only at the domestic situation but also at the situation across the Tasman as to whether there might be some initiatives the New Zealanders are taking in this direction which we might take up. Yes, this is chapter one in a continuing saga. Thank you very much.

**Mr Lamb**—When do you anticipate reporting, Mr Chairman?

**CHAIR**—Very late in the year.

**Mr Lamb**—We would like to consider, as we proceed with consultations on the article 43 amendment, the time at which we should go to government concerning that. It may be that we can come to you with respect to that amendment before you do your report. I do not know whether procedurally you could integrate these things once we had put the other to you. As the document in the Foreign Affairs submission says, we have not yet done the national interest analysis on this, but it might be possible to link them if that suits you procedurally.

**CHAIR**—Off the top of my head I would say September/October. September hopefully; October maybe. We will just have to see how we go. The secretariat would like a bit longer, I am sure.

**Ms Jackson**—Could some officers of the department remain as observers, not to answer questions?

**CHAIR**—Yes. Thank you very much.

[12.12 p.m.]

**DAPRE, Mr Robert Patrick, Director, Divisional Coordination and Planning, Family Programs Division, Department of Social Security, Box 7788, Canberra Mail Centre, Australian Capital Territory 2610**

**HERSCOVITCH, Mr Andrew, Assistant Secretary, Disability Programs Branch, Labour Market and Disability Programs Division, Department of Social Security, Box 7788, Canberra Mail Centre Australian Capital Territory 2610**

**RAYMOND, Ms Judy, Assistant Secretary, Sole Parent Program Branch, Family Programs Division, Department of Social Security, Box 7788, Canberra Mail Centre, Australian Capital Territory 2610**

**ROWLANDS, Mr David, Assistant Secretary, Family Program Branch, Family Programs Division, Department of Social Security, Box 7788, Canberra Mail Centre, Australian Capital Territory 2610**

**STANTON, Mr David, First Assistant Secretary, Family Programs Division, Department of Social Security, Box 7788, Canberra Mail Centre, Australian Capital Territory 2610**

**WINZAR, Ms Peta, Assistant Secretary, Special Payments Branch, Housing and Special Payments Division, Department of Social Security, Box 7788, Canberra Mail Centre, Australian Capital Territory 2610**

**CARMODY, Ms Margaret, Assistant Secretary, Policy Analysis and Planning, Family and Children's Services, Department of Health and Family Services, PO Box 9848, Canberra City, Australian Capital Territory**

**DELL, Ms Alison, Director, Health Issues Section, Office for Aboriginal and Torres Strait Islander Health Services, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory 2601**

**DORAN, Ms Fidelma, Director, Population Health Strategies Section, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory 2601**

**GOREN, Ms Ruth, Assistant Secretary, Office of Disability, Disability Programs Division, Department of Health and Family Services, GPO Box 9848, Canberra Australian Capital Territory 2601**

**STANFORD, Ms Alison, Director, Family Policy Section, Department of Health and Family Services, GPO Box 9848, Canberra City, Australian Capital Territory 2601**



**THOMAS, Ms Jenny, Assistant Secretary, Family Services Branch, Department of Health and Community Services, GPO Box 9848, Canberra City, Australian Capital Territory 2601**

**WHITEFORD, Dr Harvey, Director of Mental Health, Health Services Development Division, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory 2601**

**CHAIR**—I apologise for keeping you waiting for so long. I suspect the committee will raise more questions than we anticipated. It is a very technical and very difficult area, and I apologise for that. I emphasise that this is a preliminary hearing. I have no doubt that in due course we will come back to all departments for further evidence. I think the best way to proceed would be for one spokesman from each department to read into the record a short opening statement. Perhaps we can start with Health and Family Services.

**Ms Thomas**—Firstly, I must apologise to the committee for the lateness of the submission of the Department of Health and Family Services. There have been some difficulties in a big portfolio in pulling together contributions at a time when significant pressures have been imposed by the budget. However, we acknowledge that it does not help your task in absorbing the content of our submission prior to the hearing, and I ask you to accept our apology.

**CHAIR**—We have been getting the child-care lobby at the electorate office level.

**Ms Thomas**—The departmental submission focuses primarily on your terms of reference 6 and 7. We have made no comments on the third and fifth terms of reference. It is important to note in our submission that many of the programs in the area of children and family services are a shared responsibility of the Commonwealth and state and territory governments. Child protection services are wholly a state and territory government responsibility, although the Commonwealth has a role in broad child abuse prevention.

My colleagues here are from the areas of the department that are covered in the submission, that is, the Office of Disability; OATSIHS; mental health, including the national youth suicide strategy; public health, which covers matters such as immunisation, child and youth health policy; children's and family services, including child care, child abuse prevention and the prime ministerial youth homelessness task force, emergency relief.

**Mr Stanton**—We are pleased to have the opportunity to address aspects of the convention which relate to the Social Security portfolio. As noted in the department's submission, there are only a limited number of articles in the convention directly relevant to Social Security. The most important of these are paragraph 1 of article 26, which requires that a child's right of access to social security be fully recognised. The Australian

social security system provides a comprehensive range of cash assistance to families which has been increased in recent years. Details of this assistance and its growth over the last several years are outlined in detail in the submission. We will be happy to provide any further information that you may require.

**CHAIR**—As we have 45 minutes, there will be a series of questions which we will not be able to cover and which we will provide to you to take on notice. Under the circumstances, we cannot avoid that. In my opening comments I made the point that this committee has no agenda and no particular view. The rationale for looking at the convention at this point in time was a bipartisan decision taken by all members of this committee. I want to make that very clear.

There have been suggestions both orally and in some submissions that we have received that this committee is simply a mouthpiece for the government wanting to change certain directions. That is untrue. After nearly seven years of the ratification process, we want to see how we are doing within that convention. That covers a wide range of activities. I think it is important that you understand where we are coming from.

This is an exploratory series of committee hearings. To repeat what I said to the first group, in the first 72 hours of our advertising that we were going to look at this, we had over 1,000 inquiries. We already have 140 formal submissions. It is indicative that there is a wide spectrum of views as to what is right and what is wrong with what we have done and what we should do in the future.

**Mr BARTLETT**—I want to ask both departments whether any changes in policy have taken place since 1990 that have been a direct result of the Convention on the Rights of the Child. Has it had any tangible impact on policy decisions?

**Ms Thomas**—I would broadly say that much of the program direction in the department in the areas relevant has been consistent with the convention. While you could not draw an immediate cause and effect relationship between them, I think it has been a backdrop to policy considerations.

**Mr BARTLETT**—So there has been no tangible or identifiable decision that has been made as a result of Australia being a signatory?

**Ms Doran**—We have a child policy which draws on the convention's principles and which has been agreed between the Commonwealth and the states. I could not say for sure that it was the convention that provided the impetus for this policy, but it certainly draws on it, as Jennifer is saying.

**Mr BARTLETT**—In relation to the formulation of new policy measures, does that take place with reference to the convention or is it just assumed that that is a backdrop—that we are generally complying with the principles anyway?

**Ms Doran**—No, it takes place within the context of using the principles as they are used within the health policy in terms of the child.

**Mr BARTLETT**—How about DSS? Is that the same?

**Mr Stanton**—In the case of Social Security, it would be similar to that expressed by Health and Family Services. It is a broad context within which changes have taken place, but I could not point to precise examples of cause and effect.

**Mr BARTLETT**—Would it be reasonable to say that, had we not ratified the convention, it would not have had any marked impact on policy decisions in either of those two portfolios and that our general commitment as a country to the principles of the rights of the child would have been adhered to anyway in policy regardless of the convention?

**Mr Stanton**—I guess that that is a difficult question to answer in that it is in a hypothetical sense. I think that is probably correct. The approaches that have been taken in Social Security in terms of cash assistance to families certainly has been against a backdrop of government policy of a number of governments concerned to provide assistance to families with children which would have applied irrespective of the convention.

**Mr BARTLETT**—And many of those issues were taken before the convention was ratified in any case?

**Mr Stanton**—Yes.

**Ms Thomas**—I would agree that it is difficult to say. I do not know that I could give you an answer on that. We just do not know.

**Ms Doran**—But it certainly adds content and context to what we have done and to negotiating with the states, say, on child and youth health. We have quite extensively used the principles embedded in the convention.

**Mr BARTLETT**—Has that been a necessary bargaining tool in negotiations with the states?

**Ms Doran**—No. It is not used as a bargaining tool. If they agree with the principles and they get into the policy, it is through a process of working through these issues, but it certainly has helped to develop the policy.

**CHAIR**—To what extent has the UN committee's view had on policy formulation? For example, we are told that they were very critical of youth suicide rates in New Zealand and were asking questions of the New Zealand government. Have they been

asking similar questions in the Australian context to which we have had to react? I guess that question is mainly for Health and Family Services.

**Ms Thomas**—We understand that there are some concerns that are being raised. We have only become aware of what those questions are in the last week or so, so the department really has not had an opportunity to respond.

**CHAIR**—Is this as a result of the review of our first report?

**Ms Thomas**—Yes.

**CHAIR**—But you were involved in the preparation of that first response as a department, weren't you?

**Ms Thomas**—Yes, the department was.

**CHAIR**—What sorts of questions are they asking that you are aware of?

**Ms Thomas**—I understand there are some 45 of them and only maybe half a dozen or so are relevant to this department.

**CHAIR**—What sorts of questions? Can you give us a feel for some?

**Ms Thomas**—I have probably got one or two in my notes. If you give me a moment.

**CHAIR**—We discussed with DFAT and A-Gs the impact of the response to our first report. It is for our government to decide, but, nevertheless, perception of what they say is always important in some of these processes.

**Ms Thomas**—I have here some questions. Question 2:

Please specify existing mechanisms and procedures in place to monitor the situation of children being placed in care. Can children lodge complaints of abuse and neglect?

That would be a response for state governments. To continue:

Please indicate whether information and awareness raising campaigns have been developed to prevent situations of ill treatment, abuse and neglect and domestic violence in the family. Please provide available data on the occurrence of ill treatment of children.

**CHAIR**—How would this be handled? Is there a standing group of officials with states and territories, within Health and Family Services, or is it just ministerial?

**Ms Thomas**—The SCCSISA administrators would deal with these matters generally.

**CHAIR**—And then it would be fed up through into the ministerial level as need be?

**Ms Thomas**—Yes.

**CHAIR**—Are there major issues or issues that we really do not have a reasonable response to at this stage? It all sounds to me to be fairly motherhood stuff, really, in Australian terms.

**Ms Thomas**—I have not seen all 45 questions, but I think most of them are in the area of the Attorney-General's or the states for response. I understand that they do not present any major difficulties—certainly not to us.

**Mr TONY SMITH**—The UNICEF report apparently indicated that '14 per cent of Australia's children, more than 700,000, are so poor they sometimes go hungry'. Would you say that, given the social security network and safety net and community safety nets, no child ought to go hungry?

**Mr Stanton**—I think the issue of poverty and poverty measurement is a very complex one. It is very much determined by the conceptual approach taken to the measurement of poverty. We can provide further material to the committee should you wish to receive it, but there is a long debate about whether you measure poverty in an absolute sense or in a relative sense, relative to the standards of living of the community in which you are resident. We have had this debate in Australia for many years, going right back to the establishment of the Henderson poverty inquiry in 1972. Each of these measures is not without criticism. When it comes to defining the measures, it is very difficult to obtain the data that would support the estimation of numbers affected.

**Mr TONY SMITH**—So you would not accept the UNICEF estimate?

**Mr Stanton**—I would like to have a closer look at the basis on which the UNICEF estimate was calculated.

**Mr TONY SMITH**—It is an interesting phrase, 'sometimes go hungry'. In a practical sense, what if a child walked into a Social Security office, looking in a bad way, and said that he was hungry? What would you do about it?

**Mr Stanton**—First, I suppose, we would wish to know the context in which the child is coming into such an office—what their parental arrangements are. Certainly, we administer a wide array of programs which may relate to the eligibility of such a family. It could be that they are in a sole parent family, in a dire situation, or unemployed or

disabled. So we could test the eligibility of the family for a social security entitlement. Certainly, we would also seek to assist in placing the family and the child in contact with others who may well assist in that circumstance.

We have social workers in all of our regional offices. Our larger offices would have two or three social workers. They are very closely interlinked with other agency groups and state government. We would actively seek to explore their eligibility for benefits from the Commonwealth. If not from the Commonwealth, we would seek to pursue their entitlements and assistance from state governments or to assist them to be in touch with others who could provide assistance, such as the Salvation Army, the Brotherhood of St Laurence and St Vincent de Paul. Certainly we would approach it in an active manner.

**Mr TONY SMITH**—Obviously that would be followed through pretty carefully if that situation occurred?

**Mr Stanton**—Yes.

**Mr TONY SMITH**—I take the same example: if a teacher at school was noticing a problem with children and they reported it to you, would you look at mechanisms to follow it up and try to determine the family history? Or would you pass it on somewhere else?

**Mr Stanton**—I do not think it would often occur that a teacher would be in touch with our offices. There would have been situations where a teacher concerned about the domestic circumstances of a child could be in touch with one of our social workers or one of the staff of our offices. But I normally would have expected that they would pursue that through other avenues.

**Mr TONY SMITH**—In terms of a monitoring situation, would you more put that to the state authorities?

**Mr Stanton**—Yes. I mean, the Commonwealth in this matter has a direct responsibility constitutionally and by our legislation to meet people's entitlements for an array of social security provisions. That array of social security provisions is quite extensive. But that is our primary responsibility. Where we get into situations where we would interface with state governments or others, then we would seek to pursue that in a responsible manner.

**Mr TONY SMITH**—Do you see some advantages in having a reporting system where there is an obligation on the part of teachers to report situations like a child who looked somewhat malnourished or needing care? Do you feel that, if there were a reporting structure, it would ultimately remove this statistic that is thrown at us by UNICEF?

**Ms Winzar**—One of the important factors here is the Commonwealth and state protocol for the support of unsupported young people, which basically relates to people under the age of 18. That protocol between the Commonwealth and the state governments is specifically designed to recognise that it is the states who have primary responsibility for the welfare, if you like, of children under the age of 18 and have a legal mandate to investigate their domestic circumstances.

One of the handicaps that our social workers face is that, although they might take on advice from the school counsellor, for example, they do not have any actual capacity to investigate the child's home circumstances. Inevitably, with people under the age of 15, anyone who would report to a Social Security office would be referred by the social worker to the state Department of Community Services. Because the state have the responsibility for the care and protection of young people, they would then take up the responsibility of liaising with the family, finding out what was wrong, intervening if necessary and offering the family counselling and so forth. Monitoring would be undertaken by the state as well.

**Mr TONY SMITH**—I refer to homeless youth and so forth. In my experience in the electorate, I have encountered a number of histories involving children who have obtained this benefit by making false accusations of abuse—including sexual and physical—against one or other parent and have retracted it later when they came home after having received the allowance. Is there any means in the act at the moment of penalising children who have behaved in that way—that is, they ought to repay it at some later stage, when they become adults? Is there a capacity to look at that in the present legislation?

**Ms Winzar**—Very few of the claims for the independent homeless rate are on the grounds of parental abuse, either physical or sexual. Most of the claims which arise are because the parents refuse to allow the young person to return home. It might interest the committee to know that around 40 per cent of claims for independent homeless rate are rejected. The two principle reasons for those rejections are that the kid can return home—the parents have either changed their mind or their position all along has been that they are happy to have the child at home—or else there has been some mediation and the family has come to some agreement.

Verifying allegations of abuse by parents is a fairly serious matter. We require that those allegations be verified by a third party. We reissued the guidelines on verification some time late last year, but essentially we are looking at a third party who is removed from the family—for example, a school counsellor or the state Department of Community Services, to see if it has been reported previously. In some cases, the police can provide us with supporting evidence as well.

In terms of appropriate penalties for young people who misrepresent their circumstances, I am not aware of any cases where allegations such as those have been

substantiated and then later withdrawn by the young person. But I would be happy to take those on, if you have them.

**Mr TONY SMITH**—Is there someone here from the Child Support Agency?

**Mr Stanton**—The Child Support Agency is in the Treasury portfolio.

**Mr TONY SMITH**—There is a reference made to it in here. I thought I would ask some questions about that, but if nobody is here from there—

**Mr Stanton**—We can field questions on those aspects of it that relate to our involvement with the Child Support Agency on the Social Security side.

**Mr TONY SMITH**—My question would probably not fit in there.

**CHAIR**—I would like to come back to more general things. There has been criticism by the UN committee of the record in New Zealand on indigenous people's welfare. Are you aware of any criticism in the feedback of, for example, health for Aboriginal and Torres Strait Islanders in Australia?

**Ms Dell**—Coming specifically from the committee?

**CHAIR**—Yes.

**Ms Dell**—I am not.

**CHAIR**—Are you aware of the New Zealand criticism?

**Ms Dell**—No.

**CHAIR**—Again, it gets down to the sovereign rights of the New Zealand government but, nevertheless, we would be interested if there was anything being fed back on that, either from the committee or through this report.

**Ms Dell**—I have not seen the committee questions yet, but I understand one or two of them relate to Aboriginal health. Is that right, Alison?

**Ms Stanford**—I believe so.

**CHAIR**—I would be surprised if they did not.

**Mr BARTLETT**—I would like to pursue again the issue of child poverty that Mr Smith was pursuing. Given that there is dispute about whether the measure ought to be



relative or absolute, is it your perception that the incidence of child poverty has been increasing in Australia over the past decade or so, or has there been no noticeable change?

**Mr Stanton**—I do not have evidence that would support suggestions of such an increase. Certainly, if you look at what has happened with the social security provisions for families over, say, the last 10 years, we have seen a significant enhancement of the rates of payments that are made to families who have low incomes. This has been achieved through better targeting of the program. Family payments, as you would be aware, are now not paid to higher income earners. So we have seen a very significant increase in rates of payment paid to low income recipients—be they the children of pensioners or beneficiaries—and to low income families in the work force. So the evidence from what has happened in terms of social security provisions is that there has been a significant enhancement of payments and there has been an extension of the coverage of payments.

I do not have evidence based on any detailed statistical information that would support a suggestion of significantly enhanced problems of child poverty. In any event, I do not think there is up-to-date data from the Bureau of Statistics that could support that.

**Mr BARTLETT**—But those increases in family payments over the last decade or so have taken place as a policy initiative of the department or the government irrespective of reference to CROC?

**Mr Stanton**—The original significant changes to the family payments structure resulted largely from recommendations of the *Social Security Review*, which at the time was chaired by Professor Bettina Cass, and the work that was done with that leading through to the then Prime Minister's commitments in relation to child poverty and these relationships in terms of setting benchmarks of adequacy. Family payments being set in relation to rates of pension payable to married persons has been sustained by the present government, but it has not been a matter of a direct causal relationship between such changes and the convention.

**Mr BARTLETT**—It has been suggested to this committee that policy proposals presented to cabinet ought to be accompanied by a child impact statement. With regard to your respective portfolios, what implications do you think that would have for your department, and what would you see as the potential benefits and costs, both real and financial, of such a policy?

**Ms Thomas**—That is very difficult to estimate right now.

**Mr BARTLETT**—You may take that on notice.

**Ms Thomas**—Yes, I will take it on notice.

**Mr Stanton**—My own view here is that in bringing material to government we would be expected to ensure that our programs are properly elaborated and presented in terms of their financial and other impacts. Whether a specific requirement or something called a ‘child impact statement’ would assist in that process I personally doubt.

**CHAIR**—I have a question for Health and Family Services. In some of these reports there is reference to involuntary circumcision and female genital mutilation. Are these sorts of issues that we, as a matter of course, would take up nationally? Are you aware of any criticism or comments coming again in these series of questions?

**Ms Doran**—I am not aware of any criticisms. In fact Australia has a two-pronged approach to female genital mutilation, the reason being that we do have a large number of migrants coming from countries that practise it. The approach is legislative; most states and territories have brought in legislation specifically banning mutilation of females. Secondly, it is educative. It was felt that there was a moral responsibility, if we were going to bring in specific legislation, that people were educated about what it meant and about the health hazards basically of mutilation, which are quite significant.

This is basically funding that is provided to the states so the program is about educating health providers and educating communities about the hazards of genital mutilation so that those programs are fully integrated with existing health services in the states. For example, when women present to hospital to give birth, if they have particular health needs as a result of mutilation, the hospital is able to deal with those effectively. So Australia has had a very strong response to female genital mutilation and, as far as I am aware, there has not been any criticism at all—in fact more often it is seen as praisable.

**CHAIR**—What about the involuntary circumcision? I know it is a somewhat different subject.

**Ms Doran**—I do not quite understand involuntary circumcision. In what way is it different from female genital mutilation?

**CHAIR**—It has been raised in some of the submissions. I guess it is getting into more of a philosophical thing as to whether a male needs to be circumcised or not. So it is quite different from mutilation, isn’t it? It is a different issue. You have seen no reference to that?

**Ms Doran**—No. Mostly female genital mutilation—or it may be called euphemistically female circumcision—is performed on children. So the extent to which it is voluntary or involuntary is—It is performed on children as a cultural rite.

**Senator ABETZ**—Does the law disallow it on adults? The legislative response of all the states, as I understand it, is that they all have legislation in place now. Does that prohibit it on adults?

**Ms Doran**—I am not sure.

**Senator ABETZ**—Could you take that on notice, please.

**CHAIR**—There being no further questions, does either portfolio want to make any other general comments in relation to this convention—I suspect to a lesser extent Social Security than Health and Family Services? Does specifically Health and Family Services want to make any other general comments in relation to this convention, either as an assistance to your portfolio thrust or an inhibitor to what you are doing? Is there any evidence along those lines?

**Ms Thomas**—No, I think the earlier comment stands. It has been a general backdrop to policy development in the department rather than either an inhibitor or an accelerator.

**CHAIR**—No other comments?

**Mr Stanton**—We do not have any further comments.

**CHAIR**—There being no further comments, thank you very much for your patience.

**Luncheon adjournment**

[2.12 p.m.]

**ARTHUR, Dr Evan, Assistant Secretary, Literacy and Special Programs Branch, Department of Employment, Education, Training and Youth Affairs, GPO Box 9880, Canberra, Australian Capital Territory 2601**

**McMILLAN, Mr Brian, General Counsel, Legal and Review Division, Department of Employment, Education, Training and Youth Affairs, 16 Mort Street, Canberra, Australian Capital Territory**

**MARTIN, Ms Robyn, Director, Legislation, Administration Section, International Division, Department of Employment, Education, Training and Youth Affairs, 16 Mort Street, Canberra, Australian Capital Territory**

**PRIOR, Mr Athol George, Director, Indigenous Education Policy, Department of Employment, Education, Training and Youth Affairs, Box 9880, Canberra, Australian Capital Territory 2601**

**CHAIR**—Thank you very much for coming along this afternoon. We hope we won't take up too much of your time. Do you want to make a short opening statement in relation to this?

**Mr McMillan**—You have a submission.

**CHAIR**—You don't want to make an opening statement?

**Mr McMillan**—No.

**CHAIR**—Let me just repeat what I said to DFAT, A-G's, Health and Family Services, and Social Security before lunch: there have been some suggestions in submissions and oral discussion with the secretariat that this committee has some sort of agenda about it. I just wanted to start this afternoon by refuting that and making the point that this committee—which, as you know, is a cross-party, both house, joint committee—has no agenda, and the rationale for reviewing this convention was as a result of an exploratory paper which was produced over the Christmas-New Year break—again, a very neutral assessment of what happened and where we are at in terms of this convention.

We are simply seeking to get over the next few months as much evidence on the public record as we can to be able to report back and, hopefully in the process, to assist Australia in producing its next report, which of course is due in the UN by October-November this year. That is the sort of general potpourri of the summary of what we are about. We are exploring the convention with, first of all, government departments, and then later this week we have our first hearings in Brisbane and next week we are back in Sydney to see what people have to say about it.

It would be fair to say that, quite apart from the comments from some that we have some sort of agenda, there is a wide spectrum of view on this convention. It is an emotional issue. It was an emotional issue prior to and at about the time of ratification back in 1990. Judging from the 1,000 inquiries that we had in 72 hours and the 140 submissions that so far have been put in, clearly the subject is one that still generates a lot of interest.

Following those few opening remarks, perhaps I should start by saying that the UN Committee on the Rights of the Child has been critical particularly of New Zealand. New Zealand has responded to that with a children's commissioner and a number of other things, particularly with emphasis on the Maori population. A report which is circulating, as I understand, at the moment within government departments identifies about 45 areas where further comment is sought. I just wonder whether some of those are within DEETYA and to what extent, and in particular in your area whether there has been some criticism of lack of education or whatever in terms of indigenous people.

**Mr Prior**—I am not aware of any aspects of indigenous education that have been raised or questioned or that have a need to be responded to in relation to the convention.

**CHAIR**—Is the department aware of some of these issues that have been raised? I am not sure how these have been circulated within government departments but, for example, Health and Family Services suggested there were 45 questions that had to be answered, some of which were for them. A lot were for A-G's and others. I was just wondering whether there was anything in the DEETYA area.

**Ms Martin**—Some questions were raised with us through Attorney-General's under education, leisure and cultural activities and under basic health and welfare that relate to indigenous—

**CHAIR**—What sorts of questions were being asked? Could you give us a feel for the sorts of things that the committee were saying which obviously will have to be responded to?

**Ms Martin**—Basically, in relation to the first issue, under basic health and welfare, the committee was looking at whether any studies had been undertaken or envisaged to evaluate the success of existing health programs for Aboriginal and Torres Strait Islanders. This was marked for our department. However, it is one that we expect the Department of Health and Family Services will respond to, but I mention it because it had actually been raised with us.

**CHAIR**—I know they are responding to it.

**Ms Martin**—Under education, leisure and cultural activities a question was asked

as to what extent school curricula have been adjusted to give room for education about the UN Convention on the Rights of the Child. Another one was access to—

**CHAIR**—What does that mean? What does that really mean?

**Ms Martin**—This is an issue that we need to explore in developing our response.

**CHAIR**—So maybe some of these questions are being posed by people who really do not understand what the problem is or what the issues are. Is that what you are saying, without putting words in your mouth?

**Ms Martin**—I wouldn't like to make that bald statement. We do need to go further and clearly understand what the import of this statement is. Another issue that they raised under that same heading is access to secondary schools always made possible for children, especially the Aboriginal and Torres Strait Islander children living in remote areas.

**CHAIR**—It is so recent that you haven't really had time to refer it within the department?

**Ms Martin**—We have referred it on but we haven't yet had time to meet to develop the departmental response. A third question under that heading was to indicate if primary and secondary school teachers receive at state and territory level education on human rights and children's rights. Some of those issues go to the school curricula, which falls within the states.

**CHAIR**—That is the only feedback that you have had as a result of the convention in the general educative area?

**Ms Martin**—Yes, that I am aware of.

**Mr TONY SMITH**—When did those questions come to you?

**Ms Martin**—I had them by 22 April.

**Mr TONY SMITH**—This is directly from the committee itself, is it?

**Ms Martin**—No, this came from Attorney-General's.

**CHAIR**—Attorney-General's are coordinating responses?

**Ms Martin**—Yes.

**Mr TONY SMITH**—Do you know when they got the query?

**Ms Martin**—No, I do not.

**Mr TONY SMITH**—One would assume relatively recently.

**Ms Martin**—The letter was written to us on 5 April.

**Mr TONY SMITH**—Does it arise out of a visit by the committee or does it arise out of first-hand information or are they just questions from a distance?

**Ms Martin**—My understanding is that they were questions on notice issued by the United Nations committee in preparation for the formal hearing, but I cannot be more specific about the timing of it.

**Mr TONY SMITH**—Obviously, when those questions are asked—I take the chairman's point about trying to decipher what the question really means—it does put a certain burden upon the department to address that non-specific question or the question that is hard to understand.

**CHAIR**—They really have to understand what they have to answer.

**Mr TONY SMITH**—Exactly. It means that there is an additional burden placed on the department to try to decipher that, I guess. Would you agree?

**Ms Martin**—I have no comment on that.

**Mr TONY SMITH**—Is this the first inquiry that you are aware of or have there been others?

**Ms Martin**—This is the first that I am aware of, but my colleagues may be aware of others.

**Dr Arthur**—I am not aware of the Rights of the Child Convention being raised, but that is by no means an encyclopaedic knowledge. Things have been raised with our division but I am not aware of this particular convention being specifically raised on issues to do with my branch's area of responsibility.

**Senator COONEY**—We are talking about youth affairs. When you talk about youth affairs, what age limit is involved? The reason I ask that is that I notice that the maximum age that you can be considered a child under the convention is 18. Do you have anything to do with that?

**Dr Arthur**—We do not actually have anyone here from the youth bureau but my understanding is that the youth affairs part of the portfolio goes beyond age 18.

**Senator COONEY**—But does it go below 18 as well?

**Dr Arthur**—Certainly the portfolio as a whole has responsibilities going well below that age. Whether the youth affairs helmet of it would regard it as such—it probably would actually—I do not think there is a precise science on that issue.

**Senator COONEY**—I was just thinking that the convention makes a distinction: it says nobody over 18—that is the effect of it, in any event—is to be considered a child. I do not know whether you are taking that on board in the department or whether you have any particular regard to that in the light of the convention.

**Dr Arthur**—I suspect our position—Brian could probably answer better than me—in terms of legislation, what is a child and ages of responsibility, is something which intersects in the department in a number of ways.

**Senator COONEY**—I was just wondering whether there was any consciousness of the convention in the operation of the youth affairs part of the portfolio.

**Mr McMillan**—I am not sure whether any of us can actually answer that directly, I am afraid, because we do not have direct responsibility. But we can certainly take that on notice.

**Mr TONY SMITH**—What age does it start? At what age do you get interested in youth?

**Dr Arthur**—The portfolio as a whole has a responsibility in various policy areas beginning with certain areas in the child care area through to the employment area and the full span of people's lives. As a portfolio it covers a wide range and spectrum.

**Senator COONEY**—I would like to follow on from Mr Smith's question. A lot of child care and what have you goes to looking after the family—the mother and father. Are there any examples that you know of, have identified or have an impression of where the child is looked at in terms of the convention at all? I am just trying to get an impression from you as to whether or not the convention as such has had any impact. I take it from the way that you are reacting that it has not.

**Dr Arthur**—I would say that it is—

**Senator COONEY**—I am not saying that you are acting against the convention; all I am trying to get from you is whether the convention as such seems to have any impact in your portfolio.

**Dr Arthur**—It is one of a number of human rights instruments which, combined with domestic legislation, provide the context within which we operate. It is part of that



general context. I do not think there is anything that has come to notice with regard to this convention which sets it out from other instruments which provide, as I say, the context within which we operate.

**CHAIR**—In your submission you refer to four of the AEP goals; you make mention of 21. Could you provide to the committee a copy of the total list of goals? Could we have that in due course?

**Mr Prior**—Yes.

**CHAIR**—I think it would be interesting to have a look at the overall setting rather than just 1, 8, 11 and 20, which are the ones that you have spelt out. On a more general thing in terms of budgetary cuts—as a member of the government I am reluctant to use the term, but they are good budgetary cuts, nevertheless—to children’s education, are there any particular areas that have been particularly affected as a result of those cuts, particularly the disabled, the disadvantaged and Aboriginal and Torres Strait Islander children?

**Dr Arthur**—In terms of school funding overall, there were no cuts in the last budget to school funding—indeed, there were certain increases in some areas of funding. Overall in the schools area there has been no impact.

**Mr Prior**—That is the same in indigenous education—there were actually real increases.

**CHAIR**—Yes, that is right. I recall that.

**Mr BARTLETT**—It has been suggested to the committee that, in drafting policy proposals, a child impact statement ought to be prepared. Would you see that as being useful in your portfolio area?

**Dr Arthur**—I think that we would need to look at it in terms of the overall portfolio interest. I do not think we have a position on that at the moment.

**Mr McMillan**—That is something we really need to explore generally. As you would appreciate, the portfolio is pretty diverse. A child impact statement would mean different things and perhaps have different effects in the different areas. But we can certainly explore that.

**Senator ABETZ**—Do you do family impact statements?

**CHAIR**—Can I interrupt? In 10 seconds, we need to have one minute’s silence for the anniversary of Port Arthur. I ask your indulgence.

*A minute's silence was then observed—*

**Mr McMillan**—I am not aware of family impact statements. We could certainly look at that.

**Mr BARTLETT**—Am I right in saying that you said that the Convention on the Rights of the Child has had no real impact in forming policy? You have not formed policy with direct reference to the Convention on the Rights of the Child but you have operated just within the general parameters of the principles outlined in that convention.

**Dr Arthur**—Indeed. As I said, the convention is part of a backdrop of a number of instruments.

**Mr BARTLETT**—But you do not make specific reference to it.

**Dr Arthur**—Not that I am aware of. However, clearly with any policies that we do adopt, if issues arise from time to time in terms of compliance with this or any other convention, those issues would need to be explored and we would seek advice from the Attorney-General's Department if there was any implication of a difficulty. In general terms, when one is formulating policy if you become aware that there is an issue of a possible requirement from an international convention at that point then someone would normally examine the issue.

**Mr BARTLETT**—So it would be fair to say that any improvements in education policy or any change in education policy over the past eight or nine years has taken place regardless of the recommendations of the convention.

**Dr Arthur**—No, I would not put it that way. I would put it that the convention exists and it is part of the backdrop within which we formulate policy. It has not been the case that we have made specific reference to the convention in the process but it is certainly part of the situation.

**Mr BARTLETT**—Fair enough. Could I pursue the question of corporal punishment in schools? Does the federal department have any policy?

**Dr Arthur**—We have no policy on that issue that I am aware of.

**Mr BARTLETT**—Are you aware of whether or not state governments who have implemented a policy to ban corporal punishment have done so with reference to article 28.2 of the Convention on the Rights of the Child?

**Dr Arthur**—I am not aware of the background of which those decisions have been made. We certainly could explore that.

**CHAIR**—In one of the submissions, without spelling out which one—and I must admit this is drawing a fairly long bow—they made the point that there is discrimination against boys in the education system with special programs for girls in science and maths. It would seem to me that all that has been done is an attempt to reverse a trend. How do you react to that criticism?

**Dr Arthur**—First of all, if that comment has been made it could be made in terms of non-discrimination provisions in the Convention on the Rights of the Child but also it could be made with regard to the non-discrimination provisions in a range of other conventions and also with regard to the non-discrimination provisions in domestic legislation. On that subject—Brian could comment more expertly than me—special measures are something which are specifically provided for in Australian domestic legislation on discrimination issues. My preliminary reaction would be that this falls under the special measures rubric.

**Mr McMillan**—Yes, I would agree.

**CHAIR**—So you reject any suggestions that it is a form of discrimination?

**Dr Arthur**—Certainly in so far as those things have been part of Commonwealth policy, they have been consistent with existing Commonwealth legislation on non-discrimination.

**Senator ABETZ**—The law is, as I understand it, that it is discrimination per se but that discrimination is allowable under section 9 as a special measure and therefore that discrimination is ‘justifiable’.

**Dr Arthur**—Exactly.

**Senator ABETZ**—The community debate or argument is whether that is or is not justifiable.

**Dr Arthur**—Indeed.

**Senator COONEY**—Looking at your submission, have you got a special role for Aboriginal and Torres Strait Islander education policy or does that run through the states?

**Mr Prior**—That is a national policy which is a policy supported by and with the commitment of all the states, territories and the Commonwealth government.

**Senator COONEY**—I take it from what you have told the committee that a lot of these measures that we might ask about contained in the Convention on the Rights of the Child are really for the states to apply. You simply provide money, in effect, and make sure that is administered properly. But have you got a special task with Aboriginal and

Torres Strait Islanders or is that also done through the states?

**Mr Prior**—As I say, there is a national policy framework which all states, territories and the Commonwealth have committed to. The Commonwealth role in that does include funding but it also includes policy development and we provide national leadership in the sense of implementation of the policy and coordination of the various players in implementing the policy.

**Senator COONEY**—That might be one area where you might have regard to the Convention on the Rights of the Child. Is there any other area that you might have regard to as a department? With general education you would not because that is done through the states, as you say.

**Mr Prior**—I cannot see any.

**Dr Arthur**—There are a number of Commonwealth programs which are designed to address specific issues. The submission mentions special education. There are other Commonwealth special purpose payment programs which do address particular areas of need and to an extent respond to concerns in instruments such as the Convention on the Rights of the Child.

**Senator COONEY**—In giving advice to government—I do not want to know what advice you give to government—you have regard in that area to the convention, would you?

**Dr Arthur**—My previous answer would apply. It is certainly providing advice to government on issues such as the Commonwealth role in terms of special education. The non-discrimination requirements of this instrument and other human rights instruments are things that we have to make sure Australia as a nation is complying with.

**Senator COONEY**—Could you tell the committee what weight you give to the convention in that respect?

**Dr Arthur**—It is part of the context within which we operate.

**Senator ABETZ**—Was your department consulted in any way prior to Australia signing up on CROC and then upon the ratification? The reason I ask that is: were you consulted in relation to the potential impact it might have on our domestic laws, rules and regulations that may need to have been changed to make sure that they were consistent with our newly acquired international obligations?

**Mr McMillan**—I think we would have to take that on notice. I am not sure any of us can answer that directly.

**Senator ABETZ**—That was some time ago, so I will accept that. I have a follow-

up question which is a general one. Are you consulted by the Department of Foreign Affairs and Trade in relation to treaties that they are working on to ascertain what the impact on our domestic requirements may be prior to them being signed?

**Mr McMillan**—We will have to take that on notice as well.

**Senator ABETZ**—Would it be fair to say that if it happened as a matter of course you would be aware of it or not necessarily? I do not want to put words into your mouth. But as we seem to sign these protocols and other things on a fairly regular basis, if it were as a matter of course that you were asked how they will impact on the domestic administration, then one would imagine that you would be aware of that.

**Mr McMillan**—I would normally expect that those sorts of issues would be raised with my division because of the legal implications. I have been responsible for that area of the department for only two years, so my experience is limited.

**Senator ABETZ**—If you can take that on notice, I would be obliged.

**Mr McMillan**—I will take that on notice.

**Senator COONEY**—I do not want to go into the policy you make, but when you are giving policy advice what process do you go through? Do you just sit around the table? What I am trying to get from you is just the impact that any of these sorts of treaties have. I can understand that you would have a consciousness of them and you would sit around and say, ‘There’s such and such a section in the Convention on the Rights of the Child,’ or the International Covenant on Civil and Political Rights, all those sorts of things—and we are all conscious of them. When you are developing, say, a policy for the Aboriginal and Torres Strait Islanders, do you take specific account of the conventions? As you said before—and you have given me this impression; I just want to test whether I have the correct impression—it is just something that is in your mind rather than something that is brought forward to look at to see whether it is relevant.

**Dr Arthur**—It is difficult to answer that question because of the way in which policy is formulated. I am not aware of any one standard model or one standard practice on those things. I make the general comment that I would have thought, in my experience, it quite rare, particularly in the schools area, that you are dealing with policy issues where the issue of breach of the convention is likely to arise. In general terms, our policies are not formulated in ways and the policies which we pursue are not such that that is likely to be an issue. The exhortations of directions of policy in the convention are broadly the directions in which the Australian government historically has moved in any case. So in that sense, certainly in the schools education area, at the Commonwealth level at least, it is not an area in which the issue of conflict with the convention, which is where it will get sharp, often arises.

**Senator COONEY**—The culture of the community is going to be at least equal to, if not ahead of, the matter set out in the convention.

**Dr Arthur**—Certainly in the school education area I would agree with that.

**CHAIR**—Do you have any general comments you would like to make in relation to this before you leave?

**Mr McMillan**—Thank you, but no.

**CHAIR**—If you just take several of those questions on notice, we would appreciate replies in due course. Thank you very much.

**Mr McMillan**—Thank you.

[2.45 p.m.]

**BAYES, Ms Helen, National Convenor, Defence for Children International, PO Box 383 Dickson Australian Capital Territory 2602**

**BESSELL, Ms Sharon, Deputy National Convenor, Defence for Children International, 14 Cooyong Street, Canberra City, Australian Capital Territory**

**CHAIR**—Welcome. Do you have any opening comments?

**Ms Bayes**—Thank you. I would like to start off by making a fairly short oral presentation to amplify some of the points we have already made to you in our written submission. I will give you a few details about Defence for Children International because it may be an organisation that you have not come across before. Defence for Children International was established in 1979 in order to be a non-government voice for the development of children's rights. DCI was very active at the UN level in advocating and developing the draft of the Convention on the Rights of the Child. DCI now has sections around the world in 50 different countries. So in addition to that spread of experience over time it has a spread of experience in working for children's rights in all the regions of the world.

DCI Australia was created in 1993. We have a national committee on which there is expertise in areas including child development, child protection, child advocacy, early childhood education, juvenile justice, community education in human rights, child and youth education on the Convention on the Rights of the Child, community development relating to children's interests, child sexual exploitation, child labour and child soldiers. We also have an advisory board which gives us very ready access to quick advice on matters such as UN activities about children's rights, the interpretation of the Convention on the Rights of the Child, issues relating to the Family Court, indigenous children, domestic law, parliamentary processes and the welfare system, in particular what non-government organisations are doing and their role.

We are a community based organisation which is freely open to any member of the community to join. We have a very wide membership all around Australia, including people who work in the area of services to children, such as social workers, lawyers, teachers, child-care workers and so forth. We also have members who are interested in children in respect of their human rights because they may be interested in human rights generally. We also have people who are simply parents and who are concerned about children's rights issues in the community. So we have a strong community base and our members are always free to participate in the development of DCI statements on things such as the development of our position on something, the organising of events and the deciding of organisational priorities.

Our major project so far has been the preparation of the alternative report to the

Committee on the Rights of the Child. We lodged that in October 1996 and we attended the pre-sessional meeting with a representative from the National Aboriginal Youth Law Centre to discuss the content of the alternative report with the committee in January. Following on from the pre-sessional discussion has been the process of submitting further questions to the Australian government which have been the source of quite a bit of discussion already today. In view of that I would like to table a set of the questions, which we have with us. We have been sent these questions in respect of the important role that non-government organisations play in the monitoring process and in providing information to the Committee on the Rights of the Child about community priorities and community views about what needs to be done in a particular state—that is, a state party.

**CHAIR**—Is that the only document you want to incorporate? Do you want to incorporate the other document too?

**Ms Bayes**—I wanted to mention in a little while an article—

**CHAIR**—We will wait until you do that, and we will incorporate both together.

**Ms Bayes**—Thank you. The process that we went through to produce the alternative report was a highly consultative one. We held seminars in Canberra, Melbourne, Brisbane and Perth, and we advertised it very widely. It was freely open and accessible to any non-government organisations and, indeed, any individuals who wanted to come along to participate in the discussion and express their views.

We believe that the range of organisations that participated in the preparation of the report does represent a very wide range of non-government organisations that are very concerned to see the Convention on the Rights of the Child adequately implemented in Australia. There was an outstanding unanimity of views about the key recommendations that we included in the alternative report. I want to mention some of those key recommendations a little bit later.

Our role in terms of the rest of this cycle with the Committee on the Rights of the Child will be that we will pick up on the observations made by the Committee on the Rights of the Child when they are made after its formal session in October. We will pick up on those by reporting them back to non-government organisations and probably, in many cases, taking the lead in generating community discussion of those observations and pressing for adequate government response, both at the national level and at the state level, to the various observations that the committee has made.

One point that I would like to make about the observations is that they are not framed as, or not intended to be, criticisms of Australia. They are very often genuine requests for further information for explanation so that the committee can have a good clear view about what the situation in Australia is vis-a-vis children. So the fact that a question is included there is not necessarily to be interpreted as a criticism of Australia.



I want to make one or two points about the Convention on the Rights of the Child—some of which have come up while I have been listening to the discussion with the government representatives during your proceedings today. The convention is a set of standards, a set of benchmarks, by which you can measure the progress in a nation or in a community towards meeting those particular standards. It is not a set of concrete requirements which you can at one point in time meet and then say, ‘That is finished.’ They are measures by which we can assess what we are doing in relation to children and the impact on children of government policies and the accessibility for children of the various services that they need, but that is an ongoing process.

It will be necessary for Australia to have in place, in order to meet the requirements of the convention, some ongoing mechanisms—a system of measures which enables ongoing monitoring to take place. So there can be a cyclical review of the impact of government policy, government allocation of resources, development of legislation and so forth on children.

Another point that I would like to make is that the convention is not anti-family. I am very pleased to see that, as the community in Australia gets a better understanding of the Convention on the Rights of the Child, the opposition to the convention on that ground is gradually fading. In that regard I would like to table this article, which is a very recent and expert article on why children’s rights and family values are compatible. I would urge the committee to consider that article.

**CHAIR**—Is it the wish of the committee that the questions be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The questions read as follows—*

**CHAIR**—The committee has agreed to table an article by Gary Melton called ‘The child’s right to a family environment’, from *American Psychologist*.

**Ms Bayes**—Because our view regarding the opposition to the Convention on the Rights of the Child in the community is fading, that leads me to reflect that the most important thing we need in Australia is a positive, proactive community education program about the Convention on the Rights of the Child. I believe that there was a lot of misinformation circulated in the years surrounding ratification. That led people to be unnecessarily anxious about the impact that the convention would have and misled people about the sort of requirements that the convention might make on family matters.

One of the key things that Defence for Children International would like to see your committee recommending is a proper, fully funded community education program which would enable people to become better informed about what the convention means, how it works, and how people can pick up on it in relation to their own participation in community life vis-a-vis the children they have contact with. In relation to that point, the implementation of the convention is not just a government matter; it for all of us to be aware that these standards, these benchmarks, for children are highly desirable and have been accepted around the world as being standards for children.

**CHAIR**—Are you talking about education or education and monitoring? The reason I ask that is that one of the central thrusts of your submission is the establishment of the federal commissioner. Is it fair to say both education and monitoring, and the monitoring involves the use of a commissioner?

**Ms Bayes**—Yes, that is right. I refer to a comment which was made earlier this morning about whether the Convention on the Rights of the Child is actually making any impact in Australia or, indeed, in countries overseas. Sharon Bessell, who is with me, is an expert in children’s rights in relation to child labour in Indonesia. I invite her to make a comment on the way the convention is being used in relation to children’s issues in Indonesia, in particular.

**Ms Bessell**—Senator Abetz, you raised the question, but it might be useful for other people to give some consideration to this. I will preface my comments by saying that in Indonesia there is still a long way to go, much to be achieved, and there are many areas in which the convention has made very little impact. But I would hasten to add that the convention has had considerable impact in Indonesia and the impact has been a very positive one.

We see it in a number of particular policy areas; for example, the area of juvenile justice has been something that has been neglected in Indonesia for many years, to the extent that there was not a juvenile justice code in existence. Legislation has very recently been adopted by the Indonesian parliament to introduce such legislation.

A number of non-government organisations but also people within government departments and some concerned parliamentarians who could see the inadequacies that existed were able to use the convention in a very positive way to lobby for that legislation to come about. The convention has also been used in a fairly positive way, shall I say, to put the issue of child labour onto the agenda in Indonesia. Here, the convention is only one of a number of factors that have influenced the government to take up this issue and to begin responding to it but the convention has been very important.

Overall, my impression is that in Indonesia the most significant way in which the convention has impacted is in the way it has allowed community groups and non-government organisations to put their concerns to the government, because the government has actually ratified this document; they have given some commitment to children's issues, issues that were often neglected within policy.

That neglect is due to a number of factors. It is due to the political superstructure; it is also due to poverty. So there was a twofold problem there. But the convention has provided the possibility of using it in a positive way to bring about changes that are beneficial to children, and we have seen people within government departments and parliamentarians being able to use the convention in that way as well.

We certainly see in Indonesia that the convention has been very much part of the family; that those who have used the convention have used it to stress that this is something positive for both children and their families, and within that context the convention has not been used in a way that has pushed children's rights as something separate from the family. This has been important in the Indonesian context, given the ideology surrounding the family.

I would also comment briefly that I think Senator Abetz raised the matter of whether the addition of an Indonesian on the Committee on the Rights of the Child would have any impact. I think it is far too early. Ibu Nafsiah Mboi has only just come onto the committee and I think it is too early to see what impact that will have in Indonesia. But I think it will be a very positive one, given the very esteem in which that particular woman is held in Indonesia.

I would also say that Ibu Nafsiah Mboi has herself been a member of the Indonesian parliament so, while she has a very strong commitment to children's rights and to human rights generally and has a background in child welfare, she is also very closely attuned, as I would imagine that a number of other members of the committee are, to issues of state sovereignty. With such people on the committee I think some of the concerns can be allayed about the committee seeking to in some way override state sovereignty. Certainly, people like Ibu Nafsiah Mboi have a very strong commitment to the maintenance of state sovereignty and also the pursuit of these ideals and values surrounding children. So I will leave it at that, and if anyone would like to pursue questions I would be happy to answer them.

**CHAIR**—Maybe I could just come back to the point you made about some reservations and concerns that particularly came to a head in 1989. I would be interested in your reaction to this. Perhaps some of it is as the result of some Australians out there perceiving that this was a convention for the underdeveloped countries rather than for the more developed, and that perhaps that led, as you indicated, to some of the misconceptions about what it really meant.

If I go back, I remember that in opposition the present government criticised not the convention per se but four or five clauses of it, which we felt put too much emphasis on the rights of the child at the expense of the rights of the parents. I forget what those clauses were—12 to 16 or whatever; I cannot remember—but maybe it is the level of development of the country which dictated the degree to which it was accepted or not accepted and maybe that is one of the explanations in Australia where some people took umbrage that ‘those people in New York or Geneva are telling us what to do when we are already there’. Is that a reasonable comment?

**Ms Bayes**—Yes, I think there is a view in Australia that we do everything we can for children and therefore we ask why there is this, in a sense, external pressure to do more. My response to that would be that the children in Australia who are at risk because of exploitation, abuse, inadequate services or deprivation of their rights are as seriously affected individually as are children overseas. The numbers may be different, the proportion in the community may be different, but we are talking here about a convention on the rights of ‘the child’, not the rights of ‘children’. It is important to keep that distinction in mind. We are talking about each individual child as being the object of this convention. Australian children whose rights are not being adequately met are as seriously affected as an individual child whose rights are not being met in another country, an undeveloped country, a poor country.

**CHAIR**—For example, it led to the rather extreme situation in 1989 or early 1990 of the child wanting to divorce the parents. I find that very difficult to comprehend and certainly to agree with, but that is a personal view.

**Ms Bayes**—I think that particular case was a US case, and the Convention on the Rights of the Child does not give the child the right to divorce his or her parents. The rights in the convention are to do with the child’s rights to access to parents and to control or put restraints around intervention by the state in relation to the parents. I think somehow US law enables the child to make an action on the basis of the child’s best interests. We do not have that.

**CHAIR**—You are probably quite right that that is more US domestic law than the direct implication of the convention on the rights of the child.

**Ms Bessell**—You were talking about the way in which the convention relates to Australia as opposed to the way it relates to developing countries. There are obviously

enormous differences in the problems facing children. I think to some extent that is why the question was raised this morning about the generality of some of the conventions, that they are not very clearly defined. In part, the reason is that the objective of the convention was to have as many states parties as possible and to set down broad guidelines regarding states' responsibilities to children and the rights that those children have.

Often, the particular articles are quite broad, because they will apply slightly differently to different countries, depending on their domestic law, their particular ideologies and values and their levels of development. To some extent, the way in which Australia interprets and implements a particular article, while the guidelines are set internationally, will be judged by Australians and will be brought into force by domestic law. So there is some flexibility there for governments to be able to take up the convention in ways that are appropriate to their own situation.

**Ms Bayes**—I would just like to make another comment about the implementation of the convention or the impact of the convention on other countries in Australia's region. You may have seen some publicity recently stemming from our conference in Brisbane called 'Children's rights: the next step'. One of the papers compared Australia's progress in implementing the convention with a number of Asian countries and gave Australia a fairly low mark in comparison with India, Sri Lanka and some other countries. That assessment was made on the basis of the seriousness with which the government of the country is taking the convention and putting in place measures to ensure that children's rights issues are adequately dealt with by the government and adequately monitored in terms of trends and developments within the country.

So although you can certainly say that the average child in Australia is much better off than the average child in those countries, that was not the basis of the estimation. The estimation was on the basis of the seriousness and the sense of commitment from the government of the country to actually implementing the convention. Australia got a low mark on that because of lack of effective action so far to put in place the system that we are talking about here.

**CHAIR**—Some of my colleagues can ask questions on that too, but I just wonder how such a subjective judgment could be made. It would be very difficult to make a judgment along those lines. Empirically, it would be impossible. Somebody has to make a subjective judgment and I could not agree with what was put forward at the conference. I think Australia has done a lot, but how do you judge it? On what basis do they make the judgments?

**Ms Bayes**—I guess there I would refer again to our alternative report which we have put to you as an integral part of our submission. It points to a range of things which, in our view—that is, the non-government organisations that participated in the process of producing the report—need to be put in place in order to effectively implement the convention. Since those measures have not yet been taken, our view is that the convention

is not yet being taken seriously in Australia by Australian governments.

**CHAIR**—Is some of that being coloured by the post-Teoh situation?

**Ms Bayes**—Yes, it is influenced in part by the government's action in relation to Teoh but it is also—

**CHAIR**—The legislative solution is what you are criticising.

**Ms Bayes**—Yes, and the executive statement, which undoes the Teoh decision. Defence for Children International welcomed the Teoh decision because it meant that the best interests of children would be at least considered in relation to administrative decision making. We see that as absolutely flowing from obligations in the Convention on the Rights of Child. It is, in our view, coming from a community perspective—a kind of commonsense expectation that community organisations like us and members of the community would have—that the Australian nation made a promise to children that best interests would be considered when decisions are being made in relation to children, and that promise has been reneged on. We often use the word 'promise' because I think it reflects the attitude that we would like to see this being seen under.

**Mr BARTLETT**—Couldn't it be argued, though, that we are making progress and that we have been fulfilling all of the obligations under the treaty without necessarily putting in place structures to apply the convention—that we have been achieving the aims of the treaty in any case? If you look through the articles in terms of education, in terms of protection against sexual exploitation and so on, we really are up to the mark in all of these areas because of our other policies that are already in place. Therefore, there is no real need to put in place special structures to apply the convention.

**Ms Bayes**—Again, I would draw your attention to the alternative report, which has a whole lot of examples of situations where children's rights are not being adequately met, where children are not being adequately protected. I would request you to look at the examples which are raised there to show that the implementation of the convention is not adequate.

**CHAIR**—We are yet to see the details of the present government's legislative solution, but surely it is a reasonable move for governments, whatever their political hue might be, to make it clear that until such time that some of these things become part of domestic law, all we are doing is playing into the hands of those who criticise—some of them through lack of information—that somebody in Geneva or New York makes laws for Australia. That is at the bottom of the present government's approach. You do not agree with that?

**Ms Bayes**—No, I do not think the convention is laws for Australia. It is a set of international standards which, after all, Australia participated in preparing and which are widely accepted. This nation has accepted them, and we are duty bound to do our best to

make sure that they are implemented.

**Senator COONEY**—When you say, ‘We have accepted them,’ you mean the government of the nation has accepted them. What a good proportion of the citizens of the country say is, ‘We elected the parliament, not the government’—and that is strictly true—‘and we would like the parliament to scrutinise what has gone on before we proceed with ratification.’ They say that we as Australian citizens should not be bound in this area by what the government does, given that, if the government itself proposes an initiative, it has to be put through legislation. What is being put to you is that, if a domestic initiative of a government cannot have force until parliament has approved it, why should something that is non-domestic or that is decided overseas have greater force—than an initiative that is developed here? I think that is what is being put to you.

**CHAIR**—Yes, that is it. If it is good enough in the domestic legislative setting, surely the same principles and the same practice should be applied in terms of its international implications. That is the rationale for the decision that has most recently been taken and the rationale behind the Evans-Lavarch approach in 1995.

**Ms Bayes**—Maybe I am not following the point very well.

**Senator COONEY**—Perhaps I can give you an illustration. The government said, ‘We as a government say that the Hindmarsh Bridge should be built.’ There would be a lot of support for that. But I think the parliament said on two occasions, ‘No, that might be your initiative but you cannot build the bridge.’ If that is the situation with the domestic initiative, why should an overseas initiative have greater force simply because it is made overseas? Shouldn’t that initiative also have to run the gauntlet of the parliament if a local initiative has to?

**Ms Bayes**—We support very strongly the need to implement a convention in domestic law. That is a very important part of the process. In developing domestic law to implement the convention, we must have a lot of community discussion about how the various standards are interpreted in the Australian context. As a matter of record, I would like to mention the matter of reservations. That was something that I mentioned because I was told by somebody at the United Nations Commission for Human Rights that it was possible for state parties to make reservations after they had ratified the convention and made initial reservations, and that it was still possible to go back and make further reservations. If I am incorrect in having said that, I am very happy to let the whole issue go away.

**CHAIR**—You heard what Attorney-General’s said this morning: you are incorrect.

**Ms Bayes**—I was pleased to hear it. I have asked you to look at the alternative report, and I do not think we need to go through the particular items in there because they are all documented. The committee’s processes of monitoring progress with the

Convention on the Rights of the Child are inherently bound with this involvement of non-government organisations. The process which has enabled us to present an alternative report to the committee, to attend a pre-sessional discussion with the committee, to have access to the questions which have been given back to the government for further information and to have access to the further details which are given to the committee is extremely involving for us and empowering for non-government organisations.

One of our roles will be to pick up on this process every time the cycle goes round. One of the ways in which the committee gets access to information to reflect on the government statements is through this process of non-government organisation involvement. It is quite correct to say that the committee in itself does not have the resources or infrastructure by which to monitor progress on the Convention on the Rights of the Child independently. It must rely on information from other sources.

**CHAIR**—I do not want to put words into your mouth, but do you welcome the involvement of this committee in reviewing this situation?

**Ms Bayes**—Yes, we certainly do. We welcome the increased involvement of the parliament in the process. We welcome more public discussion of the Convention on the Rights of the Child, and we are urging that resources be put into an education program. One of the principal values of this process is that it is enabling more people to understand the process, to understand the convention more fully and to work positively with it.

**CHAIR**—I want to go back to the Brisbane conference. People would have been aware that we were about to review the progress of the convention. Was there criticism that this committee—as I indicated this morning and again this afternoon—had some sort of agenda?

**Ms Bayes**—There were some concerns expressed.

**CHAIR**—I think Sid Spindler was involved in some of these comments. Was he at the Brisbane conference?

**Ms Bayes**—Yes, he was. He chaired the plenary session, and I think he made some comments encouraging non-government organisations to be very alert to the work of your committee and to make their input clear. We would be doing the same thing to encourage NGOs to put their views to the committee. We genuinely believe there is very widespread support for the convention in the community and that the worries and anxieties that have been expressed by some organisations are declining.

**Mr LAURIE FERGUSON**—It concerns me that you say you welcome the Teoh decision. Perhaps there was no original intention to go this far, but essentially the interpretation leads to a wider group of rights than might have been intended under the convention—for example, when Australia came into this process they intended that heroin



dealers' children should impact upon our ability to extradite people because there might be a worse social security system in another country. You say that you welcome it. Why do we welcome it?

**Ms Bayes**—That is not my understanding of the Teoh decision. The decision of the High Court in Teoh was that where an administrative decision is being made, it is going to have an impact on children and the child's best interests must be at least considered. The decision does not say that the child's best interests become the dominant factor. It is simply saying that the effect on children must be visible in the process of making the decision and the child or somebody acting on behalf of the child can then appeal a decision on that basis.

**Mr LAURIE FERGUSON**—That is more an accurate description, I agree, but do you think that was anywhere near the intention when you went into this process?

**Ms Bayes**—The decision in Teoh is actually weaker than the convention because the convention says that the best interests of the child must be a primary consideration in all matters which affect the child. The Teoh decision simply said that the best interests of the child must be considered during a decision making process.

**Mr LAURIE FERGUSON**—So you would be very pleased to campaign the Australian political process in the example of Teoh and make that a primary consideration in deportation cases. Do you think that that is what the Australian populace would like to be involved in—that kind of convention decision? Are you prepared to fight publicly?

**Ms Bayes**—I would like to see the impact on the child being considered in deportation cases. If the deportation is going to have a serious impact on the child's family life and the security and ability to remain outside the alternative care system, those matters are taken into account in arriving at the final decision.

My understanding in relation to Mr Teoh—and I do not think we need to go into the personal details here—and his proposed deportation was that the decision meant that the children would remain in the alternative care system for the remainder of their childhood. That was the key issue. There was no question about his capacity to be a good father to the children.

**Mr LAURIE FERGUSON**—When you say to us that we would be surprised at the extent of public support for this convention and we should well appreciate it, do you think that that support would go to that kind of interpretation of the convention? When you say that we should not ignore the overwhelming public support for this convention and the fact that the questioning of it is being reduced, et cetera, do you think that that would go to that kind of example? Do you think we could go to the Australian electorate and say, 'Look, this is a really great process we are part of and as a result of it, this decision is an outcome'?

**Ms Bayes**—Yes, I think that if you speak about it in general terms and show it as relating not to issues of whether a drug trafficker can stay in this country or not—because that is not what it is about—

**Mr LAURIE FERGUSON**—But that's the outcome though.

**Ms Bayes**—But dealing with a much wider range of issues to do with children at school, children in the child-care system, indigenous children and a very wide range of areas.

**Senator ABETZ**—Just excuse my ignorance, but I would like a bit of preliminary advice. How many members does the Australian section of Defence for Children International have?

**Ms Bayes**—We have about 150 paid up members around the country. On our database we would have about 500 people who are also involved in terms of supporting our work who have not necessarily paid a subscription. In addition to that, there would be non-government organisations, peak bodies and so forth that are not in a position to join us but certainly have collaborated with us on a number of areas of work.

**Senator ABETZ**—How are you funded?

**Ms Bayes**—We are funded by raising subscriptions from memberships, by donation and by making small surpluses from the sale of publications.

**Senator ABETZ**—In relation to your submission, I suppose a lot of matters arise, but you indicated that the Australian people had been misled as to the impact of the convention or its effect. How would you interpret, for example, family, in the convention? What does that mean?

**Ms Bayes**—I am speaking here as an individual and I have not read any expert analysis of the convention in terms of its definition of the family. I was interested in your request to the government representatives this morning to obtain a definition in relation to the convention. But my reading of it would be that it places a very high level of emphasis on biological parents, and in the absence of biological parents the people who have legal custody or care and nurturing role, based on a legal definition for the child, that is through the alternative care system or through an allocation of, say, a residence order to the extended family.

**Senator ABETZ**—Did you hear Senator O'Chee's question this morning about whether this convention applies to abortion on demand?

**Ms Bayes**—Yes, I heard the question.

**Senator ABETZ**—What is your view as to that? Do we read the preambular paragraph, along with article 6, to mean that abortion on demand is not allowed?

**Ms Bayes**—No, the convention avoids the issue of abortion and it did so consciously because it is a controversial matter and because certainly at the time when the convention was being drafted it was also controversial, possibly more so than it is now. The provision in the convention which refers to the unborn child relates only to the child that is to be born, not to a foetus who is not to be born because the parent is going to proceed with an abortion.

**Senator ABETZ**—Which is very interesting, isn't it, because it means therefore that if a child is injured *au ventre de sa mere*, to use a French legal term, whilst inside its mother, it is entitled to make a claim for personal injury, but if it is voluntarily aborted it has no rights at all. But that is an issue that I will not develop at this stage. What about corporal punishment: is that allowed or not allowed? What is the definition of physical violence?

**Ms Bayes**—I think the committee on rights of the child has expressed the view that corporal punishment is a breach of the convention on the rights of the child.

**Senator ABETZ**—Is that your view as well—the defence for children group's view?

**Ms Bayes**—Yes, it is our view. In terms of legal definitions of that and legal definitions of when the state should take action in relation to corporal punishment of children, we fully support the idea of widespread community discussion in order to arrive at a definition which is appropriate to the Australian context. We would not advocate state intervention in relation to a parent giving a child a spank in a situation where the child is being disciplined for some minor problem and it was limited to the quick spank. What we are saying, though, is that if that develops into a level of physical abuse of the child which leaves lasting pain or lasting marks or some kind of emotional harm to the child, that is the sort of situation where the state has a responsibility to protect the child.

**Ms Bessell**—Can I make a comment here on generalities about what definitions the convention is actually using. Professor Philip Alston has done a lot of work on the convention, and you may well be familiar with his work. He has stated that the convention itself should not be seen as an inflexible, unidimensional instrument imposing a particular set of values or definitions but a set of guidelines which then allows some flexibility and some interpretation by national governments, which would mean, in line with his arguments, that the Australian government has some flexibility in formulating definitions as to the family, for example, based on our own cultural, political, economic and social situations.

**Senator ABETZ**—Does that not underline, if I may say so, the very real point

that, because there is so much flexibility, all those concerns that were expressed within the community and are still being expressed about this convention are not because the people were misled. Nobody today has been able to give us a definition of 'family'. There are conflicting views as to whether corporal punishment is or is not allowed under this convention. You say the community is being misled. I have got to say to you that when people who are allegedly very knowledgeable in this area cannot give us definitive answers, is it not appropriate for there to be community concern as to what the eventual impact of this convention may be on, mainly, parents' rights?

**Ms Bessell**—I would say that inflexible definitions would create a much greater problem and, perhaps understandably, raise greater fears within the community because they may be seen as being inappropriate to a particular situation. Allowing some flexibility allows this sort of process that we are seeing at the moment whereby parliamentarians can consult with various organisations with different views within the community to establish what the sense is. I think that not making very strict definitions does not necessarily allow for misinterpretation. But, yes, it allows countries, states, parties and the community the opportunity to ensure that the convention is relevant to their own situation. If I could talk about misinformation—I do not think Helen used the word 'mislead'—

**Senator ABETZ**—I made a note of it, but if that note is wrong I will withdraw it. The *Hansard* will pick that up.

**Ms Bessell**—If I could refer to misinformation, the issue of children divorcing their parents is something that I have heard again and again with concerns that people have about the convention. This is not an issue that is taken up in the convention. It is not something that the convention gives rise to. It is something that took place in the United States—and you well made the point that the States have not ratified their convention. It is that kind of misinformation that has tainted the debate to some extent. Because we have not had any process of disseminating information about the convention to the community, on many occasions people have gone out and sought that information themselves and found that their concerns, to some degree, have been allayed because the convention does not interfere with the family in that way, for example.

**Senator ABETZ**—If it is not as prescriptive, as you are saying it is not, and it is open to wide, flexible interpretation, it undermines, does it not, the whole basis of your alternative report? I would suggest to you that some of the comments you make in your alternative report are based on a particular interpretation of very flexible clauses in the convention, and Australia could say, 'We abide by all the conditions of the convention on this interpretation,' and you say, 'Australia is virtually in breach of every area of the convention on this particular interpretation.' So is the interpretation flexible, or do we have to interpret it as you would suggest, under the alternative report? You cannot have it both ways, can you?

**Ms Bessell**—No, I think that there is flexibility there in terms of how a

government, for example, interprets particular definitions within the legislation. The alternative report is based on wide consultation with a number of non-government organisations and, as Helen commented earlier, there was a wide degree of consensus about the way those organisations—and indeed a number of individuals that have contact with children, through their work, through their personal lives and so on—see the obligations of the convention not being met within Australia based on their own experience.

So we do not have DCI's point of view being put forward in the alternative report but we have the results of a fairly extensive consultation process we went through. I would encourage you to see the alternative report as being a useful document in that it is based on a wide degree of consensus from a number of community groups and can give you some of the concerns that are there within the community and among people working with children.

**Senator ABETZ**—It is interesting that the alternative report does not, for example, take up the issue of abortion on demand, because a number of countries that signed off on the convention specifically welcomed the fact that it protected the rights of the unborn and that life starts from conception. Some countries are of the view that that is part of the purpose of this convention. I suggest to you that, if you had consulted with Right to Life, for example, they would be saying Australia is not abiding by the convention on the interpretation of the convention that countries such as Argentina and Ecuador have given it.

Can I quickly give you another example to make the point. Let us say every child has the right to know its parents. How on earth on that basis can we as a community allow IVF programs for lesbians where the father will never be known to the child? Is that not a breach of the convention to the child that is about to be born? It has a right to know whom its natural parents are.

We are also told that this convention is very strong on parental rights, yet we have a homeless youth allowance where children can make an allegation against their parents without the parents being asked one question and they are entitled to receive the homeless youth allowance. A month later it is found that the child has simply told a stack of lies to get some money out of Social Security for a month or two—usually then they see the error of their ways and they go back home. In the meantime parental rights have been completely ignored.

Why have not those sorts of issues been picked up by your organisation in the alternative report or do you just ignore those views expressed in the community by organisations that you do not necessarily find yourselves attuned with?

**Ms Bayes**—Can I make a comment in relation to the abortion issue. We did seek advice from Professor Philip Alston on the issue of whether the convention relates to

foetal rights. He advised us that it does not. The position that he explained to us is the one that I gave to you before.

So we have never considered it as being part of our area of activity. That is not to say that we as individuals do not necessarily have views, but it is not part of DCI's mandate. We would not be entering into the debate on the basis of the Convention on the Rights of the Child because the Convention on the Rights of the Child does not cover it. That is the position we would take there.

**Senator ABETZ**—But do you accept that there are alternate views on that in the international community?

**Ms Bayes**—I am not really interested in entering into discussion about whether the convention covers that issue or not because, unless I am advised that it does, it is not part of our area of concern. Quite honestly, there are so many other issues about children once they have been born and their rights that that entirely takes up our capacity.

**Senator ABETZ**—I would have thought that the right to life—being entitled at least to being born and draw a breath—might be a fairly important fundamental right for a child.

**Ms Bayes**—I think Defence for Children International is simply prepared to put that issue aside and leave it to other community groups and organisations to work out what the position should be in Australian law.

**CHAIR**—If you accept the professor's views about flexibility, does that not reiterate the right of individual governments to take a legislative solution according to how it sees it and, therefore, reinforce the present federal government's view in producing a piece of legislation which reinforces a national view?

**Ms Bayes**—As I was saying, we urge there to be domestic legislation picking up the articles of the convention and interpreting them in a way which is appropriate to the Australian situation and acceptable to the Australian public. The obligation under the convention is to ensure that legislation is not harmful to children or that harms to children are prevented.

I would like to make a comment in relation to this about the interaction between research on what is harmful to children and how those standards might be interpreted. If research demonstrates that a certain behaviour of a parent, a school or any other caregiver is harmful to the child, then it becomes contrary to the rights of the child. If the research shows that it has no effect on the child, that it does not harm the child, then it is not contrary to the child's rights because it does not engage the standard that is expressed in the convention. So very often we are referring not only to the actual written definition of the standard but to what light is shed on the definition in the Convention on the Rights of

the Child by research in the area of child development and what does harm to children.

I think part of the debate in relation to smacking is whether in the end it is really harmful to children. I think the Australian community is quite clear that excessive beating of children is harmful. So what we have to do is make a definition which draws the line between parenting which involves the quick occasional smack that the state should not intervene with—in the end there is no clear evidence that it is harmful to the child; in fact, some people may believe that it is beneficial because it is a clear parental instruction to the child—and what the research shows and the community accepts is harmful to children.

We do not have at the moment legislation which does that. What we are asking for in the alternative report is legislation to do precisely that—to make an Australian definition which will clarify the situations which are harmful to children where the state has an obligation to do something to protect children.

What the state should do is not necessarily imprison the parents. Obviously, imprisonment of the parents may create even further harm in the family situation. But it would place an obligation on the state to provide support to the family and to provide additional support to parents who are under such stress that it is coming out as excessive physical punishment of their children.

**Senator ABETZ**—How would that impact on Aboriginal tribal law, say, where they have spearing in the thigh, floggings or things of that nature? Some magistrates and judges in the Northern Territory are now accepting that rather than dealing with them according to white man's law. They are allowing the tribal community to undertake a spearing or a flogging as more appropriate than putting an Aborigine into custody. How would that sort of legislation impact on a 16-year-old Aborigine?

**Ms Bayes**—I hope the legislation would not discriminate in relation to different groups. But indigenous law is a separate issue that might be catered for by special provisions in another law which enable traditional practices to continue if they are wanted by the indigenous group and not regarded as crossing the boundary of acceptability.

**Senator ABETZ**—So Aborigines might be allowed to spear for tribal punishment, but a school might not be allowed to use the cane?

**Ms Bayes**—Yes, that is a conclusion that you can reach.

**Senator ABETZ**—How is that going to assist the creation of a cohesive Australian society where you have one rule applying to a certain group of Australians and another rule applying to another group of Australians?

**Ms Bayes**—You are raising an issue which certainly needs looking at. It is a real example of the way in which the different articles in the convention need to be balanced one against the other.

**Senator ABETZ**—It is the sort of trouble we can get into if we slavishly follow the convention, isn't it? Really, at the end of the day, commonsense has to prevail irrespective of the black letters of the convention.

**Ms Bessell**—These problems, to some extent, are why we have advocated a commissioner for children and for legislation implementing the convention in such a way that is appropriate, that has parliamentary approval and has included some degree of community discussion and consensus. The issue of legislation and the way in which it would respond to these various issues is something which I think a number of groups continue to wrestle with. One thing I would encourage the committee to do in your deliberations is look at the possibilities of legislation, the way in which we can adopt domestic legislation which is suited to our own context and perhaps put forward an options paper looking at the various possibilities for legislation, allowing that to then be debated and discussed broadly within parliament and outside in the community.

**CHAIR**—How many states have children's commissioners?

**Ms Bayes**—Queensland has a children's commissioner. South Australia has a children's interests bureau, but it is not a commissioner. New South Wales is looking at, I understand, the creation of an office of the status of the child—which is a different mechanism, but it is within government—to coordinate child policy.

**Mr TONY SMITH**—In the context of your report, do you think that children should have a say about the age of consent? If so, how much say and what vehicle should be used?

**Ms Bayes**—We advocate that children and young people should be consulted in the development of policy that affects them. In relation to the age of consent, we also would advocate that children be consulted in the development of that policy. The child's point of view or the young people's points of view would be one element of the consultation and should be taken seriously, but it would not necessarily be taken holus-bolus. The principle of consultation with young people and children in relation to these issues is very important and is an integral part of the convention.

**Mr TONY SMITH**—There were three questions and they take up what Eric said, too—if so, how much say? I think you have sort of answered it, although you were a bit non-specific, with respect. What vehicle would you use for such consultation?

**Ms Bayes**—We would like to see a commissioner for children have a consultative arrangement with children and young people on some sort of council or some way in which the commissioner might travel around the country consulting with children and young people. There are actually quite a few options there and what we would like to see this committee recommend is that the—I am sorry, I am getting a bit mixed up. Our position on a commissioner for children and the structures that should surround that are



not yet clear. We are engaging in discussion at the moment on the way in which a commissioner and those kinds of consultative mechanisms should be created. But we are absolutely clear that we need a commissioner for children and that that office should be independent. It should report to parliament and it should have consultative mechanisms, including consultation with children and young people.

We cannot really comment at this stage on how those things would be done. But we would urge you, the committee, to look at various options, not just the option in New Zealand—although we were delighted to hear that you are thinking of possibly having further discussions with the commissioner for children in New Zealand about this—but other models for commissioners around the globe.

**Mr TONY SMITH**—What age, off the top of your head, would you say should be the age that a child could engage in consultations about the age of consent?

**Ms Bayes**—I would say 12—that is off the top of my head.

**Senator ABETZ**—Do you think the average mum and dad would agree with you that at age 12 their kids ought be discussing and deciding social policy on the age of consent? Do you think that if we as a government went to the people with that sort of a policy we would get a ringing endorsement by the people?

**Ms Bessell**—Before Helen answers—she probably is the person to answer—I would say that we should not see this as children deciding social policy. Depending on the issue, that will say which age group of children can be involved. Obviously very young children are going to be much less able to be involved. We are perhaps looking at children, as Helen has said, 12 and above and into their adolescence.

**Senator ABETZ**—We are talking about 12-year-olds for the age of consent.

**Ms Bessell**—But we are not talking about deciding social policy. What we are talking about is having some input from young people on policies that affect them, in the same way that other community groups do not decide social policy that affects them but have some mechanism of inputting their views into the policy making process.

**Ms Bayes**—In the process of consulting with children and young people, it is not just a matter of going to them and asking the question. The issues relating to it and the whole process of children's rights need to be built into the process as an educational process as well.

**Mr TONY SMITH**—Just so that I understand it, you would like to see a right enforceable by law for a child 12 or over to consult with the commissioner about the age of consent?

**Ms Bayes**—One of the roles of the commissioner would be to receive the views of children and to seek the views of children about issues affecting children. That consultation with children would cover the full age range. But you asked me specifically at what age did I think children—this was not the wording of your question, but I guess it was the way that I interpreted it—would be able to make a useful comment, from their perspective, about when the age of consent should be given.

I felt that, because children reach puberty at around 12 and are facing issues about their sexuality and indeed are educated about their sexuality, as they should be from around that age, then that would be the right age at which to start asking children who are involved in the consultative process—I am not talking about doing a referendum among children on this or a very widespread thing—to express their views, which can be taken into account in developing policy.

**Mr TONY SMITH**—But where it hits the body politic is in respect of that very point that I am asking about. Are you saying that a child of 12 or over should have a right at law to countermand their parents who say, ‘You can’t consult on this matter; you are too young’? Are you saying that that child should have a right to countermand their parents and actually consult with the commissioner about the age of consent?

**Ms Bayes**—I want to bring it back to two broad principles which are in the Convention on the Rights of the Child, and they are freedom of expression and that the child’s decision should be taken seriously in decision making. All I am saying is that in the example you are giving, those principles should also apply. I would not put it in the words that you have used in terms of countermanding parents’ views or anything like that; I am simply saying that the child’s point of view is relevant and should be heard.

**CHAIR**—If I could just make a comment, they are the very articles—12, 13 and 16—that were criticised, and I suspect that Senator Abetz is quite right: I just wonder how many parents would have changed their views on that in intervening years—as to whether there is too much emphasis on children’s rights at the expense of traditional parents’ rights. I think those criticisms perhaps are still there in large quarters—irrespective of your comments about there being more acceptance of the convention. Perhaps that is true, but I think in respect of some specifics of the convention, the criticism is still there.

**Mr TONY SMITH**—I would like to put three questions to you, and I have to go soon so I will not be able to hear the answers. One is: how can the state be held responsible for developing a child’s respect for its parents? The second relates to your criticism in paragraphs 1.3 and 1.4 about embarrassment for Australia’s integrity. What you are really saying is that a move from the government to remove this from the judiciary and from the executive to parliament would amount to an embarrassment of Australia’s integrity as an international citizen. That is what I take that to mean. Lastly, if you support the convention in its entirety, which I presume you do, why do you say in your alternative report that in some jurisdictions offenders as young as 16, 17 and 18 are classified as adults?

**CHAIR**—Perhaps you might take those on notice.

**Senator COONEY**—Could you give me—not necessarily now unless you can do it now—some analysis of paragraph 6.1 where you say:

We consider it regrettable that this Term of Reference refers to ‘needs’ rather than ‘rights’ of children. ‘Needs’ are conceptually very different to rights.

I am wondering whether you do not get yourself into a lot of trouble by drawing the dichotomy between needs and rights. It gives the impression that rights are somehow discretionary, whereas I would have thought that human rights are something that are needed. That is their genesis: people have human rights because they have needs as human beings. When you make that dichotomy I think perhaps you get yourself into some difficulties because you can then be asked why children should have rights over their parents, why children should have rights at 12, and what have you, whereas if you talked in terms of needs you might find it falls into place better. Could you just have a look at that and give an explanation at some stage as to why you make that big distinction between needs and rights.

**CHAIR**—Why don’t you take these questions on notice and if there are any other questions that we want DCI to take on notice perhaps we could do that under the earlier resolution. We will pick that up as well. And if you top it off with any supplementary comments that you want to make in writing, it will save us a little bit of time because we will have to close soon.

**Ms Bayes**—Could I also make a final comment that the other people on the national committee—and indeed our membership who have specialist expertise in various areas that I mentioned earlier—would be very happy to appear before your committee to discuss particular issues as they come up for you. Indeed, they would be willing to meet with you individually, informally, outside the committee’s hearings.

**CHAIR**—This is only a preliminary hearing anyway. Of course we will be coming back according to what we find over the next few weeks and months. In the short term if we could have some responses to those questions on notice and any other supplementary comments that you think are appropriate, that would be useful.

[4.05 p.m.]

**ASSADI, Mr Jahanshah, Regional Representative, Regional Office of the United Nations High Commissioner for Refugees, 9 Terrigal Crescent, O'Malley, Australian Capital Territory 2606**

**KEATING, Mr Paul David, Consultant Legal Officer, Regional Office of the United Nations High Commissioner for Refugees, 9 Terrigal Crescent, O'Malley, Australian Capital Territory**

**STEELE, Mr Peter, External Affairs Officer, Regional Office of the United Nations Office of the High Commissioner for Refugees, 9 Terrigal Crescent, O'Malley, Australian Capital Territory 2606**

**CHAIR**—I need to close this meeting at 4.30, so we do not have a lot of time. Could we just ask you to make a brief statement, if you would, and then we will quickly ask some questions. Hopefully, in 25 minutes we can get as much as we need to. But we can always get you back.

**Mr Assadi**—I appreciate the opportunity to appear before this distinguished committee—and that you have saved the best for last! UNHCR's association with Australia, regardless of the government of the day, is one that goes back several decades. By way of background, if you will allow me, I will be very brief but say a few words about UNHCR in general.

UNHCR is referred to often as the UN refugee agency. We are entrusted by the international community to look after the welfare, protection and rights of the world's refugees. Today we are looking after the needs of some 26 million people. We have offices, unfortunately, in 104 countries around the world. We have the largest budget of any UN agency—something like \$1.5 billion dollars—and we have some 5,000 staff working in these 103 or 104 countries. We have a governing body known as our executive committee comprised of some 50 governments, of which Australia is one important member, and our mandate, our statute, is one that goes back some four decades, with its roots in the displacement that occurred after World War II.

We have helped some 20 million people find what we call durable solutions to their fate over the years, but unfortunately the problems seem to be getting more difficult and more complicated globally, and, as I said, some 26 million people—more than the total population of Australia—comprise what we call our case load.

You do not have to stray very far to find out what we are confronted with. It is headline stuff. If it is not Bosnia, it is eastern Zaire; if it is not eastern Zaire, it is Rwanda. It used to be Cambodia and Vietnam; it still is Afghanistan and parts of western Africa and central Asia. Our relationship with you as not only a member of an executive

committee but an important partner over the years in carrying out our humanitarian mandate, our non-political humanitarian mandate, is one that we cherish very much and we value very much.

This was exemplified last year when the new government, shortly after the elections in March, invited our high commissioner, Mrs Sadako Ogata, to visit Australia as a guest of government. She met with members of parliament and appeared before the Standing Committees on Foreign Affairs, Defence and Trade, and Migration. We are very pleased that the new government saw fit, as one of their first acts, to invite our high commissioner, Mrs Ogata, to Australia.

You are also an important country for resettlement. Many Australians are Australians because of UNHCR. Again, we owe a lot to what you, your people, your NGOs, your parliamentarians and many others have done for refugees and displaced persons over the years.

We are very much indebted for what your peacekeepers have done for us in places like Cambodia, Rwanda and former Yugoslavia. We are very much indebted to you for having worked with us in developing an international regime that respects the basic rights of refugees, even though these are enshrined in the 1951 UN convention relating to the status of refugees. We believe that conventions are one thing but that actual practice and support are completely different. Australia has proven itself, not just as a government but also as a people, to be important partners of ours.

We have twice been awarded the Nobel peace prize, which we think we should share with the government and the people of Australia in many respects. Our second Nobel peace prize was in 1981, largely based on our work in favour of the Indochinese—primarily the Vietnamese, Laotians and Cambodians. I remember serving those days in South-East Asia myself. When we were awarded that prize, one of the first things we did was contact the Australian embassies and some of the Australian NGOs and journalists and say thanks for the contributions many Australians have made. UNHCR has been honoured by this peace prize, so I think you have a long and proud track record of involvement with refugees and asylum seekers.

I think it is important for us not only to bear in mind the type of collaboration that we have enjoyed with all sectors of Australian society but also to reiterate that UNHCR very much values the support that you have lent in making human rights an internationally important and tenable issue.

I appear before you as an international civil servant. Therefore, I think it is not proper for me to get into those domestic issues which are out of balance for the UN. But we took the initiative of making a submission to you a few weeks ago because we feel that we are partners—not just with the government, I must emphasise, but with all sectors of Australian society. I have seen many parliamentarians in refugee camps all over the

world. I know there is quite a bit of interest in all sectors of society and all sectors of the community here. So we took the initiative to make a submission to you. Basically, I am available to you to respond to this submission.

Even though the refugee regime is largely ‘administered’ by another convention, the 1951 UN convention on refugees—that is the more specific and germane convention which governs our work, to which 126 countries have acceded—the Convention on the Rights of the Child, to which some 190 governments have acceded, gives us a wider framework to advocate the rights and protections of refugee children. Refugees are already disadvantaged by definition, but to be a child and to be a refugee is double jeopardy. You are vulnerable twice.

I would also like to make the distinction between asylum seekers, refugees and other categories of migrants. We have a saying in UNHCR that, while all refugees are migrants, not all migrants are refugees. It is important for us when we have a discussion on asylum seekers and refugees to maintain the distinction between one category of migrants, which is constituted by asylum seekers and bona fide refugees, and immigrants of varying categories, which is a different category of people altogether.

We come to you with our written submission. We have also submitted other additional supplementary written information to you which we hope you will find useful. As part of our ongoing policy of being available to parliament and the various committees, we have made this submission and we are available to you. I will leave my oral introduction there. Given the shortage of time, I would be more than happy to respond.

**CHAIR**—Mr Assadi, thank you very much for both your written submission and the supplementary material which we received this morning. I am sure we will study all that in some detail. I thank you for your introductory comments. I think we will give a number of questions to you on notice in due course because of the time, if you would accept those and respond to them.

The secretariat has been through the submissions we have received. There is one specific one that hits my eye. World Vision Australia has provided to this committee an example of an 11-year-old Cambodian boy who has been detained in Australia for three years. I do not know whether you have any knowledge of this particular case. If you do not, then I am interested in a more general sense as to what extent UNHCR can get involved in cases like this.

**Mr Assadi**—I am not aware of this particular individual. Maybe some of my staff may know of it. We get representations all the time. Our in-trays every morning are quite full with requests from various groups and organisations regarding people in detention. What we normally do is transmit these queries to the Department of Immigration and Multicultural Affairs and ask them to get back to us. Normally they are very prompt and efficient and we get responses to our queries. Part of our work is making this type of

contact with the department of immigration and, as I said, they are usually quite responsive.

**CHAIR**—Would it be possible for you to raise that issue and get back to us? That would be the way to do it. That is certainly the part of the submission from World Vision Australia that interested me.

**Mr Assadi**—We would be happy to.

**Senator ABETZ**—On a broad brush approach, Australia is right up there in relation to its responsibilities in relation to refugees. It is one of the better international citizens.

**Mr Assadi**—Absolutely. On many scores, and I think I mentioned a few of them in my introductory remarks, we are very pleased with Australia's contribution. Australia has a very developed and sound legal basis to adjudicate refugee claims, which is quite important to us. You have a sound appeals body which allows people to get a second hearing which acts as a safety net. We in fact helped Australia establish this system some years back and we have full confidence in it.

You have a resettlement policy that allows several thousand refugees that you interview offshore to come to Australia by, in effect, invitation. You take people from all over the world and you have a quota that you essentially make available to UNHCR's resettlement requirements. You are a funding government for many UN humanitarian agencies including UNHCR. Despite the budgetary restrictions last year, UNHCR's slice of the pie from Australia remained intact, for which we are very grateful.

You have helped us develop, if you will, a body of soft law, not hard law—a code of conduct among nations internationally which is quite important for us. It is not just what happens here that counts when we ask for Australian cooperation; it is the cooperation that you give us in making good things happen elsewhere.

**Senator ABETZ**—Is that what you refer to as unofficial guidelines in your submission, on page 3, when you say 'soft law'?

**Mr Assadi**—Yes. For example, our governing body's decisions and resolutions constitute more or less what we call soft law. On the question of children, I would like to be a bit more specific and not so much deal with the broad brush because, again there, you have many positive things that you should definitely be given credit for. When we talk about protecting the rights of child asylum seekers or refugees who are suffering from this double jeopardy or this double vulnerability, we are not just looking at the Australian context; we are looking at situations elsewhere in the world. We are looking at the impact of armed conflict on children. We are looking at the question of forced conscription of 14-, 15- and 16-year-olds.

**CHAIR**—Child soldiers.

**Mr Assadi**—We are looking at sexual exploitation. These are the types of issues which do not occur in this country but, unfortunately, do occur elsewhere. That is why it is important that your support and your accession to these types of international agreements be there not so much for your own domestic situation but for us to be able to make sure that these negative things that are happening to children elsewhere are minimised or, eventually, do not happen.

**Senator ABETZ**—Our code of conduct in Australia, I suppose, is to a certain extent more important than us having signed up to the Convention on the Rights of the Child. Ultimately, our actions speak a lot louder than our words or us having signed a particular document, noting some of the countries that are signatories to the convention.

**Mr Assadi**—These international conventions are negotiated often over a long period of time. Every word and letter is negotiated and a consensus then emerges. No-one finds any convention perfect but they live with it because that was the best they could come up with by way of a consensus document. That is the nature of the beast for all international conventions.

I think your own track record domestically speaks volumes: that is extremely important. At the same time, as I said, for the types of reasons relating to questions of exploitation, forced conscription, children being sent out onto landmines, sexual exploitation, et cetera, it is important for us to have open and democratic countries like Australia associated with these international agreements so that we can then make these awful things not occur elsewhere in the world.

**Senator ABETZ**—How should Australia treat young people who are under the age of 18 but who may well be married with children? Should we see them as child refugees, as being in the double jeopardy situation you are talking about? Or are we talking about child refugees—for example, the 11-year-old that the chair mentioned in relation to the World Vision submission?

**Mr Assadi**—If that under-18-year-old is a refugee and a parent? That is a very good question. In my previous posting in Hong Kong we had a few cases of under-18-year-olds who were parents. We treated them basically as though the fact that they were parents did not make them adults. Some of them, precisely because they were not adults, found themselves having children and did not have the mental capacity to know what they were doing—if I can put it in those terms. I think that would be triple jeopardy, not just double jeopardy. You do not have too many cases like that, fortunately, in Australia.

I do not think it is a major problem. Our biggest concern would obviously be what we call unaccompanied minors: minors who are not with their parents and who find themselves alone, under age or in detention, let's say. That is what we refer to, getting



back to your question regarding unofficial guidelines. Ideally, we would like to see the treatment of these children—particularly unaccompanied children—put into a more formal context. That does not mean they are badly treated today. I went to Port Hedland myself last month. The facility is fine. Children get education. Their health is fine, the food is fine and many of the facilities are fine. But, if they have to be in detention, let us put the way these unaccompanied children are to be treated into a more formal, official context. We are more than happy to work with the government on this.

**Senator COONEY**—Your main concern seems to be the process. Children in detention is a worry—none of us want it to happen. The other thing you would like to see is the provision of help—either legal or, at the very least, help by an adult when they are going through the legal process. Would they be the two concerns you have?

**Mr Assadi**—That is correct. Children, given their special vulnerability, should be given the opportunity to have legal aid or assistance at all stages, from the very beginning. They often do not know the culture or the language. Even an adult would have a problem. Children should be provided with legal assistance and proper counselling. Also, their cases should be heard and dealt with promptly. Children should be given priority consideration when adjudication is made on their applications. They should be treated expeditiously, fairly and on a priority basis, so that they do not have to remain in detention longer than necessary.

**Mr BARTLETT**—Mr Assadi, you said that, given Australia's good track record in this whole area, possibly the main benefit of our ratification of the treaty is the signal it sends to the rest of the world: it gives you a bit more power in dealing with these issues. In reality, how significant is that, given that refugee crises come from calamitous issues such as international conflict, civil war, famine, poverty and so on? In reality, what sort of clout does it carry that countries such as Australia have ratified this treaty?

**Mr Assadi**—I would put it the other way around. I would ask: if a country like Australia—which is blessed and does not have the types of problems other countries have—does not ratify the treaty, what signal would that send to countries confronted with major problems?

**Mr BARTLETT**—You are saying that the signal itself is significant, even in the light of the enormity of those problems?

**Mr Assadi**—Absolutely. If you compare your situation to other western industrialised countries, the numbers of asylum seekers or refugees that show up in North America and Europe are vastly greater than the numbers showing up here. Yet many of those countries have ratified. So, if a country like Australia—which, again, by comparison, when you look at things in context, does not, fortunately, have the severe problems of other countries, including other industrialised countries—would not ratify, that would certainly not be a very positive signal to be sending to those countries where we would

like to make statements regarding conscription, landmines, sexual exploitation and so forth, and where major problems of a socioeconomic or military nature do exist.

**CHAIR**—I am digressing slightly, but have you received a copy of our report—No. 6 or No. 7—on protocol II and protocol IV in terms of the inhumane weapons convention which deals with anti-personnel landmines?

**Mr Assadi**—We have received something from the immigration department, but maybe not exactly those two. We would be happy to receive them.

**CHAIR**—We should send one as a matter of course and, as a result of today, we will send you a copy of the one on protocol II and IV.

**Mr Assadi**—That would be excellent.

**CHAIR**—It is important. We have made some very strong recommendations to government on that, and it has implications for families—and for children in particular because, as you know, children have a predilection for picking up or kicking these things around the place.

We have run out of time. What we will do is take the rest of the questions and put them together as a series of questions on notice, if you could take those on board and come back to us. At some time in the future, we will pick up some further evidence from you. Here in Canberra today and tomorrow, we are just taking preliminary evidence—on an increasingly wide range of issues. I am sure we are all suffering from information overload at this point in the afternoon. Unless you want to make a final comment before you go, we will leave the questioning at that.

**Mr Assadi**—That is perfect, Mr Chairman. Again, thank you very much for the opportunity to appear before you. As I said earlier, the Convention on the Rights of the Child, together with the Convention on the Status of Refugees, allows us to tell the rest of the world—countries that do not have your developed and mature systems—that children are children first and asylum seekers or refugees second. That is important for us. We appreciate the support we receive from the entire spectrum of Australian society. We are very grateful for that.

**CHAIR**—Thank you very much for your time.

Resolved (on motion by Mr Tony Smith):

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

**Committee adjourned at 4.32 p.m.**

