COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: United Nations Convention on the Rights of the Child

CANBERRA

Tuesday, 29 April 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz
Senator Bourne
Senator Coonan
Senator Cooney
Senator Murphy
Senator Neal
Senator O'Chee

Mr Adams
Mr Bartlett
Mr Laurie Ferguson
Mr Hardgrave
Mr Tony Smith
Mr Truss
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

BALNAVES, Mrs Joyce Elvira, Immediate Past President, Catholic Women's League, Archdiocese of Canberra and Goulburn, PO Box 3259, Manuka, Australian Capital Territory 199

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JOINT STANDING COMMITTEE ON TREATIES

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Tuesday, 29 April 1997

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Bartlett
Senator Coonan	Mr Hardgrave
Senator Cooney	Mr McClelland
Senator Neal	Mr Tony Smith

The committee met at 9.02 a.m.

Mr Taylor took the chair.

PURNELL, Mr David Lyle, National Administrator, United Nations Association of Australia, 10 O'Sullivan Street, Higgins, Australian Capital Territory 2615

CHAIRMAN - Welcome. Would you like to make a short opening statement in relation to your submission?

Mr Purnell—Thank you for the invitation to appear before the committee. I will just say something about the association itself. It is part of a worldwide network of citizens who are concerned to promote the aims and ideals of the United Nations. In Australia, we have some 2,000 members around the country. We have a series of divisions in each state and territory and a national executive, which has approved our submission to this committee. We are part of a worldwide organisation called the World Federation of UN Associations, which is accredited to ECOSOC and the UN.

Our focus is very much on attempting to encourage people within Australia to take seriously the role of the UN and the sorts of conventions, treaties and so on that it helps to negotiate and the standards and benchmarks that it attempts to set. Our basic viewpoint on this particular convention is that the rights of the child convention should be taken as seriously as the other conventions in terms of being incorporated into the domestic arrangements of Australian policy and law.

We have noted in our submission the way in which this concern for children has developed in the international community since the establishment of UNICEF in 1946, the Universal Declaration of Human Rights in 1948 and the Declaration on the Rights of the Child in 1959. I think the 1959 date is significant because it refers to the phrases 'owes to the child the best it has to give' in terms of the way we approach children, and the principle of 'the best interests of the child' which has been carried forward in later conventions, in particular in this convention in 1989.

As was said yesterday by a number of people, the fact that this convention has been signed and ratified by so many countries suggests that it has touched a chord in terms of acknowledging the importance of children's rights being set out in some defined fashion. As far as we are concerned, we believe that Australia, as a party to that convention, should take every step it can to incorporate the principles and standards that are in it in domestic jurisdiction. Partly, this is to ensure that people throughout Australia, regardless of where they live, will have equal access to these rights.

We are very pleased to see that the government has made its report to the UN committee. We are also pleased to see that an alternative report was put forward by an NGO to help give a total picture, as you might say, of some of the more critical issues that are around. So, while we acknowledge that the government report contains many positive things about Australia's operations and policies, we think that it acknowledges weaknesses and we think the alternative report spells out some of those areas as well.

There has been quite a lot of discussion about the whole question of balance of rights, and we think that the convention is a fair attempt to balance the rights of all people—adults and children. In fact, we would like to see more education on that point around the community as to what exactly is in the convention, rather than some of the mythology that tends to develop about it.

We have made a point in one of our clauses to support the idea of the optional protocol on the involvement of children in armed conflict with a minimum age of 18. We acknowledge that Australia's policy at the moment is 17, but we think that Australia should support the objective of 18.

We are also sympathetic to the idea of the creation of a post to the Commission for Children which has been proposed by Defence for Children International—and probably a number of others—as a way of giving responsibility to some particular office to ensure that the convention is fully implemented around the states and territories and nationally. We have also made a comment about the child labour issue and ILO convention 138 which prescribes the minimum age for employment.

Also, we have drawn attention to the tripartite working party's report on labour conditions in the Asia-Pacific region and proposed banning of imports of products of child labour. We have made a number of comments in relation to that as well. I will leave it at that at this stage, just as a starting point, and I will respond to questions.

CHAIRMAN—You were here, as I recollect, for most of our discussion with DCI in particular and would have heard their comments about the children's commissioner. Would you elaborate a little further on what you foresee as the aims of such a commissioner and, perhaps, if you have any experience, make some comment about the Queensland experience, bearing in mind that I think Queensland is the only state thus far to actually appoint a children's commissioner.

Mr Purnell—I do not have any personal experience or knowledge of the Queensland experience. I am mainly relying on what the Defence for Children people have said about that. Maybe other members of your committee will have more information on that. I suppose it is more in the line of the general principle that a lot of these conventions benefit from having an officer or an office which is responsible for checking how it is going. By subsuming it within the Department of Foreign Affairs or the Attorney-General's Department or somewhere like that, it seems to me that it loses some of its impetus. You have somebody like a human rights commissioner who can press something, so maybe you should have a subset of that office that includes this kind of responsibility.

Mr McCLELLAND—You mentioned that you thought there was quite a degree of misinformation in the community and that some form of education program might be desirable. What sorts of things do you think would be effective there?

Mr Purnell—For a start, I think it would be very helpful to have more information about the convention itself, perhaps in a more educationally sympathetic form, available for teachers to use. For example, there are these comments that are made about different rights of different groups. In fact, if you look through the convention and take it as a whole, it seems to me that you can see that there are certain rights for children. It is also balanced against not interfering with the rights of other people. Then it talks about respect for parents and things like that in other sections. I think it is a matter of getting a wider view of the whole thing.

Mr McCLELLAND—So you think the schools may be a good starting point?

Mr Purnell—They certainly could be, yes.

Mr HARDGRAVE—You have just touched on the question of obligations. I tend to believe that hand in hand with rights are obligations. Do you think that there has been a weakness in spelling out to children both traditional and societal obligations that they have?

Mr Purnell—That may be so. On balance, I tend to think that we are faced more with a series of crises relating to children, both in Australia and other parts. If you look at the ongoing reports about issues of poverty, homelessness, disability, the stolen children thing that we are about to hear the report on, some of the material that was presented by UNHCR on children refugees, it seems to me that overall there is a much greater problem of dealing with the sorts of issues that are exploiting or diminishing children in one way or another. So the question of children's obligations, it seems to me, is fairly well covered.

Mr HARDGRAVE—You can talk about misinformation, and perhaps it is a great urban myth, but I think certainly across areas in my electorate in the southern suburbs of Brisbane, there is a general distaste towards this particular convention based on the fact that a lot of street-smart kids have wised themselves up sufficiently to get off umpteen different potential charges, or are treated more softly before the courts. The theoretical swift kick up the tail by the police sergeant, long lamented for by some of the older members of society, just is not offered towards children as a form of immediate punishment for a misdemeanour. This leads then to further crime. This is the sort of thing that is talked about. Do you think they are valid criticisms or are they based purely on the urban myth?

Mr Purnell—I think it is a bit of a mixture of things. I noticed recently that a retired magistrate in New South Wales made some very strong alternative comments about the way children were in fact neglected before the courts, that they were not given the support they needed in front of the courts. It seems to me that there is a whole range of experiences that are being expressed here. I certainly would not like to feel that we are going into a stage where people are going to be very heavy-handed about children's obligations as a sort of excuse for not dealing with some of these other issues—just as I

think quite a few men got very upset when the women's movement started to assert women's rights. They started to say, 'But we have got rights, too.' Racial groups assert their rights and other groups say, 'We have got rights, too.' It can be used as a kind of cover, I think.

Mr HARDGRAVE—Well and good but there are very well intentioned people, again in my community, who suggest to me very bluntly that parents, traditional controllers, or police organisations, teachers, people like that are basically feeling very hamstrung as far as disciplining children is concerned. Certainly the urban myth talk, if you like, points back to this convention, that children are not being shown the results or the potential punishment for something they do wrong because people are fearful of the consequences of our obligations under this.

Mr Purnell—I would have felt myself that this is setting a kind of standard, a benchmark to which we aim, and it may mean that it raises to profile some issues that need to be addressed in our community about how adults and children relate to each other—including issues such as discipline.

Mr HARDGRAVE—I do not think anybody disputes there is a benchmark that has been set by this, but then the question becomes: have governments in Australia perhaps taken the letter of this convention to some extreme and perhaps over-compensated, over-legislated or over-regulated in order to adhere to the benchmark?

Mr Purnell—I do not have a particular view about that. I am more concerned about seeing that the benchmark itself remains as an objective because, if we accept that, it means that we can expect other countries to live up to that.

Senator NEAL—I assume you had a look at both Australia's report on compliance with the convention and the alternative report. I was wondering which areas you thought Australia particularly had to do more work on in terms of complying with the convention.

Mr Purnell—I think we have identified a few things in our submission, in the area of child labour, for example, where I think that report of the tripartite group should be taken more seriously than it has been. We have identified some material in relation to the children involvement in war, the optional protocol and what should be done there.

Senator NEAL—There are not necessarily any breaches occurring in Australia at the moment to that particular agreement? We are not involved in armed conflict.

Mr Purnell—No, I think it is more that question of the age at which children are involved in the military forces—that is part of that.

Senator NEAL—I suppose I am more interested in areas that are actually affecting children in Australia at the moment and where we need to do more work to protect them.

Mr Purnell—I think the alternative report actually does give pretty good analysis of some of those I mentioned, and then issues such as child abuse, the incidence of suicide, crime, the treatment of children before the courts, the Western Australia legislation, that sort of thing. All of those things seem to me to be areas which ought to be looked at more carefully as to whether Australia is fulfilling its obligations.

Senator NEAL—Do you think that compliance with the convention should be merely on the basis of legislation providing rights, or whether it is also an issue of the provision of resources to provide accommodation, sufficient financial support, that sort of thing?

Mr Purnell—It is definitely the resources, I am sure, and if there were a commissioner for children, for example, that obviously would involve some resources, but it would then perhaps lead to pressure on states and territories to improve their performance in a number of these areas. There is a bit of an impression—and I got it yesterday—that some people feel that Australia is on the side of the angels. We have signed this convention and therefore we do not have to do anything more now because after all we have already reached these standards. In fact, that seems to me to be ignoring a lot of these other issues on which we seem to have endless reports about children suffering from deprivation in various ways in Australia. So it seems to me that a lot more resources are needed to actually make these things real for a lot of kids.

Senator ABETZ—That is the basis we entered into the convention, is it not? Gareth Evans, as Attorney-General at the time, said that we can sign the convention because we domestically do not have to do anything else, because it is all hunky-dory. So where do you get an interpretation that more things need to be done?

Mr Purnell—From reading these various reports such as the alternative report, from reading the newspapers and the different documents that have come forward from different agencies about where children are being neglected, abused and that sort of thing in various parts of Australia.

Senator ABETZ—Do you think a commissioner for children would stop paedophilia? Do we not need criminal law, do we not need, say, the Wood royal commission from time to time? Do we not we have the structures basically in place? Are we just going to set up another bureaucracy at taxpayers' expense for no good purpose at the end of the day?

Mr Purnell—In terms of cost of a structure, as I said before, if it is incorporated within the Human Rights Commission structure it perhaps can be done relatively inexpensively from a bureaucratic point of view.

Senator ABETZ—Like the ever burgeoning Human Rights Commission?

Mr Purnell—The other sorts of things that you are talking about obviously do need to be done. It is a global approach, I think.

Senator ABETZ—With the Defence for Children International yesterday when we tried to pin them down on specifics, on the interpretation, all of a sudden they bounced back and told us it was a very wide, flexible document. Reading the convention, you could argue, for example, that abortion on demand is prohibited. In fact Ecuador and Argentina made a declaration on signing the convention that this was a good thing because it gave recognition to the rights of the unborn child. France, on the other hand, specifically put in a reservation saying that it does not impact on the rights of the unborn child.

How on earth can we legislate on the basis of the convention when two countries are such poles apart in interpretation of the convention? What about legislation of the right of a child to know its parents—fundamental right in the convention? How does that impact on the IVF program for lesbians with a donor bank of sperm where the father is not named? Are we not in breach of the convention if we allow that to occur?

What about the homeless youth allowance? We say that there is respect for parents in this convention. It says so in the convention but I cannot see it anywhere. Parents have no right whatsoever to talk to the department to find out where their kid is, what is happening or why the kid left home. It really depends on your viewpoint as to how you would implement this international treaty; does it not? It is so wide, so flexible. It means all things to all men, does it not?

Even the Islamic countries have signed up. I note how everybody falls over themselves telling us how wonderful it is that 190 countries have signed up. Yet not one of the witnesses before us have told us anything about their reservations, including the reservations from Islamic countries which say, ‘We are happy with this convention as long as it does not impact on our fundamentalist Islamic laws.’ I have to say that fundamentalist Islamic laws do not give much rights to children, women or people of a different religious belief. How much are we going to take note of this convention when you have this amorphous mass that wobbles around like jelly whenever you try to touch it?

Mr Purnell—You are touching on one of the inevitable difficulties of the international community. When you try to get some kind of approach to a thing like this, you are inevitably going to strike difficulty. Of course, Australia has reservations about various treaties and conventions and will no doubt continue to do that from time to time. It seems to me that that is not a reason for not attempting to see how this relates to our country.

Senator ABETZ—But it depends on your social perspective, does it not? You cannot honestly say that the convention requires us to do this. Ecuador and Argentina will tell you, ‘Abolish abortion on demand’, whereas France would say, ‘Allow abortion on demand.’

Senator NEAL—I thought you said it was a reservation?

Senator ABETZ—They have said that it does not impact. That is their interpretation.

Senator COONEY—As I understand it, Mr Purnell is saying that the sorts of problems that Senator Abetz is quite properly raising are not peculiar to this particular treaty, that any treaty, any international treaty, is going to have these problems and that you have got to make the best you can of them. Is that what you are saying?

Mr Purnell—Yes. The point I was making earlier was that it seems unfortunate to say that, because Gareth Evans said what he said at the signing of the convention, we have actually achieved something. It seems to me that that is really selling us short and selling children short particularly. Here is an opportunity for Australia to sign and ratify a convention which enables us to focus on some of these issues, and to try to deal with them more constructively and more consistently than perhaps they are being dealt with now across Australia. That is why a commissioner for children could be helpful in helping to identify weaknesses, points of coordination across jurisdictions and that sort of thing.

Mr BARTLETT—In section 4.62, you comment that Australia should ratify immediately the ILO convention which prescribes a minimum age for employment. What is the ILO's suggested minimum age and how does that compare with what applies in Australia?

Mr Purnell—I do not have the convention here with me so I am not exactly sure. Somebody else may have access to it. I might have to take that on notice.

Mr BARTLETT—If you could. Are you of the opinion that Australia is not rigorous enough in preventing child exploitation in the labour market? Do you think it is a problem in Australia?

Mr Purnell—Certainly the working party that looked at this seemed to come up with the view that there were areas that needed to be given attention. I do not know much about the issue of child labour in Australia, I am not aware of much more than what you read in the media about it but, clearly, if there is a group that has done a bit of investigation, I would think that needs to be looked at.

Senator NEAL—There was a Senate inquiry into the clothing industry that gave evidence on that exact issue.

Mr BARTLETT—That example would seem to indicate that the problem of child exploitation in the labour market is not so much in the public domain but is what is happening already, contrary to existing law. I cannot see how changing the existing law or signing the ILO convention would alter what happens already illegally. If our current laws

are adequate, why will signing the ILO convention change what happens illegally?

Mr Purnell—I guess it comes back to that same issue, I suppose, of being seen as a good international citizen in acceding to a standard that is an accepted international standard.

Mr BARTLETT—But surely if our current laws operate under that standard anyway, and we are rigorously trying to maintain standards in the labour market, officially, is that not the sort of example that we want?

Mr Purnell—Yes, certainly. But, again, it is a question of whether it is being enforced adequately or whether there are ways in which it could be more adequately enforced in Australia. I suppose by making a decision to ratify this particular clause or convention, one is saying, 'We will take a further look at what this involves in Australia.'

Senator ABETZ—How can you seriously come to this committee with the recommendation in paragraph 6.7 that:

The Commonwealth Government should ratify ILO Convention 138.

When we ask you what the impact of that would be you cannot tell us. How much rigour and research has gone into this? I am disappointed by the fact that you make a specific recommendation, and then when Mr Bartlett asks you about the impact of it on the domestic law, you are unable to tell us. I have got to say I am disappointed with that.

CHAIRMAN—But you said you would take it on notice.

Mr Purnell—Yes, certainly, we will endeavour to respond to that.

CHAIRMAN—That is Senator Abetz's view but I think under the circumstances we just have to accept that you will take it on notice. Whilst I think some of us would share a disappointment that you are not able to, it is a fact of life that you cannot at this stage.

Mr TONY SMITH—You have suggested that the Commonwealth, effectively, should implement the convention in toto in its internal legislation?

Mr Purnell—I guess I am suggesting that it should be reviewing its legislation—national, state and territory—to see what changes need to be made that would bring it into line with the convention.

Mr TONY SMITH—Okay, I think I understand what you are saying. Do you have a view about whether a child should be able to have input in recommending the age of consent?

Mr Purnell—We do not have a particular view on that particular issue. I think we support what is in the convention in terms of the right of children to be consulted about issues that affect them?

Mr TONY SMITH—That issue affects them, does it not?

Mr Purnell—It certainly does.

Mr TONY SMITH—So you would think that children should be consulted about that?

Mr Purnell—I do not see any reason why they should not be consulted.

Mr TONY SMITH—At what age should they be consulted?

Mr Purnell—I notice that the Defence for Children group thought that 12 was a reasonable age. I do not have any difficulty with that.

Mr TONY SMITH—Let us refer to articles 12 and 14 of the convention. Article 12 states:

> States Parties shall assure to the child who is capable of forming his or her views the right to express those views—

Article 12 goes on to say that they should have a voice in judicial or administrative proceedings for that purpose. Article 14, paragraph 2 states:

> States parties shall respect the rights and duties of the parents . . . to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

I would suggest that is a qualification on the parent's right. Having regard to that, do you support a right at law for a child to countermand its parent's wishes in relation to the issue of age of consent?

Mr Purnell—I do not have a particular view on that. I think it is something that has to be worked out within the public debate within the country.

Mr TONY SMITH—But if you accept the implementation of those articles into domestic law, and on the basis of what I have said, a child could go to the court or an administrative tribunal to seek to countermand its parent's wishes in circumstances like that. That is arguable, is it not?

Mr Purnell—It is arguable, certainly. So it would be a matter of a balance of how the decision came out.

Mr TONY SMITH—Do you think that that would be greeted with great joy by the Australian electorate?

Senator NEAL—It depends what the parent wants for the child.

Mr TONY SMITH—I am asking the question.

Mr Purnell—I think that is part of the public debate in Australia. People have to make choices about how they respond to those situations. If somebody is making a decision in a court, they clearly have to take all those factors into account.

CHAIRMAN—Can I just take you back to yesterday and DCI's evidence, in particular, in relation to the post Teoh solution. As you know, both the previous government and this government have decided to take a statutory track in unravelling—if that is the right word—the Teoh judgment. Does the association have a view on this? For example, do you share the criticism that DCI put forward yesterday of that legislative solution to what is perceived to be a potential problem?

Mr Purnell—I think our approach is very much a matter in the area of perception. It seems to us that although from a technical point of view one may be able to argue very convincingly that this is the way to deal with this problem, I think from the point of view of the perception of people out there in the wider community and in the world it looks very contradictory. It appears that Australia is giving an international support to all kinds of things and then at the same time is using a backdoor method to pull back from that. It seems to me that it sends lots of dubious signals to the rest of the world. That is where we have difficulty with it.

CHAIRMAN—What sends the signals—the legislation solution?

Mr Purnell—Yes. It gives the impression that we agree with all these things but we are going to reserve our right to disagree with things when it suits us. It is that kind of message.

CHAIRMAN—But how do you reconcile that comment with what DCI and others said yesterday—but DCI in particular—that implicit in this whole convention is a large degree of flexibility. If there is the flexibility, why should not government exercise a solution which injects some sort of certainty into the equation?

Mr Purnell—I can see the reasons why the government might feel it wants to do that. But it seems to me it is a cop-out in a sense to say, because the decision making is made a little more difficult by the Teoh case, therefore we will basically eliminate the problem by doing this and therefore remove some responsibility from our administrators and so on to have to look at these wider issues. I think that is the sort of message it can send to the wider community.

CHAIRMAN—Helen, did you want to follow up on Teoh?

Senator COONAN—No, I want to go on to a different topic.

Senator ABETZ—Mr Chair, could I follow up on Teoh? What international message is sent, when you look at the background of the Teoh case? A drug trafficker in heroin—a merchant of death who may well have been responsible for the death of a number of children in Australia and adults—is allowed to stay in Australia on the basis of the Convention of the Rights of the Child because he has a child. What about the rights of all those children that may well have died and other children whose health and wellbeing have been prejudiced by this man's activities? What sort of message does that send to the international community? That we are willing, for the sake of one child, to prejudice all these other children? It really sends a strange message not only domestically but also internationally, doesn't it?

Mr Purnell—That is the specific nature of that case, but in fact it seems to me—

Senator ABETZ—Based on CROC.

Mr Purnell—The court took that all into account, it seems to me, when they made their decision and so—

CHAIRMAN—But on the basis of CROC, of our international obligation under this convention and so this is a practical outworking of this convention where a man convicted of selling drugs—heroin—to Australian children and adults is allowed to stay in the country because of a convention on the rights of the child. That would have to be one of the most perverse outcomes of an international convention. Where are the rights of the children to be protected from these greedy individuals that sell drugs for gain without any care for the wellbeing of the children of Australia? I just find that a very perverse result.

Mr Purnell—Maybe there is an element of difficulty about that, but in fact surely it also has to be addressed by the laws of Australia in various directions as to how these people are dealt with.

Senator ABETZ—But it was the convention that the decision was based on. That is why the former government and this government want to legislate to knock out the perverse result that occurred as a result of Teoh, the perverse result being that a drug trafficker, who may well be responsible for the deaths of a number of Australians, is allowed to stay in this country on the basis of the alleged rights of a particular child.

CHAIRMAN—Not only to overcome the perverse result that Senator Abetz is referring to but to inject some certainty back into the equation and I come back to flexibility again. It has always been implicit in all of these conventions by governments of all political persuasions, both sides of the political fence, that until such time as it

becomes part of domestic law, it does not have full effect. All the legislative solution is doing, surely, is just reinforcing that domestic right.

Senator COONEY—Despite what you would be saying about Teoh, that did not compel the decision makers to come to a particular decision. All it required was that the decision makers take into account the children. The sorts of things that are suggested flowed from that might not have occurred simply because they took that into account. Do you want to say anything about that? Teoh is a matter of process, not outcomes, is it not?

Mr Purnell—That is what I would think; it actually has implications for other areas too.

CHAIRMAN—Yes. Are you finished with Teoh?

Mr McCLELLAND—Just to follow on from the chairman's comment: is his contrary argument namely that these international conventions have a morality to them? If you like, they are conducive to forming an international morality. But in so doing they are often vague and inconsistent. Because of that vagueness and inconsistency there is some reluctance in the community to embrace them. If the community can be assured that embracing that morality will not affect their lives in terms of becoming law, do you think there is an argument that the community may be more inclined to accept the international morality contained in conventions such as this?

Mr Purnell—That is a bit of a double edged problem I think. It seems to me if you do not try to implement it in domestic jurisdiction, you run the risk of then just appearing to be paying lip service to things.

Mr McCLELLAND—But is it not the case, for instance, that there are internal inconsistencies with the various clauses. They have not been drafted by an expert statutory draftsman. To try to implement them would be a nightmare for a judge. He would end up chasing his tail like my five-month-old kelpie. Is that not the problem? These are not drafted as legislation; they are drafted as principles. To say that these principles, in many cases internally inconsistent, then become law is a problem. To inflict that on the community without a say in the actual wording of the legislation—are there not risks in doing that?

Mr Purnell—Yes. I suppose now that there is more of a process like this committee to look at some of these things and see what kinds of things are viable and what are not. That seems to be a constructive step forward. Previous treaties have not had that kind of scrutiny, so this is a good development.

Mr HARDGRAVE—The big ticket items like a heroin dealer being able to stay in this country as a result of an application of this convention through the court overshadow more everyday kinds of things. If there was an attempt to bring back the cane, would it be

possible? Would article 19, part 1, apply which talks about legislative, administrative, social and educational measures to protect a child from all forms of physical or mental violence? That seems to be what people are suggesting. Would a parent—not a policeman—be able to search their child's bedroom without article 16, part 1 or 2 applying? Article 16 says:

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

But there is an application of article 16 for a child to say to their parent, 'You are not able to search my room for something,' and these things are happening.

Surely, there in itself are some more sort of every day examples of where these global benchmark principles, well intentioned and well laid out in this document, have some bizarre results in application of law in this country.

Mr Purnell—I see that some of them are a challenge to the way people often think about rights of parents in relation to children, for example, but it seems to me that it ought to be looked at carefully as to what those rights to privacy are that children deserve. I would not necessarily assume that the child should not have a right to stop somebody going into their room. It seems to me that one needs to have a discussion about that and what it involves.

Mr HARDGRAVE—You agree with the concept that a parent would not be able to search their child's bedroom for something?

Mr Purnell—I think it is a very fraught issue in many families and I think it is something that needs to be carefully considered. I would not necessarily make a decision one way or the other in a blanket way or—

Mr HARDGRAVE—I would not want to suggest that one size fits all, but the core concept of parenting children is under threat by an application of article 16, for instance.

Senator COONAN—Wouldn't you really be in breach of your duty as a parent? If you really suspected that your child was involved in drugs, wouldn't you have some real obligation to try and inform yourself so that you could assist your own child? You run into silly situations if you try and apply this literally.

Mr Purnell—I think, again, it is a balance of rights, isn't it?

Senator COONAN—Where is the balance there? How could there really be any serious suggestion that a parent ought not to help a child whom they have some reason to believe is involved, not only in criminal activity but in activity likely to affect their health

and even their wellbeing?

Mr Purnell—In that particular case there is every justification for the parent taking that sort of action, but there are other cases where parents take it as a total right to simply be in the child's room whenever it suits them. It seems to me that that is the other extreme where a child has actually no chance to be private.

Senator COONEY—Mr Purnell, why don't you look at article 19 itself. That might get you out of your problem. It does not protect children from proper treatment by their parents, but it saves them from violence—and we all know what violence is. That is something we all want to avoid. It says:

> . . . to protect the child from all forms of abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse . . .

It does not stop parents taking proper action, even physical action I would have thought, against their children as long as it is not violence that has got that criminal overtone to it. I do not know whether you want to look at the convention a bit more closely, but that might get you out of some of the problems you are getting yourself into.

Mr Purnell—Those words 'all forms of' are a very broad interpretation. One would—

Senator COONEY—Yes, violence.

Mr Purnell—But one would suspect—

Senator COONEY—Do you know what violence is? You do not get locked up for proper or even physical punishment. It does not stop punishment, it stops violence.

Mr Purnell—I would regard any form of hitting another person as a form of violence.

Senator COONEY—You might.

Mr Purnell—But someone else might not.

Senator COONEY—But are you interpreting the treaty?

Mr Purnell—I do not know.

Senator COONEY—That is for us to discuss amongst ourselves. Perhaps, it might help to look at exactly what the treaty is saying and you might find some solace in that.

CHAIRMAN—Any more questions of Mr Purnell?

Mr TONY SMITH—Would you concede that it is arguable—and focus on those words 'concede' and 'arguable'—that the implementation of the convention into domestic law could produce more uncertainty, more perverse outcomes than presently exist?

Mr Purnell—It seems to me that it is an area that is never going to be simple or straightforward. But it is worth while attempting to see where the principles of the convention relate to what is happening in Australia to children and to do what we can to make it more consistent across the board in terms of their rights, responsibilities and opportunities. I understand what you are saying. It is arguable, I guess, that it could lead that way, and it is only part of a total process of trying to make our rights more consistent throughout Australia.

Senator COONAN—There is one paragraph in your submission that relates to children detained at Port Hedland. It concerned me to think that, somehow or other, there needed to be some reconciliation between offences under the Migration Act and the need to keep children in these centres. What you have said is that Australia is presently in breach of both article 31 and 37(b). How do you see some reconciliation between obligations, as you see it, under the convention and the unfortunate need to detain children. My researches show that there are 31 in Port Hedland—some are unaccompanied—15 in Villawood and 12, I think, in Maribyrnong. Can you elaborate on what you had in mind there?

Mr Purnell—The submission from the UNHCR is probably a more helpful one in terms of how processes can be improved there, and so forth, so I would refer you to that.

Senator COONEY—They said yesterday that they thought it was pretty good at Port Hedland. Could we have your views on it? I do not think the UNHCR helped us, so if you could answer Senator Coonan's question it would help me a bit, I must confess.

Mr Purnell—It may have been improved now, you see. It is a little difficult to assess exactly. I think he was saying that it was all right now, wasn't he?

Senator COONEY—He did not seem to be condemning it—I think the people here yesterday would agree with that.

CHAIRMAN—Yes.

Mr Purnell—That is true. Whereas we think there is still some care that needs to be taken about how this right to recreation and cultural activities is actually working on the ground up there. Some of the reports that have come out seem to be rather disturbing in that regard. Maybe that is something your committee needs to ask a few more questions about of UNHCR, and of others too, perhaps.

Senator COONAN—It worries me that you have said that you consider that the detention of the children 'is' in breach, not 'could be', or whatever. I am very concerned that that stays in a submission of this kind without some elaboration about what it is that you have identified as the breach.

CHAIRMAN—Would it be more appropriate, Mr Purnell, to have 'might be', rather than 'is'? Is that a reasonable amendment to your submission?

Mr Purnell—Yes, that is probably more appropriate.

CHAIRMAN—Can we take it that that is an official amendment?

Mr Purnell—Yes.

CHAIRMAN—Do you have any other final comments to make?

Mr Purnell—No.

CHAIRMAN—Thank you very much indeed.

[9.49 a.m.]

BARRALET, Ms Kay Withey, Executive Officer, National Legal Aid, GPO Box 512, Canberra, Australian Capital Territory 2600

OSMAND, Ms Alison, Specialist Children's Solicitor, ACT Legal Aid Office, GPO Box 512, Canberra, Australian Capital Territory 2600

STANIFORTH, Mr Christopher, Chair, National Legal Aid, GPO Box 512, Canberra, Australian Capital Territory 2600

CHAIRMAN—Welcome. Would you like to introduce your submission with a short statement?

Mr Staniforth—Thank you, yes. Hopefully, you each found our submission simple—to the point of simplistic. We are saying to you something which we think is just remarkably basic commonsense for all Australians—that the most vital part we can play in our community as adults is to bring to our children a sense of decency and responsibility. As a parent of three children, I know full well—and those parents around the table, I hope, know full well—the vital role which we as adults play in modelling our behaviour for our children.

As lawyers being involved in legal aid—between us, for over 35 years—I think it is our duty to come to you to tell you that our community does not exhibit a level of decency and respect for its children anywhere near the level which I think a decent, ordinary Australian would wish. Having been involved in children's law for over 10 years, I could not possibly portray to you the horror which comes with seeing abused children come before a court. These children come from families that, with great respect, do not really entertain the dialogue that has gone on here this morning about fine points of treaty interpretation. They come from families where the reaction to a communication breakdown is a biff on the face or where a child's misbehaviour is an open invitation to some kind of physical or sexual abuse.

We really do not have a community which is at the level of, with great respect, the Olympians present around this room. As the previous witness said, what this convention is all about is putting down basic principles—which will always be contradictory; moral principles always are. We, as taxpayers, spend a lot of money having students at university study philosophy for four years because you can make moral arguments about anything. But the principles, if they are good principles, should be respected, and we should be very careful how we deal with them.

CHAIRMAN—Let's start with your comments on Teoh. You have heard the previous witness and some of the members. On page 2 of your submission, you talk in very general terms about whatever the political reaction to Teoh may be, et cetera. Was

this submission written before you were aware of what government was doing in that area? Or, irrespective of that decision, yet to be spelt out in legislation, do you have a contrary view?

Mr Staniforth—Our view is again quite simple. This morning, whatever government's intention, the common law of this country, as we understand it, is that legal aid commissions of Australia, being administrative decision makers, are bound to take into account the provisions of all treaties that are relevant to their decision making. One of those treaties, called the convention, relates to an important part of Legal Aid Commission business: the children. So we say, 'Today we must take that into account'.

CHAIRMAN—Yes, that is today. But if there is a statutory provision, the statutory provision prevails.

Mr Staniforth—If there is, yes.

Senator COONEY—Do you know that the government has put out a directive?

Mr Staniforth—Yes.

Senator COONEY—I think Teoh still prevails, but it is Teoh with an addition to it, which would mean that—if I understand the Chairman correctly—if you look at the case as it now stands, taking Teoh into common law, decision makers do not have to take into account the convention because of that directive. I think that is what is being put to you, and we would like your comments on that. It is true, the legislation has not gone through—

CHAIRMAN—No, it has not been introduced yet.

Senator COONEY—but the directive from both governments did. What difference do you think that makes?

Mr Staniforth—In the only case that I am aware of where this was tested in a court, the Federal Court judge involved did not seem to be able to be persuaded that the executive direction would, so to speak, fill the gap. It isn't for me to comment about the wisdom of the Federal Court judge, but I do say that all the common law of which I am aware maintains the position that we must follow that Teoh logic, whether we like it or not. We say it is a matter for you on that side of the table as to how that common law is amended.
But the case law, in the absence of statutes, seems to be saying to us very strongly that we must consider—and I would like to stress the word 'consider'—the provisions of all national treaties relevant to our operation.

Senator NEAL—What was the decision that you say dealt with the issue of

whether the executive direction overrode the Teoh?

Mr Staniforth—It was Mr Justice Hill—

CHAIRMAN—It was Re K, was it not?

Mr Staniforth—No, it was a decision in the middle of last year, Mr Justice Hill in a—

CHAIRMAN—It was a Federal Court decision.

Senator NEAL—Maybe if you give us the citation further down the track that would be helpful.

Mr Staniforth—I will get it.

CHAIRMAN—Anything more of these witnesses in terms of Teoh? Have we done Teoh to death? Helen, would you like to start?

Senator COONAN—Yes. What I am interested in is your views about the extent to which a lot of the quite necessary representation about children—I am not cavelling that it is critical that children be properly represented in appropriate cases—can be done really by welfare people and they do not really need a grant of legal aid to do it. In other words, how much law really is made, say, in the average family law case involving horrendous difficulties with children? Experience tells you that there are lots of things to sort out, a lot of things are involved in looking at the best interests of the child, but usually it does not involve some complex legal principle. What is your view about the extent to which it can be done by people other than lawyers and whether that would take some pressure off legal aid?

Mr Staniforth—Could I start, Senator, and then ask Alison to finish the answer because she does it daily and she could give you a terrific on-the-spot answer. I was involved last year in the subcommittee of the Family Law Council which looked at involving children in Family Court proceedings, and the very strong feel that came out of that work—and again I am relying on my own experience there having done that kind of work myself—is that you are perfectly right, with respect, Senator, about the complexity of the law involved. There is very little complex law in nine cases out of ten. I guess the truth is that that is true of Australian law generally—

Senator COONAN—It has been a bit of a hobbyhorse of mine in the legal aid inquiry, I am afraid. Anyway, go ahead.

Mr Staniforth—But there is a much more vital complexity where I think a lawyer who can provide a ‘good offices’ approach, as distinct from a font of legal knowledge, can

play a most important role—and that is the brokering role. Nobody else in the shemozzle which is parents breaking up in Australia in the nineties can provide such a clean brokering role as a person who clearly ostensibly has no interest to pursue in terms of the outcome between the parents. If that line is maintained, then I would be a very strong supporter of the role continuing.

I think how we choose child representatives and the circumstances in which we choose them leaves a lot to be desired, and I think there is a grave danger—and I think I am coming to what you were saying—in circumstances where the appointment of a child representative takes the role of case management; it is simply an easy way of getting the problem out of the way. It should be left, in my view, to cases where the dispute between the parents is clearly impacting on the child's welfare—and, sad to say, that is abundant. Perhaps I could leave it to Alison.

Ms Osmand—Senator, I think in my own practice, and in the practice of other representatives of children, it is not left entirely to the lawyer to assist the court in coming to a decision. I myself work very closely with court counsellors and court experts, psychologists and psychiatrists, because I am after all a lawyer and have particular skills. I do not have the skills of a very experienced court counsellor, I do not have the skills of a psychiatrist or psychologist, so in my work I look towards a joint approach to try and bring before the court the best possible solution for the children that I am representing. More and more in the Family Court people are appearing for themselves.

To give you an example, I have four final hearings in May. In every single one of those matters there is a self-represented litigant. In one matter both parents are self-represented. The prospect of those parents having to successfully run their cases is very daunting. It is not only daunting for themselves, but for the judge. The role of the separate representative there is effectively to run the case and to assist the judge to come to a decision. I am finding that more and more my role is expanding because of the number of self-represented litigants that are coming before the court. They are simply not capable. While the law is not complex, the rules are complex and they are not capable of running their own cases.

Senator COONAN—So what you are really suggesting is that under the guise of the best interests of the child being looked after in this case, your role covers representing everybody or being a broker between all the parties? Is this an expanded role for the convention as well?

Ms Osmand—I would not go so far as to say I was representing everybody, but making sure that the evidence is covered and that the relevant evidence comes before the court. That might mean in a sense cross-examining both parents as if their own counsel would have cross-examined them. It may take days, but it is done properly and so that the judge is aware completely of all the issues that relate to these children. That is becoming more and more a very important role of the children's representative. Otherwise, huge

chunks of evidence that are important may not come out and go before the judge.

Senator COONEY—I thought you were saying to Senator Coonan that as an advocate your task was to ensure that all evidence came out.

Ms Osmand—All relevant evidence in relation to the interests of the children. Yes, relevant evidence.

Senator COONEY—Even though you are representing somebody else?

Ms Osmand—When I am representing the children.

Senator COONEY—All relevant evidence in the interests of the child.

Ms Osmand—That is correct.

Senator NEAL—So the danger is, if in a civil matter someone is not properly represented or does not represent themselves very well, they may get a decision that is not a proper decision in the light of what has occurred. In a family law matter, if all the evidence comes out and an incorrect decision is made, the rights of the child or the welfare of the child may be compromised.

Ms Osmand—Yes.

Mr McCLELLAND—On that point you have mentioned a situation where it is quite frequent for neither party to be represented. Are not the risks for the child even greater if one party is represented? Assuming one parent is represented and the other is not, if the child then did not have legal representation, is there not a risk that the parent with a legal representative would have the weight of influencing the proceedings?

Ms Osmand—Yes, and often you see incredible cases where one parent will have a Queen's Counsel and a junior and the other parent will be at the other end of the bar table on their own and terrified. They are immediately on the back foot. Yes, the child's representative is essential there. It is absolutely essential that the child's interests are properly put.

Mr McCLELLAND—Legally represented.

Ms Osmand—That is right, because that parent is so disadvantaged. The unrepresented parent is just so disadvantaged against very experienced practitioners.

Senator COONAN—Are these custody cases you are talking about or some other cases?

Ms Osmand—These are residence and contact cases, yes.

Senator COONEY—Your general thrust is that there are not enough resources available for everybody to be represented in any event, even independently of the convention, but that the convention reaffirms the position you take. There are just not enough resources to go around so that everybody can be adequately represented. Is that a fair assumption?

Mr Staniforth—To quote politicians on both sides, there will never be enough money for legal aid and we will be the first to accept that.

Senator COONEY—That is a bad admission to make.

Mr Staniforth—It is a realistic one. Being a typical lawyer, I will come back with the punch line which is that what is happening now is disgraceful. What has been happening over the last decade in this country is disgraceful in the sense that we introduce into our legal systems levels of emotion, vindictiveness and animosity between adults which is impacting not only on them and making them the more bitter for it. It is impacting on our children and we see that daily. It is impacting on the system itself and it is making the system less effective for it.

Senator COONEY—And what you are saying is that this does two things. It sets out the fact that not only children but also parents have rights. As I understand what you are saying, those rights will remain in limbo unless they can be enforced. You say that in many cases that cannot be done and that this convention just reaffirms your proposition that people should have rights and they should be enforceable.

Mr Staniforth—I really struggle with these notions of rights, because I am a firm believer that rights and responsibilities are the two sides of one coin. You talk about the coin rather than one or the other sides of it. What I am saying is that this convention sets principles of decency which, as they have been applied in the legal work that I am aware of, seem to be pitched where I would have thought most of us would want them to be pitched.

Senator COONEY—I understand you to say that those principles of decency exist apart from the convention and the convention is just an expression of them.

Mr Staniforth—Yes.

Senator NEAL—You raised the issue of counselling and the new charges that are being imposed as a potential problem. I am not really certain and you might be able to advise me. With reportable counselling, is that charged as well or is it just the negotiation type of counselling?

Mr Staniforth—The real worry to our mind is the $40 voluntary fee which is about to be introduced. It is extremely difficult to get intractable disputes to counselling in the first place.

Senator NEAL—I would be interested in that, but just before we go on, with reportable counselling, the report is made to court. Is that $40 fee referring to the more general counselling?

Mr Staniforth—Yes. If we provide a disincentive to people to talk about their disputes, our experience is that it becomes a bigger dispute. If you keep suppressing it, people take more and more intransigent positions and it finishes up costing us all much more money at the end of the day. Most legal aid commissions have some kind of precondition to granting legal aid that the people have made every genuine attempt to use a counselling or a mediative approach. If one of the parties simply refuses to be involved in it, then of course all of those preconditions amount to not much at all. That is used as a tool by an intractable party—and I have to tell you that it is—and people say, 'I simply won't go to counselling. I'll just let you stew. You can take this through every court in the land', then we have the cost. It is cost not only in terms of dollars; it is cost in all those things we talked about before—the emotion and the shifted cost to other areas of our community. I would respectfully wonder if at the end of the day, the $40 fee is going to be cost effective.

Senator NEAL—So you are saying that that $40 just becomes another excuse why you do not go counselling?

Mr Staniforth—Yes.

Senator NEAL—And how do you see that impacting on the welfare of the child when that counselling does not occur?

Mr Staniforth—As I said, the typical concern that we have is someone who uses any excuse not to go to counselling. Now if that person happens to be a wealthy person or a person who has something going for them or they are getting some very strong advice saying, 'Don't give in. You shouldn't give in. You've got all this going for you', all that does happen in those cases is a build-up of the adversarial nature of the two people. They are now building a bigger conflict which at the end of the day has to trickle down the children involved. It has to impact on the children and it does impact on the children.

Senator NEAL—There was a suggestion earlier in the discussion about not having legal representatives to represent the children and having some welfare agency provide a role. In the majority of cases where legal aid separate representatives are appointed, is there any welfare person or agency involved?

Ms Osmond—Do you mean as in state welfare?

Senator NEAL—Or any welfare agencies. Usually, there would be some circumstances, where DOCS was involved, where there was an abuse allegation. But that would be a relatively small group. I cannot imagine any other body or person that would generally be involved in a dispute about the placement of a child.

Ms Osmand—No. Sometimes DOCS or family services branch are involved initially. State welfare authorities are very reluctant to become involved in Family Court proceedings, although there is capacity for the Family Court to invite them to intervene. They are very reluctant to do that. Usually they are involved at the initial stages interviewing children. That sometimes can be successful but, in other cases, it is not necessarily successful. Sometimes it can make the situation more difficult.

Usually it is the Family Court counselling unit that is primarily involved with a family. Often a court expert, who is a psychologist or psychiatrist, is appointed to investigate a matter, particularly where there is an allegation of abuse and there needs to be a forensic exercise conducted around whether that allegation is true or not. There are not a large number of welfare organisations involved.

Senator NEAL—Would DOCS normally not get involved unless there was an allegation of some abuse or unlawful treatment of the child? In a normal dispute between parents about where the child should reside or whom should have contact, would DOCS get involved?

Ms Osmand—No.

Senator NEAL—Is there any reason for them to be involved?

Ms Osmand—My experience indicates that they are usually involved where there is an allegation and a notification has been made and they act upon that notification. That may result in parents and children being interviewed. They may then separately take action within their own jurisdiction, or the matter may then have already started in the Family Court. My experience is that, once the matter is rolling in the Family Court, they tend to bow out.

Senator NEAL—Of the matters involving children before the Family Court, what proportion of them roughly, in your opinion, would involve notifications to DOCS?

Ms Osmand—It is low.

CHAIRMAN—Would you say 20 per cent?

Mr Staniforth—Fifteen to 20 per cent.

Mr HARDGRAVE—Chairman, you and I, and Mr Bartlett, are members of the

significant minority at this table—the non-lawyers. I worry that too much process and not much outcome comes out of various legal systems. I submit that there are obviously always mechanisms other than lawyers in these disputes. If we go much further on that, we are going to go down the Child Support Agency road, which I am trying to avoid, although I may ask it in my second question.

Firstly, based on your experience, are there really, as the urban myth suggests, many spurious claims based on an interpretation of this convention by people representing children? In other words, 'You cannot search my bedroom. You cannot hit my bottom', those sorts of things.

CHAIRMAN—Does this, as a convention, pass the test of reasonableness in legal terminology? Does it pass the test of reasonableness?

Mr Staniforth—Can I start out by a sincere claim of modesty in this. I do not know that you should take our evidence as necessarily the paradigm of what is reasonable. Having said that, I will try to answer that question directly. I am unaware of any matter at all that has come into my office in 10 years which would fit that characteristic of being a claim based on a search of a bedroom or a spanking of a bottom.

Mr HARDGRAVE—That was an example only. Something based on this convention.

Mr Staniforth—I will come as close as I can in this. That is in areas of expulsion and suspension from school. I can tell you that I have personally granted legal aid in two matters where two children—as best I remember of 16 and 17—were suspended from school. I do not want to bore you with the factual recitations because that probably will not get us anywhere.

Senator NEAL—Facts always help us.

Mr Staniforth—Okay.

Mr HARDGRAVE—The example would be useful.

CHAIRMAN—The floor is yours.

Mr Staniforth—That is a bit dangerous for a lawyer.

Senator ABETZ—Are you game to spell that?

CHAIRMAN—He is the sixth lawyer.

Mr Staniforth—I will take it with the 'w'. This child was 16 and had been

suspected of being involved in a chemistry group prank that had gone horribly wrong. He protested his innocence to the principal of a local ACT college, who was having none of that and started the road of expulsion. His parents, who were not exactly flush with funds, brought him to see us and said, 'What can be done?' The assistant director of our office telephoned the principal and, to be blunt about it, got a mouthful of old Australian about what was going to happen. We granted modest aid. I think the bill was $200 or $300. It was eventually conceded that it was wrong to assume that this boy had been involved in this prank that had gone so wrong.

I suppose one of the motivations that I had in granting legal aid in that case is that an expulsion from school—particularly at a college, but at any time of your life—is a pretty hefty thing. I suppose you people regularly may be so, but if any of us were evicted from our job—

Senator ABETZ—Not senators.

CHAIRMAN—Depends which house—in the bear pit, yes.

Mr HARDGRAVE—We are all well-behaved. There is not a problem there for us.

Senator ABETZ—But isn't the point in your example that you provided legal aid to the parent? The parents came to you so the grant of aid was to the parent as opposed to the child.

Mr Staniforth—I have to be honest and say that it was technically notionally to the child but because of the conversation between the parents and the child and our solicitor.

Senator ABETZ—For the child but through the parent.

Mr Staniforth—It certainly was a request for support by the parents.

Senator COONAN—Could you not do that so that just the boy was involved and not the parents?

Mr Staniforth—I have to say, as a matter of practice, I would seek urgent permission to talk to the parents because I would want to know what it is all about. I cannot say that I have had a case where it has ever happened that the child has simply come along himself. Would you mind if I backed it on the basis of being hypothetical any further than that?

Senator COONAN—Sure.

CHAIRMAN—Please make your point to Mr Hardgrave's question.

Mr HARDGRAVE—You have bounced this against the convention when you have made those decisions.

Mr Staniforth—I am not that clever to be frank with you. It just seemed to me that that was not a fair cop. Reading the convention, I see a lot of support for that kind of decency principle.

Mr McCLELLAND—Would you see a principle in the convention that that child had a right to procedural fairness to have the allegations put and the opportunity to answer those allegations?

Mr Staniforth—Yes, and to use the wording of the convention in an administrative proceeding which was directly affecting his welfare.

Senator ABETZ—But isn't the reality that you would have done that anyway, even without the convention, because natural justice demands that if a kid is unfairly accused, then he ought be defended, and we do not need CROC to tell us that? That has been a fundamental principle of our law since Adam played full-back for Jerusalem.

Senator NEAL—Procedural fairness is not a principle applied to children.

Senator ABETZ—Of course it is.

Senator NEAL—Quite regularly it is not.

CHAIRMAN—Let's not have arguments.

Senator COONEY—I think that is not what he was saying before, but you say this is important because it reaffirms those principles of decency. That has been his approach right through.

CHAIRMAN—Let Mr Staniforth finish.

Senator COONAN—In all fairness, that decision would not have been tenable in any way, otherwise the child would not have had any recourse if there had not been some voluntary process undergone there.

Mr Staniforth—I suppose that is the bit that I worry about.

Senator COONAN—That is where the convention may be of some assistance.

Mr Staniforth—Yes. I very respectfully urge of you that, in any recommendations that this committee finally makes, some thought be given to messages—that much cliched word. We are now able to have evidence like this before you, which 10 to 15 years ago

maybe would not have happened—issues we all think are part of Australian decency. Certainly at the school I went to, people were expelled and that was it; you were out.

We are an evolving community. If documents like this, as charters of basic principles, help us evolve, then let us acknowledge that much. How we go on to deal with it is in your hands. We would simply ask that you not throw out babies with bathwater and that you do give great weight to that need to honour decency and have respect as models for our children's behaviour.

Mr HARDGRAVE—Based on your experience, are existing laws which sanction or punish somebody who does the wrong thing sufficient? In other words, there could be an allegation made and evidence produced that this charter punishes the rightdoers rather than the wrongdoers; creates a series of rules and regulations which restrict people's normal conduct—relationships between parents and child. Those allegations are made. On the other hand, have we not sufficient sanctions in our system to deal with child abuse, paedophilia and people such as that? From your experience, are they sufficient; if not, where is the deficiency?

Mr Staniforth—St Peter opened the gate on the second question, and I heard Mr Smith comment about my using the word 'disgraceful.' I will say it again: our systematic approach to child abuse in Australia is disgraceful. Children are very, very hard put to raise a complaint about abuse, for all sorts of reasons. Why would you? This is your home; any complaints, any whistleblow, gets you out of the home. The question of resources is a vital part of that.

Mr HARDGRAVE—What about the question of sentencing? Should there be more mandatory, tougher sentences so that the book is literally thrown at somebody who does this, if it is proved in the court that they have done that? Should there be tougher sentences?

Mr Staniforth—If you gave me the drafting pen there would be, but that is a balance which the whole community has to accept. I would have thought that issues around abusing children should attract some of the biggest penalties that you could possibly imagine.

Mr HARDGRAVE—And the current penalties are not sufficient, not tough enough—the range might be too flexible and allow the judiciary to perhaps go for the softer option?

Mr Staniforth—The absolute challenge in this area is to get these cases in court. You simply do not get these cases in court. If you look at all of the literature—as we are all aware, there are books on it—about how many children in Australia are abused, and if you look at how many people are prosecuted for abuse of children, the gap is enormous. We do not get it to court. And we do not get it to court for a whole—

Mr TONY SMITH—We do not know how reliable the figures are either, do we?

Mr Staniforth—No, but it is such a big gap that—

Mr TONY SMITH—A UN agency said there were 700,000 children who feel hungry occasionally, which is a funny sort of thing to say.

CHAIRMAN—'Sometimes', I think was the wording.

Mr TONY SMITH—'Sometimes feel hungry'. That is what they said in their report, and suddenly that figure of 700,000 and 14 per cent becomes the figure for poverty, which is just ridiculous.

Mr Staniforth—I guess I am talking about something different. Please excuse me but I have got to tell you this because I think it has to be told. I am talking about a case, going back eight years, of a father who anally raped his son—this was in Brisbane—and then lent him out to his mates and was never prosecuted. This boy could not talk for two years. When I first came across him here in Canberra, he could not talk. He had become mute; the psychologist had a word for it. That case has never been prosecuted. It is not on its own; there are hundreds of cases like that which we see.

Mr TONY SMITH—Why hasn't it been prosecuted?

Mr Staniforth—There are a whole range of issues.

Mr TONY SMITH—Isn't there sufficient evidence? Can't he give the evidence of it? Surely, the police have investigated the matter; there would be a duty on your part to inform the police of these matters.

Mr Staniforth—I certainly did.

Mr TONY SMITH—They have investigated it, have they not?

Mr Staniforth—I would assume so. Again, the federal gap here was a problem. All the criminality would have occurred in Queensland and these were care proceedings being brought in the ACT.

Mr TONY SMITH—The question is: how would this convention make it any different?

Mr Staniforth—Because of this reason: if we say, as an ordinary, decent community, that that kind of behaviour towards our children is wrong—and, as a matter of principle, we are saying it is wrong—we accept that the logic, if not the words, of those

kinds of moral principles that are in that convention is right, then, with great respect, what you people say, as representatives of us all, echoes through the community. We say that these principles are right.

Mr TONY SMITH—But isn't the community already saying that? And you are saying it in your submission.

Mr Staniforth—We are saying it, yes.

Mr BARTLETT—The community constantly is saying these are the principles and we abhor that sort of abuse. How does ratifying the convention make any difference? For instance, since the convention was ratified, has there been any change in the occurrence of abuse in Australia?

Mr Staniforth—I think in these last few years, certainly in the last five years—and I am not saying this is cause and effect stuff; I am saying it is coincidental—there has been, in the work that I see happen in the legal system, a much greater prospect of a child being heard, being involved and being able to give evidence in a respectful way. For example, numbers of police forces around the country now have specialist children's abuse units and their processes are a different process.

Mr BARTLETT—But isn't that because there is a greater community awareness of the extent of the problem rather than a sudden desire to adhere to the convention?

Mr Staniforth—Yes, chicken and egg.

CHAIRMAN—This is a convention that has been ratified and it is very different from anything else we have dealt with thus far, because it is all under the new tabling mechanism. What we have done is taken this particular convention—and I outlined this yesterday; you weren't here. Under the joint resolution of both houses, all extant conventions are deemed to have been tabled, so we can look at them. We felt that it was appropriate to look at this one because nearly seven years have lapsed since ratification. So we are dealing with something that has been ratified—that 37C or whatever it is.

What we are really searching for as a committee is some evidence—if indeed there is any evidence—to indicate that, because the ratification took place, something better has happened in terms of the welfare of our children. Are you able to make such a judgment?

Ms Barralet—I would like to make a comment on the importing of certain principles out of the convention into the amendments to the Family Law Act last year. If you take, for example, the issue of consideration of the Aboriginality of a child, lifted straight from the convention, there is a change. The focus on best interests has been beefed up. Alison is more of a specialist in this area than I am; she might like to comment on that.

CHAIRMAN—That is the sort of stuff we are looking for, with due respect. Even though it might only be anecdotal, it is evidence which we should really grasp.

Mr HARDGRAVE—Mr Chairman, I just want to finish off what I have sparked here. What I was trying to get at—and I think that Mr Bartlett, Mr Smith and Senator Abetz have picked up on it 100 per cent correctly—relates to the sanctions, the punishment, that is there for people who actually do the wrong thing by children, despite the fact that this charter exists, despite the fact that there is a benchmark, despite the fact that community standards have been uplifted, awareness has been uplifted, family law acts have been changed and all those sorts of things. There is still a weakness in the whole system. If you do the wrong thing, you are still not really getting very much punishment meted out to you.

Even with something like the Child Support Agency, it has been rattling around for eight years with a couple of variations or amendments; we have just put some more through the House of Representatives and government members are looking at it again. We have still got people who do not want to pay a contribution to the raising of a child that they have—I will generalise—fathered and left with the mother, who are still escaping the net, despite the fact that there is a system in place which means that those who do pay feel awfully hamstrung and punished. Yet there are no great penalties or sanctions imposed on those people who do not do the right thing in that area. Do you find that is the case as well?

Mr Staniforth—As I say, personally, I agree with every word you have said, with great respect, but I would go even further and say that the weakness is that we do not get that criminal process into play at all. It is not only that everything you have said is right, but that so many cases simply do not see the light of day.

Despite the chair's invitation, I cannot jump to that causal thing that says that the shift that I have seen happen in our community—certainly over the last five years—is a causal link somehow with this convention. I am not saying that; I do not know it. But what I do say, as Kay has said, is that it is interesting to see some of the good changes come and be justified in terms of this convention—the Family Law Act was a very good example, and some of the words are pinched.

In terms of an administrative process, the Family Law Council subcommittee, to which I have already referred, tended to cloak its reasoning with this convention as a justification but, as a participant in that, I have to be honest and say that, from my mind, it was done in the terms, 'These are decent principles, why would you not want it that way, and article 14 says it about right.'

Mr HARDGRAVE—As Mr Bartlett said, I think, best of all, society now, regardless of a convention or otherwise, demands that these matters are heard. They are

more aware of it than they were, say, 10 years ago. Is that a fair comment?

Mr Staniforth—I guess I am not sure. I do not know and that is what worries me. It is the opposite corollary. I cannot prove this one way or the other but let us say that those who support the convention are correct. If we amend it or tinker with it—whatever we do—in the wrong way, I would hate for us to be seen to be gainsaying the decency principles. That is my simple point. I would very respectfully urge you, in your deliberations, to keep in mind that many of us out here are justifying decency type decisions on the basis of that convention.

Senator COONAN—I will just follow that with one quick question. This is a real devil's advocate question and you may or may not agree with it. Could this convention be used to suggest that the adversary system of litigation is totally anathema to the best interests of children? You really do not get an opportunity to explore facts in the same way that you would in, say, just an inquisitorial system, where the decision maker can inform themselves however they wish. Is that an extreme example of where the convention could be used? Could we say, 'It is not in the best interests of the kids to have parents slogging it out and have people cross-examined so let us do it a different way?'

Mr Staniforth—I am just trying to think of an article that would come close to supporting that and I cannot. I suppose the closest is 14; is it not? It says there that be some kind of involvement of, so to speak, a third party, given the constitutional issue between parents. I am a very conservative lawyer—

Senator COONAN—So am I.

Mr Staniforth—I would not like to have to run that.

Senator COONAN—I am just interested to know what the implications might be.

Mr Staniforth—I would not like to run it that hard—that sounds to me like it is just pushing the convention too far.

Mr McCLELLAND—You made some comments before in quite defensive terms that there are some sound and moral principles in here, but do you think there are areas where we could do better? I take for example the case that you have given us some account of, of the youth molested by his father. Mr Smith asked you questions which implied that something should have gone further. But I must say that if that situation had been reported to me as a member of parliament I would have, as you did, referred it to the police.

I can well imagine that, if I referred it to the local police and the offence had occurred in Queensland, my reference is as far as it would go. Do you think there is cause—particularly when you have regard to article 3.2 of the convention which casts a

positive obligation on states to ensure the protection of children—for having a child advocate/ombudsman/custodian to whom these matters could be reported and hence that custodian ensure that proper prosecutions and so forth take place?

Mr Staniforth—I am terrorised by growing bureaucracies. There is a danger that every time we have a problem we see the construction of a bureaucracy as the way to handle it, and I really do worry. In the late 1970s and early 1980s there was a growth around Australia in terms of community advocate roles, and governments funded those roles. I think any fair audit today would raise questions about how effective that course has been. My humble response to that is that it is up to each of us. If I am a general duties police office who receives a call from a member of parliament, it is up to me to say, 'Gee, I've got to do something about that.' It is up to training us all. We as lawyers are in there, and we have got to be trained to know what the right responses are to all this stuff. We have all got to stop and think about that.

Having said that—and this isn't contradicting what I have just said—the Commonwealth has a special role, I would suggest, in this area: not from a resource angle, but from a moral persuasion angle. It is the Commonwealth that goes overseas and enters into processes like this, and it is the Commonwealth that can bring that message back to our local communities. It does it through state and territory governments and through its own avenues and, in this area, particularly through the Family Court. I would urge you not to underestimate that role. There is a moral persuasive aspect of the Commonwealth which really is distinct from its resource base. It does not have the majority of the resources that deal in this area—they are state and territory based resources—but it does have a very important influence role around our country.

CHAIRMAN—You see nothing to be gained by DCI's proposal to have a children's commissioner? You are worried about the bureaucracy around that.

Mr Staniforth—I am worried about the bureaucracy.

CHAIRMAN—You do not see that that could give some sort of concrete progress in furthering children's rights, or is it just another imposition in terms of bureaucracy?

Mr Staniforth—If it is going to be results based, if it is going to say, 'These are the outcomes, this is what we are going to do,' I guess my fears would go away. What I would have thought we needed is an audit that says, 'This is what we have achieved; this is why it was worth the money; that is worth doing because you have got your dollar value out of it.'

Senator NEAL—Have you ever been involved in any matters where children have been exploited in employment situations, or are you aware of any matters that legal aid has provided aid in where that has occurred?

Mr Staniforth—I am not aware of any personally. Alison may know.

Ms Osmand—No, none come immediately to mind.

Senator NEAL—Are you aware of any proceedings that have been taken which involve reliance on the convention outside of the legislative framework?

Mr Staniforth—Teoh, I suppose, answers that.

Senator NEAL—Both more relating to the child rather than the third party.

Ms Osmand—In the past I have relied on the convention when I have been making an application for the appointment of a children's representative, and that was prior to the decision in Re K. The decision in Re K made the grounds quite clear. But even since Re K, if a judicial officer is looking uncertain or concerned about whether a child's representative ought to be appointed, I have pointed to the article in the convention that indicates that children ought to be represented and heard in proceedings. In those circumstances I have relied on the convention for the appointment of a child's rep when, in the past, I have acted for a parent.

Senator NEAL—Is there any other case you are aware of involving the child asserting its rights and relying on the convention?

Mr Staniforth—No. Ordinarily, it does not happen that way.

Senator NEAL—I would not have thought so, but a statement was made earlier that children are popping up in courts saying, 'You can't do this to me because of the convention.' I have never heard anything like that occurring and I just thought your experiences might indicate some of those situations arising.

Ms Osmand—As a children's lawyer, that is not the impression that I gain of children in the family law jurisdiction. Children are caught up in a situation that they do not want to be in. They are not often aware of their rights. They are in a desperate situation. They are often saying, 'I don't like it,' when one parent hits the other parent. I had a 12-year-old child whose mother broke her arm and tore chunks of her hair out. When I said to her, 'And how did that make you feel?' she said, 'I didn't like her.' She did not say to me, 'Well, she breached the convention by assaulting me.' Her reaction was, 'I didn't like what she did to me, and I didn't like her for doing it.' So I think the children that I represent in any event are not as au fait with the convention. There seems to be a view that they are and that they are all running around touting the convention, but they are not.

Mr HARDGRAVE—There is folklore on it.

Ms Osmond—Yes, and they are not, particularly in the family law jurisdiction. They are just caught up in a situation that they do not want to be in.

Senator NEAL—What about in the Children's Court? Have any of you had any experience in that area?

Mr Staniforth—Can I take the liberty to really stress about treaties coming within our boundaries—and we do deal with a disadvantaged client base—that it just does not come out that way. These people, 99.9 per cent of the time, are very poorly spoken; the literacy levels are fairly awful. It does not come out, just as Alison says, as even a distant echo of, 'Article 14 says I've got to be involved in this.' It comes out as kind of hands in the pocket, look around, wonder what is going on thing. All the work that is still left to do in this country around children is making them understand rights and responsibilities. It is that civic stuff which we are talking about. We have got a massive job to do to have children understand that consequences flow from a criminal act.

Mr TONY SMITH—But, generally speaking, by the time they get to court they are somewhat mollified to what they were on the street when they were picked up, are they not? That is a matter of commonsense—and you can tell by the records of interview that some of them do. It is absolutely bizarre what they say to police and then, when they come to court, you think they are Peter Pan.

Mr Staniforth—Yes. It is sad to say there are a number where it is just not there—as I say, there are lights on but nobody's home. There is a massive amount of that going on, and that is why this discussion—and I am sure you will accept this—does not translate very well to the streets of our major cities.

Mr TONY SMITH—The first question I will ask to be put on notice as I know we are short of time. In relation to the grants of legal aid for separate representation of children, what are the guidelines in circumstances—if this is appropriate to ask you can perhaps take it on notice—where a father is seeking custody, using the old term, of a child after that child has been with a parent who has passed away and the child is now staying with auntie and uncle and the father has not seen the child for some years? What would be the guidelines for separate representation of that child in terms of a proceeding of that nature, and—

Mr Staniforth—Have I time to have a bash at it now?

CHAIRMAN—Sure.

Mr Staniforth—Most of the commission guidelines would be sympathetic to the Family Court decision in Re K and, as you know, there is a list of almost scriptural items now which show the circumstances where the court thinks an appointment should be made. And that is quite important: it is the court that makes the order saying that a child

rep shall be appointed, and then there is a facilitating role of the Legal Aid Commission. There is a letter that comes over to the commission that says, 'Could you please just fix up the bill?'

Senator COONEY—Which they sometimes refuse.

Mr Staniforth—That is pretty rare—but it is growing. There would be a range of factors which would be relevant. If there were a highly intractable issue between aunt and uncle and the father, then I would be much more tempted to say yes, that is a certainty for legal aid. If it is a 17½-year-old child who is highly eloquent, knows which way—

Mr TONY SMITH—A 12-year-old child in this case.

Mr Staniforth—The court will say that that is a child whose wishes should be given some weight.

Mr TONY SMITH—The net outcomes of that are, if I may say so very quickly for this particular father who has raised this matter with me, that he is almost worn out financially by the process. There have never been any allegations of sexual or physical abuse but just the fact that they drifted apart. The system is working against a natural father and seems to be contradicting the convention in a sense.

Mr Staniforth—Yes.

Mr TONY SMITH—Taking the last point very quickly, I have difficulty understanding what you are saying in the third paragraph of your submission. I can understand the first sentence of it—and I appreciate the comment—but then you say:

. . . the principles underpinning the wording of the Convention have been implemented in Australia as a matter of natural evolution of the Australian community . . .

In effect, are you saying that, as you said before, 'a fair cop' and all those things have come in by way of natural evolution over time, so these principles which underpin the convention, but do not necessarily depend on the convention, have come in anyway? Is that what you are saying?

Mr Staniforth—Yes. It would be a dreadful community which had to rely on this document to say, 'Is this decent? Let's have a look at what this says,' and then come to the view that it is.

Mr TONY SMITH—You go on to say:

The principles—

common law principles, if I can import that—

. . . have allowed children to be involved appropriately in decisions which affect their lives . . .

What do you mean there?

Mr Staniforth—The decency principles—I think that is the best way to describe them—we are developing as a community—and I would hope that we are still on the road and that we have not stopped—have allowed children to have an appropriate level of involvement in the process. I am stressing the word 'appropriate'. I think it is our experience—and I will try to speak for the three of us, but certainly it is mine—that we have not got those situations where children are standing up in court and saying, 'I accuse you, Dad, of giving me a whack on the backside contrary to the convention.' The involvement is, to my mind, at an appropriate level.

Mr TONY SMITH—What are the decisions which are affecting their lives that you are talking about there?

Mr Staniforth—There is a whole range: Family Court matters, school expulsion matters—those kinds of issues where a child should be involved.

Mr TONY SMITH—Thank you for that. At first I was going to jump, but I think you have explained it pretty well.

CHAIRMAN—Thank you very much, that has been very helpful evidence. Do you have any final comments to make before you depart?

Mr Staniforth—I thank you, on behalf of all of us, for inviting us and for being so kind.

CHAIRMAN—Thank you.

[10.48 a.m.]

BLACK, Mr Robert John, Policy Officer, ACROD Ltd, PO Box 60, Curtin, Australian Capital Territory 2605

BRAITHWAITE, Mrs Janet, Executive Director, ACROD Ltd, PO Box 60, Curtin, Australian Capital Territory 2605

CHAIRMAN—Welcome. Do you want to make a short opening statement in relation to your submission?

Mrs Braithwaite—First of all, thank you for inviting ACROD to present before you. We appreciate very much this opportunity to focus on the need for Australia to strengthen its commitment to the Convention on the Rights of the Child. We see it as a powerful mechanism to ensure a better deal for children and young people with disabilities.

ACROD recognises that we are living in an environment of cost-cutting; that is the reality and we understand resource issues. We believe, however, that if we did have a national agenda for children then the rights and interests of children would not be so readily ignored as they often are now.

For example, ACROD is concerned that many programs for children with disabilities were affected when a six per cent efficiency dividend was applied to many funding programs as a result of the last budget. There were exemptions made for programs that were of personal benefit—for example, social security benefits were exempted, as were things like the continence aids assistance scheme.

We would have liked to have seen that kind of policy thinking applied to all programs for children with disabilities. We think there might be a chance of that happening if we have a national agenda. We have recently been campaigning, for instance, against the application of the six per cent funding cut to the states and territories under the Commonwealth-state disability agreement.

Many of our members have looked at the effects of the cut on services. It would mean, for instance, that the Foresight Foundation, which provides group homes for the most severely disabled young children who are both deaf and blind, would be closing one group home. Greystanes children's home would be cutting their community access and independent living skills program. The spastic centre would be reducing its therapy services, and so it goes on.

The Australian government's report on compliance with the convention stated that hearing services are now given free to children and young people under the age of 21. It is noteworthy that, as a result of the last budget, legislation was introduced to remove

eligibility for free services from the 18- to 21-year-old group, so that part of the Australian government report is no longer true. ACROD and the Deafness Forum have made submissions to the Senate inquiry for the reinstatement of the service. We are hoping that that will happen when the Senate sits again next week.

My colleague here, Bob Black, gives policy support to our ACROD National Committee on Children and Youth Services. He has consulted with the membership on the issues relevant to the convention. One of the particular issues that has long been of concern to us is the fact that today, when it is nearly the 21st century, we still have children and young people who are accommodated in nursing homes for the frail aged. It is a terrible thing for the children and the young people, and it is a terrible thing for their families. That is something that ACROD has been talking about for over 10 years, and the convention coming in has not seemed to have made much of a difference.

I should note, though, that in the ACT a special program has been brought in to make certain that all children and young people in that situation are now starting to move out into special community homes. We think there should be a specific program like that on a national scale. Again, we would expect that, if we had a national agenda for children, that type of appalling situation would be addressed.

CHAIRMAN—Thank you very much. Was ACROD consulted in the preparation of the report?

Mrs Braithwaite—The Australian government report?

CHAIRMAN—Yes.

Mrs Braithwaite—No, we were not.

CHAIRMAN—What about the alternative?

Mr Black—Yes.

CHAIRMAN—You talk about a legislative solution in terms of disabled people. How do you see that being done in a way that is not already being done? What further steps need to be taken legislatively?

Mrs Braithwaite—In relation to the particular issue of young people in nursing homes, for instance?

CHAIRMAN—Yes.

Mrs Braithwaite—When Commonwealth, state and territory ministers concerned with community services and disability meet, they should adopt as a principle that, in each

of their jurisdictions, they will have an identification of all young people and children in nursing homes and have a plan of action over five years, that is legislated for, that says that these people will come out.

Senator NEAL—Doesn't the anti-discrimination act already prevent discrimination on the basis of disabilities? Isn't that a legislative backing? Couldn't someone who is unable to obtain accommodation because of their disability take action under that legislation?

Mrs Braithwaite—No, I do not think that is so.

Mr Black—It is complaint based. It does not confer rights as such. Therefore, you have to have people prepared to mount a case and argue it. Often, the people that you are talking about would find it rather difficult to mount that case.

Senator NEAL—I suppose you are saying that there is no legislative base. I accept that the lack of accommodation for disabled young people is a major problem; I am quite aware of that. But, in terms of a legislative base, it appears to me that there is a complaint mechanism available at the moment. I am supportive of the legislation, but it does not seem to have yet resolved the problem. Maybe a further step needs to be taken.

Mr Black—I suppose a partial response to that is that it is a systemic problem which requires a systemic solution. It is not fair to place all the onus on individuals who are often very poorly placed to raise complaints. It is a defect of administration and government that needs to be rectified. It is quite unfair in a sense to blame the victim and to expect the victim to resolve the issue. What is needed, as Janet said, is a system whereby appropriate age relevant services are available to people who need them, and they are able to be accessed and people are directed towards them.

To enlarge a little bit on the situation of younger people in nursing homes, one of the even more worrying aspects, apart from the isolation—and the pattern tends to be one young person per nursing home, with the 79-odd people we talked about spread across 64 nursing homes—is the different pattern for younger people. Older people commonly go into nursing homes and might be there for a maximum of two, three, four, or five years. It is very common that people go there only for a very short length of time before they die.

Senator NEAL—Less than six months, we are told by the government.

Mr Black—Yes, I was trying to be generous. We have figures which indicate that people under 25 have been there for 20 years.

Senator NEAL—I am not suggesting that it is the solution to the problem, in fact I am saying quite the contrary, but there is legislative provision to allow complaints to be made about the inadequacy of accommodation, but really I am putting to you that the

solution is really the funding of appropriate accommodation for young people who are disabled, rather than further legislation.

Mrs Braithwaite—It is a priority question. It is a soluble problem.

Mr Black—And it is a program question. It is a question of having a program which has got a conscious orientation to produce a certain set of results.

Going back to your question about legislation, a number of the people that make up our national committee point to examples in places like Victoria where there is a right conferred in relation to young people with intellectual disability to secure services and to be placed on a register of service recipients.

They draw the parallel between that and the situation of other people with intellectual, physical and sensory et cetera disabilities elsewhere, who do not have any right to services, do not have any status in terms of saying, ‘Look, I need a service,’ and suggest that if there was some legislative cover to ensure that people could either register or be entitled to receive the service on the basis of their disability, or to be assessed for a service, that would redress the balance in terms of making their capacity to ask for and receive services in quite a different situation than it now is.

Senator COONEY—I notice in your submission you say ‘projects are not programs’. I think you have been on to that now with Senator Neal. Could you just explain the distinction you are making there?

Mr Black—The Australian government’s report draws out a number of instances—and I will not be able to give you the examples now—where quite worthy activities take place. When we check with our members, what we find is that almost inevitably they are pilot projects, they are for 10 people, they are time limited perhaps, they cannot serve the needs of the 10 people that they were originally set up for, and there are no plans to replicate them. So what is put across as being something that applies across-the-board, in fact applies to 10 people in one state, and there are no prospects of increasing that or extending that to others.

Senator COONEY—And what you are doing in using that expression ‘projects are not programs’ is saying that programs are what should be undertaken—

Mr Black—Yes.

Senator COONEY—and projects are not adequate to meet the needs.

Mr Black—Projects are a way of starting, but when the impression is given by a reference to the project that that is a widespread occurrence, or that it is universal, it is not appropriate.

Senator COONEY—It is in that context that you go ahead and talk about the principles from one to seven.

Mr Black—Yes.

Senator COONEY—The other point I would like to tease out with you is the second sentence under your heading, 'Responsibility of Australian Government', you say:

> It is quite inappropriate for Australia to enter into such agreements and then point to the division of powers and responsibilities within Australia as precluding effective action to implement them.

I thought there might be some concern there since the nation of Australia is the one body that gives Australian governments representation at the United Nations. Would it not be fair that the responsibilities that the states have should remain their responsibilities, even though we have signed a treaty? Otherwise you are going to have the federal system in some difficulty, are you not? I take it that what you mean by that is, if the Commonwealth signs up on an international treaty, it should then finance all that flows from that, such as the provision of hospitals, adequate schools and the provision of all those social amenities that we need. Are you saying that?

Mr Black—I do not think we are saying that. We are saying that if the Commonwealth signs something which it says, 'Yes, we will abide by those articles,' then it has an obligation to give practical effect. The practical effect relates to people wishing to enjoy the benefits that that convention perhaps extends to them. It does not necessarily imply all those resources. As one of the previous witnesses was saying, it relates to things like moral persuasion. It relates to a system which I gather is now more developed in relation to treaties to ensure that there is adequate consultation with states and territories in relation to what those treaties and conventions might mean and what are the practical ramifications of them.

Senator COONEY—And when you use the expression:

> . . . and then point to the division of powers and responsibilities within Australia as precluding effective action to implement them.

What are you saying?

Mr Black—There needs to be some cooperative activity between the Commonwealth and the states to give practical effect to something which we as a nation have agreed to.

Senator COONEY—So you are talking about the process of getting the treaty signed and the sort of thing that this committee is doing? Is that the sort of thing you are talking about there?

Mr Black—Yes.

Mr HARDGRAVE—Has the lot of people with disabilities in Australia improved as a result of this treaty?

Ms Braithwaite—With the convention of the child, we have not seen any evidence of it.

Mr HARDGRAVE—What about the concept, process or experiment—whatever you wish to call it—of deinstitutionalising people with disabilities?

Ms Braithwaite—Basically, deinstitutionalisation has been a very good thing, because it has meant that most people have now lived in a more homelike environment. However, as ACROD we believe that there are still instances where there are people with a high level of 24-hour support that must live in some care situation. If you want to call that an institution, you can.

Mr HARDGRAVE—I was pleased to hear the qualification, because it is the 'one size fits all' approach and the lot of bureaucracy is always to try and compartmentalise things. But you cannot apply the 'one size fits all' approach to this.

Ms Braithwaite—That is right. We do not believe in that. There is a case for all things. One of the dilemmas with children who are born with very severe disabilities is that we seem in our community to think it is okay to spend all the time and effort in the world on the survival of a baby, then we do not think about the responsibilities afterwards in that respect. The end result is a person with a very high level of disability.

Mr HARDGRAVE—Would you agree that, as a result of deinstitutionalising a lot of people with disabilities, there is now greater pressure back on family based carers and support for them is fairly weak?

Ms Braithwaite—Yes. I am not certain whether the Carers' Association of Australia has made a submission to this committee, but I think they would say that carers are under pressure.

Mr HARDGRAVE—The reason why I raised that is because I am trying to see how deinstitutionalisation works in the context of this convention. I have a constituent who is a very articulate, capable chap who is severely disabled. In fact, he is actually now working for a McDonald's store on a drive through, which is absolutely wonderful. As you would imagine, he lends some strong voice to a lot of the needs and wants of people with disabilities. He just lives down the road from me, so I see him all the time. His argument is that deinstitutionalisation has been a flop in too many instances in his mind and that there are a lot of lonely people who are slotted into homes with parents struggling to try and look after them and so forth. Are you aware of many cases like that?

Mrs Braithwaite—Yes, we are. A lot of our members constantly report that, for example, with the scaling down of what used to be called sheltered workshops—and what we now call business services—over the last seven or eight years, a lot of people who worked in them and then had a much fuller life are now sitting at home watching TV and doing nothing. There is an enormous amount of social deprivation for people with disabilities.

Mr HARDGRAVE—Yes. So in that context, deinstitutionalisation in those examples would in fact be in contravention of the moral spirit of this convention?

Mrs Braithwaite—Yes, that is the trouble. With moves to the broader principle of decency sometimes you have some inadvertent bad results around the edge.

Mr HARDGRAVE—What is being done to try and fix that up?

Mrs Braithwaite—Organisations like ours constantly lobby to say that people must have options to give them a better quality of life and, if it does not fit the political correct option, then they still need other ones.

CHAIRMAN—So are you arguing that the Disability Services Act should be amended and amended radically, particularly in terms of deinstitutionalisation?

Mrs Braithwaite—You mean the Commonwealth Disability Services Act?

CHAIRMAN—Yes.

Mrs Braithwaite—No, we are actually not arguing that it needs to be amended drastically, because it is enabling legislation rather than prescriptive. What has happened in recent years—and especially lately—is that a more liberal interpretation is being placed on what before were very strict guidelines in some areas. Of course, the Commonwealth government now really only has responsibility for employment services. The rest have gone to the states and territories.

CHAIRMAN—What about severely disabled children and what measures do you as ACROD see as the solution? What measures would you take, particularly in relation to severely disabled children?

Mrs Braithwaite—Do you mean as far as care and things go?

CHAIRMAN—Yes, generally—measures that are not being taken at the moment.

Mrs Braithwaite—Bob is the expert, but it is in our submission. I can tell you that therapy services, respite care services, et cetera—especially therapy for children attending mainstream schools and that support in the mainstream environment—are a huge

commitment. One of the results of the change from specialist schools to integration means that you can have the desirable thing, but you must then be prepared to give those children the support, otherwise those kinds of socialised relations we were talking about will happen.

Mr HARDGRAVE—Can I also say to you that the parent of a disabled child who went from a special school environment where one teacher was looking after him directly into a mainstream school is now worried that her child is going to be subjected to resentment from the other children, because the teacher does not have sufficient support to give the attention that is needed. So in a lot of ways it is not going to help the lot of people with disabilities if there is resentment that is brought in by this mainstreaming.

Mrs Braithwaite—This same debate has been raised for many years.

Mr HARDGRAVE—I think I have heard it before myself, but I thought it was worth drawing it out in the context of this convention.

Senator ABETZ—You would agree that disability per se does not diminish the inherent value of a human being?

Mrs Braithwaite—Absolutely.

Senator ABETZ—Perhaps I can read this to you, 'You are in support of the deliberate killing of babies who are disabled?' and the answer is, 'That is the case.' For reference that is from the Legal and Constitutional Affairs Legislation Committee hearing on Thursday, 13 February 1997 and the answer was given by the compassionate Professor Kuhse. Would that mean that we would be in breach of this convention if that policy were to be pursued?

Mrs Braithwaite—Absolutely.

Senator ABETZ—And would it also be in breach of the convention if we were to abort children prior to birth—it makes sense, does it not, if you are aborting them—solely on the basis of their disability, or on the belief that the child may be born disabled?

Mrs Braithwaite—Are you asking me as Janet Braithwaite or as ACROD?

Senator ABETZ—As ACROD.

Mrs Braithwaite—ACROD does not have a policy on that issue because of the extensive debate. I would say that the majority view of members of the board is that it is an individual person's decision whether they have an abortion when they discover that they are carrying a severely disabled foetus.

Senator ABETZ—Later on in your submission you basically invite us to legislate for the convention to be implemented into domestic law. Is that right?

Mr Black—Yes.

Senator ABETZ—How are we, as parliamentarians, to make head or tail out of the preambular clause which tells us that the child by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection before as well as after birth? That is what the preambular section tells us. Then we go to article 6, clause 1, which states:

State Parties recognise that every child has the inherent right to life.

You have invited us to legislate this convention into Australian law. How would you suggest that we legislate that particular clause into Australian law?

Mrs Braithwaite—Unfortunately neither Bob nor I are lawyers, like the people before us. We are paper pushers and lobbyists. I do not want to be ducking the question, but the trouble is that we can say we think something should be happening, but we cannot sit here and pretend to have the technical expertise to say the solution to how it can be done.

Senator ABETZ—I understand that. Would it be fair to say that you have not considered the detailed effect and implications of importing this convention into our domestic legislation and that you have not gone through it article by article?

Mr Black—No, we certainly have not gone through it article by article. Our decision as ACROD was to limit ourselves not just to kids with disabilities, but to limit ourselves to four or five issues that we thought we might be able to say something sensible on. We were clear that we were leaving lots of things out. We had difficulty doing justice even to those areas that we did cover. To carry on and answer your question, our view is that there are processes of legislative debate which one would assume would be followed in this as in any other case and which would come up with the result that suited Australia that was debated by our representatives.

Senator ABETZ—If it is a result that suited Australia—and I would join with you that that is the basis on which Australia ought to be legislating—therefore we should not be pushed around by the so-called views of the glitterati on the international stage. We ought to be considering what is in the best interests of Australia, but can I suggest to you that that is different to what you say in your submission, where you submit:

Those key issues are:

1. to submit that, as the signatory to the Convention, the Australian Government has a clear obligation and responsibility to ensure that full practical effect is given to the Convention. . .

I read that to mean that you would want basically the whole convention incorporated. I have to say to you that, reading through the convention, you can read it as meaning that abortion on demand is or is not allowed. You can read it that corporal punishment is or is not allowed.

We have a clause in article 15, clause 1, which states:

State Parties recognise the rights of the child to freedom of association.

What does that mean? Does that mean a parent cannot say, 'I will not allow you to go to a particular set of toilets where I know paedophiles hang out, because I am concerned'?

Senator NEAL—That is a pretty long bow.

Senator ABETZ—Senator Neal says it is a pretty long bow and the chances are that that is right. But, if these are fundamental rights—the right to freedom of association—what gives Senator Neal, or Senator Abetz for that matter, the capacity to determine which is the appropriate interpretation of what has to be seen as a very vague clause? Would we not be better off just pursuing what is in the best interests of Australia and not really regarding this convention?

Mrs Braithwaite—I do not think that most people would agree with you, notwithstanding the fact that there may be some small problems in the convention. I think that an earlier witness was saying that was the total concept and the better parts of it are there and should be followed and complied with by Australia. We see it as a really good opportunity to get a policy focus on children and for our area, children with disabilities. So we see the pluses far more than any of the negatives.

Senator ABETZ—I can fully understand that from the disability sector that you come from and I would agree with you. There is the myth being promoted, I would suggest, that this is also about parental rights, because article five tells us that parents have rights. But after having read that, everything else tells us about what the rights of children are and that a parent has a right to limit the child's freedom of association to ensure the wellbeing of the child. It is an absolute right given to the child and there are a lot of other areas, such as in article 13.

Let me go to another article:

The child shall have the right to freedom of expression . . .

I can tell you that I do not think my children will have that at my place as they grow older. Senator Neal has got children and laughs. I would like to think that her children would treat her with some respect and other elders within her household. But the article continues:

. . . this right shall include freedom to seek, receive and impart information and ideas of all kinds.

So a 10-year-old can go down the road and say, 'I want to find out about heroin use' and

they have got an absolute right to seek that sort of information. Once again, it is drawing a long bow, but you can go through article by article in this convention and ask, 'What does it actually mean?' Everybody tells us what a wonderful convention it is and how many countries have signed up to it. Are you aware of how many countries have expressed reservations on this convention, saying that it will not impact on the domestic law?

Mrs Braithwaite—No, I am not aware how many.

Senator ABETZ—That is interesting.

Mr McCLELLAND—Can I come in from a different tack? Is the thrust of your submission that the principles contained as opposed to the specific wording of the convention should be reflected in our legislation?

Mrs Braithwaite—Absolutely. I must admit that we do not make the convention our bedside reading.

CHAIRMAN—It is not a bible; it is a broad set of principles.

Mrs Braithwaite—Yes.

Mr McCLELLAND—Principles of decency that one former witness put to us.

Mrs Braithwaite—Yes.

Senator COONEY—You would be referring to 14.2 and 12.1 as well?

Mr McCLELLAND—And indeed article 3.2, where there is an obligation to protect and care for children. It may not be protecting or caring for them if you are allowing them access to heroine. Indeed, I would submit that you would not be protecting or caring for them if you are allowing them access to heroine or pornography at a young age.

Mrs Braithwaite—We would agree with that.

Mr McCLELLAND—To jump to a second issue. Has your association or anyone done research as to the savings that can be obtained by early intervention with children with disabilities? In other words, are there statistics that indicate that early intervention actually saves money in the long run in terms of making them employable and self-sufficient? Do you know if any work has been done along those lines?

Mrs Braithwaite—We would have to take that on notice. I know Bob has addressed it, but we would certainly have a lot of literature that shows that the child that

has early intervention later develops far more easily and can go into mainstream, et cetera. The real value is in that early intervention. It gives the kid a head start. They cannot wait until they are four years old.

CHAIRMAN—Can you take those on notice? If you can provide us with anything that you consider to be pertinent.

Mrs Braithwaite—We will certainly bring some data on that, yes.

Senator NEAL—I know you mentioned it briefly then, but you are critical of the Commonwealth-State Disability Agreement not providing properly for younger people with disabilities. In particular, you mentioned early intervention. Are there any other areas where you think that agreement is inadequate and should be added to?

Mrs Braithwaite—Therapy, respite, and aids and equipment are all areas that need focusing on. They are crucial, especially in that developmental stage.

Mr Black—I think there is perhaps a general defect in the sense that there is no particular reference to the needs or the type of services that might relate to kids. It tends to be an adult oriented document.

CHAIRMAN—Did you want to make a final statement—any sort of last words of wisdom for the committee before you go? Here is your opportunity.

Mrs Braithwaite—No, thank you. A national agenda for children is what we want.

CHAIRMAN—Thank you very much.

[11.21 a.m.]

CHARLESWORTH, Professor Hilary Christiane Mary, Professor of Law, Research School of Social Sciences, Australian National University, Canberra, Australian Capital Territory

McCORQUODALE, Mr Robert Gordon, Deputy Dean (Graduate Studies), Faculty of Law, Australian National University, Canberra, Australian Capital Territory

CHAIRMAN—Welcome. Would you like to make a short opening statement in relation to your submission to the committee?

Mr McCorquodale—We would. First of all, I would like to thank the committee, on behalf of both of us, for the opportunity to speak to you. We are both appearing as independent academics who teach and research in the area of international human rights law. We are both going to make a short statement. I will deal with the significance of the convention at the international level and Professor Hilary Charlesworth will address the way in which the convention has been implemented in Australia.

In regard to the significance of the convention at the international level, as you know, its legal status is that 190 countries have ratified it and only three countries have not—the Cook Islands, which is not a UN member, Somalia and the United States. The United States is not a party to many human rights treaties. In fact, it is the most ratified human rights treaty in the world, and these countries have accepted the legal obligations of the convention.

As well, it has a political and social status in that it is accepted by the international community that the convention is an appropriate benchmark for all societies, and the expectation that all governments have worked towards the implementation of their legal obligations. In fact, I noticed in paragraph 26 of the submission by the Department of Foreign Affairs and Trade that it makes the point, which is absolutely accurate, that at the international level the convention has been remarkably successful in acting as a catalyst for change and providing a practical framework for addressing the needs of children. Particularly within the Asian region, most governments have responded quickly and positively to it.

What obligations are there under the convention? There is an obligation to report, firstly two years after entry, then every five years. Australia has submitted its first report, which has not yet been considered by the committee. The committee is only a committee of 10 members, they are only part-time, they have limited powers. There is no individual petition under this convention.

There are a number of general legal obligations which arise from Australia's ratification of the convention. Hilary Charlesworth will deal with those in her opening

statement, although I make the point that some of the rights are for immediate implementation and some of them are for steps to be taken. They are not all an immediate obligation.

Australia, as you know, has only one reservation to the convention. It does not have, for example, a federal reservation, which it has in some of the other human rights treaties.

With regard to the parameters of the convention, I think it is worth while mentioning three points. The first is that, as we noted in our written submission, the convention is based on two concepts: firstly, that each person, solely by the virtue of being human, is entitled to enjoy the full range of human rights; and, secondly, that children are people in their own right and they are not appendages or chattels of others simply because others are of an older age.

The second, and obviously crucial, aspect is the notion of the best interests of the child, because its primary consideration, under article 3 of the convention, as you know, is not defined, and that does not make it very easy from a legal or political perspective. But that means it is up to each country to clarify within their own jurisdiction what that means. The phrase used in international law is 'cultural relativism'; it allows the particular culture of society to be imbued with the principle rather than having a set, fixed meaning.

What that means is that the convention in these terms is flexible; it also means there is some discretion for each country, but it does not mean an absolute discretion for states to do whatever they like. What it means is that there are some limitations within the context of the best interests of the child rather than being an open-ended obligation.

The final parameter of the convention which I would like to mention is the notion of the family. Both the preamble and article 5 in particular make clear that the family and parents' roles are crucial and the parents' rights, responsibilities and duties shall be respected. In fact, the preamble, as you know, states that the family is the fundamental group of society and the natural environment for the growth and well-being of all its members—in particular, children—and should be afforded the necessary protection and assistance so that it can assume its responsibilities within the community. That is not just left in article 5 or in the preamble; it comes up in a number of other articles—article 8, article 16, for example.

The final points I would like to make are concerns which have been raised about the convention itself. The concern which I often read is that it undermines traditional family values. As I have just said, the family is a focus of concern of the convention and the role of the family is vital in regard to the child. The preamble, for example, states:

> The child, for the full and harmonious development of his or her personality, should grow up in a family environment in an atmosphere of happiness, love and understanding.

We all desire this for our children, but, sadly enough, it is not always the case that children do receive this kind of family environment. The convention recognises this and aims to undermine some family values. It aims to undermine exploitation; it aims to undermine abuse of children; it aims to undermine sex, racial, religious discrimination of children; it aims to undermine the denial of children's personality and the denial that children have legitimate interests which may not be identical to those of their parents.

So those are the kinds of values which are undermined. In my view, those kinds of values are not values which one would like to see within Australian society—the kind of values which are undermined by the convention. Many of the submissions about this convention, many of the parties to it, such as the Vatican, have accepted that this convention is the basis for what should be the position in international law. In my view, if the convention is implemented, then it would improve family values, it would improve services for children, so that parents will be enabled to fulfil their role with respect to children, to bring them up in the appropriate atmosphere—to use the term—of happiness, love and understanding.

The other concern is in relation to rights as against responsibilities. The comment is that the focus on rights of children encourages some kind of individualistic and anti-parent, legalistic society. I understand that; we get that comment in all areas of human rights. But children's rights, in particular, are a matter of concern.

The issue is not so much whether or not we get caught in the notion of rights as against other people but the fact that children's legitimate interests should be put into the equation and not ignored. We cannot pretend that parents or governments carry out their responsibilities, so it is necessary to ensure that the legitimate interests of children are taken into account. One would hope that, by clarifying these legitimate interests as rights, it is a reminder of the responsibilities of parents and governments so that their responsibilities are carried out.

The final comment on the concerns is about the unrealistic standards set by the convention. The rights were set out in the convention after many years of debate in which Australia was a major player. It is very hard to deny that children should not have right to life, that they should not have the right to a name, to an adequate standard of living, freedom from exploitation, freedom from torture. But what we often forget is that this convention sets out, as the Commonwealth Attorney-General has acknowledged, only minimum standards for the protection of the human rights of children. Surely, Australia should be ensuring even higher standards than these so that the rights of the convention are meeting the minimum standards and not the maximum.

In conclusion, I would say that, in the light of the international community's clear adoption of the convention as setting minimum universal standards for the protection of rights of the child, and the fact that Australia has ratified the convention, there is international legal, political and societal unanimity that the convention is an appropriate

minimum benchmark for implementation in Australia of the protection of the rights of children. My colleague, Hilary Charlesworth, will now look at how Australia has actually complied with its legal obligations.

Prof. Charlesworth—I wanted to follow on from what Robert has said by looking more at the way the convention has operated within Australia. The obligations and implementation are set out in articles 2 and 4. One of the obligations in article 2 is to implement the convention without any form of discrimination, so you should not privilege some children and so on. That is a fairly straightforward one. Article 4 says that states parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights. This is fairly strong language in international human rights conventions. So it is clear that Australia has undertaken its international obligation of implementation and not to discriminate against any particular group of children.

What I want to suggest briefly is that, while certainly there have been valuable steps in Australia as a result of the implementation of the convention—for example, some of the amendments to the Family Law Act which explicitly rely on the convention—Australia really has not fulfilled its obligations adequately at all. What we would like to urge this committee to do is to recommend proper implementation of the convention through national legislation.

The Australian government's response to this is to say that the general approach in Australia—I am referring here to its report to the UN—is to ensure that domestic legislation practice comply with the convention prior to ratification. That is a rather blanket statement made in this report. In other words, there seems to be implicit the claim that Australian law is already in conformity with the convention. I would really want to question those assertions. I do not think it holds up.

First of all, it is not the case that we generally do not pass legislation. We have the example of the Racial Discrimination Act and the Sex Discrimination Act, which were fairly explicitly in reliance on international conventions. This report also claims there is a complaints mechanism because the convention is appended to the Human Rights and Equal Opportunity Commission Act. But, as the committee would be aware, that is an extremely modest remedy. All it allows is inquiry and ultimately a report to federal parliament. There is no action that flows from that unless federal parliament decides to act. It is a very weak remedy. The Teoh case, which opened up the possibility—it was a very modest possibility—that these conventions should be considered in making administrative decisions, has effectively been stopped in its tracks, as it were, by the two ministerial statements.

I want to give one single example of the way that I think there really is a need to implement the convention in Australian law. The area I have chosen is the area of juvenile justice for Aboriginal and Torres Strait Islander children. I hasten to add I am not a criminologist or an expert in juvenile justice in Australia, but it is very easy to find

material on this, to match it against the international obligations and to see that Australia is really falling badly behind. So I have relied on information supplied by the Australian Institute of Criminology and the Aboriginal and Torres Strait Islander Social Justice Commissioner.

We know that indigenous children are disproportionately represented in the criminal justice system in Australia. In fact, the statistic is that indigenous children between 10 and 17 are 18.6 times more likely to be held in detention than other children. That is the national statistic, and this covers major state variations. For example, in Western Australia, the figure is 32.4. So in Western Australia an indigenous child is 32.4 times more likely to be held in detention than a non-indigenous child in obviously identical circumstances in what they have done. Again, in Western Australia, Aboriginal children make up 57.9 per cent of children in detention, yet they form only 2.7 per cent of the juvenile population. So they are fairly dramatic statistics.

The Australian Institute of Criminology has projected that, given the high proportion of youth in the indigenous community, by the year 2001 there will be a 15 per cent increase in the number of indigenous children in detention, and by the year 2011 there will be a 44 per cent increase in the number of children in detention. Clearly, just on those figures I do not think anybody would deny that there is a problem. There is a case of prima facie discrimination against indigenous children.

How can we explain these figures? What are the reasons for them? We know from criminological research that indigenous children are, first of all, much more likely to be arrested than to receive a summons. They are much more likely to be refused bail, and they are much more likely to receive a detention order than a non-custodial sentence. Indeed, in a recent study in WA it is shown that an Aboriginal child is four times more likely to be imprisoned on conviction than a non-indigenous child who has been found guilty of the same offence. It does seem that there is systemic—it is subtle, but it is systemic—discrimination operating in the juvenile justice system against Aboriginal children.

The problem, I think, with respect to the convention is that the Australian government seems to have decided that issues like this juvenile justice can be effectively left up to the states, but we would want to argue that we need national legislation to implement the convention because otherwise there is no pressure on the states to observe children's rights. We have for example, the legislation in Western Australia—the Young Offenders Act of 1994—which allows the Director of Public Prosecutions to ask for a special court order to add 18 months on to the sentence of any young person who exhibits a pattern of re-offending and who has committed a serious offence. Because, as I have mentioned, Aboriginal children are four times more likely to be detained than non-indigenous children, clearly they are much more likely than other children to bear the brunt of these special orders.

Section 125 of that WA legislation directs the court to give primary consideration to the protection of the community when sentencing young offenders. This, I think, goes against article 3 of the convention, which makes the best interests of the child a primary consideration in all decisions involving children.

It is also clear that article 37 of the convention is violated by this Western Australia legislation. Article 37B protects children from unlawful or arbitrary deprivation of liberty and I think the fact that the Western Australian legislation explicitly puts the protection of the community ahead of accepted notions of justice—this is set out in the legislation—is a violation of article 37. Also article 37 makes detention be punishment, if you like, of the last resort and for the shortest appropriate period of time. The fact that that Western Australian legislation allows the DPP to request a block additional sentence of 18 months goes directly against article 37. It also goes against article 40 of the convention, which puts the child's re-integration into society as a prominent goal.

I do not mean to focus necessarily on these problems in WA. That is just one example of where I think it is necessary. If we did have national legislation implementing the rights of the child, then there would be some recourse against those state laws. What is interesting, when you look at the description of the WA legislation in the Australian report, is that it simply sets out the legislation and makes absolutely no comment about it. That is, I think, one of the problems with this report. It is peculiarly bland. It just collects a huge amount of information and puts it there; it offers absolutely no analysis at all. This is unlike some of our treaty reports. I think some of Australia's treaty reports are really first rate and are quite critical and self-reflective, but this simply is not. It is an unanalytical compilation of material and it does not acknowledge that there are any problems at all in Australia.

In conclusion, that was, as I say, one case study to suggest the need for there to be implementation of the convention at a national level. The adequate protection of children's rights does require uniform national standards and, as I said, we would urge the committee to recommend this.

CHAIRMAN—Thank you. Does the alternative report pick up the point of the inadequacy that you have referred to?

Prof. Charlesworth—No. I think the alternative report is a very worthy document. I have been disappointed by it because it does not work through the convention in a very systematic way and only makes extremely general comments on that particular topic. I found it, if I may say, quite a blunt instrument in analysis of the convention.

CHAIRMAN—Would you use the word 'subjective' rather than 'objective'?

Prof. Charlesworth—For the alternate report?

CHAIRMAN—Yes.

Prof. Charlesworth—Oh, no, I would not use 'subjective' at all. I did look it up; I consulted to see what does it say about this—and it just makes very general statements on issues. It does not offer any particular case studies. It makes a general point about the overrepresentation of Aboriginal and Torres Strait Islander children in custody, but it does not take it any further than that.

Mr HARDGRAVE—I am just wondering, Professor: are you suggesting that children in Western Australia are being arrested because of the fact that they are children or that they are of a particular race, and not because they have been suspected of committing or may have in fact committed a crime?

Prof. Charlesworth—No, I am certainly not suggesting either of those things. The point I am making is that, if we start out acknowledging the disproportionate representation of one group of children in gaol, I think maybe one response might be, 'Well, perhaps indigenous children are inherently more criminal.' Maybe somebody might say, 'Well, this is the reason they are there; they are just inherently more criminal.' I think that response has to be ruled out when you look at the huge variation between the states; the proportion in WA is much higher than anywhere else. Do you say then, 'Okay, it is only Aboriginal children in WA that are inherently criminal, and they are less inherently criminal if they happen to live in Victoria'? I think we have to rule that out as one of the responses.

So when we see this massive lack of balance in representation, we have to start asking the question why. As, for example, the Royal Commission into Aboriginal Deaths in Custody made the point, if you, as it were, set up a system that in effect targets particular groups, then you have an unjust basis. You cannot discriminate between children—if children commit criminal offences they should all be dealt with the same. The point is here that some of the very basic rights that should be accorded to children have, effectively, been removed through this legislation, and its effect is to disproportionately affect Aboriginal children. That is my only point.

Mr HARDGRAVE—You said no, you are not suggesting that why they are being arrested is that they are children and they are of a particular race. But you then said, 'But if you set up a system which targets one particular group', so in fact what you are implying is that because they are children and because they are of a particular race they are, in fact, being arrested. You have reversed the argument in the course of that response.

Prof. Charlesworth—No. I am actually drawing the distinction—I should make this more explicit—between direct and indirect discrimination. I understood your initial question to be, 'Is this legislation directly discriminatory?' I do not believe it is. My point is that there is indirect or systemic discrimination. If one discovers, for example, that many discretionary aspects of the criminal justice system discriminate against Aboriginal

children—if you find, for example, as I said, that Aboriginal children, when they come up before magistrates, are four times more likely than children who have committed identical offences who are non-Aboriginal to receive a custodial sentence—you have to say that, however the legislation is drafted, its effect is one of indirect discrimination against a particular group. That is the problem.

Mr HARDGRAVE—You could suggest almost anything out of those statistics. Certainly I am not suggesting in any way, shape or form, as you said through your previous response, that Aboriginal children in Western Australia are more criminal—I think those were the words you used. I guess what I am trying to nail down is the fact that, despite the fact that they are four times more likely to receive a tougher sentence, there are all sorts of reasons behind that. It may well have been that there are four times as many of them who have been repeat offenders and the court has dealt with them on the basis of giving them a tougher sentence. In other words, I hear what you are saying and I accept that it is possible. I am really just challenging you on this question: surely, in this country, no-one is going to be arrested unless they are, on the basis of evidence, suspected of a crime—no-one. But you are suggesting otherwise.

Prof. Charlesworth—Yes, I am. There is considerable work now done, and it is very respected research, particularly by the Australian Institute of Criminology, which does show, for example, that Aboriginal kids are much more likely to be hassled by police than non-Aboriginal children. We know that, so I do not think we can say that there is complete equality in the way the law actually operates. So it is one thing to look at the words of the legislation; it is quite another thing to look at the way it works on the ground.

If we find that we have legislation that theoretically applies to everybody, but the kids who are constantly getting picked up, hassled, arrested rather than summonsed, refused bail and so on just happen to be Aboriginal, we can see that there is, as I say, something deeply wrong in our actual system. At the moment there is no way of actually challenging that. There was no move by the then Commonwealth government, as far as I am aware, to make any sort of move against this WA legislation on its consistency with the Convention on the Rights of the Child, so I guess I am arguing that there need to be some national standards so we can measure these things against it.

Mr HARDGRAVE—That is fine. That is why I wanted to challenge what you were saying.

Senator COONAN—If an Aboriginal kid is refused bail, presumably it may be—I am just exploring something with you—because the kid has nowhere to go, no-one to supervise him, no effective way of ensuring that he does not get into trouble until he is dealt with, all of those usual sorts of considerations. I am just wondering how national standards really are going to help in practical situations when it is somebody's circumstances that differentiate whether or not the legal process operates, if you like, to

achieve a sort of equality of outcome for all kids. I am coming at it backwards, but I am just interested in how you would see that working.

Prof. Charlesworth—As I said before, I am not a criminologist, but I know there has actually been a study by the Australian Institute of Criminology on the whole bail process. First of all, it is clear that it is not that bail is not granted because there is no place, often, for the children to be sent to. Often there will be views expressed—and there has been quite an interesting study collecting various views of magistrates, I think quite prejudiced views—of, 'Oh, you'll nick off; you won't come back'. So it does not seem to be on so-called objective grounds. If you, say, measured up the way that various different groups are—

Senator COONAN—For, say, a history of absconding; that could also be a situation.

Prof. Charlesworth—As far as I am aware the studies do not bear that out. But, to go to the essence of your question, which is a basic and important one of how national standards are going to change this, I think that if there were national standards that, for example, legislated that there should be no discrimination on the basis of any of the accepted international bases for discrimination in the administration of juvenile justice, then that would give a basis for challenging local, state or territory based practices in these areas. One would actually have to prove to a court that there was some form of systemic discrimination operating, so the burden would be on people wanting to challenge it, to actually marshal the evidence and say, 'Look, there is a de facto system of discrimination operating here.'

Mr HARDGRAVE—You have quoted statistics, but are there statistics to support, say, an anecdotal belief that individual magistrates or judges may be consistently sentencing in a tougher way towards Aboriginal children than not? Can you actually pinpoint particular judges and magistrates acting in this particular way?

Prof. Charlesworth—I would not want to essay an answer to that because I am not familiar enough with the criminological system.

Mr HARDGRAVE—Would you suspect there is?

Prof. Charlesworth—It certainly—

Senator COONEY—In this respect, what if it is just theory about an incident? I am interested in this.

Prof. Charlesworth—Generally, what one finds is yes, you will certainly have some famous people who always stick out. I know this from working as a lawyer; you know that these people always do this. But I guess the argument I am making is that it is

not just a few bad apples in the barrel. I do not think that it is as easy as just saying, 'Oh, look, we will just chuck out these.' What I am speaking about is something that is more system-wide than that. I could try and hunt out a particular incident for you to see if there is that, but my suspicion would be that yes, you would find some people particularly racist in their views, but that a subtle form of racism would permeate the entire system.

This comes out pretty clearly from the report of the Royal Commission into Aboriginal Deaths in Custody, which made the point that there might be some particularly egregious people who constantly say very racist things, but the much larger problem is the unrecognised one of a system that is built on a form of discrimination. I would suspect that that would be the case here.

Mr BARTLETT—I am not convinced that enacting the convention into legislation will change that. The sorts of discrimination that you are talking about there happen anyway in spite of current law to the contrary—as you said, because of subtle prejudice and so on. How is another layer of law going to change that? In fact, you said that it is not the words that are written on the paper in the legislation but how it works on the ground that matters. So I cannot see how simply enacting another law to say that we should not discriminate will work any differently from the current legal system that is based on that premise.

Prof. Charlesworth—I suppose my response to that would be to say that in areas where we do actually have national standards for non-discrimination—for example, sex discrimination—it has been possible in a number of cases that have come up to show that particular practices—let us set aside actually what the law says—within workplaces, banks and so on, in effect build up a regime of discrimination, and they have been successfully challenged.

My argument would be that, if you actually have a national standard against which you can measure the state and territorial practices, that allows a form of a standard against which it can be measured.And this goes on all the time—assessing practices, as opposed to legislation, against national standards. You might find that there is, let us say, a pattern of discrimination in hiring women in banks, just to use a recent case that has come down. So you find that over the years. You are not looking at laws here at all; you are looking at the practices of the particular employer over the years. Our tribunals all the time measure practices against a national standard, and it can say, 'Yes, it is discrimination,' or, 'No, it actually doesn't meet the test.'

I would not see any problem on that basis in implementing the law. In Australia, we have got quite a long and proud tradition of dealing with indirect discrimination through our discrimination laws.

Mr BARTLETT—Perhaps the answer is in education and monitoring rather than in a layer of laws.

Prof. Charlesworth—I would want to have both. I think both are absolutely vital. This inquiry is a very valuable one because it raises the profile of the convention and will have an educative affect in itself. I see that as one of the values of this committee's work, I guess more generally. Certainly, from the perspective of a university academic, it is extremely helpful to have these exercises. I think they simply raise consciousness. But I would not want just to leave it up to education. I would say that you need to go on a number of fronts.

Mr McCLELLAND—Sitting here as a politician—at some stage it may become part of the debate around this table, I suppose—I have a perception, at least, that the community would certainly be prepared to accept national standards dealing with measures that protect children, such as freedom from abuse, freedom from violence, and even standards that go to their development, whether they be disabled or otherwise; for instance, encouraging mass media to put out stuff that encourages the education and development of children. My own perception is that there would be public support for that.

On the other hand, my perception is that there would be strong opposition if parliament were to enact legislation which overrode the ability of states to prescribe penalties for offences that those state legislatures have thought—ill-advised or otherwise—would be conducive to the protection of the community. Do you think there is a point in having national standards which do not perhaps go all the way that you have advocated?

Prof. Charlesworth—I would say yes. Given that our implementation of the convention has been—I am speaking now from an international lawyer's perspective—so half-hearted and so minimal, I think even a partial implementation of the convention would be a good thing.

In response to the issue you raised about the possibility of taking away some of the states' powers, or overriding their powers to prescribe penalties, my feeling—and I am speaking now as a member of the public—is that there has been a lot of publicity in the last few years about the extraordinary difference in penalties. I am not just speaking with respect to children; this has been an issue of community concern generally. On the contrary, people say, 'If I'm arrested for this in this state, I'm going to be treated quite differently from in that state.' There is a sense that this does not have to be a necessary or crucial aspect of federation.

Perhaps the public, as opposed to state politicians, would see a real logic in more generally having national criminal penalty systems. This might be a very good point to start at. We should be treating our children well; it should not matter what state you are in when you find yourself arrested because you have stolen a car and you have had a high-speed chase. You should be treated the same in WA, Tasmania and Victoria. That is my feeling.

Mr McCorquodale—In some areas, such as the family law area, where there is Commonwealth legislation, in fact this is happily accepted. Interestingly enough, the convention has sort of been implemented a little bit in the new Family Law Reform Act 1995, but not directly. It does not refer to the convention; it picks up a couple of random rights and puts them in, and that is it. It is like taking a full look at the convention but not actually doing anything more substantive than that. In those kinds of circumstances where you grab a few rights and throw them in, it is not actually a very effective method of having a national standard because it seems to highlight some areas as against others. What has then happened in legal argument has been that, if it says something about a child's right to contact with their parent, it becomes a parent's right to contact with the child. It gets moved around because there is no broader base on which the courts are looking at it. It is just a case of picking a couple of rights out of the air.

Senator COONAN—That is usually because the parent is the applicant or respondent, as the case may be, and the child is not a litigant, so that is obviously why that happens.

Mr McCorquodale—Of course, but the child is not generally separately represented or with their best interests taken into account, although the legislation now provides a change of wording from 'welfare' to 'best interests'—a child's best interests are taken into account. So, in a sense, by pulling in the whole convention, you could allow that broader base of best interests to be brought in rather than just a couple of little issues.

Senator ABETZ—You indicated that this was the most ratified and accepted convention and, as a result, legal consequences flow from the ratification by these states. Can you tell us how many countries put in reservations?

Mr McCorquodale—I cannot give you the exact number, but quite a number—not by any means all of them. That is not uncommon in any human rights convention. Every single human rights convention has reservations to it. In a sense, that is the way in which countries are able to take up the legal obligation but recognise, particularly, national sensitivities, also making the point that a reservation which is against the object and purpose of a convention is not able to be actualised—it is an invalid legal reservation.

Senator ABETZ—If that is your view, I would be very interested then to hear from you about this: for example, the very first country, Afghanistan, declared a reservation—anything that is incompatible with the laws of Islamic Shari'ah and the local legislation, in effect. Are you saying to me that the fundamentalist Islamic law is not in conflict with certain sections of the convention?

Mr McCorquodale—I would definitely say that a number of areas are—

Senator ABETZ—If it is—and you have conceded that point—how can you assert before this committee that their ratification is of no legal effect? Because if you believe

that, along with all the other Islamic countries, you should not be coming before this committee and telling us that 190 countries have ratified it, when you personally believe that the ratification of Afghanistan, Iran, Iraq and a number of other countries clearly are not legal ratifications, because their reservations are such that they do not adopt the convention.

Mr McCorquodale—Perhaps you would let me finish my previous answer, which was that I would definitely say that most Shari'ah law is largely in accordance with the convention, it is not opposed to the convention. Although we may not like, for example, certain views which mean that children are not necessarily educated in the same way that we would educate them in a liberal democracy, that does not necessarily mean that the concept of the protection of children is not actually a very high and valued one within a great deal of Shari'ah law.

Senator ABETZ—What about freedom of religion?

Mr McCorquodale—Freedom of religion is a difficulty across all the world; it is now a problem common in many societies.

Senator ABETZ—The right to have child brides and arranged marriages?

Mr McCorquodale—Let us pick up your question on freedom of religion. If you have a look at the article in regard to freedom of religion you will see that it actually refers to the parents' interests as well; it is not taken purely as the child by itself. But, just because that reservation may well be, in your view, contrary to some of the particular rights, it does not mean that it is contrary to the object and purpose of the convention, which is to protect the rights of the child. It is not a case that there may be individual articles that would seem inconsistent. I would accept that there may well be some areas which are inconsistent with Australia because they have a reservation to article 37, but that does not necessarily mean that the reservation itself—

Senator ABETZ—But that is a fairly limited reservation, you would have to agree.

Mr McCorquodale—Of course it is.

Senator ABETZ—It is a reservation on all provisions of the convention that are incompatible with the laws of Islamic Shari'ah and the local legislation in effect. That is a pretty massive reservation compared to Australia's reservation on article 37C.

Prof. Charlesworth—I would like to give a technical answer to your question. This may be an interesting thing for the committee to consider because, as Robert has said, in human rights law the whole issue of reservations is a very vexed one, because you often find countries signing on and then, effectively, burrowing out the heart of their

obligations by saying this.

Senator ABETZ—Exactly.

Prof. Charlesworth—Before I heard that one, my favourite one was always the reservation of the Maldives to the Convention on the Elimination of All Forms of Discrimination against Women. It said, 'We accept this convention, but only in so far as it means absolutely no change to any laws we have got anywhere.' I think that is quite a good example to give to students, because it shows the preposterous abuse of reservations. Robert is absolutely correct to say that if they violate the object and purpose of the treaty, at international law, they are considered invalid. The catch, if you like, in the whole scheme is that it relies on other—

Senator NEAL—I just want to clarify one thing. You said 'invalid'—the reservations are invalid not the—

Prof. Charlesworth—The reservations are invalid, yes. What it requires, because the international community is a community of sovereign states, is one or more states to call the state on that. Unfortunately, there is no automatic mechanism; the UN Secretary-General does not sit down and check all the reservations as they come in and say, 'Cross this one out; cross this one out.' The system operating under the Vienna Convention on the Law of Treaties requires other members of the treaty to actually put in objections to the reservation. It would be an interesting exercise for the committee—and I do not have the advantage of a list of all the reservations—to consider encouraging the federal government to start putting in objections to outrageous reservations.

The Australian government has, on a couple of treaties, been quite good in criticising and actually making formal objections to reservations—I know they did to the women's convention. I am not aware of whether Australia has ever made objections to other reservations. To me, it actually eats away at a human rights regime. And it would be a very productive thing if countries like Australia that have reputations as good international citizens decided to be pro-active and say, 'Come to the international community.' I do not think Australia's reservation to 37C could be criticised in any way as being in violation.

Senator ABETZ—Time is slipping by and I have a few other questions. The point I was trying to make is that everybody who has come before this committee supporting the convention flies the flag of 190 signatories saying, 'Isn't this wonderful.' Yet when we look through the reservations many of them in fact gut the principles of the convention. I find it not necessarily as intellectually transparent, of all those that have come before the committee, as I would like.

None of them have told us about the reservations, and substantial reservations, of some of these 190 countries. I find it concerning that those promoting the convention are

not willing to say, 'By the way, in fairness, this is the other side of the coin.' To pursue that line, Professor McCorquodale, you talked about family values and that even the Holy See has signed up on the convention. Their reservation in part B is interesting. It says that 'the Holy See interprets the articles of the convention in a way which safeguards the primary and inalienable rights of parents,' and then mentions a few particular areas.

The Holy See found it necessary to put that reservation on and yet we are presented with the argument on parental rights that there is no concern because even the Holy See has signed on. Yet we are not told that the Holy See signed up with what is a fundamental reservation on the primary and inalienable rights of parents. Why didn't you tell us that that was the basis of the Holy See's signing on to the convention?

Mr McCorquodale—In a sense, it reaffirms my point that the Holy See recognised that the convention has the potential of upholding family values and parental rights. Just to clarify, it is an interpretation they have got and not a reservation in technical terms. They haven't actually put a reservation on any of it only an interpretation.

Senator ABETZ—The parliamentary library information service tells me it is a reservation.

Mr McCorquodale—It is within the broad rubric of reservation but it would be considered an interpretation. Their interpretation is consistent with exactly the point I made that it is quite possible and, in their view, absolutely accurate that this convention does in fact set out rights consistent with parental rights.

Senator ABETZ—In other words, Australia could legislate domestically on the basis of saying, 'Australia will incorporate this convention but on the basis and in a way that safeguards the primary and inalienable rights of parents.' That would then be satisfactory for the world community because it is an appropriate interpretation and we could fully safeguard parental rights. I then ask: what is the purpose of all of these so-called rights of the child that are in this convention if that is an appropriate, acceptable interpretation of the convention?

CHAIRMAN—It is unfair to expect you to react to some of these reservations today. Could you take on notice half a dozen reasonable reservations and make some comment.

Mr McCorquodale—Or unreasonable reservations. I would be very happy to do that for the committee.

CHAIRMAN—Not some of the oblique references but some of the more fundamental things that Eric has thought out.

Senator ABETZ—Yes, thanks for that, Chair.

Senator COONEY—I have found it very useful for people to come back. Could the professor and the doctor come back later on because I do think they are on top of this issue?

CHAIRMAN—As I said yesterday, these are preliminary hearings. We expect, depending on what individual people say and what issues are raised, that we will get people back. These are only first hearings. Irrespective of that it would be helpful, if you agree, to do something like that. Specifically, let us have a look at the Holy See and some of the other areas, maybe half a dozen or so. I will leave that to your judgment. Could you make some comment about whether by doing that they fundamentally fly in the face of the ratification process.

Mr McCorquodale—I think that would be a useful exercise.

Senator ABETZ—We were told that the family is the focus of concern in the convention. There is the preamble clause, which I have to say sounds very much like the objectives of the Lyons Forum, which reads:

> *Convinced* that the family, as the fundamental group of society and the natural environment for the growth and the well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

If that is a fundamental preambular aspect of this convention, I am astounded that everybody who has come before this committee in support of the convention has basically argued for rights of the child or a commissioner of children. None of them have come here and said, 'You have got to make tax policy such that families can afford to feed their children. Why don't you have a family impact statement on every piece of federal or state legislation because, if families are not dysfunctional, the kids will be okay?'

We seem to be fiddling around with the symptoms of dysfunctional families, which are the kids, instead of going right back to the beginning and the preambular clause which says that families are the basic unit, that, basically, if families are okay the kids are okay. But not one of the people submitting so far in favour of the convention has put that sort of emphasis on the role of the family. That is why I think there is a lot of concern within the community that there has only been hot air in favour of the family but nothing of substance.

Would not the government be better served to say that the rights of the child can best be looked after by having proper functional families and that is where 90 per cent of the effort of government ought to be directed to minimise the number of kids who might be the victims of poverty, sex abuse, domestic violence or do not have proper education or whatever.

CHAIRMAN—Eric, with due respect, you are asking the two academics here—

who are here as legal experts—to make a social judgment. They might have some personal views, and I am happy to listen to those views, but they are here in a legal interpretative role rather than as social judges. I hear what you are saying but—

Senator NEAL—That is really a matter for us.

CHAIRMAN—You have made quite a few statements today in the absence of questions.

Prof. Charlesworth—I would like to try half an answer to that. I totally take the point that it is obviously a matter for you as the legislators. Yes, Senator Abetz, I would say that obviously you could not take this convention and whiz it around in a mix master and turn it into a piece of Commonwealth legislation. Obviously, a great deal of work needs to be done. It would not make a lot of sense in Australian law to whiz things around like that.

CHAIRMAN—Such as 'What is a family?' to start with.

Prof. Charlesworth—Yes. But I would say that it is perfectly consistent with the convention if someone said, 'This is a great way to do this is.' Obviously you do not give money to the child but you give money to the family to support the child and so on. The translation of that is for you, the politicians, but that is not in any way inconsistent with the convention. That is one way of translating some of the rights. It is not the only way to translate it. If you had something that only focused on those issues, you would only be taking part of the convention but that is a perfectly valid way of doing it.

I am not saying that it would be an easy task to turn this into a piece of national legislation because there is a lot of opaque, vague language, and precisely because it allows individual states—in the international sense of state—a 'margin of appreciation', which is the technical wording for it, in the way that they translate it into their law. It is not quite the same as some other human rights treaties which have been used in legislation. For example, the Racial Discrimination Act takes a lot of its wording directly from that convention.

CHAIRMAN—But isn't that an incremental process? Governments will pull out things from various areas that might be in various pieces of legislation.

Prof. Charlesworth—Yes.

CHAIRMAN—You eventually pull it out. You are not suggesting, are you, that we have an umbrella piece of legislation which covers the Australian rights of the child?

Prof. Charlesworth—That is one possibility. That is effectively a political question, but it would also be one way of doing it. I can think of advantages and

disadvantages of that. On the other hand, one could have a package of legislation that dealt with different aspects. At the end of the day you want to protect the rights. The form in which you do it does not actually matter incredibly.

Mr McCorquodale—In the same way, I mentioned the Family Law Reform Act that would be picking up some of the points that you make. It could well be an avenue for a great deal of these issues, without which issues such as social security may not be relevant for that kind of legislation.

CHAIRMAN—Unfortunately, we have run out of time. Whilst I feel sure we will get you back, if you could just take on board that particular one, we would appreciate that. It would give us a better feel for some of these reservations and some academic views on whether, as I said before, they might be perceived as flying in the face of real ratification rather than superficial or perceived ratification.

Senator COONEY—Just one point of clarification on article 52. If the committee becomes dissatisfied with this treaty, has it the ability to recommend to government that the treaty be denounced?

Mr McCorquodale—And within one year Australia would no longer be a party; that is correct.

CHAIRMAN—It is set out in the convention.

Prof. Charlesworth—It would be the first country ever to do so.

Mr McCorquodale—Yes, and I think one would have to look at the issue of international obligations.

CHAIRMAN—The other point we perhaps should get on the record, from the experts' evidence that we took yesterday, is that we, as a committee, cannot technically insert further reservations.

Mr McCorquodale—Yes, that is correct.

CHAIRMAN—That is true, isn't it?

Prof. Charlesworth—We cannot amend the treaty. Do you mean Australia cannot make further reservations?

CHAIRMAN—My understanding of the evidence given yesterday was that, now that the thing has been ratified, we can no longer insert further reservations. We can object, as you have suggested, to other reservations but we cannot insert further reservations.

Mr McCorquodale—That is correct.

CHAIRMAN—Could you give us a view on that one as well?

Prof. Charlesworth—Okay.

Senator COONEY—That was quite clearly stated. You have a period during which you can make reservations and, once you have done that, you have accepted the treaty. So you cannot chop and change.

Mr McCorquodale—That is my understanding of this treaty.

Senator ABETZ—So the technical way would be to denounce it, then sign up again with all the reservations you want.

Mr McCorquodale—Yes, but one has to look at the international criticism that would entail.

CHAIRMAN—It was a point that was raised by DCI, in particular. They listened to the evidence that was given earlier in the day and, when they came to the table, in the light of the evidence that was given by A-G's, they had to withdraw that comment. There have been suggestions—and I did not cover this in opening this morning—that this committee has an agenda. I should say to you this committee does not have an agenda. It is not a voice of government. We had the exploratory paper prepared in a very neutral sense and what we are about is looking at all aspects of the convention. If you could give us that as well, that would be very helpful.

Mr McCorquodale—Just to pick up that point, one cannot ignore the international criticism which would follow a denunciation.

CHAIRMAN—Absolutely. Thank you very much.

Luncheon adjournment

[2.03 p.m.]

COONEY, Ms Elizabeth Joan, Research Officer, Australian Catholic Social Welfare Commission, PO Box 326, Curtin, Australian Capital Territory 2605

HARRIGAN, Mr Neil, Deputy Chairperson, Australian Catholic Social Welfare Commission, PO Box 326, Curtin, Australian Capital Territory 2605

O'CONNOR, Mr Paul Toby, National Director, Australian Catholic Social Welfare Commission, PO Box 326, Curtin, Australian Capital Territory 2605

CHAIRMAN—Welcome. Do you have a short opening statement to make before we go to questions?

Mr O'Connor—Yes, we do, Mr Chairman.

CHAIRMAN—Please proceed.

Mr O'Connor—The Australian Catholic Social Welfare Commission is a commission of the Australian Catholic bishops and has a mandate to advise the Catholic bishops of Australia on matters pertaining to national social welfare issues. The wellbeing of Australia's children is an area of great concern to the bishops. Children must be placed at the heart of our community, and the commission welcomes this inquiry as an opportunity to highlight the current status of children in Australia.

The commission supported the Australian government's ratification of the United Nations Convention on the Rights of the Child in 1990, and this support continues. The support is based on the recognition within the convention of the inherent human dignity of every child. This is a fundamental principle of Catholic social teaching and one which should not be subsumed by arguments about the rights of parents or the over-intrusive state. Whilst these issues are important and must be a part of any debate on the implementation of the convention, they should not detract from the importance of the convention in both a national and a global sense.

The Australian Catholic Social Welfare Commission has some major concerns about the position of children in this country. Whilst many children enjoy the benefits of our overall high standards of living, many children are suffering from abuse, neglect, poverty and other forms of disadvantage. There is no escaping the reality that we have let many of our children down. When I say 'we', I include public institutions, governments, families, churches, et cetera.

With increasing economic pressures, many families are having difficulties finding the economic and personal resources necessary to adequately care for their children. Catholic social service agencies across the country are witnessing the consequences of

these pressures every day.

This inquiry provides an opportunity for the Commonwealth government to refocus on Australia's commitment to children. Children are our greatest asset now and in the future. Our public institutions must recognise their obligations to all our children.

In the commission's submission to this inquiry, we raise some particular areas of concern. These areas are child welfare, youth homelessness and income support to families and young people. There are a number of points we wish to make today which relate to both the general and the more specific issues raised in our submission.

Firstly, the commission recognises that the convention is not the panacea to all the ills facing children in this country. The convention provides for frameworks upon which each nation state can build and adopt more specific legislation and policy. The strength of the convention is that it frames the basic developmental and autonomy interests of children as rights—not simply as laudable goals that are at the mercy of resource constraints but as interests that states have an obligation to provide.

Secondly, the commission recognises that the bulk of legislative frameworks in both the Commonwealth and the state-territory jurisdictions meet the requirements of the convention. However, this does not of itself translate to a satisfactory implementation of the convention for all of Australia's children. It is the implementation of the convention which raises some concern for the commission. Again, we welcome this inquiry as an opportunity for the Australian parliament to enter into dialogue with the Australian people on these matters.

Thirdly, if the convention is to be implemented properly, mechanisms must be put in place to monitor this implementation. Our submission raises the option of the Australian government appointing a commissioner for children and an interdepartmental committee which could coordinate a whole-of-government approach to children's policy. Such initiatives are an important way of monitoring the gap between legislation and policy implementation.

Fourthly, in spite of some much publicised concern at the time of ratification, the commission believes the convention has the potential to improve the lives of children and to empower families in their role as primary carers. The preamble clearly recognises that. It says:

> The child, for the full and harmonious development of his or her personality, should grow up in a family environment in an atmosphere of happiness, love and understanding.

We all agree that children should be raised by their family. This is the ideal, and a strong focus of Catholic social teaching. Fortunately, for most children in Australia, this is the case. However, for some children, their families cannot or will not provide them with this

environment.

What the Commonwealth government has agreed to under the convention is to assist families to provide supportive environments in which to raise their children. When it is clear that families cannot meet their obligations to provide a safe, secure and nurturing environment for their children, governments must provide a safe, nurturing and appropriate alternative environment. The aim of the convention is to support families.

Fifthly, article 5 of the convention clearly articulates the rights and responsibilities of parents. Parents must make decisions on behalf of children not mature enough to make their own decisions, and must provide guidance and direction on decision making to their children. This article governs all the provisions of the convention, recognising how particular rights are to be applied and interpreted.

Finally, other concerns have been raised about the separation of children from their families. The convention in article 9 is clear that such separation should only occur when it is necessary for the best interests of the child in the circumstances of abuse or neglect. There is nothing sinister about this power and it already exists in the states' child welfare legislation in order to protect children.

The convention also promotes contact with parents, even after separation, and the importance of children being aware of their background and heritage. Nothing in the convention in regard to child welfare services contradicts the current professional opinion in this area.

In the seven years since the Australian government's ratification of the convention, there has not been a significant improvement in the lives of many of Australia's children. Whilst there has been some raising of community awareness this has been minimal. The present parliamentary inquiry provides the opportunity for this nation to take the next step in upholding the rights of children. The legislative frameworks are already in place and what we need is a commitment from Australia's government to more actively implement the convention. This will involve resources and such resources should be seen as an investment and not a burden. It is at the start of life that disadvantage is laid down and entrenched. It is vital that it is at this stage of the life course that this disadvantage is redressed.

The Australian Catholic Social Welfare Commission is hopeful that this committee will take up the challenge presented to us by our children and more actively and comprehensively promote the rights of every child.

CHAIRMAN—Thank you. As you point out, this convention has been very widely ratified, possibly at unusually high levels. Are you also aware that a number of sovereign states have submitted a number of reservations and one of those reservations is from the Holy See? Are you aware of what that involves? Senator Abetz raised this in evidence this

morning, so he can elaborate in due course. Are you aware of that reservation? If you are, would you like to tell us what that really means?

Mr O'Connor—I am not mindful of what the exact position of that is. We were aware of that before we provided support to the convention in 1990 and 1991.

Ms Cooney—Is there a reservation involving the position of families?

CHAIRMAN—Let Senator Abetz read—

Senator NEAL—There is actually some argument about whether it was an interpretation or a reservation.

Senator ABETZ—Are you aware of the reservations of the Holy See?

Mr O'Connor—As I said earlier, the commission was aware of those reservations at the time. I would have to go back and check to be precisely accurate as to what they are.

Senator ABETZ—So you didn't review the reservations of the Holy See in preparing your submission to this committee?

Mr O'Connor—The commission, when it supported the convention in the first instance in Australia, was aware that the Australian Catholic Bishops Conference supported the convention as well.

Senator ABETZ—Yes, but the question was this: in preparing your submission which we have before us today, did you review the reservations of the Holy See in your letter dated 18 April 1997? Just before writing that, did you review the reservations of the Holy See?

Mr O'Connor—The commission did not.

Senator ABETZ—The Holy See interprets the articles of the convention in a way that safeguards—these are the important words—'the primary and inalienable rights of parents'. One assumes that if parents had inalienable rights no convention on the rights of the child can override those rights of parents that are stated to be inalienable. Where does that fit into the scheme of things generally? Also, from the Catholic perspective, what weight are we to give to this convention? What gives? Are parental rights inalienable?

Ms Cooney—In article 5 of the convention it clearly states that parents do have rights and responsibilities under the convention. Article 5 is to guide the implementation of the other articles of the convention.

Senator ABETZ—With respect, I don't think you have answered the question, have you? If you have a right—an inalienable right—they are two different categories, are they not? If parents had inalienable rights as asserted by the Holy See, how does that marry up with the alleged rights the children have under the convention? Whom are we supposed to believe, the Holy See or the Social Welfare Commission of the Australian Catholic Church, which tells us that children do have rights?

Ms Cooney—I do not think that, in our submission or anything that we have said, we are saying that parents do not have rights. I do not think it is an issue of either/or. I think it is an issue of children having rights. Parents also have rights and responsibilities to oversee the development of their children, to monitor that development, to make decisions for them when they are too young to make those decisions and to guide them in decisions into the future.

Senator ABETZ—What emphasis should we, as a committee, therefore place on the word 'inalienable' which was inserted by the Holy See in front of the term 'rights of parents'? To use the word 'inalienable' suggests that they might be stronger than just ordinary rights, like the rights of the child.

Mr O'Connor—Senator, I am happy to take that question on notice. I will go back and read the preamble and the information and discussion that occurred in the United Nations prior to their final resolution on the specific wording. I will also look at the preamble and those clauses and examine what the Vatican's specific concern was in terms of its interpretation of those specific clauses.

Senator ABETZ—All right. In adopting the treaty, you would undoubtedly accept the preambular clause 5, which starts off:

Convinced that the family, as the fundamental group of society . . .

Would we not be looking after children better by having a commissioner for families, rather than having a commissioner for children, to make sure that we have as few dysfunctional families around as possible? We want to ensure that the number of children who are sexually abused, victims of domestic violence, poverty, et cetera, are minimised as much as possible. Wouldn't we, as a community, be a lot better off trying to fix up families than trying to fix up kids at the other end, as a result of dysfunctional families, and saying the kids have got certain rights?

Ms Cooney—Certainly, in our submission it is quite clear that we support the support of families and that the best way to address children's rights is to address some of the disadvantages that are facing Australia's families. However, I also believe that it is unfortunate but it is the reality that most children—the vast majority—that suffer from abuse and/or neglect do so at the hands of their families. For those children who are some of the most disadvantaged children in our communities, I do not think an Office of the

Family, which I think would be very worthwhile as well, would serve the interests of those children.

Senator ABETZ—If you had an office of the family it would undoubtedly have an educational role. Hopefully, instead of just educating children as to what their rights are, it would also educate families as to what their responsibilities are—that it is not appropriate to bash mum once a week and for children to observe that. And if mum happens to slip out the door, you do not then pick on the eldest kid and that sort of behaviour. How does this convention assist us in what happens in No. 3 John Street in Smithtown? How does the convention impact on those kids?

Mr O'Connor—I think we need to make our position clear. We regard the convention as a useful framework upon which governments can build their own social policies and family support services. We are not particularly concerned whether the full convention is fully agreed to in all its aspects provided that the intent of the clauses contained in the convention about various aspects of family life, particularly in relation to children, are taken up by parliaments across the world, including the Australian governments.

Senator ABETZ—I am usually not one to defend Gareth Evans, but I feel possibly an injustice may have been done to him on page 7 of your submission, at paragraph 2, in the last sentence:

> The Commonwealth Government of the time was clear from the outset that it had no intention of enacting the Convention as domestic law.

As I understand it, Gareth Evans in fact said that, as far as the convention goes, Australia already stacks up. So rather than saying that we have got no intention of implementing this, Gareth Evans was saying that we live up to all the requirements of the convention and that therefore, might I suggest, prior to our signing of the convention we already had all those social and moral structures of our community in place through domestic law. That is basically, I think, what Gareth Evans was saying.

Ms Cooney—Yes, and that relates to the sentence prior to that sentence as well, where it says:

> Australia's laws relating to children enabled Australia to meet all the obligations the Convention would impose—

with that exception, which was about children in adult prisons in some states and territories.

Senator ABETZ—Are you saying that it is only limited to that?

Ms Cooney—That the only area of legislation that Gareth Evans identified—

Senator ABETZ—Yes.

Ms Cooney—As not in line with the convention was that issue of children being put in adult prisons in some jurisdictions because of issues of geography and so on.

Senator ABETZ—That was why we sought the reservation to 37C. But, apart from that, at the time Gareth Evans welcomed the ratification, didn't he say that there was no need to change anything because domestically we were right up there, we were okay? That would suggest, would it not, that all those moral and social frameworks that we have just been told about that the government needs through this convention were already in place in the Australian domestic body politic, and the convention adds nothing to it?

Ms Cooney—The convention does add something to it because, unfortunately, whilst that legislation is in place, the reality is the implementation of that legislation is not upholding the rights of all children. For instance, you have some children who are living in conditions that are not in line with the convention. Even though the legislation is in place—for example, social security legislation—that does not necessarily mean that children are not living in poverty.

Mr BARTLETT—Didn't you say that in the seven years since ratification there has been no significant improvement?

Ms Cooney—Yes.

Mr BARTLETT—Therefore, the ratification of the convention has not added anything to the domestic law that we already had in place in terms of improving the life of children.

Ms Cooney—The minimal implementation of the convention has not added anything.

Senator ABETZ—When was the youth homeless allowance implemented?

Ms Cooney—I am not aware of the exact year.

Senator ABETZ—I am not aware of that exactly, either. It has been suggested in some of the submissions received by this committee that the youth homeless allowance basically is one of these concepts that kids have a right to support. We have—I have got to say to you—these tragic cases of kids, for no good reason, fronting up at Social Security at age 14 or 15 saying, 'I can't get on with mum or dad because,' and the department makes no inquiries with the parents, the kids get funding and, three or four months later, the kids come back home crying, apologising and saying, 'We should never have done that.' You ask them why on earth they did it and they say, 'Well, the money was available so it was an easy option. If the youth homeless allowance wasn't there, we

wouldn't have done it.' Can we see that as one of the negative impacts of some of the principles of the Convention on the Rights of the Child that have, in fact, got out of hand—where the parents are not being involved in the future of the children?

Ms Cooney—My experience of the youth homeless allowance, and children's applications for it, is not that it is handed out willy-nilly. Yesterday I think the Social Security officers indicated that 40 per cent of those applications are rejected. My experience in supporting young people to apply for this allowance is that there is a very thorough assessment. It is not an easy allowance to get; it is quite difficult to get.

They have done studies that show that the majority of young people on the allowance are victims of violence and rejection from their family. I am sure there are cases where what you are saying has occurred, but I think the vast majority of young people on the youth homeless allowance are some of the most disadvantaged children and young people in our community.

Senator ABETZ—No doubt about that.

Mr McCLELLAND—In your experience, if a homeless child, as a result of violence, victimisation or otherwise, was on the streets without any assistance, would it be more likely that that child would fall into prostitution or perhaps drug pushing to sustain themselves if they were without such an allowance?

Ms Cooney—If they are without any sort of income support, or without any other family or other support, then they do not have many other options, unfortunately.

Senator COONEY—This is just a matter of clarification. Senator Abetz's experience seemed to be that all children are well-off and all they need is proper parental control. Is that your experience, that all children in Australia are well-off?

Ms Cooney—It is certainly not the experience of myself as a worker on the ground in Wollongong and Campbelltown which are both areas of high unemployment and disadvantage. Also, the experience of workers in Catholic social service agencies that we have regular contact with across the country is that there are significant numbers of children living in poverty. When we talk about poverty we are talking about being hungry; about going to school hungry not having had any breakfast and not being able to concentrate at school so their education suffers.

We are talking about children who go to school with shoes with holes in them and who do not have adequate clothing during winter. I know there are discussions about how you measure poverty and levels of poverty, but their experience is of children who are facing real poverty and disadvantage that affects all their life chances. The key to our submission is that it is those children that the convention is probably most effective in addressing.

Mr BARTLETT—You described Australia's compliance as minimal implementation of the convention. Yet earlier, in your opening comments, you said that the bulk of legislation does meet the requirements of CROC. In your opening comments, Mr O'Connor, you said that more resources were needed to ensure fuller implementation. How much in terms of resources and how would you see them being used in order to achieve an adequate level of implementation, in your view?

Mr O'Connor—Your question and the previous question indicate the complexities of the issues that you are dealing with when you are talking about social issues and relationships. The intent of the convention is to outline to member states a set of optimal conditions and circumstances in which children can be reared where they are the sole object and outcome of resources that are available to them, either through their families or through the state.

In response to your question in terms of a dollar figure, I am afraid I cannot answer that. I would be happy to take that on notice because there may well be some literature around that can indicate the sorts of areas specifically where people require additional money. I am aware that in the last federal budget there were increases in the Attorney-General's family services program which is providing adjunct and supportive services to families who are stressed. That is a positive move. The issue about funding children's services is obviously a primary issue for states to address since they have the constitutional responsibility.

Mr BARTLETT—So your comment about funding was in terms of more funding for existing programs to address need, rather than funding to set up a structure to implement the recommendations of the convention?

Mr O'Connor—Our proposal to have a commissioner for children is not necessarily a proposal to establish a huge bureaucracy to oversight that. It is simply to have a person or an office to which the Australian government can refer to assess the impact of some of the decisions they are making in other areas that do impact on families, such as regional development, employment policies, et cetera. We are not looking to have a commissioner for children to oversight in great detail what the Australian government's response to children is, because the Australian government does not have a major responsibility for children. It is through the states.

Mr BARTLETT—I am not sure that I agree with that comment. I would think that responsibility is implicit in every decision of government; that the principles under which we as a government operate, and the same with state and local governments, is to enhance the quality and security of the family as well as children. So while it is perhaps not stated and perhaps not monitored by a commission or an agency, it is implicit in every decision that is made.

Mr O'Connor—Well, I suffer because—

Mr BARTLETT—At least that is the ideal, anyway.

Mr O'Connor—It is not made explicit to social policy groups like ours as to how some of the decisions do impact on families and children.

Mr HARDGRAVE—I sometimes worry that we can overregulate and overlegislate to try and overcompensate for the very worst examples in our society. I read in your submission that on the notion of the rights of children to be active participants there is a caveat of 'in accordance with their developmental stage', which I imagine has something to do with their age, maturity, and all that sort of thing. Nevertheless, the statement, with that caveat, says:

Children must be enabled to participate . . . in all aspects of family life and in those activities of society which affect their lives.

Children must always have the right to participate in those decision-making processes which directly affect them.

Can you explain to me what restrictions we are looking at here? There is this nonsensical debate going on at the moment about the age of consent getting down to single figures, or some darn thing or other. I would hate to think that we are talking about matters like that.

Mr O'Connor—I am happy to come back and talk about the age of consent. I can give you an example of an area where some states have made decisions about the age that children should be involved in decision making. I refer you to the adoption legislation in Western Australia where children as young as six have a say in what the outcome is of an adoption process. That age varies across the state jurisdictions, so that in Queensland it may be 15 and in New South Wales it may be 12. That is the sort of regulation and direction that we are looking for from the Commonwealth—to get some uniformity in these laws so that it does not depend on where you live in Australia as to how you get treated.

Mr HARDGRAVE—Do you think age is in itself a fair enough measure or, to use your words, the 'developmental age'? Is there an assessment that can be made that one 10-year-old may be more mature than another 10-year-old, or less mature?

Mr O'Connor—I think that is allowed for within the Western Australian adoption legislation.

Mr HARDGRAVE—Six is an astonishingly young age to be making big decisions, I would have thought.

Senator NEAL—You do not make the decision; you just have some input.

Mr HARDGRAVE—Your opinion is asked. Is that what you are saying?

Senator COONEY—Article 12 says:

States Parties shall assure to the child who is capable of forming his or her own views—

so it has to be capable—

the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

I do not suppose that is terribly radical or revolutionary—not in most families, I wouldn't have thought. Article 14, paragraph 2 says:

States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Would you have any trouble with either of those propositions?

Ms Cooney—No; I think that is perfectly reasonable.

CHAIRMAN—To what extent was the commission involved in the preparation of the first response to the commission and also in DCI's alternative report?

Ms Cooney—Do you mean the government's report?

CHAIRMAN—Yes.

Ms Cooney—We were not directly involved in the government's report.

Mr O'Connor—The first report to the United Nations?

CHAIRMAN—Yes, the first report—the one that is three years late.

Mr O'Connor—We did have some involvement with that. We were not overly happy with the information that various Commonwealth and state departments were providing in the Australian report.

CHAIRMAN—Were those reservations picked up, in part or full, by the alternative report?

Mr O'Connor—I think they were. The initiative for the consultation for the alternative report came from the non-government sector, who were alarmed at the information that was going to the United Nations outlining what the Australian government's position was.

CHAIRMAN—Did you want to check that or are you happy with that as a statement—that, yes, it has picked up your reservations?

Mr O'Connor—I would need to go back. This was some years ago now. I think the consultations were held in 1993—when I was involved. It may have been the first draft of the Commonwealth's report. I am happy to go back—unless you want to add to it, Liz.

Ms Cooney—Only to say that we had some involvement recently with the DCI report through their workshops.

CHAIRMAN—I leave it to you, but if you would like to give us some supplementary information on that, we would be happy for you to take it on notice.

Senator COONEY—I have a point arising out of what you said in answer to the chairman. You found that you were not getting as much information and help from government about these issues as you might have liked—and I understand that the government at that stage was government by a party of which I was a member.

Mr O'Connor—Apart from the time it took for the reporting to come back from the various states and territories—and I do recall there had been a number of state and territory elections which constantly put everything back—the commission found it difficult to find out where the Commonwealth was up to in terms of preparing the report. Some of the information that was coming from the states did not necessarily gel with the information that we knew from our service agencies about the situation on various matters relating to children.

Senator COONEY—Would it help a body like yours if a committee like ours could give you information?

Mr O'Connor—It certainly would.

Mr HARDGRAVE—The witnesses before us are from an organisation that does a lot of wonderful work around Australia. I wondered if I could seek their experience on a submission from their colleagues in the women's league which has suggested—it has not quite directly come out and said it—that abortion is in contravention of this particular convention. What would be the impact of any national legislation to outlaw abortion in order to comply with the convention?

Mr O'Connor—I am happy to take that on notice because I am aware that the Australian Catholic bishops conference secretariat is preparing a submission and it will cover that specific aspect.

Mr HARDGRAVE—There is another suggestion from the women's league that

there needs to be an examination of whether children, by dint of well-meaning government support, are actually encouraged to leave home. I think we touched on that a few moments ago. Would you support such an inquiry? Is there a need for such an inquiry?

Ms Cooney—As I said before, I do not think that the youth homeless allowance encourages children to leave home. I think that what we have seen in the past decade in child welfare services generally is more of a shift towards supporting children in families, which we would certainly agree with. I think it is very important that that happens but, unfortunately, often the support services are not there. So sometimes we are even leaving children in situations which are detrimental to their wellbeing and, in some tragic cases, it results in a child's death.

There is often a public perception that government services encourage families to break down, but I think the reality—certainly in child welfare services—is that that is not the case.

CHAIRMAN—On that point, one of the initiatives taken soon after coming into government last year was the appointment of the Salvation Army fellow to look into that. Was the commission involved in input to his review?

Ms Cooney—Yes, the commission had some involvement in the development of that. It was not actually on the task force, but it had some involvement in the development of the report of the Prime Minister's youth homelessness task force.

CHAIRMAN—Is that ongoing?

Ms Cooney—I think they have some pilot programs now that have come out of that task force.

Mr O'Connor—We are very happy with that initiative. We are waiting to see how the pilot is run in terms of their results.

CHAIRMAN—You want to see project converted to program. Is that what you are saying?

Mr O'Connor—It depends on the outcomes. If the outcomes indicate that it is providing a useful service and it is going to fix up a situation before it gets out of hand, then I think the parliament does need to look at that sort of initiative.

Mr McCLELLAND—It may be stating the obvious, but if a child were unable to access welfare and that child had genuinely been expelled, or domestic circumstances of abuse or assault genuinely prevented that child from living at home—and I understand your evidence, Ms Cooney, is that that is usually the case—if that child were forced into prostitution, would that child, at an early age, be more likely to succumb to AIDS and

hepatitis and hence be a burden on the community in terms of medical assistance and the spread of those diseases?

Ms Cooney—I think that is a potential concern.

Mr McCLELLAND—Are there many repercussions of casting a child onto the street without proper sustenance?

Ms Cooney—Yes, absolutely, and there are also issues of crime, which cost the community ultimately in the long run.

Mr McCLELLAND—Any of you should feel free to answer this. If I could jump back to an earlier issue of inalienable rights of parents, you make a point in your submission that you see the Convention on the Rights of the Child as being consistent with the Holy See's charter of family rights. Is it the case that that charter does not recognise that the rights of parents are absolute? For instance, does the charter say that parents have a right to lock children in a cupboard for days—

Senator ABETZ—Or murder them?

Mr McCLELLAND—Or does it say that parents have a right to keep children away from school? Or does it say that parents have a right to place their child in servitude? In other words, is it the case that that charter of family rights by the Holy See does not recognise parental rights as being absolute and unrestrained?

Ms Cooney—Don't you want us to say we think that would be correct?

Mr O'Connor—There is a momentum of documentation that the church has put out on families. On that specific question, again, I would need to go back and read the relevant information.

CHAIRMAN—You have already indicated that you would take that on notice.

Senator NEAL—You have stated there are a lot of areas that the Commonwealth government does not have power to legislate in and that it really is within the scope of the states. Bearing that in mind, what mechanisms would you suggest the Commonwealth take up in order to encourage the obligation under the convention to be met through the states?

Ms Cooney—In the submission, we present an argument that the Commonwealth should, as signatory to the convention, take more responsibility in particularly the area of child welfare. We looked at the prospect of an agenda for children, where highlights, outcomes for children and benchmarks are set by the convention. That should be coordinated by the Commonwealth, in conjunction with the states, territories, non-government organisations, children and young people. I think the Commonwealth is taking

the lead in some coordination in states and territories in those areas, particularly child welfare where they currently have very little influence other than the child protection council.

Senator NEAL—But who would you see in the Commonwealth as having the responsibility to carry that agenda for children? Should it be a particular department. A commission for children has been suggested somewhere—

Ms Cooney—The Commission for Children has a role independent of government and appointed to the parliament. But within government probably the most appropriate department currently, and the department that does do some work in that area, is the Department of Health and Family Services. It takes the running of child abuse issues. It would probably be the most appropriate department at this stage.

Mr Harrigan—There have been times in the past when a central department has taken advantage of it as well. The Department of Prime Minister and Cabinet in previous years has taken an early role because of its coordination and central role in the government.

Senator NEAL—Essentially through the COAG process?

Ms Cooney—Yes.

Senator ABETZ—Doesn't the current law require, for example, parents to send their children to school? If a parent breaks a child's arm, the parent cannot get up in court and say, 'I have an absolute defence to this because I am the parent of the child.' There are no such concepts in the criminal law, are there? If a parent were to breach the criminal law, as one would against another adult, the same law would apply if they did it to their child.
Mr O'Connor—Criminal law is not our specialty, but I accept what you are saying.

Senator ABETZ—I come back to the matter Senator Cooney raised about article 12 of the convention, which states:

State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

How do you recommend that a state party should assure to the child that capacity? How would that work in practice? How does the government assure to the child those aspects of article 12? How do we legislate for it? What mechanisms do we provide?

Ms Cooney—It depends on the areas you are talking about. Each separate area

may be different—for example, to return to child welfare, if you are talking about separate representation or children's advocates. I do not think there is one mechanism that you can put in place, but article 12 needs to be remembered or implemented throughout all the sorts of public policy.

Senator ABETZ—'In all matters affecting the child', so you have got—

Mr HARDGRAVE—Custody and adoption would be two good examples, wouldn't they?

Senator NEAL—You have to do it separately in each area. I know this is contrary to the normal hearing, but just an example—

Senator ABETZ—Are you answering?

Senator NEAL—No, but it might help you, though.

Senator ABETZ—Oh, good—expert evidence from Senator Neal.

Senator NEAL—No, it is just a suggestion. If you do not want to use the information you do not need to.

CHAIRMAN—Come on, let us not prickle!

Senator NEAL—Under the Family Law Act, there is a capacity for a child to have input into the process and express their views through the counsellor, through a separate representative. In terms of an adoption, a child can express its view and have it taken into account as far as possible. There are huge provisions. You do not have one bit of legislation that says, 'This will cover every possibility where a child might have input.' You deal with it on a situation by situation basis.

Senator ABETZ—Where it may be necessary. Having practised family law, chances are, just as long as you have, Senator Neal, I am aware of all that. But this article says 'in all matters'. If there is a child who is aged 14, upset with a decision of mum and dad, just about the domestic arrangements in the house, does this article 12 cover that sort of situation? If it does, does the state then assure the right to the child by providing them with, say, a legal aid lawyer to argue their case in front of the Commissioner of Children? How does it work out in practice?

Mr Harrigan—I wear another hat; I run the local Centacare in the ACT, which is a welfare delivery service. We have been given funding through the pilot project because of the problem it is to bring the young child back into a meaningful discussion with the parents. I presume legal response is one way, but we are attempting to do it more through mediation and preparing parents for discussion, those sorts of things. So there are

perhaps—

Senator ABETZ—I welcome that. But I am wondering what our obligation as a nation is. If we were to accept the invitation to import the convention into our domestic law, how would we do it in that situation? The work that Centacare and other community groups do, without lawyers and legal argument, to try to get a dysfunctional family functional again is great. I compliment you and your organisation and others that do that. But how do we, as a nation, implement that specific article? There seems to be a lot of uncertainty, no matter what article you pick on, as to what it would actually mean if you were to import it into our domestic law. That is basically the reason I asked the question, to see if you could shed some light as to how it ought to be done in all matters.

Mr O'Connor—I think there is some uncertainty in terms of implementing a number of those clauses, but I would cite the Australian government's decision to establish adolescent mediation services. We would be happy to regard those as Australia picking up its obligation under that clause—that they are providing a range of services for people who are in those situations.

CHAIRMAN—In your submission, unlike just about every other one we have dealt with over the last two days, there is no mention of the High Court Teoh case. I am not suggesting that that is unhelpful, but do you have a view as to the impact of the present government's legislative solution to the Teoh problem? Do you have a view on whether it will help or hinder the processes of implementing the intent of this particular convention?

Ms Cooney—We did not mention Teoh because it is a very complex area and it involves legalities that we do not have experience in. But I think the fact that the Commonwealth is a signatory to the convention should mean something in terms of its application in this country. Perhaps the proposed Commonwealth treaties act will limit the impact of the convention on domestic issues. There is some concern with the response of the government to the Teoh case.

CHAIRMAN—But some concern in relation to what, that perhaps the government is not committed to all aspects of the convention or that it is taking a selective approach?

Mr O'Connor—It think it is confusion rather than concern. Australia is a party to this. We understand that the coalition had some reservations about the Australian government signing it but we are now a signatory. That international environment has had an impact on the way that Australian courts interpret the obligations that governments have signed. At one stage the Australian government was sending a clear message that it was happy about the convention. We are now seeing another side that is saying, 'Just hold on a second. What are our obligations under this international convention? What is its standing?' I would like to use the word confusion and we will wait to see what the outcome is.

CHAIRMAN—I suppose I should have prefaced my question with the statement that the bill is not yet available but it will be available shortly. I assume that, once the bill is introduced, your commission will have a view on the bill.

Mr O'Connor—Our commission could well have a position on the bill. However, there are other national bishop structures that may be better qualified and better placed, such as the research department or the immigration office.

CHAIRMAN—Bear it in mind that Teoh is the direct result of this particular convention.

Senator COONEY—You started by saying that your organisation supports this as a general statement of what ought to happen as far as children are concerned and as far as the family is involved, that you are not so interested in the actual details but rather that you agree with the general thrust. Is that still your position here today? Do you want some specific matters translated immediately into some sort of action or is it the general thrust of the convention that you are interested in?

Mr O'Connor—I think our position is clearly that it is the overall flavour that the convention brings to the Australian domestic situation.

Senator COONEY—Yes, that is what you started with.

CHAIRMAN—I think you made that point in your opening statement.

Senator COONEY—I just wondered whether they had moved from that or whether that was still the position.

CHAIRMAN—Does anybody else have any other questions of the commission? Are there any other general points that you want to make, bearing in mind that this is only a preliminary hearing and we may very well get you and others to come back?

Mr O'Connor—I will just make a comment about a publication that has been produced by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General. That document makes specific reference to various issues relating to the age of consent. The MCCOC took a view that there was no objective criterion in their study for determining what the acceptable age of consent should be. They recognised that there was a lot of confusion and that there are different ages across the jurisdictions, and they have put up a number of recommendations.

The commission would argue that the MCCOC should revisit the issue and develop a set of principles to guide the public discussion on defining the determinants of consent vis-a-vis children and that these principles be applied to any age settings that may be finally agreed upon by the officers committee. What we are really saying is that there

seem to be no guiding principles in this document as to how they came up with their recommendations other than, 'It's a bit of a mess and let's put forward the bare minimum,' which was the case for a number of the states and territories.

CHAIRMAN—Thank you very much for your time. You have been very helpful.

[2.56 p.m.]

DUNCAN, Mrs Rita Patricia, Secretary, Australian Capital Territory Branch, Australian Family Association, PO Box 188, Woden, Australian Capital Territory

MORRISON, Mrs Catherine Mary, President, Australian Capital Territory Branch, Australian Family Association, PO Box 188, Woden, Australian Capital Territory

BALNAVES, Mrs Joyce Elvira, Immediate Past President, Catholic Women's League, Archdiocese of Canberra and Goulburn, PO Box 3259, Manuka, Australian Capital Territory

UHLMANN, Mrs Mary Rose, President, Catholic Women's League, Archdiocese of Canberra and Goulburn, PO Box 3259, Manuka, Australian Capital Territory

CHAIRMAN—Welcome. Does either or both groups have a short opening statement to make to the committee?

Mrs Balnaves—Yes, I have.

CHAIRMAN—We'll let the Catholics go first.

Mrs Balnaves—We are all Catholic. We are ecumenical as well. I have got copies of this for you, and I felt it necessary to add something to this. I would like to point out, before I start, especially in light of ACROD's presentation this morning, that I am totally deaf in my left ear. I only have one ear to hear with, so excuse me if I occasionally have to say, 'Could you repeat that?'

Obviously, there are many aspects of the rights of the child which could be dealt with at such an inquiry. We add the following matters to our original submission as matters which have come to our attention.

We recognise that part of such an inquiry would be to discuss and recommend what legislation might be needed to implement the convention. We would recommend hastening slowly, as far as legislation is concerned, because we already have legislation in Australia which treats the various aspects of care for children.

We agree with the concept of articles 12 and 13—that children should be heard. However, we believe that strong emphasis must be placed on giving due weight in accordance with the age and maturity of the child. In a family situation or even a school situation, a child's freedom of expression must be limited to that situation and the maturity of the child.

There would be many occasions when the child's opinion should be heard but cannot necessarily be accepted—for example, when a family has to move for work opportunities. There will also be occasions when a child is wilful and contrary and needs reproving. It could be maintained in such an instance that the child is not getting total freedom of expression as article 13 implies. It all rests in the interpretation of that article. If it only means that the child should be able to be fully educated and to explore ideas to achieve full potential, then that is admirable. In that case, article 13(2) needs to be brought into play. It states, 'The exercise of this right may be subject to certain restrictions.'

Our concern on this matter arose out of having young children with whom we have a considerable amount of experience telling adults that they do not have to be told what they can do because they have rights. They have obviously, in these circumstances, been taught what their rights are, either wrongly or they have just misunderstood, which children are prone to do. The whole matter as to what age and maturity means is open to much discussion because children, being entirely individual, develop maturity at different ages and no particular age can be set.

In relation to the above, the best interests of the child come into discussion and here family rights and rights of parents come into play. Article 14 needs to be stressed—that parties shall respect the rights and duties of the parents.

In all of the above respects we suggest that children necessarily, for their proper growth, need to learn what is right and what is wrong. This would certainly be in the best interests of the child but may not be considered so by the child. We consider that the old-fashioned idea of right and wrong should be resurgent and might help to overcome much of the crime to which teenagers and pre-teens seem to be prone today.

We have a particular concern about child suicide, which is prevalent, and we understand Australia has one of the highest rates of suicide in the world. It would appear that this often occurs because the child—that is, up to 18, as the convention states—has little or no hope in the future. There have been a number of inquiries into this matter, for example by the National Health and Medical Research Council and the New South Wales state government's inquiry into suicide in rural New South Wales, but no solutions have yet been found.

May we suggest that the emphasis on abortion at the very beginnings of life and on euthanasia at the end of life might well influence young people to feel that there is not much purpose in life. We have taken away in so many instances hope for the future, which life is about.

That brings us to youth unemployment. What have young people to look forward to when on every side they are told there will not be work for them and when the emphasis at all times is that it is only paid work which is of value? Depressing, also, is that in many instances parents may also be unemployed, again producing a sense of lack

of worth and of hope. Work opportunities are very much the area of government and it is surely in the interests of the future of Australia to provide opportunities for employment and training. The closure of CES offices is also of concern, for many young people would have to travel some distances to make contact with the CES office or what has replaced them.

We are also concerned at the diminishing number of child health centres which seems to be a part of policy. Many mothers are encouraged, though it is supposed to be their choice, to leave hospital within 24 hours after the birth of a child. In such instances, child health care centres are vital to help to avoid distressed parents and child.

I would like to slip in here that article 24D, to ensure appropriate health care for expectant mothers, is particularly relevant in light of something that came to my attention at the weekend—that some funding for Aboriginal antenatal clinics may be stopped. In fact, such antenatal clinics provide the introduction to Aboriginal health care which is so very necessary.

There must also, in such instances, be adequate community nurses who can visit the home at times of distress. A point which is also of concern arises when a parent or parents kill their baby through shaking or hitting and the charge against them is reduced to manslaughter, and it would appear that they are sometimes discharged. This certainly gives those of us who read newspaper reports of such instances great concern as to the message it is giving others. We acknowledge that we do not have personal knowledge of such instances and must rely on newspaper reports but we believe that this is an area for examination. We have no wish to see more people in prison than absolutely necessary but this remains a matter of concern.

We have concerns also about pornography. We are aware that child pornography is banned but we are also aware that it still exists. We are, however, also aware of the harm pornography in general can cause children exposed to it. The law can play a part in this quite specifically. The Model Criminal Code Officers Committee addressed this by asking for submissions under the heading ‘Act of indecency with or in the presence of a child’.

There have been examples of mass murderers having been used to watching pornography, yet always there is the argument that there is no evidence of pornography harming people—that the evidence is casual, not causal. We believe that if children have rights and are unsupervised they could readily watch pornographic videos in the home, and we cannot estimate the harm that can be done psychologically.

We have given much thought to the convention and see the Australian government’s role being of great importance, not only in our country, but overseas. There is much evidence of small children having to work in dreadful conditions in some countries and there are also reports of children being stolen for adoption. This is an indictment on us, as well as on the conditions of those countries. This is of special

concern when Australia is reducing overseas aid, which we believe should be increased in an effort to help other countries to achieve the high standards of life which most of our Australian children enjoy.

CHAIRMAN—As a procedural matter, we receive into evidence the addendum to your submission dated 23 April. I now call the Family Association.

Mrs Morrison—We are coming from an experienced field. Neither Rita nor I have any legal background, but only experience in rearing families. The Australian Family Association is a voluntary, ecumenical, non-party political organisation which was founded in 1980 to provide a forum and a vehicle for those individuals and organisations in the community concerned with strengthening and supporting the family.

We believe in raising the status of the family and in the importance to children of good parenting. We do not see bureaucracy as a substitute for family. The association believes that the family is the natural and best mechanism for meeting the needs of children. The greater majority of Australian families are successful in nurturing and rearing well-adjusted children.

We do not deny that there are many cases of neglect, nor do we deny that these children deserve the protection of well-constructed laws. We recognise the objectives of the convention to protect children from exploitation with regard to child labour, sexual abuse, sale, maltreatment, et cetera. But unless this convention acknowledges the rights of parents in rearing their children and recognises that children have responsibilities in respecting parental rights, we envisage that articles 12 to 16 will continue to cause divisiveness and disharmony amongst the most honourable of families.

Despite what is recognised in the preamble of the convention with regard to the family, the preamble, we recognise, is not subject to the law—the articles therein. This is what gives us grave concern. We feel that the convention should safeguard the primary rights of parents with regard to education, articles 13 and 28; freedom of expression, articles 12 and 13; freedom of religion, article 14; freedom of association with others, article 15; and freedom of privacy, article 16.

Senator NEAL—These are the ones you do not agree with, are they?

Mrs Morrison—That is right. We presented a short submission because we are only a very small unit. We are a national body and our state offices, I know, are also putting in submissions. So we kept ours rather limited, but we are quite happy to speak to the articles of concern that we have raised. I ask permission to table here a pamphlet we circulated back in 1989-90 to all MPs as well as to many organisations who raised concern. We were instrumental in setting up a petition which was the largest petition at its time, raising concerns with regard to this convention.

I also would like to table a letter that we received from Alan Cadman at the time. I thought he very succinctly put the concerns down there, recognising that the rest of the world may have a problem with the sale of children, child labour and maltreatment of children—and we recognise that the UN has to deal with those countries—but we also feel that Australia already had in place good laws that were being abided by in all states.

I would like to refer to Gareth Evans and the comments you made earlier to the previous people. Myself and four others had a delegation to Gareth Evans about December 1989 from memory. At the time we felt he had not been briefed properly with regard to this convention. I had to have talks with a member of his department who told me they would brief him prior to our meeting with him, but when we met with him I felt he was not informed as to our concerns and he seemed to be taking up the issue of abortion, which we were not raising at the time. He then told us that he did not see any reason why Australia should not sign the convention. He then went on to say that they would not ratify it. We raised the issue that this was rather hypocritical to be signing the convention but not then ratifying it. From memory, it was a long time ago, I think it was pushed through parliament very quickly in the final stages of the sitting of that year, in December, and then it was ratified about 28 December.

CHAIRMAN—Let me just go back. The first thing we need to do is to accept both the brochure and the letter as exhibits.The second point is that there has been no parliamentary involvement before. That is why this committee now exists. I can explain to you the difference between signature and ratification. This committee, in general terms and with the exception of what we have got before us in this hearing where the convention has actually been ratified, gets involved between the signature, which is the moral intent, and the ratification, which is the intent in international law. Once the treaties are tabled, after signature, we then have 15 sitting days in which to report back to the parliament as to whether the convention—a double taxation, an extradition treaty, whatever it might be—should actually be ratified.

That is what we have been dealing with almost exclusively since we were established last year. We have put through about 70 such treaties since June. In the joint resolution of both houses of parliament—the House of Representatives and the Senate—any conventions that are extant, such as the Convention on the Rights of the Child, are deemed to have been tabled and, as such, we can look at them. That is what we have done with this particular convention. I just want to clarify the situation. Here we are dealing with something that has already been ratified. There was no consultation with the parliament in terms of that ratification. I was heavily involved myself. I remember tabling many thousands of signatures at the time, but they were only petitions. It was only public comment from pressure groups. There was no discussion in the parliament whatsoever before the decision was taken to ratify it. Nobody saw legislation—it was simply an act of the executive and the executive has the right under the constitution to ratify treaties.

Quite apart from the setting up of this committee to take action between the

signature and ratification, we are introducing a piece of legislation in the next few weeks which makes it very clear that, until such time as we introduce domestic laws, then the intent of the convention only has limited intent. The legislation picks up some of the points that both groups have made. There has to be some sort commitment on a legislative basis domestically. I just wanted to make it very clear to you that there was no discussion really, apart from the political rhetoric that went on in 1989 in particular.

Mrs Morrison—Oh, I see. So that is where we have the quote about Mr Peacock at the time trying to bring in reservations?

CHAIRMAN—That is exactly right. He was the shadow attorney-general at the time and I recall, as Senator Abetz would, being heavily involved in that criticism. I and a number of others met with church groups in particular. The point I was going to make—and I wanted to ask the question before Senator Neal asks some—is that, before you tabled that brochure, your statement was reiterating the reservations that you had in 1989, in particular to those clauses 12 to 16. That is basically what you are saying, is it not?

Mrs Morrison—Yes, that is right. So can I clarify that? When you say you had discussions, they were not in parliament?

CHAIRMAN—There was no debate.

Mrs Morrison—No debate in parliament at all.

CHAIRMAN—There has never been. That is why this committee has been set up by the present government because, arguably, despite what Senator Evans said—and I am being a little party political at the moment because we cannot avoid it—that there was consultation with state and local government and with non-government organisations.

We argued at the time that there was not but, most certainly, there was no parliamentary debate, except as an offshoot to some other piece of legislation when people took an opportunity. They were actually tabled under previous tabling mechanisms, but that was it—they were just pieces of paper that were tabled with no debate.

Mrs Morrison—That clarifies it, because we were rather surprised after we heard about the signature and then the ratification.

CHAIRMAN—With this particular one, what this committee has dealt with since it was formed in June last year is a convention that has already been ratified. We can recommend whatever we want to, but there are limitations as to what government, as a result of those recommendations, can actually do within the meaning and within the provisions of the convention.

Senator NEAL—What is the size of the membership of your organisation?

Mrs Morrison—About 2,500 nationwide—that is of membership—but we have affiliations with the National Council of Women and family councils in both Victoria and Western Australia.

Senator NEAL—Are you the organisation that Susan Bastick set up?

Mrs Morrison—Yes. I think she will be talking to this committee; I hope she gets a hearing on her own submission. However, Susan Bastick did not set it up, she came in later.

Senator NEAL—Is this still the views of the organisation expressed in this pamphlet that you have provided us with?

Mrs Morrison—Yes, it is.

Senator NEAL—You define traditional marriage as the marriage of two heterosexual spouses, with the father fulfilling the role of primary breadwinner and the mother fulfilling the primary role of homemaker. It goes on to say:

. . . lifestyles, such as defacto relationships, voluntary single parenthood, and homosexual relationships (are elevated) to a status almost equivalent to that of the traditional family . . .

Are you saying that in your view, families that do not accord with that profile are of less value than a traditional family?

Mrs Morrison—No, we are not stating that they are of less value. This is our opinion as to what constitutes family, and we are well aware that in the International Year of the Family the family was never given true definition because everyone retracted from it. We are just stating what we feel there, and we are not saying whether anyone else is lesser or better.

Senator NEAL—It says elevated almost 'to a status equivalent to that of a traditional family'. Does not that indicate that they are not at the status of a traditional family?

Mrs Morrison—If we are looking at law and contract of law and contract of marriage, I think that is what we were referring to in the status there.

Senator NEAL—I just wanted to know what the views of your organisation are. Are you saying that a family which does not involve two married heterosexual parties and children, with mother at home and father at work, is of less value than any other sort of family?

Mrs Morrison—We have extended from mother at home. In this day and age, it is

entirely the choice of the mother. We like to see the mother have choice and more equity in her choice as to whether she stays at home, but economic times have pushed her out into the work force, so we are not arguing with that.

Senator NEAL—As you are probably aware, only about 15 per cent of Australian families now fit that profile: mother at home, father at work, children. That has become very much a minority grouping within our community.

Mrs Morrison—I would like to see statistics to back that up, with all due respect.

Senator NEAL—I would be happy to provide them to you.

Mrs Morrison—I would be happy to have them.

Senator NEAL—They are readily available. What I am concerned about is whether you are trying to argue that only the children in that sort of relationship are entitled to protection.

Mrs Morrison—Good heavens, no. We did not come here to argue what is family and what the definition is of a family. We argued that well in 1994. What we are here for is the protection of children, but recognising parental rights. If those parental rights come from a de facto relationship, if they are the parents we still recognise parental rights.

Senator NEAL—Are you saying that you no longer distinguish between those different types of families?

Mrs Morrison—No, we do not distinguish—

Senator NEAL—So, to some extent, you have changed your views since—

Mrs Morrison—We have not necessarily changed our views. We have made a statement. It is no longer politically correct to say the 'ideal family', but this is what we believe in. We have many members in our association who are divorced and who are in de facto relationships. We do not deny them membership.

Senator NEAL—You think they are of equal status to those who are involved in a traditional family?

Mrs Morrison—If their interests and concerns are the same as ours, yes.

Senator NEAL—You have expressed a view that any further pursuit of the convention by legislation will further erode the traditional family. Is that a correct understanding of your position?

Mrs Morrison—With regard to these articles we have raised concerned over.

Senator NEAL—So it is only those articles?

Mrs Morrison—Yes.

Senator NEAL—I see; I misunderstood that, I am sorry. Apart from the articles you have raised that you are concerned about, would you be quite happy to see the remaining articles put into Australian law through legislation or other means?

Mrs Morrison—We feel the declaration on the rights of the child proclaimed by the UN 30 years ago more or less gave a far better and more balanced view as to the protection of children because it did recognise the parents' rights, whereas when you recognise family and parental rights in a preamble it does not come into the articles at all. I did hear a reference to article 15, but in that article there are restrictions on how to apply—

Senator NEAL—If the parents' rights were recognised in the articles, would you have a different view?

Mrs Morrison—I suppose we would.

Senator NEAL—I would like to read article 5 of the convention—

Mrs Morrison—I am sorry, that is the one I meant when I said 15.

Senator NEAL—There are a number of them actually. Article 3 says:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 5 says:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 14—and I cannot say these ones I have found are exhaustive—says:

2. States Parties shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent

with the evolving capacities of the child.

Just those three I have found, and I assume that is probably most of them, do tend to indicate to me some respect for the rights and responsibilities of parents.

Mrs Morrison—Can I mention article 5 which we have articulated in the pamphlet. You did not say that it goes on to say:

. . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Senator NEAL—I did read that.

Mrs Morrison—We would like to know who is going to state that these things are 'in a manner consistent with' or 'appropriate direction and guidance'.

Senator NEAL—That is another debate.

Mrs Morrison—No, I do not see it as another debate.

Senator NEAL—You do accept that the articles recognise that parents have rights and responsibilities?

Mrs Morrison—No, I go on to article 14 that you have quoted. It declares 'the right of the child to freedom of thought, conscience and religion'. Parents and guardians are allowed only a limited right to direct children in the exercise of this right by the convention. Again, we have restrictions on parents as to how they apply it.

Mr McCLELLAND—Why do you say they have only a limited right?

Mrs Morrison—It says it in the convention.

Mr McCLELLAND—Why doesn't article 5 give them an absolute right to give direction and guidance?

Mrs Morrison—Because article 5 states, 'in a manner consistent with the evolving capacities of the child'. Who is going to decide this—a court of law? Article 5 continues by referring to 'appropriate direction and guidance in the exercise by the child of the rights'.

Mr McCLELLAND—But isn't the convention itself based on principles of decency towards children? Isn't it really saying that the parents have the right to give guidance and direction in accordance with these principles of decency? Don't you see it that way?

Mrs Morrison—No, we do not quite see it that way. We agree with the principles of decency but we see the restrictions being put on parents in these finer points of law. We have seen children take their parents to court—where they want divorce and that type of thing.

Senator NEAL—When did you see a child take its parents to court?

Mrs Morrison—There was a case in Victoria about four years ago where a child took his parents to court to divorce them.

Senator NEAL—It has never occurred.

Mrs Morrison—I am sorry; I did not bring all my documentation with me.

Senator ABETZ—Would you take that on notice, please?

Mrs Morrison—Yes.

Senator ABETZ—It would be helpful if you could provide the committee with that information.

Senator COONEY—There seem to be two issues. I am not sure whether you are saying that this is a bad document or that it is a document that will have good or bad results, depending upon who will interpret it. Or are you saying both?

Mrs Morrison—We are not saying that the outright document is a bad one. We recognise that there are areas in the world where it is necessary to have laws drawn up to cover all aspects. We feel that Australia already has suitable laws to cover aspects of child care, child protection, et cetera. We are saying that we do not like parental rights being denied in these particular articles that we have mentioned.

Senator COONEY—I think what is being put to you is that these provisions do not take away the parents' rights. You might be right—I do not want to argue that—but you seem to be saying, 'Yes, these provisions do that.' But when it is put to you that they do not, you are asking, 'Who is going to interpret it?' It seems to me that maybe we are floating past each other. I am trying to gather from you whether you are concerned about the interpretation.

Can I give you an illustration: suppose I said that there ought to be a law to honour your father and mother. You might say, 'That's a reasonable proposition but I don't like it because somebody might interpret it in a particular way that either does not do enough honour to the father and mother or that does less honour to the father and mother.' There would be two things there: you might well agree with the principle, as you understand it, of honouring your father and mother; but you might disagree with the way

people interpret it. I cannot gather what your objections are in respect of these articles.

If Senator Neal is right in her interpretation—and I am not saying that she is—do you disagree with the principles that she has expressed? Are you saying, 'Even the principles, as you state them, Senator Neal, are wrong;' or are you saying, 'Senator Neal, I don't think that the way you are interpreting this document is correct'? Can you see the distinction?

Mrs Morrison—You are getting into the legal side of it.

Senator COONEY—It just seems to me that we are having an argument about what the interpretation will be, or who will interpret it, rather than about the principles.

Mrs Morrison—When you refer to these articles that we are concerned with, they are allowing the children the right to express views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child—

Senator COONEY—Would you disagree with that?

Mrs Morrison—Yes, we do. We think parental guidance is needed there, and we can see it in the case of the classroom where they can even have divisiveness with the teachers.

Senator NEAL—But can you not have freedom of expression and parental guidance? I will give you an example—

Mrs Morrison—But parental guidance is not mentioned in the article.

Mr McCLELLAND—Yes, it is, in article 5.

Senator COONEY—In 14.2 it seems to—

Senator NEAL—I will give you an example. A child freely says to you, 'I do not want to do sport'—they freely express their view. You say to them, 'I think it is in your best interests to do some sport; it is good for your health, it is good for you.' If the child is five, you might probably say, 'I think we will enrol you in sport.' If the child is 17, and they say they do not want to do sport, obviously their view and their opinion is going to be more important—it may not be worthwhile to say, 'Well, you have to do sport'. So what I am saying is you can have both freedom of expression and parental guidance balanced against each other, and the weight of each of them varies depending on the maturity, the age, the capacities of the child.

Mrs Morrison—That is right. But I will also put a case study to you of a mother

telling me she has had her child come home from kindergarten and, when she was being told to wipe up or do something, she has been told back that, 'I am my own person and you do not have to tell me what to do'. So this is all very well written down here, but what is being taught to children in the classroom is totally different to what your interpretation of this law is.

Mr McCLELLAND—Does that arise from the convention?

Mrs Morrison—Yes, the rights of children are coming through the classroom.

Mr McCLELLAND—But do you think that teacher and that child were aware of the convention concerning the rights of the child—

Mrs Morrison—The teacher might be.

Mr McCLELLAND—Or do you think that was just insolence? I have got a four-year-old as well, and he comes home and says all kinds of things to me of that nature. I will say, 'Young man, I will give you the facts of life', but he would have absolutely no idea of the convention concerning the rights of the child—and nor do I think that, as learned as she is, his preschool teacher would have any idea.

Mrs Morrison—This is the unfortunate thing. We are getting a lot of reports back to this association, complaints from parents, that their children are coming home and telling them their rights. And this is where I refer to the divisiveness and the disharmony it is creating in very good families.

Mr McCLELLAND—Are you not placing too optimistic a view on the extent to which this convention is being disseminated?

Mrs Morrison—No way.

Mr McCLELLAND—Are you saying that that child's teacher has said, 'You do not have to clean up your blocks'? The directions I have got from my child are otherwise. I have seen it. The teacher says, 'Alright, you have played with that; you put it away.' It is most unlikely, is it not—it is implausible—that a teacher would have said to a child in a preschool environment, 'You do not have to clean up your blocks because the rights of the child say that you have absolute freedom to be a completely irresponsible and ill-mannered child.' That is completely implausible, is it not?

Mrs Morrison—I would say that is implausible. But it is being imbued in society. You can see by my age that my youngest child left school a long time ago.

Mr McCLELLAND—You are agreeing with me it is implausible that a teacher would say that, or enable a child in their class to have that liberty. You have agreed with

me it is implausible. Then, with respect, you are doing a backflip by saying that this has all arisen because of a convention. There is no causal connection there at all.

CHAIRMAN—To be fair, I think really we can go around and around in circles on this arguing the same sort of thing. Basically, all we can finish up saying is that your position in 1989 and your position in 1997 has not changed and that the experience over the last seven years since ratification has not in any way changed that view. That is what you are saying, is it not?

Mrs Morrison—I am saying that exactly and, if anything, it has strengthened it.

CHAIRMAN—That is all we can conclude. We can go around and around in circles as to whether it is the convention, as to whether it is societal changes or whatever it is, but I do not think anybody could put his or her hand on their heart and say that is the only cause, whether it be the convention or anything else. Mrs Uhlmann, you were going to make some points?

Mrs Uhlmann—While listening to and supporting some of the concerns raised by Catherine, the Catholic Women's League was very pleased—we have heard a lot about alienation and all of that—that it is supported by the Vatican. I really think in this day and age we have to be a people of hope. The church is certainly telling us that we have to be a people of hope, because we are surrounded by breakdowns in many ways.

I have had six children and I have been a principal of a school. I have had instances that Catherine is concerned about, but I have always found the best way to work them out is with mutual respect. I think we have to get back to the fact that with rights there are responsibilities. We had a lot of talk about the inalienable rights of parents, but parents have responsibilities. As a member of the church, always, from the very first, when you were doing marriage preparation—which they did not worry about before I got married, you fell into it, I suppose—it was stressed that you had responsibilities to your children from the time they were born, and before they were born.

Whether or not people agree with the church's stance on certain things, every tribe needs some rules. Have you noticed that, if you go way back in history, there were rules and very many of them are very sound rules because they involve health, safety and law. We are having some troubles, I believe, because the law has become wishy-washy in some ways.

If you say that, they try to tell you that you are a right-wing conservative or whatever and silence you. That is a very real danger, and that is why Pauline Hanson is being listened to—because people feel they have been silenced. I actually vote Labor but I think the Labor government was wrong in some of the things they did. Too much political correctness has crept into some things.

I believe there is great potential for good in this convention. I do believe, too, that if you say the law is an ass, it is not such an ass that it does not sometimes come up with the right solutions. There are still very wise people among legislators, among parents and so on. Today's parents cannot possibly totally tell their children what to do, certainly after a certain age. As a teacher, I think we have really got to go right back into the classrooms. People are coming up with programs all the time; everybody wants more money and that is not always the answer.

What we have to do is never give up; we must constantly evaluate what is good and what has failed, where we have wasted the money, how we can spend it more wisely. I think we can then really look after all these people. But it is a matter of building respect. If we look at what occurs in the classroom when children are small—and I have been retired for a while now—the children are taught that they have rights not to be touched or interfered with—protective behaviour. Within that protective behaviour we have to teach children, boys and girls, that yes, they are different, but yes, they have to respect each other; that little boys have a right to think a certain way and little girls have a right.

Recently, in my family, when there was a bit of trouble—and I never like to interfere—between my son and his spouse, I suggested she read a book which is a best-seller entitled *Men are from Mars, Women are from Venus*. We should all read it because in it there is a great depth of wisdom. When you read it, you think, 'I really knew that.' But we forget from time to time. When she was coming home to tell me that I had really brought up my son in the wrong way, he was an academic and he really did not want to cut the grass and all of those sorts of things, I said, 'Have you really asked him how he feels?' If you read the book, the man, who is a psychologist, really starts to listen to his wife, instead of telling her how she feels.

People need to listen to people. We are never going to overcome domestic violence if we only come in from one angle, for a start. We should not only come in from the angle of the woman but from the angle of the man and the woman. What women do not realise is that sometimes they have to learn strategies for safety, so that if your husband comes home really drunk, you do not then attack him verbally. That is not the time to do it. My daughter said, 'How can you put up with dad sometimes, mum?' I said, 'You learn to negotiate and you learn when to keep your mouth shut.' Often, people do not, so what happens? There is a violent situation.

We are only coming from one angle a lot of the time. Perhaps I am a feminist as well, but I think there are degrees of feminism. We need to look at the other person's point of view. There is a very good Jesuit who writes books—Powell, I think his name is—and he practices a thing called vision therapy, which is trying to see the other person's point of view. I think we have to do that in all relationships.

Parents have to see the child's point of view. When a child gets to a certain age, you have to stop and listen to what they are saying. Some of the most brilliant things have

been taught to me by my children and said to me by my children. When I was having trouble with a teenage son, he said, 'You don't listen to me.' When he went away, I thought, 'He is right.' This has the potential to guide us in so many ways.

CHAIRMAN—Does the Catholic Women's League share the view of the commissioner, Mr O'Connor—to put it in biblical terms—that it is not a bible but a general enunciation of principles?

Mrs Uhlmann—A framework.

CHAIRMAN—A framework of principles.

Mrs Uhlmann—Yes.

CHAIRMAN—So you do not see the panacea to the problem as some all-encompassing piece of legislation which ingrains this.

Mrs Uhlmann—Do you mind if I tell you what you do?

CHAIRMAN—That is what you are here for.

Mrs Uhlmann—You go back to the laws you have and look at them. Many are wise. They want always to reinvent the wheel and throw the baby out with the bath water. That is just a waste of time; it is a waste of money. We were at the criminal code hearings. There is much in that that is good, but there are some things that bother us about the age of children and consent and so on, because what we want to do is protect those children.

What the pope says is about the perfect family. When I look back, I think I tried to have the perfect family, but the perfect family is a very difficult thing to have. I can see the mistakes I made and I sometimes apologise to my children for them. What we have to do is also look out from those families to the reality of what is happening out there. I see it in my own family. I might have wished certain things were so and, if they are not, do I say I will never speak to you again? No. This would not be very popular to say, but that is not what Jesus would have done. For me, that is not the message of the gospel. The message of the gospel is unconditional love, but that does not mean unconditional acceptance of any old thing.

Before, we came back to the Ten Commandments. Our laws really were based on the Ten Commandants. Originally, this country was a Christian country. People are arguing now that it is not, but you see what happened at Port Arthur. How many of them went straight to church? Here in Canberra, they packed the cathedral, because it was the biggest church, and they went to pray together. So there is something inherent; there is a spirituality and a divine spark in all.

I was saying to my husband, 'These children that are really damaged, it must be very difficult to try to help them, but you can find their divine spark and rekindle it.' There was a wonderful thing on *A Current Affair* the other night of a young man whose mother overdosed when he was five and then his father overdosed and he was heading for suicide—

Senator ABETZ—It was *60 Minutes*, in fact.

Mrs Uhlmann—Yes, *60 Minutes*—a brilliant story and a wonderful man. The answer really to it all is a feeling of love and acceptance. That man found the key. I thought the governments could tap into that, tap into the parents who are saying, 'I will not let my child watch that TV program because it may do something bad for them.' That is what I really like in here. I try to remember all these things, but my mind fails me from time to time. But there are very good things in here that cover everything like showing pornography, allowing children to have access to it and so on.

What makes me sad is that our own government here in Canberra says, 'It should not be banned because a lot of people are watching it and it makes $34 million a year.' Is money more important than people? Can't we find it from some other source? And so many people will be out of a job. We do not want people to be out of jobs, but is that the best way to earn money? What is happening to our children? Bryant, for instance—

Mr BARTLETT—You have mentioned three things that to you are the key to protecting the right. One was decency and commonsense. One was practice of Christian love. The third one was the current laws. I take it from what you are saying that the combination of those together enables us to apply the principles in the Convention on the Rights of the Child and that we do not need to legislate further in order to ensure that.

Mrs Uhlmann—There is a danger sometimes in constantly legislating, setting something in and then having to go back and change it afterwards. If these are guidelines and frameworks—like the constitutions of some organisations—they guide you and you go back. Looking at the model code, I would direct the paper that I am writing there back to a particular article in here. They were asking should they legislate against pornography in terms of a person who lets a child watch this. We would have called it moral danger once, but those words are unfashionable. But they are real, aren't they?

I think because we have got wishy-washy we have a terrible lot of problems that we have to clean up. Governments tend to be reactive rather than proactive. We should get a little bit ahead of the game. I think we should look at all the good things and work on those and not lose heart because of some of the things that are happening.

CHAIRMAN—You do not see the need to establish a children's commissioner? Do you think that is undue bureaucracy and we should let the thing evolve?

Mrs Uhlmann—I really have not looked into that. Setting up more bureaucracies can cause all sorts of trouble for parents. What the people like Centacare do, where they try to let the parents in, I have to say did not happen in my time as a principal. I know of a very sad case where social welfare came into the school and said they would take the children away because another child had reported some particular behaviour.

That family, as far as I was aware, was a good functional family. What had happened was that the mother really had broken down in terms of being able to look after them somewhat, but they were not bad people. But they did not want that principal to tell that mother before they took the children away. The principal was torn. What was the mother going to do when the children did not get off the bus? This was real. It is not a fib. Putting herself at risk, because she had been told not to say anything for a certain time, that principal said, 'I have to go after school and tell her.' Of course, the mother just fell apart.

To me that was wrong. What should have happened was that there should have been a talking and a listening and a mediation, as they were speaking of. There should have been a bringing together. That social worker overstepped the bounds, I believe, of her role. She may have been well within the law, but that is when the law is an ass because it destroyed that family.

CHAIRMAN—The Family Association does not agree with the need for a children's commissioner?

Mrs Morrison—No, as stated in our submission we looked at the alternate report. I did not bring it with me but I presume members of the committee have it. There where all these recommendations creating an independent state of the office of commissioner for children, federal minister for children, state minister for children in each state and territory and on and on. We feel that is—

Senator ABETZ—Sir Humphrey would be pleased, would he not?

Mrs Morrison—Yes, indeed. But we would like to see—

Senator COONEY—I am sorry, but Mr Bartlett was investigating a question with you and I am not sure whether we quite got the answer. I think you said that you would prefer to see no more laws. I understand what you are saying: we should improve the ones we have and change the ethos—did I get you correctly?

Mrs Uhlmann—I think what I mean is, before you enact any other legislation there may be a need for something in the model criminal code on sexual abuse of children, which we are all terribly worried about. But I think we have to hasten slowly. You should not put in place something that will later be a very difficult problem. We should not race into making laws. Does that answer your question?

Senator COONEY—What you are saying is that there should be—

Mrs Uhlmann—A review.

Senator COONEY—Not that there should not be further laws but that those laws should be made after proper consultation. Is that what you are saying?

Mrs Uhlmann—Yes. We should consult. This is absolutely wonderful. The ordinary person comes up a lot in the model criminal code and that an ordinary person like me has access to members of parliament is a very freeing experience. I have never experienced it, except through the Catholic Women's League, and this is what we should do—consult. Ask the ordinary people.

Senator ABETZ—At the basis of what you are saying is that you cannot fix some of the in-depth problems of society by trying to put a finger in the dike to block a particular leak when there is corrosion behind it. What you have to do is take a holistic approach. As a lawyer who often appeared in court on domestic violence matters for the applicant, I found it very demeaning that domestic violence was somehow categorised. A lot of people with very good intentions said, 'Domestic violence is a problem. We need a new category of law' and as a result somebody who might have belted his wife something chronic no longer was charged with assault under the criminal code, but had a restraining order under some airy-fairy domestic law legislation rather than the law implementing the laws that were already in place.

Domestic violence was seen as a problem, so we fixed it with special legislation. Now there are problems with children and we try and fix that with special legislation, rather than saying, 'Why are there problems with children?'Step back a bit. If we could make our families somewhat more functional, wouldn't that be of great assistance to our community? At the end of the day, one wonders whether it is a question of children's rights, or of more parental responsibility to ensure and encourage parents to do the right thing by their kids.

Mrs Duncan—I feel the two of them go hand in hand. Parental responsibility and—

CHAIRMAN—Chicken and egg.

Mrs Duncan—The child has the rights and, as a parent, you address those rights. Rather than an office for the status of children, if they wanted to set up something we would be happy to have an office for the status of the family and address the children's needs within that office, rather than starting up something separate and then further fragmenting the family in a lot of ways because it does not work completely in that regard.

Senator ABETZ—In that very example you mentioned, of the social welfare worker, undoubtedly that social welfare worker had in his or her mind that his or her duty was only to the children. Therefore, plucking the children out was the thing to protect the children, irrespective of the consequence on other children, the family unit, the extended family—

Mrs Duncan—The family image within their community.

Senator ABETZ—the community at large, at school, et cetera. I think that is the danger when you have these specific little bureaucracies.

Mr McCLELLAND—I want to address this question to each organisation. Does your organisation think the treaty should be renounced? Do you think Australia should renounce the treaty?

Mrs Uhlmann—No.

Mrs Morrison—So far as we can see, if you had these concerns of ours in as reservations, apparently reservations make no difference to the ratification. At the alternate report public forum, the woman there declared strongly that the Vatican did not sign with reservations.

Senator COONEY—I think what Mr McClelland is asking is about the process set out in article 52, that if you want to get out of the treaty you can give a year's notice. I think what is being asked of you is if that is your position, that we should denounce it. Denounce is the technical word.

Mrs Uhlmann—I think it is a very dangerous thing to do.

Mrs Morrison—I would like to take that on notice. Overall, we are not complaining about all the other articles. We are just wanting the protection of parental rights.

Mr McCLELLAND—All right. There have been some shocking examples of child abuse. *60 Minutes* had an example not long ago of several instances—one in Nowra in New South Wales and one in Newcastle, as I recall—where neighbours suspected child abuse was going on, and a two-year-old child and a four-year-old child were killed. If the community is aware of child abuse, to what extent should society be prepared to intervene in the privacy of the family to rescue those children? That is a question I ask each of you.

Mrs Uhlmann—Immediately. I remember attending as a principal to hear about this sort of child abuse. When I listened I thought, 'Why do they send them back?' They were telling these stories where the children would be sent back. The answer I was given, after much hesitation, was: there is nowhere else for them to go. Perhaps governments

need to look at somewhere else for them to go. But if I was the neighbour, I would have to try to get that child out of there.

Mr McCLELLAND—Mrs Duncan, what is your organisation's view on that?

Mrs Duncan—It would be the same. But what we would like to see is more money spent on parenting. Why are these children being continually abused. Perhaps the parents need help in order to address problems that are arising in the family. If they do not get that help, and the children are abused and sent back, what else can you expect—more of the same.

We would really appreciate more money and more recognition being given to the families and parenting skills, and I would not say to the rights of the child as much as the needs of the child. Those needs, I feel, should be addressed within the framework of the family where possible. If there is abuse, then deal with it—and deal with it as soon as possible.

Senator COONEY—Following on from what Mr McClelland asked, I am going to put a proposition to you which I think you will disagree with, but I am not sure that you will. As I gather what you are saying, and that is what I want to be corrected on, you are saying that in a certain way the government should not set standards by which parents and families and children should live; that should be left to the family itself to work out. And what the government ought to do is to make sure they have got enough resources and what have you to live as a family. But there should not be any setting of standards such as you might get—and I am not talking about the terms of the treaty but I am talking about the idea of setting up standards—for the government or for the parliament to set up standards by which families and children and parents should live. As I understand it, you are against that, are you?

Mrs Uhlmann—No, because the government already does that.

Senator COONEY—That is the impression I got.

Mrs Uhlmann—No, because you already do that, because that is what the law does, and that is what our church does. The Ten Commandments would be the basis of how we would live. The standards are there, yes, and they must be maintained. No, we would never say they should not set standards. I think that these ladies are concerned about certain aspects which they have clarified.

Mrs Morrison—What I am saying is that our laws are sufficient. Our Australian laws recognise an Australian culture. Why do we need a UN law to then come in and override what we have already got in place?

Senator COONEY—So what you are saying is that you need standards but the

one set out in here are the wrong ones.

Ms Morrison—I do not think they necessarily fit into the Australian culture, either. I think UN treaties as a general thing have to be very carefully studied when they can override, as I understand it, our own domestic laws.

Senator COONEY—I do not want to go into the technicalities of it at the moment, but you do want standards?

Mrs Duncan—Of course.

Senator COONEY—You talk about the Ten Commandments and what have you. You want that.

Ms Uhlmann—I only use that as a guideline because, once again, that is probably not popular any more. We do not want to devalue our arguments because people might say, 'Well, that is not popular, you are not coming from a sound base.' But we are because, if you are talking about decency, thou shalt not kill was a tenet against which Martin Bryant was judged; thou shalt not commit adultery—it may happen more but they are still grounds for divorce; thou shalt not steal. They are all the things by which we lead a—

Senator COONEY—Can I take the chairman's lead on this. Could you just give us a bit of a discussion, because the impression I have got in some ways is that your associations are not particularly keen on governments setting standards, as distinct, say, from beliefs or something else setting standards. Could you just give us in your own way a little resume?

Mrs Uhlmann—I want you to understand we are quite happy with the convention and we think that we can work within it. Catherine has raised some concerns and I can see what she is saying, where she is coming from. And they are concerns that are out in the community anyway about parental rights, the one example I gave you, and then other rights that might be eroded in certain ways by certain children. But we certainly do not want the laws swept away.

Senator COONEY—But you do want standards, although this might not be the ones that you want.

Mrs Morrison—Yes, we want standards. Through history, laws have been set on morality, haven't they, and morality comes from basics of religion. Morality is not a chosen word these days, unfortunately, but what you have to recognise is the guidelines a government probably needs to set. What we do not like is too much government interference. Now there is a fine line there. And we feel that what is being stipulated here as to how a family, when it is mentioned, should carry out its discipline or its guidance of

children is being too restrictive. Do you follow what I am saying?

CHAIRMAN—I suppose the final point I should make is just in response to comment about UN laws overriding Australian laws: that is untrue.

Mrs Morrison—Is it?

CHAIRMAN—They cannot. There are some legal technicalities which in fact will be corrected hopefully in the next few weeks as a result of some legislation, just to clarify the situation. But in general terms, and I think we would all take a view that that is untrue. That might be a perception, it might be a very strong perception in some quarters, but it is untrue.

I would just like to thank all of you. It is sometimes very difficult at 4 o'clock in the afternoon not to go to sleep, but you certainly have kept us wide awake this afternoon and we thank you for that. This is a preliminary hearing and undoubtedly we will be getting back to you and others in due course. We are about to set off on some interstate travel to test the water, but we thank you very sincerely for your contribution this afternoon.

Mrs Uhlmann—Thank you for the opportunity.

Mrs Morrison—You did ask me about the commissioner for children and somehow I got interrupted. We only see that as worth while within the context of an office of the status of family—that is what we really feel. Family impact studies, we think, should be introduced.

CHAIRMAN—During our visit to Brisbane on Thursday we will be talking about that, because Queensland is the only state with a Commissioner for Children at this point in time. We will be taking evidence from that commissioner.

Mrs Morrison—Good. Thank you very much for your patience.

Resolved (on motion by Mr McClelland):

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

Committee adjourned at 4.00 p.m.