COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: United Nations Convention on the Rights of the Child

BRISBANE

Thursday, 1 May 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

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

For inquiry and report on -

1. the domestic ramifications of Australia having ratified the Convention;

2. Federal and State progress in complying with the Convention;

3. the difficulties and concerns arising from implementation in its current form;

4. possible inconsistencies between domestic jurisdictions and the need for agreed national standards;

5. the need for a mechanism to promote, monitor and report publicly on compliance and to implement public consultation processes;

6. the adequacy of the administrative, legislative and legal infrastructure in addressing the needs of children;

7. the adequacy of programs and services of special importance to children; and

8. any further action required in relation to the Convention.

WITNESSES

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JOINT STANDING COMMITTEE ON TREATIES

United Nations Convention on the Rights of the Child

BRISBANE

Thursday, 1 May 1997

Present

Mr Taylor (Chairman)

Senator Abetz	Mr Bartlett
Senator Neal	Mr Hardgrave
	Mr Truss

The committee met at 10.06 a.m.

Mr Taylor took the chair.

CHAIRMAN—I formally declare open the inquiry into the status of the UN Convention on the Rights of the Child. I thank everybody who has come along this morning. We look forward to receiving evidence on the public record. I will make a couple of comments before we get into the evidence.

This convention was ratified back in 1990 by the previous federal government without, really, any consultation with some of the parties who continue to be critical of this convention. Over the Christmas and New Year break, the Joint Standing Committee on Treaties had an exploratory paper written: a neutral paper—with, I point out, no bias—as to why we had ratified it, what the issues were, and whether in fact we should revisit the convention 6½ years after it has been ratified.

Just on the point of signature and ratification: for those of you who do not know, there is a very marked difference. In general terms, this committee—which was set up last year as one of the first initiatives by the government—was to reinforce the import of this, particularly at the grassroots public level on issues like this, prior to ratification. Signature of a convention simply provides the moral intent by a state, a country. The ratification then backs up and gives it some force in international law. Where this committee is involved, and has been involved since the middle of last year when it was established—and we have dealt with 75 to 80 treaties that have been tabled in that period—is that we are required, under the joint resolution of the House of Representatives and the Senate, to report back to the parliament within 15 sitting days as to whether the parliament—and therefore the government—should agree to ratification.

Where the UN Convention on the Rights of the Child is different is that it is one of the nearly 1,000 treaties that are extant or presently in force internationally with Australia as a party. We are able to look at any of those that we feel appropriate, as all of those are deemed to have been tabled: that is the legal standing of it. That is why we are looking at it. We felt—and I am sure all of us as political practitioners, irrespective of our party political hues, would say this—that there are still some concerns and there are some issues that people would like to air. That has been reinforced in what has happened as a result of our advertising the fact that we will—as a result of reviewing the paper that I mentioned and agreeing on a bipartisan unanimous basis—revisit this convention. There is obviously still a lot of concern out there about what perhaps has been done—and in some cases, more importantly, what has not yet been done—in domestic terms as a result of that convention.

To give you a feel for the size of the reaction to our announcement that we would hold inquiries like this right around the country, in the first 72 hours after we advertised that fact nationally, we had over 1,000 inquiries indicating an interest in giving evidence to this committee. To date, we have had about 150 submissions, some of them very extensive indeed, including the one that we are about to address specifically and others that we will address during the rest of the day.

As I indicated, we have had preliminary hearings. We opened the hearing in Canberra on Monday and, all day on Monday and Tuesday, we took evidence from departments such as Foreign Affairs and Trade; Attorney-General's; Health and Family Services; Education, Employment, Training and Youth Affairs, et cetera. Defence for Children International, the Australian Family Association, the Catholic Women's League—all sorts of groups gave evidence to us on Monday and Tuesday.We are in Brisbane today; next week we go to Sydney for a day hearing. The hearings are providing a lot of information which will be helpful in framing some sort of report.

The particular point I wanted to make is that, unfortunately, reflected in some oral comments to the secretariat and in some evidence that has already been given—both oral and written—is the view that this committee has some sort of agenda, that this committee is simply a mouthpiece of the federal government and that we are doing this because the federal government has told us to do it. That is wrong, and I reject that view very strongly—as I have indicated to the media earlier today. We are here to listen to all views. Even on this side of the table, we would have differing views on what the convention means, and all the rest of it.

We welcome the input that I am sure we are going to get today. Of course, this is only the start of an inquiry that we think will take five or maybe six months to complete. We are hoping to provide that report as back-up information for a series of meetings late in the year, at which time Australia's official reaction and report on its progress with the convention will be discussed in the United Nations. We have already had some extensive evidence on both of those reports in Canberra and maybe we will hear a bit more about that today. I welcome all of the witnesses in advance, and we look forward to taking your evidence throughout the day.

ALFORD, Mr Norman David, Commissioner, Children's Commission, Level 26, MLC Centre, 259 George Street, Brisbane, Queensland

NILSSON, Ms Anne-Louise, Acting Manager, Review Unit, Queensland Children's Commission, 26th Floor, MLC Building, cnr George and Adelaide Streets, Brisbane, Queensland

CHAIRMAN—Welcome. Would you like to make an opening statement?

Mr Alford—I would. Mr Chairman and other members of your committee, I come before you as the inaugural Children's Commissioner for Queensland, having occupied that position for just on four months. By coincidence, it is 12 months to the day that the Queensland parliament debated a motion which resulted directly in the preparation and passage of the Children's Commissioner and Children's Services Appeals Tribunal Act 1996, and that legislation provided for the establishment of the position I hold.

In moving the motion of 1 May last year, the Deputy Leader of the Opposition envisaged the establishment of a Children's Commission which, amongst other things, would accept and investigate complaints of paedophilia and child abuse. The functions of my office specified in the act are accordingly multifaceted and they include: monitoring of the provision of children's services and suggesting ways of improving their quality, adequacy and effectiveness; receiving, assessing and investigating complaints about the delivery of children's services and alleged offences involving children; establishing a program of official visitors to residential facilities for children; establishing tribunals to hear appeals of reviewable decisions under the Adoption of Children Act 1969, the Child Care Act 1991 and the Children's Services Act 1965; and cooperating with the Queensland Police and the Australian Bureau of Criminal Intelligence and other relevant authorities in their endeavours to eradicate sexual abuse of children, child pornography and child sex tourism.

The explicit function, section 8(b), of promoting practices and procedures that uphold the principle that parents have the primary responsibility for the upbringing and development of their children gives legislative expression in Queensland to the principle espoused in article 18 of the Convention on the Rights of the Child. The standing committee may be interested to know that yesterday in the Queensland parliament, the Minister for Families, Youth and Community Care, Kev Lingard, foreshadowed a motion to establish a committee of the parliament, including government and opposition members, on children and their parents.

The minister stated that the committee would have a major role in monitoring Queensland's compliance with the UN Convention on the Rights of the Child. It would also liaise closely with the Children's Commissioner to continue our state's progress in caring for children. To my knowledge, this is the first time that an Australian parliament will have accorded children and their parents the status of a committee of the parliament.

While it is still very early in the life of the Children's Commission in Queensland, experience during its formative period may be of interest to the standing committee. It would be true to say that the appointment of the Children's Commissioner has been received with widespread public approval and immense goodwill. Apart from establishing from scratch a new office, with all that that entails, including determination of staffing structures, position descriptions, advertising for and selecting staff, dealing with clients during the past four months has been a task of no small magnitude.

With only four or five officers in an acting capacity at the moment, the commission has dealt with in the order of 100 telephone calls each week during the four-month period. If anything, the number of calls is tending to increase, rather than decrease. During the first week of March, for example, no less than 210 phone calls were handled. The figures I have just mentioned seem to me to indicate fairly clearly a felt need amongst the community for an agency outside the formal government bureaucracy to which it can go almost as a one-stop shop regarding children's issues.

Experience of the past four months has convinced me that there is considerable confusion within the public mind about which agency of government, be it at state or Commonwealth level, is concerned with a particular aspect of children's issues. The lack of coordination amongst different departments and other bodies impinging on children has often been drawn to attention, but little has been done to ameliorate the confusion which such a situation inevitably brings. The public seems to welcome the element of focus which appointment of the Children's Commissioner has brought into what otherwise seems to have been a sea of confusion.

To date, the work of the Children's Commission has centred on three major areas. Members of the standing committee may recall the *60 Minutes* program of 13 April last in which residents of an orphanage at Neerkol near Rockhampton publicly alleged severe physical abuse by the Sisters of Mercy and other staff at Neerkol during their residency at the orphanage, which incidentally no longer functions as an orphanage.

The first allegations of physical and sexual abuse at Neerkol surfaced in the context of a child sexual abuse hotline which Minister Lingard instituted in his Department of Families, Youth and Community Care shortly after the parliamentary debate of 1 May last. Six persons from the former orphanage contacted the hotline during the first four months that it operated. In a statement to the parliament on 13 September last, the minister undertook to refer the allegations to the Children's Commissioner once the position was created. Accordingly, the commission has been involved since its inception with allegations of abuse by former residents of Neerkol.

The number of persons alleging abuse while at Neerkol has grown from the original six in September last year to more than 60. Two persons are to face court on multiple charges of sexual abuse of boys and girls. Further allegations continue to be received by both the Children's Commission and the police, between whom there is the

closest ongoing cooperation in the matter. As members of the standing committee might appreciate, the trauma experienced by the victims of this alleged abuse is extreme and manifests itself in many ways. The essential humanity required in dealing with persons coming forward after such a long time of living with their suffering is an immense challenge to all and has required staff of the commission to arrange counselling and, generally, to offer a sympathetic ear and often a shoulder to cry on.

It seems important to record here that virtually all of the victims of Neerkol have not before spoken to a civil authority of their abuse. They have repeatedly said that, while they felt comfortable in approaching the Children's Commission, they would not have been prepared to approach other authorities such as the police. I suggest to the standing committee that the mechanism of a children's commission is a useful device in implementing article 19 of the convention, which as you know refers to protection of children from abuse. Since the publicity given to the abuse at Neerkol, especially by *60 Minutes*, there have been allegations of past abuse at a number of other institutions of children in Queensland. These are still forthcoming.

A second area of activity which the commission has been involved in since its inception stems from Minister Lingard's undertaking to the parliament in the context of the second reading debate on the legislation. He then undertook to table in parliament a report by the Children's Commission within 12 months on paedophilia in Queensland.

Task force Argos, which was established by the Queensland Police Force on 3 February this year, is helping greatly in the preparation of the necessary report. Task force Argos comprises some 20 police officers and is being assisted by the Department of Families, Youth and Community Care and by the Children's Commission. While some people have contacted task force Argos direct, many have preferred to come to the Children's Commission. Although they wish their information to be provided to the police and usually are prepared to speak subsequently to the police, these people are adamant that they prefer to make the first contact with the commission.

A third area of activity that the commission has been heavily involved in involves complaints about decisions made by and conduct of officers of the Department of Families, Youth and Community Care and about matters relating to Family Law Court proceedings. Complaints about departmental decisions and officers seem to suggest the need for a greater commitment at both the philosophical level and in practice to the principles of the convention on the rights of the child.

The admittedly short experience of the commission has, however, suggested the necessity for the commissioner to draw explicitly to the attention of departmental officers on a number of occasions a number of provisions of the convention. Experience to date suggests that insufficient attention is probably being given to the convention in the training by universities of professional people such as medical practitioners, nurses, social workers and psychologists. Similarly, there seems to be a need for attention to on-the-job training

of such professionals, especially in relation to the convention.

Article 3, which deals with the concept of the best interests of the child, seems to be used often in a paternalistic manner to justify almost any action which a particular officer or professional favours. It tends to be invoked within rather narrow confines without being seen in a broader perspective where account is taken of all other relevant factors and a reasonable balance struck.

Article 8, which addresses a child's right to its name, is sometimes contravened when foster parents append their names to children in the care of the state who are placed with them. Such apparent pseudo adoption is regarded very seriously by my commission and has also been taken up strongly with the department.

Article 12, which refers to a child's views being heard on matters affecting it, seems not to be taken sufficiently seriously. The commissioner has also received many complaints from parents and indeed children involved in Family Law Court matters who consider this article of the convention is disregarded. It is claimed that a separate representative system, for example, in the Family Law Court system, does not sufficiently ensure that the child's views are given adequate consideration.

Article 18, which requires appropriate assistance to parents in the performance of their child-rearing responsibilities, seems to be too often overlooked in favour of the easier bureaucratic approach of simply removing children from their families. My personal view is that when legislative and bureaucratic dimensions replace human dimensions in the affairs of children and their families like this, it is a very sad day indeed.

The administration of children's services has, over time, tended to develop practices which nullify article 25 of the convention which calls for a periodic review of the circumstances of the placement of a child in the care of the state. Devices such as continuity of care decisions taken after a period of, say, two years in care seem inconsistent with the article. This early in my role as Children's Commissioner I have already seen fit to raise the matter with the director-general of the department.

During the past four months I have met on several occasions with some young people from the Queensland branch of Young People in Care to seek their views on the convention. As you may know, that organisation comprises young people who have themselves been in care. They consequently can be expected to have first-hand experience of the application of the convention. They have asked me to draw the standing committee's attention to several of their views, including the fact that young people need to be informed of the convention and of their rights. The expression 'best interests of the child' needs to be formally defined, keeping in mind article 12.

Children and young people should be involved at all levels of discussion in

children's rights, and all children entering care, those in need of care and those in respect of whom critical decisions are being made need to be heard and represented by an independent advocate. The issue of leaving care needs to be reviewed in accordance with article 3.3 and article 27.

The assessment, training and review of foster carers is inadequate. There need to be readily available and known channels for complaint and redress for young people, and review measures that young people are themselves involved in.

I thank all members of the standing committee for the invitation to meet with you today. I trust that you have found the submission that we have provided of interest. As you may appreciate, the preparation at short notice by the commission's small staff on top of an already heavy workload required considerable extra effort and, in the interests of Australia's children, we welcome the challenge to make a contribution to your inquiry and we look forward with eagerness to the report.

CHAIRMAN—Thank you very much, Mr Alford. First of all, let me say on behalf of the committee that we thank you for your written submission which I am sure all of us found of great value in exploring some of the issues spelt out in the terms of reference of this committee's review into the convention. We thank you also for what you have said before us this morning. Just on one issue relating to that statement, Young People in Care is a national body and there is a Queensland branch?

Mr Alford—That is true.

CHAIRMAN—Have we had submissions from—

Secretary—They have responded.

CHAIRMAN—At the national level, are they—

Secretary—Some of the states as well.

CHAIRMAN—And some of the states as well. I think it is important that we hear directly from young people. I regret to say most of us at this table here are geriatrics, so I think it is important that we do hear from them. We will take that on board and, if in fact we do not get an approach, then we might seek an approach from them.

I will just open the batting on the questioning by referring you to your written submission, in which you said in part:

. . . delays in enacting the necessary legislation and associated consequent policy and administrative action, throughout Australia, can only allow the extremes of this dichotomy to flourish.

What aspects of this convention should be incorporated into legislation, and should that legislation be federal, should it be state, should it be a mix? Or do you think that, perhaps, overall, overarching policies and in the main administrative arrangements would be adequate to ensure that the real intent of the convention is incorporated domestically?

Mr Alford—I think that question is probably a question for a national task force to consider. My personal view is that the important thing is for the spirit of the convention to be reflected in all domestic laws, whether they be at Commonwealth or state level.

CHAIRMAN—So you are saying that the convention is a framework on which Australia should build, but not necessarily in a legislative sense, in all areas? Is that what you are saying?

Mr Alford—That is right.

Senator NEAL—Can I just clarify that? I want to make it fairly clear. I suppose there are really four alternatives. We could completely ignore it, one; we could a have a particular item of legislation that tries to put the convention into domestic law much the way as it is written or as applied to Australia, two; or, thirdly, we can just go through every piece of legislation that we have already and that we implement in the future and make sure it is aligned with the convention. Or, we can not legislate or change legislation at all, but just through administrative targets and programs try and comply with the convention. Are you particularly in favour of any of those models, or you do not wish to draw a conclusion at this stage?

Mr Alford—I think I would be opting for a mix of those.

CHAIRMAN—You are in a unique position in that you are the only commissioner for children in this country, and so we would be very interested—even though they might be personal views at this stage after four months, and they might be relatively uninformed views perhaps, and perhaps ‘uninformed’ is the wrong word—to hear what you have to say on some of these issues. Yes, you are going to be one voice amongst many, but we think at this stage it is important, bearing in mind that the evidence that we had on Monday and Tuesday—and Tuesday in particular from Defence for Children International—was very strong on the need for a similar sort of organisation at the federal level. Now that is something we can talk through, we can discuss, we can take evidence on. But can I just ask you to give us some very candid views, albeit that we understand that you have only been in place for four months?

Mr Alford—My personal view, as we have indicated in the submission, is that Australia would get itself into good shape if it had a commissioner for children in each state and at Commonwealth level. To my mind, you would then have a neat infrastructure which could coordinate and focus in a way which is not possible at the moment, it seems to me.

Senator NEAL—Does your responsibility include review of Queensland legislation generally to see if it is at odds with the convention?

Mr Alford—That is not specifically listed as a function. I think that things will develop that way. I am conscious, for example, that the Norwegian commissioner vetted every piece of legislation destined for the parliament. I think that is the way things will develop in this state if the commission performs its role sensibly and properly. But it has not been written in as a specific function.

The minister, when he introduced the legislation to the parliament, admitted that we were breaking new ground. Obviously, the legislation would be shown to have some imperfections, but he was ready to go back to the parliament and remedy those imperfections if necessary. So I think we are feeling our way, but I certainly think that that is the way things will develop.

Senator NEAL—And you think it would be advantageous to include that as part of your duty?

Mr Alford—Whether it is included or not, it can still happen. I am not terribly worried about being terribly legalistic. In fact, one of my fears is that in this whole area of children and their parents we tend to get overly legalistic at times and forget, as I said, the human dimensions.

Senator NEAL—I suppose what I am really trying to work out is not so much whether you think it should actually be written in there—that again is not so important to me—but do you think there are advantages in reviewing legislation to ensure compliance with the convention?

Mr Alford—I think there are very big advantages in reviewing legislation for compliance with the convention. I think we have advocated a national task force to do that.

Mr BARTLETT—Just pursuing the issue of the need for legislation, is it not the case that much child abuse in so many areas occurs in spite of legislation to the contrary? Given that that is the case, I wonder how enacting further legislation is necessarily the answer, rather than monitoring more carefully the application and adherence to existing legislation.

Mr Alford—I agree wholeheartedly, and, I think, looking at the causes of some of that abuse.

Mr BARTLETT—And much of that abuse is because of attitudinal problems because of the make-up of the person perpetrating the abuse and so on. I am not convinced that changing legislation or applying the convention in legislation will solve

that problem. Take, for instance, the issue of paedophilia that is being investigated in New South Wales at the moment. The cases that are being uncovered there happened, and had been happening, regardless of legislation that was in place. The current approach, I suspect, to tightening up, in terms of pursuit and punishment of paedophilia, is happening now without suddenly applying in legislation the principles of the convention or without even, in New South Wales, establishing a commissioner for children.

What I am asking is: cannot the principles of the convention and the principles of protecting children be achieved without necessarily applying, in legislation, the articles in the convention and without establishing a whole new bureaucratic structure and a whole new set of offices?

Mr Alford—Yes, they could be but the evidence is that they have not and, hence, we have the Wood royal commission in New South Wales. The law has not been applied, has it? The establishment of a body like the children's commissioner gives a focus and I think that focus is very important. The experience in the last four months suggests that it is pre-eminently important.

Mr BARTLETT—Could you give us an estimation of the cost of establishing the office in Queensland, the administrative structures, the staffing and so on? Do you have an approximate idea of that?

Mr Alford—The budget for the first six months is $750,000. The budget for the full year is $1.5 million.

Mr BARTLETT—Is there any estimation of the cost with respect to the recommendations in your report that there needs to be a plethora of legislation, monitoring and infrastructure?

Mr Alford—Sorry, which recommendations?

Mr BARTLETT—On the first page it says:

> In Australia, this involves, at minimum, the scrutiny and perhaps enactment of a plethora of legislation, the interpretation of that legislation of policy statements, regulations and administrative instructions.

It seems to me that this will involve enormous cost and I just wonder whether that enormous expense might not be better applied to surveillance and improvement of the activities of police involved in paedophilia investigations or the work of the department of family, youth and community care, et cetera, rather than the establishment of a whole set of new structures and legislation.

Mr Alford—I do not see that examination of the legislation, for example, as

involving much money at all. I think it is good practice to keep legislation under continuous review.

Senator ABETZ—But you talk of enactment there. You do not only talk about scrutiny and perhaps enactment of a plethora of legislation.

Mr Alford—A decision would need to be made as to whether it is considered desirable to enact legislation or not. My view would be that it is not necessary to enact a lot.

Senator NEAL—We enact a lot anyway on a whole lot of different issues. It is no more expensive to do it on children than it is on any other issue.

Mr BARTLETT—What I am trying to determine is whether there is any benefit in applying new legislation in areas where there is already adequate legislation and, rather than applying new legislation and setting up new structures, whether we ought not to be monitoring more carefully the application of existing legislation and ensuring compliance with existing legislation.

Mr Alford—You might be interested to know that during the debate in the Queensland parliament on 1 May last year, the initial approach taken by the government was exactly that. People said, 'We have got enough of these agencies now; we don't need another body to which people can come with allegations of paedophilia and so forth.' The retort in the parliament was, 'But it doesn't work.' I would have thought that the evidence around Australia from the Wood royal commission and so forth is exactly that—that what we have got at the moment is not working terribly satisfactorily.

The experience of the commission has been that people, for some reason or another, do not like going to the police with allegations of things like paedophilia—I suppose because people have in their minds images of police and what have you—but they are perfectly comfortable about coming to the commission. They spill it all out. I say to them, 'Well, really, this is a matter that the police should be handling. Do you mind if I inform the police?' And they say, 'Oh, no, that is why we came to you.' That is the experience.

Mr TRUSS—On page 25 of your submission you suggest that Australia should not close off consideration of the option of changes to the Convention on the Rights of the Child. Do you have any suggestions as to what changes could or should be made?

Mr Alford—Not specifically, but I think it is always good to keep your options open. I am conscious that there are strong feelings in some quarters about some bits of the convention. As I indicated before, I prefer to look upon the convention as a framework, and that it is the spirit of the convention that is important rather than the literal bits and pieces.

Mr TRUSS—Yet you said in your introductory comments this morning that you were disappointed that tertiary training of professional people does not give enough attention to the convention. Is it not more important to give attention to the principles that need to be applied to properly train professionals than to the content of a UN document?

Mr Alford—Yes, but I do not think that is mutually exclusive. What I would envisage, certainly in university courses, is that it is the principles and the underlying things that are important to be stressed rather than the literal meaning.

Mr TRUSS—In your opening statement, you also refer to a number of the articles of the convention which you feel have not been adequately addressed in Australia. What is your basis for drawing attention to those articles? Is your concern about international wrath being brought upon Australia because we have not abided by the letter of articles, or are you concerned that we have not properly looked after children?

Mr Alford—As a point of correction, I was referring to Queensland not Australia. What concerns me is that the spirit of those articles is not being implemented. Probably, the department would say to me, 'Point to the words' and would then say, 'We're doing that.' But I am more interested in the spirit of the whole thing.

Mr TRUSS—So you do not care too much about the convention; it is that we do the right thing to children?

Mr Alford—Yes.

CHAIRMAN—It is worth making the point at this stage—just in case you are not aware—that Australia's reservation was in relation to article 37(c). Now that the ratification has taken place, Australia cannot introduce further reservations. What we can do is object to other reservations by other nation states. There is a limitation as to what we now can do. There is the draconian measure of total de-ratification which, I would suggest, even at this early stage, nobody in this room would want us to do.

Senator ABETZ—Excuse me, but some of us have very real concerns.

CHAIRMAN—Okay, with the exception of Senator Abetz.

Mr TRUSS—I have not heard enough evidence yet.

Senator ABETZ—Mr Chair, can I just say that, whilst it is very important for you to make opening statements saying that this committee has no agenda at all—I think it is highly appropriate for you to say that—might I suggest that it is, therefore, as a consequence of that, highly inappropriate for you to try to pre-empt any decision of this committee by suggesting what members of this committee may or may not decide at the end of it. If we do not have an agenda, then all options are open, including de-ratification.

CHAIRMAN—Point taken.

Mr TRUSS—In relation to the reservation that Australia did make concerning 37(c)—which is about keeping child prisoners in different institutions than adults—is Queensland in a position to lift that reservation? Is it the Queensland government's policy or is it currently occurring that children are kept in different penal institutions than adults?

Mr Alford—I am out of my depth on that. My understanding is yes, but Anne-Louise may know.

Ms Nilsson—There certainly have been children in adult prisons in Queensland. The majority of children are placed in youth detention centres, but it is not always the case that places are there for them.

Mr TRUSS—So Queensland would still have a problem with lifting that reservation?

Ms Nilsson—In practice.

Mr TRUSS—Because of the current practice.

Senator ABETZ—What age are those children?

Ms Nilsson—I do not have the specific ages of the children currently in there. It is kept to a very bare minimum of children where that does occur.

Senator ABETZ—It is usually 17-year-olds, as I understand it.

Ms Nilsson—Yes.

Senator ABETZ—So it is at the very end of that nought to 18 range.

Ms Nilsson—We certainly have a history of children younger than that being in there.

Senator ABETZ—Really?

Ms Nilsson—Yes.

CHAIRMAN—Do you have further questions?

Senator ABETZ—On page 2 of your submission, under the heading 'Dichotomy of Rights', you have said:

There may be a tendency, in presenting 'the Rights of the Child Convention' and manifesting its adherence in society, for it to be seen or mischievously construed as being in conflict with the rights of parents . . .

Are you aware of any groups within the community that are concerned about the rights of parents in relation to the convention?

Mr Alford—Not specifically.

Senator ABETZ—All right. In your submission, on page 9, you tell us under 'Ratification'—although that has since changed—that so many countries have become state parties, leaving only six nations—I think it is fewer now—'without full commitment to the convention'. What do you mean by the term 'full commitment to the convention'?

Mr Alford—As I understand it, some states expressed reservations and excluded certain articles.

Senator ABETZ—So you mean those countries that do not express a reservation over the ones that are fully committed to the convention? Is that how we are supposed to read this?

Mr Alford—Yes.

Senator ABETZ—Can I suggest to you that there are a lot more than six nations that are not fully committed to the convention. If I can just go through the reservations lodged, I will start with the very first country that is ratified, which is Afghanistan. They put on this reservation:

The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect.

That is Afghanistan. Iran, Iraq, Egypt and a lot of other Muslim countries have similar reservations. There are a lot more than six countries that do not give full effect and, could I suggest, even Australia, with its reservation, is not accepting the convention in full effect. So I am just wondering where you got that information from.

Mr Alford—I do not know immediately. I could take that on notice and check it.

Senator ABETZ—All right. One of the other reservations that was lodged was by the Holy See and, if I can take you back to what you describe as 'mischievously construing' as being in conflict with the rights of parents, the Holy See in its reservation interpreted the articles of the convention in a way which made it necessary to safeguard the primary and inalienable rights of parents. That is another reservation.

So, besides the Islamic countries, you have the Holy See approaching it from a different religious perspective also lodging reservations, and they saw the need to preserve what they describe as the 'primary and inalienable rights of parents'. I trust that we do not put the Holy See into the category of mischievously construing there being a conflict with the rights of parents. If it is appropriate for the Holy See to construe it like that, which community groups are engaged in mischievously construing this convention as being in conflict with the rights of the child?

Mr Alford—I am not aware of any, particularly. That is a possibility.

Senator ABETZ—Your submission is making the assertion 'or mischievously construed.' I would have thought you would have had at least one example to proffer to the committee of an organisation or group that is engaged in this mischievous behaviour.

Mr Alford—No.

Senator ABETZ—No such example?

Mr Alford—I have no example.

CHAIRMAN—Just to balance that a little, in the reservations there was also a declaration by the Holy See that it 'regards the present convention as a proper and laudable instrument aimed at protecting the rights and interests of children'. I do not think we should introduce just one dimension, even though there might be reservations. The overarching thing is that the convention is seen as a proper and laudable instrument, even by the Holy See.

Senator ABETZ—Yes, but if they saw it in full, and that is what the commission was telling us, that it was accepted in full and that there were only six countries that did not accept it in full, there would be only six countries that had placed reservations. As the foreign affairs department told us in earlier hearings, a declaration is different to a reservation, and the Holy See found both reservations and declarations.

There seems to be a slight difference in your verbal evidence to the written submission, which I must say I welcome because when I read the first page of your submission I had the same concerns as Mr Bartlett. We were told:

In Australia, this involves, at minimum, the scrutiny and perhaps enactment of a plethora of legislation, the interpretation of that legislation—

can I insert, in parenthesis, a lawyer's delight—

into policy statements, regulations and administrative instructions.

That would undoubtedly be a bureaucrat's delight. You then go on to say:

This alone will not produce the results unless . . .

I think it would be fair to say there is community concern that we need to be concerned with our children because they are the most precious 'commodity', to use that term that we as a society have. They are our future. Nobody argues with those fundamentals. But is 'a plethora of legislation', red tape, bureaucratic instructions, going to assist us? Is it not really more, as you say, the spirit? That is what you were saying to Mr Bartlett, that it is really the spirit of the convention we ought to be concerned about rather than the black letter of the law which, of course, can be interpreted in many ways?

Mr Alford—I have two comments on that. I draw your attention to the word 'perhaps' in the piece that you read. Nobody knows exactly how people will decide to go. Certainly, in my view, it should involve scrutiny of existing legislation.

Senator ABETZ—Yes, nobody would argue with that.

Mr Alford—That was just leaving open all the doors and not pretending to know the answers. The second comment is, yes, I wholeheartedly agree, it is the spirit of the convention I think that is important rather than the strict letter.

Senator ABETZ—I would like to ask one last question on page 4, under 6.1, 'Legislative change'. You tell us:

The Teoh Case has clearly demonstrated the need for a review of a wide range of legislation at both the Federal and State level. In the Teoh Case, the rights of a child of illegal immigrants were upheld, on the basis of the Convention, even though the Immigration Act had not been changed to take account of or otherwise recognise the Convention.

Are you aware of the circumstances of the Teoh case?

Mr Alford—Only generally.

Senator ABETZ—Are you aware that Mr Teoh was charged and convicted of trafficking in the drug heroin? He was undoubtedly engaged in business as a merchant of death, trying to get heroin on the streets which has the potential to kill, and does kill, hundreds of Australian children and adults every year. And we have this perverse result from a High Court decision that says somebody that has put all these hundreds of children and adults at risk will be allowed to stay in Australia for the sake of his one child that he had from a relationship. Don't you think it was a blinkered approach of the High Court to say, 'We'll look after that one child', and forget about the future of all those other children that were undoubtedly adversely affected by the importation of heroin? Do you think Australian people would want Mr Teoh to remain in Australia for the sake of his child when he prejudiced the future of tens, if not dozens, of young children in this

society by importing heroin?

Mr Alford—I am not aware of the facts as you relate them, but I think the Teoh case exemplifies the problems that arise when we approach this matter of children and their families in what I regard as an overly legalistic manner.

Senator ABETZ—But have we not approached Teoh in a very myopic approach in that all we are concerned about is Teoh's child and not the hundreds of children and adults that he prejudiced by the importation of heroin into this country. I would say the convention on the rights of children should protect Australian children from such merchants of death, rather than keeping them in the country.

CHAIRMAN—After reading your submission I need to clarify one element with you. It seems when you wrote the submission you were not aware that the federal government was moving. As announced, legislation is just about to be introduced which will move to clarify the position in terms of Teoh. Were you generally aware of that or was it just a general statement into the potential effect of Teoh as it was at that time?

Mr Alford—It was simply an example of difficult situations that can arise if we are not careful and if we do not scrutinise our legislation and get it interlocking. On the one hand we have the convention on the rights of the child; on the other hand we have other legislation and we have not taken the trouble to see that there are not inherent conflicts. It was simply an example of situations that can develop, hence the stress on the need to scrutinise existing legislation.

Senator NEAL—I was interested in the discussion that was going on earlier down the other end of the table about using the example of the New South Wales royal commission into the police—the Wood royal commission—and what that really means in terms of our policy response to that issue. The conclusion that seems to have been drawn by the members of the committee was that there had been legislation saying child abuse should not occur. Despite that, these offences obviously had been committed over a very long period of time up until quite recently.

I think you can draw a range of conclusions from that. It is funny but obviously truth is always in the eyes of the beholder. It seemed to me to indicate that, in a situation involving children who are essentially very powerless people in our community, even though there is a law to protect them, unless there is some independent arbitrator to allow them to access that protection or exercise those rights often they are ignored anyway. I suppose I saw the police royal commission as the independent person in those cases.

In the particular example of schools where children had been molested—I hate to use the word 'molested' because it is such an emotional term—by their teachers and complaints had been made, the available complaint mechanism was the headmaster who, in most cases, had a conflict between retaining the good reputation of the school and

protecting the child. Often those complaints were not dealt with in a way that most of the community would think was appropriate. If there was an independent commissioner for children in the states, do you think that they could also deal with complaints about matters that took place within the education system? Do you think that would be an appropriate matter that could be dealt with by them?

Mr Alford—I think, yes. I think the experience of the commission to date has indicated just that. For example, in the case of Neerkol these victims alleged that they had gone to the authorities—the sisters, the priests—and tried to have themselves heard but it was just dismissed. It was only when the hotline was instituted, and the commission was established that people felt that they could come and be heard. You would have thought I had given people a million dollars each such has been the overflow of gratitude expressed by a number of these people, and simply because I listened.

Senator NEAL—So you are saying that it is not sufficient just to have legislation, that you have to have the legislation that provides the rights and some effective mechanism of enforcing those rights?

Mr Alford—Exactly.

Senator NEAL—I think the conclusion is often drawn that, if there is legislation and it is not working, it means it is useless. I think the reason—I would like to know whether you agree with this proposition—legislation often is not working is that there is no process that allows it to work, rather than it being inherently flawed in what it provides.

Mr Alford—I would agree. I think legislation in isolation is probably useless. It needs infrastructure and processes to enable it to work.

Senator ABETZ—How old were those victims that approached you?

Ms Nilsson—They have ranged in age from about 46 to our oldest victim at 72. The abuse took place between 30 and 40 years ago.

Senator ABETZ—We have had similar stories emanating out of Western Australia and other states, in fact, all around the country. They seem to have surfaced irrespective of a commissioner of children in those states. Those stories tend to surface anyway; although, I would agree with you that they should have surfaced a lot earlier. That is something that I think our criminal law police and other institutions carry a great burden of responsibility for.

Mr Alford—I think it is significant that those allegations have surfaced in other states hot on the heels of the surfacing of the allegations at Neerkol. In fact, some of the people who were at Neerkol now reside in other states and certainly a lot of those

allegations have surfaced following the *60 Minutes* program.

Mr TRUSS—It may be unfair to ask you this question but you are the most senior Queensland government person likely to appear before the committee. On page 9 of your submission you say that there was cooperation and consultation with the states in 1990 when Australia signed the convention. Can you confirm that the federal government consulted with the Queensland government at the time and that the Queensland government agreed to the ratification of the convention? You may need to take it on notice—I appreciate that is perhaps an unfair question.

Mr Alford—My only comment on that is that that is a quote; it is not our statement. I think it was this morning that I read one of the Commonwealth department's submissions, and they gave chapter and verse of the consultation that allegedly took place.

Mr TRUSS—Yes, I appreciate that. But I am trying to ascertain whether the Queensland government of the day felt that it was adequately consulted and, in fact, concurred with the Commonwealth's decision to ratify the convention.

Mr Alford—I will take that on notice and make the appropriate inquiries.

CHAIRMAN—I think that issue was taken on notice from Canberra.

Senator ABETZ—At the time we signed up, and it was then ratified, the then Attorney-General, Gareth Evans, told every Australian citizen, including the state governments, that there was no need for any domestic action because we were okay.

Senator NEAL—Have we actually taken any evidence on that point?

Senator ABETZ—There are quotes from Gareth Evans as to that.

Senator NEAL—But rather than it being propagated from the members of the committee, it might be worthwhile for you to put that evidence in.

Senator ABETZ—I will absolutely do that, without any problem at all. But of course that was the basis on which the state and territory governments said that they did not have any problems because the federal government convinced them that there would be no need to take any action and that what they were doing was basically okay.

CHAIRMAN—I do not think it is necessary for you to take that on notice anyhow because I have just been informed that the Queensland government may appear later in this inquiry. They have not yet completed their submission so they just were not ready for today. There is every indication that they would want to.

Mr Alford—Mr Chairman, may I for the record make the statement that I am not

here as a representative of the Queensland government.

CHAIRMAN—Yes, I appreciate that.

Mr Alford—In fact, I am independent of the government.

CHAIRMAN—Absolutely.

Mr BARTLETT—Back to the question of legislation: is it your opinion then that your key role ought to be ensuring the application of current legislation rather than enacting or encouraging the enactment of new legislation to apply the principles of the convention? Would you see that as a main role, to make sure that current legislation is applied rigorously?

Mr Alford—I think the short answer to that is yes. But what is required is a look at the existing legislation with a view to seeing whether it is in harmony with the spirit of the convention on the rights of the child. Out of that review might come suggestions for legislation.

Ms Nilsson—The existing Children's Services Act in this state was written in 1965.

Mr BARTLETT—Would you think that role could be best done across the country by a commissioner in each state or do you think it would be better done by a federal commissioner?

Mr Alford—I think that, given the federal system, we should have a system of commissioners in the states and at Commonwealth level. I think the review of existing legislation might well be undertaken by what I would regard as a national task force.

Mr BARTLETT—Page 22, section 10.4 of your submission, mentions the need in many instances to replace or reshape fundamental belief sets. Could you elaborate on that?

Mr Alford—Yes, I think that that is a difficult task. For example, with the physical punishment of children, there is an old school which says that it does a kid good to belt him every morning before breakfast. That is a set of beliefs in some people's minds. I think we have passed that era and it is time to refashion some of these belief sets.

Senator ABETZ—Who has ever given expression to the point of view that you have just given, that it is good to give a kid a hiding before breakfast every morning?

Mr Alford—As a child, I heard that stated frequently.

Mr BARTLETT—Without discussing the right or wrong of any particular belief

sets, how do we determine or how does your office determine which fundamental belief sets need changing and which ones do not? That is in terms of applying the principles of the convention and at the same time looking at the need to ensure the rights of parents to raise their children the way that they think is appropriate for the wellbeing of their children?

Mr Alford—I do not see it as my role to sit in judgment of those sorts of matters. I think that is a matter for elected governments through legislation to accept or reject.

Senator NEAL—In your submission you said you had found that a lot of professionals who deal with children are in breach of the convention. Which areas are they most likely to breach, and is that because they are not aware of the convention or because they have determined to ignore it?

Mr Alford—I think largely because of unawareness. They are just operating in terms of a culture of an institution or an agency. It is time people took a step back and looked at what they do in the context of the spirit of the convention.

Senator NEAL—It is more a case of: 'We have always done it this, therefore we will continue to do it,' not—

Mr Alford—Exactly.

Senator NEAL—What sort of areas were there breaches in?

Mr Alford—In my introductory statement I indicated the particular articles that seem to me to be being breached—changing the names of children in care, for example.

Senator NEAL—Yes, I saw those examples. I was wondered about the conventions, numerically, that would most likely be breached. Would that particular convention be the one most breached?

Mr Alford—Now you are putting me on the spot. The interpretation of the 'best interests of the child' is, as I indicated, used by everybody to justify anything they want to do.

Ms Nilsson—That would be true across all services that we have contact with, like the Department of Families, Youth and Community Care, the Family Court. Across the board, the 'best interests of the child' is used very broadly.

CHAIRMAN—As there are no more questions, thank you very much indeed for your evidence this morning. I am sure it has whet our appetite for further questions. I anticipate that we may very well have to talk to you again after we have taken further

evidence. Thank you, and we look forward to seeing you again.

[11.13 a.m.]

BARTHOLOMEW, Mr Damian, Casework Solicitor, Youth Advocacy Centre Inc., 52 Inwood Street, Wooloowin, Queensland 4030

WIGHT, Ms Janet, Legal Education Solicitor, Youth Advocacy Centre Inc., 52 Inwood Street, Wooloowin, Queensland 4030

CHAIRMAN—Welcome. I note that you provided a supplementary written submission. The first thing we have to do is have that received as evidence.

Resolved (on motion by Mr Bartlett):

That the supplementary submission from the Youth Advocacy Centre be received as evidence and authorised for publication.

CHAIRMAN—Would you like to make an opening statement? You are not going to read that submission out, are you?

Ms Wight—No, we thought we might address some points briefly; there is no point in reading it verbatim to you. The situation simply was that we had a relatively short time frame in which to get something to you on the record, but we have had a bit of time since then to put together something a little more substantial for you. We would just like to reiterate some detail about the centre we represent, so that you are all quite clear about the background from which we come.

The Youth Advocacy Centre is a legal and welfare agency, essentially a community legal centre which specialises in assisting young people between the ages of 10 and 16. Any comments that we make in our submission are based on the premise that we are working with that age group. That is quite important because quite different considerations could or may apply to younger children for a variety of reasons. We work primarily with adolescents and probably primarily with young people who either are involved in the juvenile justice system or are at risk of becoming so involved because of issues that are happening in their lives. That is the background from which we present this submission and we thank you for the opportunity to present this further paper.

Mr TRUSS—Could you tell us how you are funded, before you continue?

Ms Wight—Yes, as a community legal centre we receive some funding from the federal Attorney-General's Department and then we are funded from what is called a pool, the Queensland pool of community legal centre money. Some of the money for that pool comes from the state Attorney-General's Department, some from the interest on solicitors' accounts, which is a fund administered by the Queensland Law Society, and there is a line item in the budget from the state government, plus we have had in the past—although this is now questionable—a certain amount of money passed on to us from the State Legal Aid

Commission into what is the Queensland pool. That is essentially how we are funded.

There are a number of positions however, which are non-legal. Our centre works as a legal and welfare agency and funds youth work and social work positions. We get separate grants from places like the state youth bureau, the Queensland Department of Families, Youth and Community Care and so on for those other positions and for some other work that is carried on.

Senator ABETZ—Do those youth workers do some paralegal type of work as well?

Ms Wight—No, we are very clear in our organisation. We have two case work solicitors. They do the legal work. We have a youth worker and our youth worker is present today if you should have any questions of her, and we have a social worker. The youth worker's main aim is probably working with those young people who find themselves without adult support, who do not have family support for whatever reason that may be, helping them to find safe, secure appropriate accommodation, possibly helping them to get back into school, the TAFE system or something of that nature and accessing a legitimate income.

Rino, our social worker, would focus on working with young people who have some problems which are causing friction within the family and trying to work with those families in an attempt to work out a solution which is acceptable to both the young person and the family, so that they can stay together and work on an on-going basis in a more positive framework. Our roles are quite clear. I do not try to find accommodation and the youth worker does not try to give legal advice.

Senator ABETZ—I understand, yes.

Ms Wight—One of the things that did interest us was the description that was put into the papers which were circulated to us from the committee on the description of the convention. We felt it was perhaps a bit limited. In fact it is important for everyone to be quite clear that the convention does recognise that young people have protected rights, which as adults in our society we should be very aware of because young people are in our care. We are the only ones that can do things for them and order the world for them.

Also it does recognise and reinforce rights which have been acknowledged in the United Nations through such things as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. They are those things such as the right of the young person to form their views, to freedom of expression and to peaceful assembly. I think it is important that we remember those rights, partly because that is sometimes where there can be seen to be friction. I do not think that friction is always necessary—if ever necessary—but it is perhaps the point where there does come to be a bit of tightening of tension between the adults and the young people in

our society.

I also thought it was important that we should note that the UN Convention on the Rights of the Child considers articles 2, 3, 6 and 12 as fundamental to all those other articles in the convention. I think that that is an important indication of how the UN Convention on the Rights of the Child in Geneva views those sections.

Just generally, in terms of the domestic ramifications of Australia having ratified the convention, what we have said here is that we are concerned that governments in fact do not take the convention seriously, have not taken the convention seriously and in fact there is not a significant amount of political will to take the convention very far at all. I would refer you, for example, to two statements which were made in Australia's report, which I articulated on page 2, that:

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

But then at paragraph 203 the report says:

> . . . entering into an international treaty does not raise a legitimate expectation that government decision makers will act in accordance with the treaty prior to its enactment into domestic Australian law. . .

Those two things seem to me to be quite incompatible and inconsistent. So we seem to be very unclear about whether we are following it, whether or not we have complied with it or whether we will comply with it. I would suggest we are getting not very clear messages from government about the status of the convention.

It is also our experience that there are a significant number of people in our community, both adults and young people, who have either no knowledge of the existence of the convention or, if they do know about it, have no knowledge of the detail of it. That is unfortunate because it has led to misconceptions about the convention. For example, that it is a question of children's rights versus family rights. We would say that that is not in fact a debate which the convention enters into. It says quite clearly from the preamble and at several stages through the convention that the family is an important, if not the most fundamental unit to children in our society. It certainly expects that families will be given support when it comes to children, the bringing up of children and those sorts of things.

It is a real shame that those sorts of ideas about the convention seem to have taken hold in the community and that can only be because of lack of education. I, myself, have had great difficulty even getting hold of a copy of the convention. The only copies we used to be able to get were rather poorly photocopied copies from the HREOC office in

Sydney. We could not even get them from the Brisbane office. For those of us who are in the know, as it were, and know where to go and how to get these things, it is very difficult. There certainly has not been an ongoing campaign in relation to publication.

Following on from federal and state progress in complying with the convention, we have tried to highlight these things from a Queensland perspective, because a number of these things relate directly to Queensland law and areas where we see that the convention is currently not being complied with. This is not by any means an exhaustive list. We would agree that the problems that the Children's Commissioner mentioned this morning are problems that need to be addressed, too. But these are examples that have come to us through our experience of working with young people in the education and juvenile justice systems. I am not sure if you want me to go through those at this stage.

CHAIRMAN—We will.

Ms Wight—Since it was raised previously in relation to article 37 where we have also raised the issue of the reservation placed on article 37(c), the situation in this state is that young people under the age of 17, if they are sentenced or held on remand, are sent to a juvenile detention centre. Once you turn 17, you become an adult for the purposes of Queensland law. Under the age of 17, because you are in the juvenile justice system, you should be placed into a juvenile detention centre. Certainly that will be the case if you are sentenced.

Remand can be a bit more difficult, because there is that period when you are held in the watch-house on the way to being taken either to gaol or the juvenile detention centre. One of our major concerns is that young people are held in police watch-houses with adults in inappropriate situations, rather than the situation being that under-17s are held in an adult gaol.

Senator ABETZ—That was our specific reservation to the convention, was it?

Ms Wight—Yes, 37(c). That is right.

Mr TRUSS—Do you have a solution to that problem?

Ms Wight—Our solution would be that we should not be putting so many young people on remand in custody. It is the unfortunate circumstance at the moment that two-thirds of the young people held in our detention centres are in fact on remand and not in fact on sentence. So there are issues there about bail hostels and appropriate places for young people to go, especially in communities outside the main metropolitan areas. Young people who are in more rural and remote areas are likely to be held for at least 24 hours, maybe 72 hours and possibly even more if there is agreement between police and family services that they can be held in watch-houses for much longer periods.

Mr HARDGRAVE—But is that so in all cases? Surely no judge is going to put a child of say 11 or 12, no matter how many burglaries they may have allegedly committed, into a gaol situation unless there is a real fear that the child is going to escape lawful custody, potentially commit another burglary or whatever in the process. Certainly that would be the case, would it not?

Mr Bartholomew—I would like to say that that is true, but there have been extraordinary examples. I perform a duty lawyer service at the detention centres and see the new admissions to the detention centres on basically a weekly basis. While certainly in most of the cases it would appear that there are grounds why bail has been refused, there have been instances where young people have been held on remand in detention awaiting a sentence or awaiting a court matter in relation to possession of marijuana or the stealing of some lollies. They are two cases that I can think of in my recent experience, but there is a much longer list. There remains the situation of young people being held in remand on custody because they do not have anywhere to live during their bail accommodation program.

Mr HARDGRAVE—The marijuana charge is much more grave than the stealing of lollies, but surely in each of those cases there must have been some recidivist basis to their conduct. Are you telling me first-time offenders are being put into gaol?

Mr Bartholomew—It has happened. I am not saying that it is an every day occurrence.

Mr HARDGRAVE—I would say not, because there is plenty of anecdotal evidence from constituents of mine in the southern suburbs of Brisbane that proves very clearly to me that children who are offenders breaking and entering into homes and destroying people's lives in the process are getting out on bail very easily and are not going into any form of detention. I find this whole proposition in a lot of ways easily debunked by plenty of anecdotal evidence.

Senator NEAL—It happens over and over again, if there is a child that has nowhere to go.

Mr HARDGRAVE—Could we get the witnesses to talk about this rather than you? I think it is better that we have the witnesses talk about it.

Senator NEAL—But you are giving anecdotal evidence.

Mr HARDGRAVE—No, I am simply asking them to respond.

CHAIRMAN—Let us just ask questions of the witnesses.

Mr Bartholomew—Obviously I can only go from my experiences in the detention

centres, but I can say to you that I have seen first-time offenders being held in custody and I have seen them held on very simple matters, for instance non-indictable offences for which sometimes it would be very unlikely that a young person would receive a detention order. I cannot say to you what happens in other courts or what happens in every situation in Queensland, but certainly from my experience as a weekly visitor to the detention centres, yes, it does happen.

Ms Wight—It is also the situation that young people come to the Brisbane detention centre from a wide variety of areas. They do not just come from Brisbane itself; they are coming from around the state in fact. In fact I think we are taking an overflow again from Cleveland.

Mr Bartholomew—We are.

CHAIRMAN—Are we continuing with the opening statement? If we could just do that, then we can ask some questions.

Ms Wight—In relation to the difficulties and concerns arising from implementation in its current form, our suggestion would be that basically you use the convention as a benchmark. In terms of your legislation, policy, practice and those sorts of things you look at the convention each time and say, 'Is this in tune with the appropriate articles?', that would give you a benchmark and allow you to in fact incorporate the convention and the ideas behind the convention in really a fairly straightforward manner, I would suggest.

In terms of inconsistencies between domestic jurisdictions and the need for agreed national standards, it is quite clear in every area of law, and the area in relation to children would be no different, that there are inconsistencies from state to state. They go from things as basic as when you are criminally liable, when you can actually be taken to court and charged with an offence. That goes from age seven in Tasmania to age 10 in Queensland. Just things as basic as that vary from state to state. I think that is probably a little nonsensical, to be honest.

It is necessary for a mechanism to promote, monitor and report publicly on compliance with the convention and to implement public consultation. In line with many other children's rights organisations we would support the idea of a commissioner for children in each state and territory and a federal commissioner. That would seem to be the logical way to go. There are also a number of models for which Australia can draw for experience, for example, New Zealand and Norway. There are a number of models around now.

We have referred to the new office of the commissioner in Queensland. The comments that we make in relation to that office should be seen as about the limitations that we see government has placed on that office as opposed to a criticism of Mr Alford in any way. He is acting within a frame of reference.

It is our concern that the commissioner's office in Queensland is very narrowly based, that it is not an office for all children in relation to the wide number of types of decisions that can be made about them in their lives in terms of education, juvenile justice and in a wide range of government services that they may need to access, or at times when government intervenes in their lives.

We would refer you in terms of the question on adequacy of administrative, legislative and legal infrastructure in addressing the needs of children to the ALRC and HREOC joint inquiry into children in the legal process which is actually looking at this in some detail. For your assistance, we have attached a copy of our submission to that inquiry rather than go through that again in any further detail.

Concerning the adequacy of programs and services of special importance to children, it would be our contention that many of these remain inadequate because, in our submission, government still does not attach sufficient importance and priority to resources for such programs and services. Those programs and services still tend to be focused on outcomes which are acceptable to adults rather than maybe taking a more child-oriented approach. In particular, there are issues in relation to care and protection which the commissioner's office may be able to address in some way. At least that is a positive step in relation to Queensland.

In summary, the question was: any further action required in relation to the convention? It is our contention that to date government has indicated little real commitment to the convention. That is indicated in our submission and in reports of the National Children's Bureau of Australia and Defence of Children International, both commenting on Australia's compliance with the convention. Australia still is not in compliance in a number of areas. There remains an ignorance across the country of the detail of the convention, and even its very existence. It is therefore our submission that it is not a question of what further action is required, but when Australia is actually going to take any significant action in relation to the convention.

CHAIRMAN—Thank you. Let us take that last comment first. Do you not think that you are drawing a pretty long bow to suggest that no action has been taken in relation to this convention? Are you saying statutory action, or are you saying social policy action? In my view, it seems that that is a very long bow to be drawing.

Ms Wight—It does seem to us that where action is taken or where government picks things up, it is often as a result of non-government and community-based organisations saying time and time again, 'This isn't right. This isn't fair. We need something done about this.' We see very little happening at a government level by the government itself on its own volition saying, 'Are we in compliance with the convention? What do we actually need to do in a very positive way to be in compliance with the convention?' It does seem to rely very heavily on people such as ourselves and the vast number of other non-government organisations around this country to keep reminding

government, both in terms of legislation policy and practice, of the existence of the convention and where its action may or may not be in breach of it.

CHAIRMAN—Am I right in saying that you would like to see statutory coverage? You refer here to the Gillick case, don't you?

Ms Wight—In terms of the Gillick case, that would actually assist in dealing with the issue of young people being heard. If we follow the Gillick case, which has been part of Australian law for some time now, we would at least be hearing young people in the variety of forums in which they are involved in decisions about them or in decision making. That would at least give them an opportunity to be properly heard; and that would then put us quite directly in compliance with the convention. Since Gillick is already law in this country that does not seem such a large step to take.

CHAIRMAN—I am not a lawyer, but the judgment says:

(a) minor is . . . capable of giving informed consent when he or she achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed.

Surely that is open to judgmental considerations as well. How do you expect that to be converted into some sort of all-embracing piece of legislation which would fix it? I just fail to see how you could do that.

Mr Bartholomew—First of all, it is a broad expectation. However, it is an expectation that professionals make on a number of levels every day in dealing with a number of different people and there is no reason why those same decisions cannot therefore be made in relation to children. The other thing is that it has been put into law in the Gillick decision. In the same way that it has been put into law in a case form, there is no reason why, I would not have thought, if it can be stated by a judge it cannot—after some work—be put into some sort of legislative form to ensure that the rights of children are heard and their interests are protected.

Senator ABETZ—But isn't the chair's point that the maturation of the child should ultimately be the determining factor, not the child's age?

Ms Wight—That is exactly right.

Senator ABETZ—So should it not be up to each individual judge in each individual case to make the determination, rather than trying to prescribe by legislation that a child of age 12 is deemed to have a certain degree of maturation? We have to do that for a degree of consistency, but—

Ms Wight—We do that for our own convenience, with respect.
Senator ABETZ—We do.

Ms Wight—That makes life easier for us as adults. But that is not necessarily fair and reasonable when it comes to a young person. I have met some very mature 12-year-olds. I have also met some not quite so mature 16-year-olds. That is the whole point, that by putting arbitrary age limits in we are not taking into account young people's views. We are therefore not looking at what could be in their best interests, because they are able to articulate and participate, and to make choices and decisions.

Senator ABETZ—Let me take you back to the position that a child is a human being under 18 and therefore different approaches ought to take place in relation to them. What do you believe ought to be the age of consent for a child?

Mr Bartholomew—Again, it is something that we think should be determined in accordance with the Gillick decision.

Senator ABETZ—On each individual case?

Mr Bartholomew—That there may have to be some statutory threshold in relation to some areas; but, on the whole, we would favour an approach—

Senator ABETZ—Would you make it 18 or lower?

Mr Bartholomew—It would be lower than that. But I am probably not the appropriate person to set that level.

Senator ABETZ—If you make it lower, what happens with a rape? If we accept that children under the age of 18 can understand the sexual act, and consent et cetera, what happens in a rape? Are you saying that a 16- or 17-year-old who commits a rape should not be treated like an 18-year-old who commits the crime of rape? Don't you have to look and draw a line in general terms, and say—

Mr Bartholomew—There are two questions that you have asked. One is about the age of consent.

Senator ABETZ—Yes, but the reason I asked that was to then import that into—

Mr Bartholomew—But a rape is a crime whether it is committed by a child or an adult—

Senator ABETZ—But should we be treating a 16-year-old who committed a crime differently from an 18-year-old, simply by virtue of the fact that they are a child under the convention?

Mr Bartholomew—That is a slightly different question, but I would submit that, yes, they should be because they have particular needs in relation to their dealings with

authorities. That is not to say, certainly in the way that our Juvenile Justice Act works here in Queensland, that a young person who is dealt with as a child can receive essentially the same sorts of orders that an adult can receive. I think that perhaps your question is based on this assumption that seems to have been allowed to be put out by the media that young people get off lightly and softly under the law as it exists. That is not what happens. The penalties that are available to adults are equally applicable to young people, certainly in this state. I cannot speak across the other states.

What acknowledging a young person's age does is to acknowledge the fact that perhaps there are greater power imbalances in relation to a young person dealing with the police and going through the court system so that they may have to have things explained to them in greater detail than would otherwise happen to an adult. So, for that reason, it would be my submission that, yes, they should be treated differently in the sense that they should have their particular needs met in the same way.

Ms Wight—It is also the case, of course, that we always presume that people are innocent until proven guilty, and we have to be very careful before we start making judgments about treating this person differently because of this horrific crime, which assumes already that they have committed that crime. I think we have to be very careful about that.

Senator ABETZ—That is a given, might I suggest, in my answer. With a 16½-year-old or a 17-year-old convicted of rape, how would you treat them as opposed to an 18-year-old? That is the point.

Ms Wight—In this state they will be sent into detention for a significant period of time. To that degree they are treated exactly the same way as an 18-year-old. There is the fact that the sentence may be slightly shorter.

Mr Bartholomew—The difference would probably be where they were actually held; whether they were held in a prison with men who are much older than them—or with females if it is a convicted female—or in a juvenile detention centre which actually had programs that were appropriate for a young person and to which a young person could respond to meet their rehabilitative needs.

Ms Wight—It is not an issue of people getting away with things because they are children. Children in our society do not get away with things. It is a question of how is it most appropriate to deal with somebody who is classified as a child?

Senator ABETZ—We could have an interesting discussion on the basis of what you say about graffiti in your submission, but I will not deal with that at the moment. On the first page of your supplementary submission you say:

The child's best interest will be a primary consideration.

How many primary considerations can you have, and what other primary considerations would you include in balancing up what ought to happen, or are you saying it is the primary consideration?

Ms Wight—No, I am quoting the convention, which states:

The best interests of the child will be a primary consideration.

Senator ABETZ—What are the others?

Ms Wight—It does not say.

Senator ABETZ—That is why people like myself are so critical, because it just says 'a primary consideration' but it does not tell us what all the other considerations ought be. Can you see that society has a right to say from time to time, 'Sure, there is a child here, and it might be within his or her best interests that we follow this course of action'—as in the Teoh case where we allow a convicted trafficker of heroin to remain in Australia? For Teoh's child that was clearly the best, but for all the other children in Australia it was clearly the worst scenario, and therefore—

Ms Wight—May I make a comment in relation to the Teoh? I think you have misconstrued it.

Senator ABETZ—No. Therefore you need to balance not only a primary consideration which is the child's best interest but also society's best interest and other children's best interest, and that there are, in fact, other primary considerations that nobody else wants to talk about. We are always told there are other primary considerations, but we are never told what the others are, and that is what I want to pursue.

Senator NEAL—Point of order, Mr Chair. I understand that Eric has very strong views about a variety of things. I understand that and appreciate it, and he is quite entitled to express them at the appropriate time. The trouble is—and this happened in most of yesterday's hearing as well—that we have these long—

Senator ABETZ—You were not even around yesterday, Belinda.

Senator NEAL—Yes, I was, actually.

Senator ABETZ—I was at a hearing of the Joint Standing Committee on Electoral Matters yesterday in Melbourne.

Senator NEAL—I mean two days ago—the last hearing of this committee. Very clever, Eric.

Senator ABETZ—Well, get it right.

Senator NEAL—The fact is that you are wasting the time of this committee. We are here to ask questions of the witnesses before us. If you wish to ask questions, that is fine, but we have had about 10 minutes on this issue so far which is you expressing your personal views. I would be quite happy to express my personal views for 10 minutes too, but it is not getting us anywhere, and I am not coming all the way to Brisbane to hear Eric express his views on this issue.

CHAIRMAN—I understand what you are saying. I was about to say to you before are you finally going to have a question because you were starting to make statements too. Can I just ask all members of the committee that we not have statements; can we have short, sharp questions that are pertinent to the issues. I agree to a point that we really do need your contribution.

Senator ABETZ—Will you allow me to ask a very short question? We are told that the child's best interest will be a primary consideration. What are the other primary considerations that ought to be taken into account when determining the child's best interests?

Ms Wight—Can I just say, before answering that question, in relation to the Teoh case, the decision that was made by the court was that because we had ratified the convention that there was an obligation to consider the convention. There was nothing said that the person had to be allowed to stay in Australia and not be deported because it was in the best interests of the child. It was said that there was an obligation to consider the convention, that it should be part of the decision making process. I think that is a very important point in relation to that case.

Senator ABETZ—But he is still here.

Ms Wight—But that is not to do with the High Court decision. I think it is really important that we are quite clear about that.

CHAIRMAN—Let us not get carried away.

Ms Wight—In relation to a primary consideration, it is my view—and I can only say that it is my view—that the committee that drafted the treaty understood that there would be a number of issues in relation to any case involving a child that would be of importance, and that you could not say in any given case that these will always be the considerations to take into account. But what it wanted to make very clear was that, whenever you are considering anything, whatever you are looking at, whatever other considerations may be important in the issue that is under debate, the best interests of the child must be in there as one of the highest considerations. Now, that is the way I read it. There is nothing else in the convention to explain it, and that is the only logical way that I

would come to it.

Senator ABETZ—But what are 'the other'?

Ms Wight—It depends on the situation.

Mr Bartholomew—It would depend on the decision on the particular situation. You could not say, for instance, that an educational need was relevant to a decision when perhaps a young person was not in education. You need to look at it on a case-by-case basis, and that is what the convention allowed you to do by saying it is a primary consideration. So each situation must be dealt with on a case-by-case basis.

CHAIRMAN—I will come back to you, Eric.

Senator NEAL—There has been some evidence given to us before today which suggests some concern about the operation of the convention. I will try and quote as closely as I can, but it will not be exact. It is that street-wise kids relying on the convention are coming to court taking action against their parents for searching their rooms. What I would like to know is this: are you aware of any particular instances of children taking action based on that convention against their parents, or anyone else, in what might be considered a minor or an unnecessary way?

Mr Bartholomew—None, actually, that I am aware of. And our organisation deals with about 1,000 inquiries a year from young people on a variety of different issues. None of the cases that we have ever taken has been in relation to young people wanting to take action against their parents, except perhaps to recover property of theirs that they have not been able to recover—to obtain property—and that has always been done, basically, through our family therapist providing some counselling advice.

In terms of court action, we have never been involved with or never been aware of any matters where young people have taken action against their parents. Indeed, I would be very surprised if any of my clients were aware of the convention. Perhaps a handful of them might. But certainly the young people I see in the detention are flat out being aware of the charge that they are on or indeed the act that they are being sentenced on, let alone knowing about the Convention on the Rights of the Child.

CHAIRMAN—The last thing they would know is that the Convention on the Rights of the Child actually even existed.

Ms Wight—It is part of my work to go to schools in and around Brisbane, private and state schools, and to the alternative learning programs run by the education department, which means that during the year I actually see a fairly significant number of young people. I am sure you could count on the fingers of one hand the number of children at all levels who even know the convention exists. It is not a thing that is

regularly discussed or talked about, and certainly not promoted.

CHAIRMAN—It would be fair to say that there would be a number that would say, 'You can't do that to me because I've got rights.' They would not necessarily say, in the school, what it might be. There is anecdotal evidence that that is what they do.

Ms Wight—But that would be in relation to things like they have been told that they may not need to answer police questions beyond giving their name and address. That is something that I go into schools to talk to young people about—what their rights and obligations are in relation to the police and those sorts of issues—so that they know as citizens of this country what the law says that they may or may not do. But that is really where lots of those sorts of things come from. It is certainly not in relation to parents. It is very rare that I would get a question, 'What can I do about my parents who are doing this or that or the other?' It is very rare.

Mr Bartholomew—I would certainly say to you, from my experiences in the wider community, that young people seem to be far less aware of their rights or less likely to make those sorts of statements, that 'I have rights that adults in the community have'.

Senator NEAL—There is often the problem raised about the convention that it gives children rights at the expense of their parents; that as soon as you give children rights that parents lose all control, that they will not able to provide them with the care and guidance that children really need to develop properly. What is your experience in relation to that?

Ms Wight—That was certainly something I heard a significant amount about when the debate was continuing in relation to the ratification of the convention. It is not something that I have heard a lot of since then. But I think that is really because it is not in the public eye, or it has not been until this inquiry came around, and we are starting to hear some of those comments again.

Again, as I think I said at the beginning, it is about public education. If you actually read the convention it quite clearly says in the preamble that the family is a fundamental unit of our society. In relation to a number of issues, it says that young people have these rights subject to their parents having the ability to guide them in these matters. It certainly does not put young people's rights versus family rights. I think it is really unfortunate to get sidestepped into that debate because that is not what the convention is about. It is about recognition of young people as human beings and as citizens, and it is saying, 'Yes, you do have these rights, and the older you get the more ability you will have to exercise them; we should be listening to you as adults.' But it certainly is not there to set one against the other. I do not believe that, if you read it properly, you can legitimately come to that conclusion.

Senator NEAL—I just want to clarify another issue that was raised. It was about

legislating to provide children below the age of 18 with the capacity to give consent or the capacity, I suppose, to do a whole range of things. Senator Abetz seemed to ask whether you should legislate to say that, at X age, you are able to do this or you are not able to do it. Is it possible that you can legislate to say that the age that you have that capacity varies depending on the assessed views of your capacity, rather than just saying a set date? I think I have seen some examples of that in—

Mr Bartholomew—Yes. I think that was really our answer to the question as to how we could do it, basically, in the same way the particular decision was set out. I am obviously not parliamentary counsel and I could not say exactly how you would word the legislation, but to take into consideration the maturity, the understanding, the ability of the young person to understand the advantages, disadvantages and implications of the decision that they are making certainly could be statutorily entrenched.

Mr HARDGRAVE—As to aims and aspirations such as you have just outlined there, do you think very few Australians, regardless of their age, actually understand their rights and obligations under the law?

Ms Wight—No, actually, which is why I am very enthused about the work that I do. It is my great concern that we in fact have an entire population, it seems to me, that is really not very aware of the law, the legal process, the legal system and its many facets, or the fact that we are a democracy run by a system of law.

It appals me how little understanding people generally have about the whole system and process. That is why I think it is very important that we start telling young people about those things from an early age so that they understand them, so they can make responsible choices and decisions when they have all that information to assist them.

Mr HARDGRAVE—Do you think maybe this is where the urban myth or the anecdotal evidence or whatever that suggests that kids are more street smart about the law than, say, their parents could be coming from? Is work such as yours actually schooling them up and teaching them things that perhaps their parents and grandparents do not realise?

Ms Wight—I think there is probably some element. One of the arguments we have always had at Youth Advocacy in relation to the presence of an independent person at police questioning is that that independent person can be the parent or a lawyer or a worker who is associated with the young person, that sort of thing, and that that is actually a bit of a nonsense because in our experience the parents and probably the worker have no more understanding of the legal rights in that process than the young person who is actually caught up in it at that particular time. So there probably is an element of that.

I think it would be overstating my influence to say that I have managed to tell so many young people so much more than their parents knew. I would actually find that a

huge compliment, but I think the reality is probably that my influence is not quite that great.

Mr HARDGRAVE—But do you think children on the whole may understand—it is hard to qualify, I guess—their rights and, therefore, their obligations as well better than perhaps some of their parents would have at their age, say?

Ms Wight—That is possibly true. I think that, because of the complexity of our society, in fact children today know probably a lot more about lots of things than their parents—and, indeed, us or our parents in turn. I think that is just the nature of society. I do not think there is anything particularly special about legal rights and obligations.

Mr HARDGRAVE—I have one or two very quick questions. Your colleague said before that a rape is a crime whether it is committed by a 16-year-old or an 18-year-old, so does it not seem reasonable that if children embark on adult-like activities they should be treated in a similar way before the law?

Ms Wight—They are treated in a similar way before the law in reality. There is really very little difference in the process through which they go, certainly in this state. They go through a court system. The court has proper evidential processes. It is a formal accusatorial system. There are some protections in there in relation to having an independent person at police questioning. About the court, if it is a magistrate's court running as a children's court, there is some confidentiality there in terms of people being present in the court, and those sorts of things. The sentencing options are different in the sense that they are probably not as long as the periods for which adults may be sentenced. But the sentences are parallel to what happens in the adult court. If you look at the range they are exactly the same.

It is the case that, in this state, if a young person commits a crime which the court considers serious enough, they may be sentenced to life imprisonment. So there is no possibility in this state that a young person will get away with something that society might consider unpleasant. So I think it really is not true to say that they are treated very differently.

The point is that we should be looking at the fact that they are young. What is the point of writing off a 16-year-old? They may have done something that is not acceptable in any way, shape or form, and I would not pretend otherwise, but the fact is that, if we write somebody off at 16, what are they going to be able to contribute to our society when they are 36? All we have done is get angry and let out that anger, but we have done nothing positive for them or for the society that they will come back into. I think we have to look at the future. What does that mean when they re-enter? We need to be looking at some of that.

Mr HARDGRAVE—So is there a point to having a children's court system?

Ms Wight—Yes. There is.

Mr HARDGRAVE—You still want to maintain a different type of treatment for children?

Mr Bartholomew—It is only a different type of treatment in that it acknowledges, as I said earlier, the particular needs that young people have in the court system. As Janet has explained to you, there are very few differences in terms of the total process but, in terms of some individual protections, for instance, it ensures that a young person at least understands the process of what is going on. There is a requirement that a practitioner or the court explain to a young person the processes that they are going through.

As Janet said, it also provides some confidentiality. Also, in terms of the sentences that can be given, although they are parallel sentences, the probation order, the community-based orders, in this state at least, are administered through the Department of Families, Youth and Community Care rather than corrective services so that the orders are orders that are appropriate to young people and are orders that young people can actually fulfil or are of significance to them. It is recognition that, because of their age, they cannot perhaps carry out the same functions as an adult; that they perhaps have other requirements; that they can do other things better or other things at different levels than adults can.

Mr HARDGRAVE—I have one very quick question. They can commit adult-like crimes, of course, but is there an acquittal process between the children's court findings and penalties and other courts' findings and penalties? Is there any acquittal, any sort of comparison regularly done?

Mr Bartholomew—Certainly it is one of the decisions that a children's court judge or magistrate would take into account. Often they will say, in making their decision, 'If you are an adult these are the options that are open to you.' So that would always be considered. The older they get, in fact the more likely they are to receive a tougher penalty than if they are younger.

CHAIRMAN—Thank you. I am going to have to cut it off now for the tape to be changed.

Short adjournment

Mr TRUSS—In your submission, you were critical of the Children's Commissioner in Queensland—

Ms Wight—It seems a bit soft.

Mr TRUSS—I am not saying that it is personal criticism. You submitted as evidence to support that concern the appendix C—unfortunately we have had to read these

things rather quickly—which is an article from the *Independent Law Journal*. In its summary, it seems to base the criticism on the fact that:

> A Children's Commissioner should be a true advocate for children, that is, someone who listens to them and speaks up for them whenever children themselves identify issues of concern to them.

I appreciate that you are lawyers, but are you really saying that the Children's Commissioner should really have been a legal advocate for children?

Ms Wight—No. By the word 'advocate' we are not referring to a legal advocate: we are simply saying any person who takes on the role of speaking up on behalf of the child. The role of commissioner does not have to be fulfilled by a lawyer and it does not necessarily require legal representation. That article is saying that, the way the office is constructed at the moment, the commissioner takes in complaints or matters for investigation and then passes them or has them investigated. Then a tribunal is possibly set up in some circumstances for decisions to be made in relation to that.

Nowhere in that legislation is there somebody who stands with the child, works with them through that process, explains that process and helps them put their views forward. That does not have to be a legal person. It just has to be someone who takes the side or stands at the side of the young person and works with them and helps them to present what they need to be heard.

Mr TRUSS—Is that what you do?

Ms Wight—Yes. It can be done by lawyers. I thought your question was: does it have to be a lawyer? I am saying not necessarily; it depends on the forum.

Mr TRUSS—I am wondering whether there are times when children need something more than a lawyer.

Ms Wight—Absolutely. That is why we have a youth worker sitting behind you. Heavens, if the world was left to lawyers we would be in big trouble.

Mr TRUSS—I am somewhat concerned that you may be limiting the role of the Children's Commissioner to being an advocate rather than being someone who is looking at the more general issues affecting children.

Ms Wight—No. If you have young people coming to the commissioner's office saying, 'I need your assistance in this matter,' in the same way that our work of law reform activity and education is informed by the casework that Damien does, then the general policy work and need to monitor things and recommend to government will come from the very fact that they have been asked to advocate in these areas and the commissioner's office has then identified problems.

Mr TRUSS—The commissioner is able to go to lawyers if he needs lawyers and to psychologists if he needs psychologists and to policemen if he needs policemen. Isn't it better for him to have a more general function, as is seemingly the model that has been set up, rather than a specific advocacy role?

Ms Wight—No, I think children are very limited in their ability to get somebody to speak up for them and with them. In our society that is not something that happens very often. Because the processes and systems and general law and legal structure they have to face are adult based and adult processed things they do not come to terms with or understand, there does have to be a very significant advocacy role. That, to my mind, is actually vital in that sort of office.

Mr TRUSS—To take the same theme into your comments on the Family Court, is it your view that children are not often enough given their own separate legal representation in the Family Court?

Mr Bartholomew—Yes. That would be the case from my own experiences of young people who come to me expressing that, in some situations, there may not be a separate representative appointed or, in other situations, they do have a separate representative appointed, but they do not feel that their views are being advocated to the court. It is very difficult for a young person to understand that justice is being done if there is somebody there who is advocating their mother's or father's point of view, and yet the person who is supposedly there representing their best interests will not advocate their own view. They do not see how the decision is just, particularly when the decision often is about them.

Mr TRUSS—That is the key point. So often children are the subject of the argument between warring parents telling different stories. Can a children's advocate or legal representative effectively put across the children's views when the parents are both perhaps presenting alternative positions?

Mr Bartholomew—Yes, they take their instructions from the young person, and then present those ideas. There may be situations, obviously, where a separate representative may be also necessary, taking into consideration the age and the maturity of the young person. I see no reason why we could not have a situation where there is a separate representative, a representative of the young person and representatives of both of the parents. Certainly, something that the judge then looks at in determining all of the evidence is the influence. Both parents will present evidence, I assure you, about what influence they believe that the other parent has had upon those views of the child.

The important thing, from our point of view, would be to see that the young person had their views expressed and advocated from their point of view and what they believe. Certainly, anyone else can then talk about other influences that they believe may be an issue.

Senator NEAL—Can I just clarify that a bit? The legal representative of the child does not strictly take instructions from the child. It is more that they take their views into account to the extent that they are able to.

Mr Bartholomew—Separate representatives. Yes, that is right.

Ms Wight—Yes.

Senator NEAL—If you have a two-year-old, you are obviously—

Mr Bartholomew—That is right. In that situation, it obviously would not be appropriate for the child to instruct their own solicitor, because they simply would not be able to.

Mr BARTLETT—I want to pursue a little further the idea of trying to legislate for some of those rights. You mention on page 2 that there has been little real commitment, particularly in relation to the issue of rights. For instance, article 12—and we have referred to it indirectly a couple of times—says that due weight be given to the views of the child 'in accordance with age and maturity of the child'. How do we legislate for that? We could focus on an example—it was raised, but I do not think really tackled—of, say, the question of age of consent. How do we effectively legislate for that right in article 12, giving due weight to age and maturity of the child?

Ms Wight—We are essentially coming back to that whole question of Gillick, because that is what Gillick says.

Mr BARTLETT—So would you advocate that there ought not to be a prescribed age, say, in terms of that issue?

Ms Wight—It is difficult.

Mr Bartholomew—The age of consent question is a difficult question and we would acknowledge that. I would say that, in terms of our submission and article 12, Gillick should be a general principle. That is not to say that there would not be some situations where perhaps there may need to be some age differential.

Mr BARTLETT—Could you just state, for the sake of the record, what you think that general principle should be?

Mr Bartholomew—The general principle should be, in accordance with Gillick and what is contained on page 5, that if a minor is capable of giving informed consent, and she or he has sufficient say—

Mr BARTLETT—Who then determines whether the minor is capable?

Mr Bartholomew—The individual professional who is dealing with the young person in relation to that matter.

Mr BARTLETT—So you are advocating that there should be no prescribed age. Should it be up to the individuals to determine themselves whether they are of an appropriate age?

Mr Bartholomew—We would say that the Gillick decision should be the basis on which we approach these things. That is not to say that there may not be some situations where the law may consider it necessary for various reasons, but that should be the premise.

Mr BARTLETT—What degree of confusion does that create then for young people wondering whether they are breaking the law or not, not knowing whether they are of a mature enough age to determine their own age of consent?

Mr Bartholomew—No.

Senator NEAL—Criminal liability—

Mr BARTLETT—I am talking about age of consent.

Mr Bartholomew—Did you say age generally or age of consent? I think we said that age of consent issue is very difficult.

Mr BARTLETT—Exactly. I am just using that as an example. There are many issues where the issue is very difficult. When we try to come down to specifics on how we enact in legislation an article such as article 12, we have problems. We are all agreed in terms of the general principles of the convention, but when we come to try and legislate, we come into difficulties.

Ms Wight—The age of consent is a very particular area, which presents very special problems.

Mr BARTLETT—Yes, it does.

Ms Wight—It is not necessarily the case that age may always be the determining factor. In some states—it may be in Victoria—if under eighteens are two or less years apart in age, it does not become a criminal offence.

Those are the sorts of things that we may be needing to look at, it is not just a question about finding a law. Those matters, like age of consent, are very complex and I don't think, to be fair, that it is possible for us to say today, 'Yes, this is the age and that's set', because there are a lot of issues that surround that. There are a lot of issues

about who is actually in breach of the law and why they are in breach of the law. Are we looking at two teenagers who may be doing something that you and I would rather they did not do, or are we looking at somebody who is abusing their power and position to do something totally inappropriate? Do you see what I mean?

Mr BARTLETT—Yes. Let us look at another example. What about the right of freedom of association where a parent argues that their child is in danger by way of associating with a particular group of people and the child argues that their own views should be considered and that they are mature enough to make that decision for themselves? How do we legislate in terms of an appropriate account being taken of the child's views compared to the parents' views?

Mr Bartholomew—It is not really an area that we would legislate for. We do not legislate in terms of those areas now. I would not have thought that we were advocating legislation for every decision that has to be made in terms of family life such as whether you can have cereal for breakfast. Certainly, that is not our submission. What we would say is that giving some statutory recognition would be a good framework for society to then work from in making those decisions. It would probably be of some assistance to parents in terms of making those decisions and making sure that their child can fully understand the consequences of the decision that they are taking, and of other authorities, more specifically education authorities.

Mr BARTLETT—Isn't that what happens in any case with the way parents raise their children?

Mr Bartholomew—We would like to think that that does happen, yes.

Mr BARTLETT—So it can happen without legislation to apply the articles of the convention?

Mr Bartholomew—In the particular example that you gave, it does.

Ms Wight—There isn't law there now. We see no particular reason why you need to be legislating for everything. That is why we were arguing in here that what we should be doing is looking at the convention as a benchmark, that you look at your law, policy and practice against the convention and say, 'Does it meet this benchmark?'. If it does then that is fine. It is not that you have to be writing the words of the convention into every possible scenario, it is a question of the process, the law that we put in place here. As for the practice that we have suggested that the police service follows, whatever, is that consistent with the terms of the convention?

Mr BARTLETT—Or is it consistent with the principles on which our society is based? I put it to you that many of those conventions really are just a repetition in many ways of the principles that we as a civilised society uphold—

Ms Wight—We would like to think so.

Mr BARTLETT—and that those benchmarks are applied in our law rather than needing to look at the benchmarks of the convention every time.

Ms Wight—I would suggest to you that we have actually undertaken, at an international level, at a legal level, to actually do that. The fact that it complies with how we like to see things is very positive because I would have thought we should not have been signing something that we were that uncomfortable with. So if the two coincide then that seems to me to be very positive.

Mr HARDGRAVE—There is a suggestion from time to time from people like the victims of crime groups—I think the current Queensland state government looked at it too—about legislation to force parents of children who commit crimes to have responsibility for meeting compensation costs to the victims. Do you support such moves?

Mr Bartholomew—I do not know how it falls within the convention.

Mr HARDGRAVE—I am wondering whether you support such a move?

Ms Wight—Generally speaking, we do not think it is very helpful. If you have a young person who has got themselves into a situation where they are in breach of the law, there may well be problems at home, other issues going on. It is our experience that most young people who come into conflict with the justice system are experiencing other problems either at home, at school, or a combination of those sorts of things.

We think that by forcing parents into the situation of having to pay compensation themselves, you may be putting more stress on that family unit. You may cause more problems and more hassles. You may end up with a child on the streets. You may end up with parents who can't make ends meet, those sorts of things, and they may be already struggling. I don't think it addresses the issues in a very positive way.

It is not something that we were particularly happy to see in the amendments to the Queensland Juvenile Justice Act. We would like to see more positive steps in terms of asking, 'Why is this young person in this situation? What positive steps should we be putting in place to deal with family problems or whatever the story might be?' I do not think putting parents at loggerheads with their children is actually going to solve things. It will probably make the two parties further apart, with more room for dissension.

CHAIRMAN—My very final question relates to Teoh and, specifically, to that legitimate expectation spelt out in the Teoh case. How do you react as an organisation to what the federal government intends to do to overcome that 'legitimate expectation' question mark? Do you understand what is going to happen?

Ms Wight—My understanding is that they want to reverse the decision in the Teoh case. Both the Labor and Coalition governments have said they are not happy with the Teoh decision. They wish that decision not to be as it is and, therefore, they will legislate to say that that is not the case.

CHAIRMAN—No. What they want to do is to clarify it in terms of that legitimate expectation and to make it very clear that it needs to be encapsulated in domestic law prior to its having a legal effect.

Senator NEAL—I think we could argue for three days about what Teoh said.

CHAIRMAN—I know. But I am just interested in your understanding of it. Bear in mind that the legislation has not been introduced yet but it will be in the next few weeks, but there has been a joint statement made by the Attorney-General and the Minister for Foreign Affairs on it.

Ms Wight—Then that is a problem if the situation remains as in Australia's report in 1995 that Australia does not propose to implement the Convention on the Rights of the Child by enacting the convention as domestic law. If that still holds true, that means that the convention will never be enacted into domestic law, which means nobody can ever have an expectation that the convention raises expectations that it be complied with. I find that extraordinary.

I find it doubly extraordinary in that it is quite clear, as I understand it, at international law that we do have legal obligations to fulfil our commitment to the treaty. I understand that because of the Vienna Convention on the Law of Treaties and from people such as Justice Elizabeth Evatt who have been quite clear about that. It strikes me that we are always telling young people, 'Be reasonable, do what you should be doing, fulfil your obligations,' and then we turn around and say, 'We do not think we will fulfil these obligations.'

Mr TRUSS—We were told that when this convention was ratified our existing law did comply with the convention and so we did not need to do anything more.

Ms Wight—I do not think we would agree that that was the case, I must say.

Mr TRUSS—You think there are some laws that need to be changed in Australia to conform with the conventions?

Ms Wight—It is not just about law; it is law, practice and policy. Certainly, there is a significant amount of practice and policy as well as—

Mr TRUSS—So in the future a High Court is going to rule some legislation somewhere in Australia as our breach of the rights of the child convention?

Ms Wight—All that Teoh did, as I said, was to raise the issue that it should be considered that we have an obligation to at least look at the convention. I cannot really see why that should be such a problem.

CHAIRMAN—As there are no further questions, thank you very much for coming along this morning. As I have said before, I think it may well be that we will seek some further comments from you. If you would like to put in any written comments in addition to your supplementary submission, please do so. If we could have something in the light of what you have heard here this morning, maybe just to elucidate a few points, please feel free to do so.

[12.21 p.m.]

DOYLE, Mr Bruce John, Queensland Law Society and the Family Law Practitioners Association, GPO Box 175, Brisbane, Queensland 4001

CHAIRMAN—Yours is a very extensive submission. Do you wish to make a short opening statement before we go into questions?

Mr Doyle—Yes. The note I had said five minutes; perhaps it will be close to 10 minutes but if that is acceptable to you—

CHAIRMAN—That is fine.

Mr Doyle—I might just give a little background first. The submission has the support of the Queensland Law Society and the Family Law Practitioners Association which consists of not just lawyers who practise before the family court but also counsellors, social workers and psychologists who are involved in family law work. Part 5 of the submission has the support of the Queensland Network of Children's Contact Services which is a loose and informal network of people who are interested in children's contact centres and who share their information and experience. It is also a resource centre for working groups wanting to establish contact centres.

In the submission I have mentioned my own experiences. My own background is 14 years as a solicitor, 12 of them as a solicitor in private practice in Queensland and two of them in the Northern Territory working as the barrister and solicitor in charge of family law there.

I note that there were some questions about child representation earlier and child representation is an extensive part of my practice. It would be 20 to 25 per cent at the moment.

The first area and largest area I want to cover in my oral submission is the area of whether the family law practices in dealing with interim hearings do comply with the treaty. I think I have clearly shown that they do not, in general.

I have also forwarded to the committee—I am not sure whether you received a copy of the judgment on Tate and Tate of Justice Rowlands. I see some blank looks so I may summarise. I will just go to the main point. There are two areas I want to cover on this area. One is what was referred to in Tate and Tate. This is a single judgment of Justice Rowlands at Newcastle recently—it was only published in March—in which he spoke about the need for 'merit based interim hearings in children's cases'. You will have that material before you and really His Honour goes into much more detail and perhaps in a more articulate way than I have in my submission about the problems of the current situation with interim hearings.

The one point where I would part company with His Honour is that His Honour has suggested that the way around this is to have better structure leading up to interim hearings, greater obligations upon parties to disclose more, to prepare affidavits 14 days beforehand and have medical reports attached.

I part company with that for two reasons, one of which is a practical reason and the other a principled reason. The practical reason is it is just the nature of interim hearings. People are always going to be putting in things late even if it is something that happened in contact in the weekend before. Even if there is no good reason for it being late, the court cannot exclude that evidence. It is not like a commercial matter where if parties do not get the matters in on time they will punish the parties by not allowing the matter in to evidence. If they do not allow real evidence in then the courts are punishing the children and the courts cannot do that. For one thing, I do not think it will work. Another thing is that the additional documentation requirement on parties means costs and who is going to pay for that?

This is an approach that the family court has adopted—and this is not a criticism of the court—and it is the way the court tries to maximise the use of its resources. Where the court has a problem with using its own resources, it has externalised the problem and put the onus on litigants before it to have a high level of preparation. So that is the problem. The principaled issue is really the core of what is before this committee: how you get to the nub of what is in the best interests of children? I believe the way of getting to the nub of that is to have some independent inquiry very early in the piece. It may be the child's representative, but it does not even have to be a child's representative. It could be a court counsellor, for example, who is able to make an inquiry.

Over the years, we have had fewer and fewer family reports coming out of the court. That, again, is an area where the court has delayed obtaining family reports to the end and it has externalised the costs of those reports largely onto children's representatives who then are funded by legal aid commissions to prepare the equivalent report. If we are going to get, at the very beginning, proper information about what is in a child's best interests, it really needs to come from an independent source. I know that means costs, although I believe that, ultimately, if it is done properly there can be savings of costs downstream when you have got proper information early in the piece.

That is my main concern about Justice Rowlands's solution. I think he has very accurately highlighted the problems, but we need to get the child's perspective into the proceedings very early in the piece. I might say from acting in some of these matters—and I come in as a child's representative in some matters—that, when you look at the two differing versions of events, sometimes there is no dispute about facts and it would be possible for a judge, on an interim hearing, to look at agreed facts and make a decision. But, in many matters, you are not talking about the same marriage. For any judge, it is almost like sifting through an impenetrable fog to find what is really happening. What a child's representative can do is to make inquiries, highlight the issues and allow the court

to get on with the real issues upon reliable evidence. That is what I wanted to say about the issue of merit based, interim hearings.

There is one suggestion which is afoot which, we are led to believe, has some support from the Attorney. That may or may not be the case, but I will assume for these purposes that it is. That suggestion is that a lot of the interim work done in the Family Court could be done by magistrates—either state based magistrates or through a Commonwealth magistracy. That has a lot of merit, but it would have to be done, if it were done, with a lot of safeguards. The reason it has attractions is of course that, first of all, magistrates are cheaper to run. But, secondly, there is a greater access for regional Australia. In relation to the recent cutbacks, I had a recent case from Bundaberg so people had to come more than 300 kilometres for an urgent decision. For the record, I just acknowledge that that is your area, Mr Truss, is it not?

Mr TRUSS—No.

Mr Doyle—I apologise.

Mr TRUSS—It is just a bit north of me.

Mr Doyle—I will get back to what I intended to say. The merit is that it can be quicker. The only caveat or qualification I would put on that is that it is very important, if more power is given to the magistracy—be it a Commonwealth or a state magistracy—that they be people who are dealing in the area if not full-time, then for a substantial amount of their time. The key areas of family law—child welfare matters and property distribution—are discretionary areas, and it is not good enough to have a good black letter lawyer doing this because in a discretionary area you need to have a consistent exercise of discretion. Of course, magistrates have the power these days. But although occasionally, and certainly in areas where the Family Court is not sitting, people have to use magistrates, there is, in general, a preference amongst family lawyers not to use them simply—from their point of view—because of reliability, consistency and predicability of the likely outcomes. So the first thing is that the magistrates must be adequately specialised.

I will give you an anecdote from only last month, about the case I was involved in with the person from Bundaberg. He came to Brisbane in a great hurry because his wife had not returned his children after contact. These children lived with him. The Family Court was very effective. The Family Court allowed me, on behalf of my client, to get into court practically within an hour and a half of filing the application. They had a good service there because, on the Family Court premises there was the Federal Police, so we were able to get the recovery order to the Federal Police so that they could start action on it. It was wonderful. The wife surfaced within 24 hours. She made her own application to the court. We were back in court again.

This is where the Family Court is a gem in terms of what it does for people in these stressed circumstances. They had a counselling service. They were able to see counsellors on the spot. The judge made a decision. The next day the handover was to take place at the court. There was a court counselling service. The wife, for her part, had expressed concerns about family violence. There was security actually in the back of the court. On the day when the handover was to take place, the Family Court counselling service was available to help the handover. They were also available and on stand-by to provide counselling.

The service the court provided even extended to the court officers providing jackets for people who were cold in the courtroom. Perhaps the last is an example of a Rolls Royce service, but the other things I have mentioned are by no means a Rolls Royce service in family law. They are the nuts and bolts of helping families and children in distressed circumstances. Although I would support the magistracy utilising this power more frequently, if it is done, it must be done with those services available.

That is all I have to say on my first and major area. That is the area that impacts most on the day-to-day practice of family lawyers. I will move on to the concern I expressed about the separate representation of children in care and protection proceedings. It is an area I believe should be handled by legal aid commissions. In my submission, I acknowledge that in the Northern Territory, where I have experience, it was funded by the Department of Health and Community Services.

This is an area of concern in Commonwealth-state relations. Care and protection is a state area, but it is the treaty itself which imposes this additional obligation to represent children adequately. I do not want to be heard on who should pay for this. All I want to say on that is that, whatever the outcome, children should not be left in some sort of a legal limbo, not knowing where to turn.

It is desirable to have an integrated system of service delivery. I believe that in Queensland we have been on the brink for the last few months, and deadlines have come and gone about having the new state Legal Aid Commission do Commonwealth work. I understand that letters have come and gone only in the last few days about the deadline which was supposed to be on 28 April. Whatever influence each of you have in this area, it is an area of great concern to family lawyers that we could be looking at a split system of legal assistance in family law areas in general.

I do not really want to say much more about the two areas I have mentioned in relation to children's representation. I have expressed concerns about the cost-capping, and I think that would undermine the effectiveness of child representation. Also, it undermines the effective representation of the particular groups we are concerned about, namely, indigenous children, children who are discriminated against, and children who may have been the subject of abuse. They are the very cases where you are going to need a lot more work, a lot more effort, and there will be more costs. And so, by definition, it

discriminates against those people.

I now move on to the fifth point I have made, which was about children's contact centres. Mr Chairman, you may be aware that the centre in Toowoomba is something of a shining light.

CHAIRMAN—Yes.

Mr Doyle—It is the longest-standing centre in Australia. It has at times received some partial Commonwealth government funding. At the moment I believe it does not. A centre such as that—and it is also true of the centre which exists on the Sunshine Coast—is built on the backs of some extremely committed, energetic individuals. These are also gems of our community, in my submission. All children in Australia cannot be fortunate enough to live in a community where there are these gems who, on their own effort and in their own time, do an enormous amount of work to make this happen—

CHAIRMAN—Including their MP, of course.

Mr Doyle—Yes, indeed. All children cannot be fortunate enough to have such centres and indeed their MPs, yes. There are gaps to be filled. In Queensland we have only one Commonwealth government funded centre. That Commonwealth government funded centre is at Logan West and I believe that these centres are really very cheap. I was involved in setting up a centre in Darwin. I think it had Justice Statement money and I think they were looking at only about $70,000 a year, which is very cheap for the service they provide.

I have mentioned in the paper that there are working groups which—with just a little bit of a kick along—could make those services happen. In fact, since I wrote the submission I have learned that there are also working groups on Bribie Island and in Townsville. I believe that with just a little bit of funding for a coordinator, it is substantially less than $70,000 or even $100,000 that some of the existing centres get per year. I believe that we would have a good number of those six additional working groups up and running with centres.

All the centres that exist around the country have stories of parents who are going to extraordinary lengths to use them. I was speaking to one of the convenors of the Sunshine Coast committee only three days ago who told me that they have parents who come from Townsville and Sydney and sleep in cars there overnight so that they can use that service for their children. So there are huge gaps in service; and, in particular, in my experience there is a gap in Brisbane's northside.

The final area I will cover is child support. I have only given a very brief submission on that and I have given some suggestions about how things could be improved there. I actually believe that this is an area where the policy settings in Australia

are basically correct. We can improve it a little bit. As you all probably know, only members of parliament receive more complaints about this area than family lawyers, but in my perception, the level of those complaints has decreased over the years. My perception is that despite great difficulties and administrative overload, the Child Support Agency has made some progress. There is a lot of room for progress yet.

In an environment where we are talking about further cuts to Commonwealth government expenditure, it would be of concern to me if those costs resulted in a reduction of the level of resourcing of the Child Support Agency. I think it would inevitably lead to a return to the bad old days of the Child Support Agency where people to a greater extent than now felt total frustration. They felt as if they were hitting their heads against a brick wall. That is an area where underservicing is quite dangerous. It can be dangerous in a spectacular way. I do not want to be melodramatic, but you will recall in the early 1980s the bombing of the Family Court at Parramatta. That was at a time when there were enormous delays in that court and there were an enormous levels of frustration.

I am not saying that it is going to result in deaths or not. But the long delays in the Family Court or if people have problems in dealing with the Child Support Agency, it raises levels of frustration. It makes it much more difficult for those fractured families to recover and get on with their lives, whether it be in a spectacular way or whether it be in the way of slow attrition and undermining family relationships which will undermine the interests of children. So I have gone over on what I promised for the introductory statement, but I am happy to answer questions.

Mr BARTLETT—On page 5 of your submission you have presented the argument that you presented very strongly in your introductory comments, that the delays seem to be some of the biggest problems in terms of applying the best interest principle. Given that there is a limited amount of funding available to address these issues, would you say that the best interests of the children would be served by putting more funding into the things you have suggested here in 5(a) in your conclusion on page 6? That is:

Placing a greater emphasis and therefore greater resources into interim hearings so that courts will have sufficient evidence and time to make interim determinations on the *"best interests"* principle.

Would it be your opinion that money would be better spent in this area to reduce delays or enacting new legislation or setting up offices of commissioners of children around the country? It is not that those things are bad in themselves, but what would you see ought to be the higher priority and what would have greater impact in terms of the best interests of the children?

Mr Doyle—Firstly, I do not think that is an area for legislation, necessarily. I suppose there is a tension here in all these submissions between stating whether or nor there is compliance and being pragmatic about it in terms of cost. If I had a limited pot of

money put into this, I would have a system where there was a very early scrutiny, perhaps only a couple of weeks after the filing of a child matter. So that there is very preliminary scrutiny about whether this was a matter where you needed a child rep, although not necessarily even a child rep. Much of this could be done if the in-house Family Court counselling service had the resources to do it. I know that the attorney is looking at it.

Senator NEAL—They do not do reports any more.

Mr Doyle—Indeed, yes, I know, but it could be done were the resources there. So if I had that pot of money, I would probably channel some of it there. It would not be necessary in every case. I think the classic case of where it is needed would be where the two stories before the court are an impenetrable fog.

If it is a case where there is no dispute on facts, I do not think you necessarily need put those resources in at an early stage. In most of these cases it is pretty obvious at the outset that they are going to be like that. If you put the money in at that stage, I believe that it will help define the issues. It simply defines the issues and makes it much clearer which way the matter is headed. There are matters in which there are enormously long histories and irrelevant material going in.

Mr BARTLETT—So that would be the highest priority?

Mr Doyle—I believe so, yes.

Senator NEAL—Am I correctly understanding the thrust of your submission, that it is your view that, because of the delays in reaching both interim and final hearings in matters involving children in the Family Court, they are actually acting in breach of the convention on children's rights?

Mr Doyle—Before I give a one-word answer, I want to be clear that this answer that I am giving is not court bashing or judge bashing. I am not doing that, but the one-word answer is, yes. As I say, the act sets out quite a number of factors that are for the best interests of the child. The court will still say that this practice is in the best interests of the child, but Justice Rowlands's judgment articulates it very well because of the tensions the courts faces.

This principle of status quo goes back well before the Family Law Act. It was applied in the Supreme Court. I am told by older practitioners that you would have got a final hearing in Queensland in two to three months. So it made a lot of sense to leave the children where they are and can get a proper hearing in two to three months. The Family Court's case management guidelines have delayed that by saying it should be 10 months. That is okay and my submission says in some cases that is appropriate and in other cases that is not.

But there is a totally different situation when you are talking about delays of two years. Now that is the tension that Justice Rowlands was talking about in his judgment, saying that there would be cases where some judges feel that they are bound by precedent and other judges will try hard to distinguish that precedent. These are the hard cases. You are going to make bad law. They will add to the uncertainty of people before the courts and it is going to be very, very difficult for everyone.

Senator NEAL—Are you providing evidence in relation to the two child protection matters as well? Do you have any experience of what sorts of delays are involved there?

Mr Doyle—To be honest, I do not have extensive experience in that area. I have mentioned in my submission an example of a matter of which I have been on the fringes. I have seen there are gaps there, but I do not get involved. I practice in the city and it seems to be in the outer suburbs where they are legally aided parties. The other thing is that there is no scope for separate representation of children in those proceedings. So, no. I have never been told.

Senator NEAL—I wanted to clarify that.

Mr Doyle—No, there is not. So that is one of the thrusts of my submission.

Mr TRUSS—Right at the beginning of your submission you comment about the fact that only five per cent of Family Court hearings actually get to a final hearing. Do the long delays that occur in the process actually have the effect of most cases resolving themselves?

Mr Doyle—That is part of it. There are two key reasons for that fallout rate. One is cost, of course. For a private individual, you are looking probably a minimum of $10,000 to get yourself all the way to the court for trial and in many cases it may be $30,000 if you are talking about a multi-day hearing with all sorts of professional witnesses. So there are not many people who can afford that.

Mr TRUSS—The point I am trying to pursue from the point of view of the inquiry is: are the people better able to sort it out themselves given a bit of time, rather than having the lawyers and the judges getting in the way?

Mr Doyle—I do not know whether it is the virtue of necessity, but they come to terms with their new circumstances and it means that many of them do give up in frustration.

Mr TRUSS—And end up with a satisfactory solution?

Mr Doyle—Depends who you are talking to.

Mr TRUSS—Finally, as members we all get lots of these cases come to our attention. Frequently we are told that the reason why the cases take such a long time to get to court is slow lawyers.

Mr Doyle—That may be their perception, but the trend of most courts now, including the Family Court, is on case management. Case management is no longer the adversarial process where the adversaries go to trial when they get around to it. The court has, in principle at least, strict timetables. Each stage should take a certain amount of time and the court intervenes. You have to go along to a directions hearing at one point, you have a conciliation conference, you have further counselling and pre-hearing conferences. The court actually drives the speed of that. So I think these days, it would be rare for that to be true.

CHAIRMAN—It is more a criticism of the legal processes than of specific practitioners, whether they be on the bench or whether they be where you stand?

Mr Doyle—I believe that is right. I think it is really just the court that does not have the judicial resources to push matters through in accordance with its own guidelines.

CHAIRMAN—I have a final question for you and I come back specifically to the convention. What is your assessment—if you are able to make the assessment—of the public awareness of the convention since 1990? Do people know nothing about it even in 1997? Do they know more about it? Do they know less about it? Does that really add anything to the appreciation of what the convention is all about?

Mr Doyle—I have to say that I have not had a single client over the years who has mentioned the convention. I have two cases over the years where I have had to mention it and rely upon it before the court.

Luncheon adjournment

[1.37 p.m.]

NIVEN, Reverend David Richard, The Gap Presbyterian Church, PO Box 87, The Gap, Brisbane, Queensland 4061

CHAIRMAN—Welcome. We have received your written submission. Would you like to make a short opening statement?

Mr Niven—Yes, but I would first like to amend my submission in two places. On page 1, in paragraph 4, I would like to delete the final two sentences commencing with the words, 'As I understand it' and concluding with the words, 'in a court of law.' On page 2, in paragraph 2, I would like to delete the words, 'Lake Pedder' and insert the words, 'Franklin River'.

CHAIRMAN—Thank you.

Mr Niven—I would like to make a brief opening statement and give a little bit of background about who I represent. The Presbyterian Church in Australia has something like 36,000 communicant members and about 9,000 adherents—some 45,000 people involved. My own congregation at The Gap is a small one, only about 40 members and 15 adherents. I think it is fairly representative of middle class Australia. We have in our congregation single people, nuclear families, single parents, divorcees and elderly folk. We have several nationalities. We are basically Australian but we also have Koreans, Sri Lankans, Indonesians, New Zealanders, Dutch, Aboriginals and, of course, Scottish people within our congregation.

I have been married for 23 years and have four children aged between 13 and 19. I have worked in Australia and in Papua New Guinea in private enterprise and in the Queensland government before entering the full-time ministry in 1984.

My submission is very brief. I think basically it is as a private individual, although I do represent our church. It is a sense of being a small fish in a fairly big pond. I am not a lawyer, although I make some statements relating to law, but I am a concerned parent. I am not opposed to the intent of the convention, inasmuch as it seeks to protect children from all forms of abuse. I am very greatly distressed by any form of abuse of children.

My concerns are in three broad areas. We can understand the convention as granting children's rights over parents' rights. It can be understood in that way; for example, parents being unable to punish children, unable to restrict what is seen or read by them, unable to restrict their associations, and unable to influence children in their religious views. My concern is that some of these areas are things that responsible parents need to be able to do.

It can be understood that competent authorities are able to remove children from

their parents. There are certainly concerns that I have in relation to the effects on our own sovereignty as a nation, that we become subject to the United Nations and to a committee of that organisation. It concerns me that treaties such as this can be ratified without going through our parliament. It concerns me that an international treaty such as this, which has not been through our parliament, has been used to nullify our constitution. I cite that example of the Franklin River.

I therefore wonder whether the convention is really necessary for us in Australia. I believe we are responsible people, with responsible government. I do not think any political party of any persuasion would not be concerned for our children and want to prevent abuse of our children. I believe we are competent to legislate ourselves. It concerns me that I understand that countries such as the former Yugoslavia, Albania, Algeria, Rwanda, Sudan and Zaire have all signed this convention, but it has not done the children of those countries any good whatsoever as far as I can see.

In summary, I think that we can care for our children without this convention. I would be much happier to see us moving towards more positive ways of strengthening our families and supporting families in the raising of their children than perhaps giving rights to children that can be misinterpreted.

Senator NEAL—You are essentially putting the view that children's rights and parents' rights cannot both be exercised at the same time, that there must be a conflict. Is that your view?

Mr Niven—In terms of the convention, it certainly seems to favour children's rights over parents' rights.

Senator NEAL—But are you saying that both parties cannot have rights without them being in conflict?

Mr Niven—No, I am not.

Senator NEAL—So you think that both children's rights and parents' rights can exist harmoniously?

Mr Niven—Both parents and children have rights and responsibilities.

Senator NEAL—And they can coexist?

Mr Niven—They can coexist.

Senator NEAL—You said that most responsible parents want to raise their children and carry out certain activities with them. I accept that in the vast majority of cases that is quite true, but obviously there is a body of parents who are not very

responsible, who do not take their responsibilities seriously, and who have a different view about what those sorts of basic rights mean.

You mentioned the right to punish your child. I know it is always very emotional to deal with specific examples, but I always think about this example when I hear parents say that. I do punish my children when it becomes necessary, but on this occasion a child in the area where I live, a three-month-old baby, wet its nappy, and its father thought that lowering it into a bath of extremely hot water and causing third degree burns was quite appropriate in terms of punishment.

I know that is not what you are talking about, but what I am saying is that there are sometimes circumstances where a parent doesn't behave properly and potentially some intervention in that relationship between the child and the parent is necessary. I assume that you are not saying there should never be any interference in that?

Mr Niven—No, my concern comes from the way that the convention is worded. I certainly would agree with you that that is an inappropriate form of punishment. The convention itself, talking about punishment, says all forms of punishment. That could be interpreted that if I say to my child, 'You cannot watch television for the rest of the week', and that is not corporal punishment, it is a form of punishment, that that is prohibited as it is a form of punishment.

Senator NEAL—I did not read it to mean that. Maybe you would point me to the article.

Mr Niven—Article 2(2) says:

State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

It could be understood as prohibiting all forms of punishment on any of the bases that are set down there.

Senator NEAL—I must confess that I would not have in my wildest imaginings ever read that to mean that. You could always argue about it but 'is protected against all forms of discrimination' so the punishment is linked to the discrimination on those various grounds but it—

Mr Niven—Mr Chairman, that is part of my concern. We see it in two totally different ways. We interpret it in different ways.

Senator NEAL—But isn't that true of any legislation? You could virtually point to any item of legislation whether relating to children or not and say, 'What do you think

this means?'. We have a whole industry called the legal system based on that argument. Even with the Crimes Act in New South Wales, which is almost 100 years old, we have endless arguments in court about what each particular article means but most people still think the Crimes Act is valuable even though there are disputes about the exact nature of what it means.

Mr Niven—I can understand that, I accept that. I think having something like this simply adds more information to be debated and argued about over and above what may be in our own legal system. Certainly, in the case of our own nation, I think we have adequate laws in place for the protection of our children from all forms of abuse.

Senator NEAL—Putting aside putting it in place as a law because it is not a law as such at the moment, do you think the principles contained in the convention are worthwhile as an ideal that we should aspire to as a community?

Mr Niven—Not everything that is in the convention in the sense that some of those articles are open to different forms of interpretation.

Senator NEAL—Which ones do you have a particular problem with? If you cannot remember the exact articles you can just tell me the area and we can find them together.

Mr Niven—In the preamble it talks about the importance of family and parents and then in the article it seems to give more rights to the child. I will highlight some of the ones. In article 5 it talks about the rights and duties of parents and then in the final line it says:

. . . appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Senator NEAL—Are you saying that you have difficulty with a child exercising its rights?

Mr Niven—Again it seems to give the rights to the child over the parent, in the way that you can understand—

Senator NEAL—Doesn't it just say that the parent should exercise rights and duties—

Mr Niven—So that the child has the rights.

Senator NEAL—Don't you think children have any rights at all?

Mr Niven—Yes, I do.

Senator NEAL—Isn't it all right for parents to help their children exercise their rights? I do not understand. I have heard this argument and I am really trying to understand what the view is. It seems to me always based on the idea that if one person has got a group of rights and another person has a group of rights they must be in conflict. I am trying to understand why there must be a conflict.

Mr Niven—For me as a parent some of the concerns could come from the fact that if I, as a parent and as a minister of the church, want to bring my children up with a certain religious belief and teach them the faith that I believe, I could see how that could be seen as taking away their rights if they perhaps do not want to believe that. They might grow up in a vacuum—

Senator NEAL—You cannot make them believe it, can you?

Mr Niven—No.

Senator NEAL—All you can do is teach them about it and see what they believe in the end.

Mr Niven—I think it can be interpreted that that would be contrary to some of the articles in the convention.

Senator NEAL—You are concerned that articles within the convention may prevent you teaching your child about the particular faith you support?

Mr Niven—A particular way of belief. If we look at article 13, as a parent I would be concerned at the right of my children to have absolute freedom of expression to seek, receive and impart information and ideas of all kinds, either orally, written or print, in the form of art or any other media of the child's choice. This right may be subjected to certain restrictions provided by law and necessary for the respect of the rights and reputation of others and for public order, public health or morals.

I have a concern for private morals of my children. I would be concerned that they would be able to access any form of information that they would like—pornographic material for example. It comes to mind that as a parent it would concern me that I could not say to my children, 'I do not think you should be reading that material. I do not want you to have access to that material'.

CHAIRMAN—You have a deep objection then, without being specific and too legalistic, to the convention as a broad set of principles?

Mr Niven—Yes. I think it has ambiguity. Some of these things are open to different interpretations which can be seen as giving more rights to the children and taking them away from parents. It is a concern for me.

Senator ABETZ—It has been suggested to you that rights can co-exist and you have accepted that children rights and parental rights can co-exist. From time to time the child's right to freedom of association—and I note the convention only refers to parental guidance not the parental right to say, 'You will not mix with such and such'. There does come a time unfortunately when you have got rights given to two groups in society where they may come into conflict. Usually they do not. On those occasions where they do come into conflict, usually something has to give.

Is it your submission that, if you are dealing with children and parents, given the wealth of life experience of a parent, it would, in general terms, make sense that the children's rights ought possibly give way to parental rights during that period of the child's development?

Senator NEAL—That is exactly the situation that I raised of the child who was punished by a parent. The parent had a right to punish and the child had a right to security. In that sort of conflict situation would it be proper to say that the right of the parent to punish a child overrides that child's right to protection?

Mr Niven—If we go back to that, the basis of that punishment was the wetting of a nappy. If every parent in Australia punished their children for wetting nappies there would be an awful lot of children punished. In fact, every child would be punished.

Senator NEAL—I know. That is what I am saying, because this parent was obviously not a very good parent in the general view.

Mr Niven—No. I think they are the exception to the rule. The child's right to urinate is fundamental. It cannot be taken away by anybody. The right of the parent is to ensure that that urination is done in a healthy manner, I would imagine, and that includes changing nappies and accepting that babies are going to urinate—sometimes on you!

Senator ABETZ—I suppose there is always the exception that proves the rule, such as there may be ministers of religion clearly who are paedophiles—I am sure that there are such cases around—but that does not mean that you should protect every child from coming into contact with ministers of religion. Similarly, there will always be the exception that proves the rule. I would like to know what happened under the New South Wales criminal law to the father who did that to his child. I trust that he was appropriately dealt with for causing grievous bodily harm, as the law, in fact, provides.

I take you to article 19 of the convention. We were talking about the types of punishment that might or might not be allowed. Article 19 tell us:

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

It then goes on to injury or abuse. Clearly, Senator Neal's example is an injury and an abuse, I would have thought. But when we talk about protecting the child from all forms of physical violence, would you read that to mean that you are not allowed to slap a child on the hand or on the bottom because that is, in fact, a form of physical violence, although it does not go to the extent of injury or abuse, which is a separate category under this article?

Mr Niven—I think that highlights one of the areas of my concern. I do not want to see children abused in any way. Not to be able to give the child a pat on the back, low enough and hard enough to change behaviour, or the example I used before of saying to my child, 'You can't watch television for the rest of the week' could be seen as mental violence. It is open to different forms of interpretation that really does concern me.

I can cite my own experience where, with my own children, there have been times when I have said to my sons, 'You are banned from television for a week' because they have done something wrong and they have come and said to me, 'Dad, can we have a smack on the bottom and watch television? We would rather do that as a trade. It is all over and finished with and then we can watch TV and it is a much better punishment.'

I think in seeking to prevent abuse in some ways the pendulum has gone so far the other way that it concerns me that conscientious and caring parents cannot exercise a discipline for the wellbeing of their child ultimately now.

Senator NEAL—Have you heard that interpretation—I think it is quite an extreme interpretation—from anyone in the legal field of the word 'violence'? It just seems to me that it is quite outside the bounds of what I expect to come within that term.

Senator ABETZ—For the public record, former Senator Ken Wriedt was in a debate with me on the Tasmanian media that CROC prevented parents and children from administering any corporal punishment. That was interpreted by the former Labor government leader in the Senate.

Senator NEAL—Would you let the witness answer the question.

Senator ABETZ—I was asking the question.

Senator NEAL—Then let the witness answer.

Mr Niven—I have an instance from people I know, but I must confess not very well, so it is anecdotal evidence. When visiting his mother, the father had raised his voice at his children and hit a table to quieten the children who were making a lot of noise and running about. He told them to sit down and be quiet and he banged the table. Someone in the unit next door heard the shout and the bang, assumed that the children had been hit and reported him. He was subsequently investigated, so the story goes, as to their

suitability to remain parents of the children.

Senator NEAL—But that is not an interpretation of the convention, is it?

Mr Niven—It is an application of what some of my concerns would be. If he has been hitting the child—

Senator NEAL—That has nothing to do with the convention; that is just a question of fact under, I assume, the Queensland child protection legislation, or whatever the equivalent is in Queensland. I am sorry to direct you so precisely on this, but it is quite important. Have you ever heard someone legally qualified, or someone expressing a legal view, say that that is what it meant? I am trying to draw from you why you would think that the convention would mean that.

Mr Niven—I have something that was forwarded to me by somebody who knew that I was coming here. It is from a publication called *Focus*, which I do not receive, and it says that a Melbourne QC has studied the convention and has confirmed the accuracy of the following account—

Senator ABETZ—Charles Francis.

Mr Niven—It does not give a name in the article.

Senator ABETZ—I think we received a submission from Charles Francis QC saying that.

Mr Niven—In the article, someone has proposed a scenario about a 14-year-old who was reading pornography, and they had followed it through as to what could happen and how the convention could be interpreted in view of a parent saying that he does not want the child to have—it is the father, I think, but the article does not say. A parent finds a pile of *Penthouse* magazines, a heated argument develops, the magazines are confiscated and the child is not allowed anymore to see the friend who provided them. It then goes through it, looking at the articles and how it could be interpreted—

Senator NEAL—Could be or are?

Mr Niven—A legitimate interpretation of them, according to this Melbourne QC, who is unnamed. That is one instance that I have of a legal opinion and I do have some others. Some of the material I have is probably a little dated, but I have some from a barrister, if I am able to put my finger on it here.

Senator NEAL—That is fine. If you can find it later, you can write to us.

Senator ABETZ—Reverend Niven, is the bottom line that you believe children

ought be protected from abuse and neglect?

Mr Niven—Yes.

Senator ABETZ—But that at the end of the day, generally speaking, parents are the best grouping or organisation within society to bring up children; and that, given the degree of maturation that is still required for the children, there ought be appropriate recognition in the convention of parental rights along with their responsibilities, but also of children's responsibilities—that they are not an island on their own, they are part of a social unit called the family, part of society at large. There is nothing in the convention that says, 'Things might be tough at home from time to time, but don't forget you are pretty lucky to be in a family unit or to be part of a society that allows families to function.' So your approach would be that families really ought be the area of our concern to ensure the children's rights are fully protected?

Mr Niven—Yes, I think that would be fairly much what I would think.

Mr BARTLETT—If it were possible to amend the convention so as to give a clearer focus on the right balance between parents' rights and children's rights and to remove the ambiguity that you have referred to, would you then be supportive of our ratification of the convention?

Mr Niven—If it was possible to be amended, but as I understand articles 50 and 51, that can only be done through the United Nations in the process that is laid down there. As I understand this, a state party cannot unilaterally decide it will amend this convention.

Mr BARTLETT—That is right. I was asking in terms of seeking your—

Mr Niven—As I said in my opening statement, we should support families. There is always the responsible and the irresponsible. In my experience with a number of families over a number of years, the majority have been caring people who have been raising their children so that they are valuable members of our society.

CHAIRMAN—Thank you very much for giving up your time and coming and talking to us today.

[2.07 p.m.]

CARROLL, Mrs Rita Mary, President, National Council for Adoption, PO Box 348, Alderley, Queensland 4051

LAW, Mrs Doral Daphne, Secretary, National Council for Adoption, PO Box 348, Alderley, Queensland 4051

CHAIRMAN—Welcome. We have received your submission. Is there anything that you want to add to your submission or would you like to make an opening statement?

Mrs Carroll—I have expanded my opening statement under two other headings, firstly, to address the fact that adoption is actively being discouraged in Australia and, secondly, to address our concerns with the impending ratification of what is known as the Hague convention in relation to adoption.

CHAIRMAN—Do you want to table something additional in writing or would you just like to speak to it?

Mrs Carroll—I would just like to speak to it.

CHAIRMAN—Sure.

Mrs Carroll—The National Council for Adoption was formed in September 1994 to promote adoption as a means of permanent caring for children. We are an independent, non-sectarian, non-political organisation. We are a member agency of NCFA in America. We have members in four states here—Queensland, New South Wales, South Australia and Western Australia. We have a member in the UK and we had an inquiry a couple of weeks ago from the UK about forming a branch there.

Because there have always been in society, and always will be, children whose biological parents and/or families cannot care for them or do not wish to care for them for whatever reason, we think adoption must remain a viable option for the care and nurturing of these children. Based on the premise that the welfare of the child or children must always be the primary if not the only consideration in framing adoption legislation, we consider that Australia is not honouring its commitment to the United Nations Convention on the Rights of the Child in the area of adoption legislation and in the area of proposed adoption legislation, with particular reference to the impending ratification of the Hague convention.

The United Nations Convention on the Rights of the Child in article 2 states that rights apply to all children without exception. Some children are being discriminated against under current adoption legislation. First of all, children should not be denied the right to be adopted into a family where there are already biological children and there is

an infertility clause in Queensland legislation—I am not sure about legislation in other states. It has been known that an abused child has been adopted to a single parent where the law in that state did not allow for that normally, which meant that the standards of that state were changed because the child was an abused child, so these children are discriminated against.

Another area of discrimination is where the children of single mothers who have subsequently married, and whose husbands wish to adopt the child of that single mother, are now discriminated against in adoption legislation. The Family Court of Australia now has power to veto an adoption by step parents, substituting a guardianship order, so that that child is denied the right to become a full legal member of an adoptive family.

The adoption legislation of many states echoes this strong preference for guardianship over adoption and, in short, adoption has become a dirty word. It is this anti-adoption sort of trend that we are hoping to hold back.

Articles 7 and 8 say that the child has a right to acquire a nationality and an identity. Adoption confers a nationality but identity has now become a problem because of the trend for open adoption. There is no longer any choice in most states in Australia and this causes an identity problem because the child is confronted with two sets of parents coming and going.

Some birth mothers are unwilling to enter open adoption agreements and elect to raise the child themselves when their request has been for adoption on the grounds that they feel they will not be able to raise this child as they would like the child to be raised. I can support that statement too.

Open adoption accommodates the wishes or perceived needs of the adults involved without taking into account primarily the needs of the child for permanency and security. We consider open adoption is not adoption but it is long-term guardianship. Guardianship, custody and fostering arrangements have a very real role to play in society and a very useful role—they are essential—but they do not give the permanency and security that legal adoption gives. This comes through in interviews with children, which we have not had but which we have had association with.

Open adoption reverts to simple adoption, which is peculiar to non-literate and pre-literate societies. It was often not permanent, although this may have been the intention at the time. It is contrary to article 20 which states the desirability of continuity in a child's upbringing and, in this system of simple or open adoption, the interests of the family are clearly preponderant over the welfare of the child, which becomes of secondary importance.

One of the foremost workers in adoption, John Triseliotis of Scotland, has had something to say about how a reasonable question to be asked is how far the idea of

contact in adoption may unwittingly lead to the re-emergence of a drift in planning for children. In other words, can a sense of belonging be achieved in the face of continued visitations by relatives who are unwilling or unable to offer a permanent home to the child? It is the legality of adoption and the emotional security that goes with it that sets it apart in the minds of children and of their adoptive parents from other forms of substitute parenting, so this comes from well-researched situations overseas.

On legal adoption, according to section 28 of Queensland legislation—and it has been so in other states too—the child's family is defined, so that open adoption leaves the child vulnerable to interference with the bonding with his adoptive family—with his legal family. It has been shown overseas that in open adoption situations adoptive parents tend to change their attitudes towards the children. They tend to make decisions about the children's upbringing, schooling et cetera with a view to what will please the birth family who will be in constant touch about this, rather than the good of the child.

Peter Bos, of the National Children's Bureau, has stated quite truly, and we have found this, that professional attitudes are now that biological is best and a potentially relinquishing mother will be counselled against relinquishing her child even when she asks for this. There is back-up evidence which I can give now or later on. It came out of an adoption conference in 1994 from Centrecare in Sydney, the Catholic Adoption Agency, where the social worker from there said that they had as many as 300 inquiries a year for adoption for children. This is not to adopt a child; this is from people wanting to give children for adoption. When they discovered that the legislation now means ongoing contact with the adoptive family and with the child, they opted out. They found that this was too much of a commitment. There was no follow-up study from them—I asked—to find out whether they elected to keep the child as single parents or to have an abortion. But they processed about 10 to 20 adoptions a year. This is a fairly strong indication, I think, that open adoption is not necessarily what birth parents want, although it is quite a common perception that everything will be much better if they can keep in touch.

I understand too—I do not have documentation for this—the figures are showing up in Western Australia that birth mothers do not want this.

Senator NEAL—Have you got a copy of that Centrecare study?

Mrs Carroll—No, it was not published in the paper, but we have it on tape. We had the tapes from the conference and that particular assertion by that particular social worker was not printed. But I certainly can get a transcript of the tape if you would like it.

Senator NEAL—I might ask you some questions once you let me have it.

Mrs Carroll—Yes, I checked with Centrecare and they said it was not 300, it was 120, but I am quoting what was said officially at the conference.

Article 6 states:

Parties shall ensure to the maximum extent the possible survival and development of the child.

Here I am treading on a very sensitive area. I want to make quite clear that we are not indicting in anyway the single parent. I think a lot of single mothers are leading lives of heroic, if not saintly, poverty and doing a tremendous job in bringing up their children and loving them. I think this is more likely where the young girl has family backing to help her raise the child, but these statistics are rather chilling. In 1994-95, there were 331 adoptions in Australia, as opposed to I think it was something like 12,000 in 1970 or pre-1970. In 1993-94—we could not get the 1994-95 figures—there were 12,750 children in Australia under care and protection orders. In 1994-95 there were 30,616 cases of substantiated child abuse, an increase of seven per cent over 1993-94. Those 30,000 cases involved 26,000 children. The data from three states and two territories showed that the largest percentage, 39 per cent, of these were from female single parent families which points me to the fact that a lot of the young mothers are simply single mothers, who are being talked out of adoption when they want it, and are simply not coping.

Senator NEAL—Most of those single parents are post-relationship breakdown. The vast majority of single parent families are not young women having children with no relationship. The vast majority of single parent families are post either de facto relationship or divorce.

Mrs Carroll—Those figures are even worse, Senator, because then we get into child homicide.

Senator NEAL—What I am saying is that it is not just young single women in those statistics of single parent families.

Mrs Carroll—No, but they are a large percentage of them.

Senator NEAL—No, they are a very small percentage.

Mrs Carroll—Does it matter whether they are? A married woman can have a breakdown in relationship and ask to have a child adopted. She is being told she is unnatural. I am talking about single as in the only parent there. I am not talking about married or unmarried relationship breakdown.

Senator NEAL—I am sorry to interrupt this, but the conclusion you drew was that they were women who had had a child as a young woman and not given them up for adoption.

CHAIRMAN—You are talking about sole parents, rather than single.

Mrs Carroll—Yes.

Senator NEAL—But what I am saying is that something like 87 per cent of single parent families are not in that sort of situation. They are marriages or de facto relationships that have broken down.

Mrs Carroll—But these people ask for adoption too. They are just not young 16-year-olds. I am quoting from the Institute of Health and Welfare.

Senator NEAL—I am not querying the figures, just the conclusion.

Mrs Carroll—I am just quoting the statistics they publish. One of the assertions I would like to make is that the child in an adopted family is the least likely to be abused. There was a child homicide study published by the Australian Institute of Criminology by Heather Strang covering child homicides from July 1989 to June 1992. She gave particular attention to 22 cases of fatal abuse or neglect. All of those children were aged under four and 17 were aged under 12 months. None came from an adopted family. The study said:

> The modal offender in child abuse incidences was a young male living in a de facto relationship with the victim's mother; a third of all offenders were aged under 21.

We have had young women in telephone contact with us, or with a group associated with ours, asking if this group can help them arrange adoptions for their children, because they are being told in Queensland—or they were a couple of years ago; I do not know what the attitude of the department is now—that they were unnatural. I have known of a 15-year-old who went to the hospital to have her baby, with the full intention of having it adopted, and she brought it home and the family raised it. All I am saying is that adoption needs to be promoted as a viable alternative to single parenthood, because there are young girls out there who are unwilling to parent the children. They are doing it out of a sense of obligation. And it would appear from the figures coming up that a lot of them are not coping.

We are also concerned about the impending ratification of the Hague Convention. We support the general principles of that convention, but we are very concerned about the schedules and regulations drawn up by the Family Court. These contain a proviso that the central authority, which apparently is going to be the Family Court, must comply with a publication known as *The national principles in adoption* and that states and territories must amend their legislation to comply with them. Many of these principles are inconsistent with one another. Their general effect will be to substitute a guardianship or open adoption for legal adoption. Because the phrase 'adoption orders made in either Australia or in an overseas country' is noted, it could reasonably be interpreted that ratification will affect internal as well as overseas adoptions. Our concern is that the whole adoption scene will just disappear and that guardianship and custody will take over.

CHAIRMAN—Let me first of all dispel that latter point. The convention has neither been signed nor is in the process of ratification. It has not even been signed. We have just checked with Attorney-General's.

Mrs Carroll—We did not know that.

CHAIRMAN—We have checked with the Treaties Secretariat and what they have said to us is that Australia has not signed, and therefore not ratified, but it is under review. There are discussions going on with state and territory governments, so I think you can rest easily on that for the time being. The other point I would make is that, even if it were signed but not yet ratified, it would not be ratified until it came through this committee. So you would have another opportunity to make your point.

What this committee does is that, with the exception of the Convention of the Rights of Child which has already been ratified, it gets involved. Our normal task is to recommend whether ratification should take place after the signing and the tabling of individual treaties. We are given 15 sitting days to do that, which has been a fairly tall order over the last six or eight months. Nevertheless, we have done it. So I can give you some assurances: firstly, that it is not in the process of being ratified; and, secondly, that it has not yet even been signed, but that, even if it were, we would be heavily involved between the signature and ratification.

Mrs Carroll—Right.

Mrs Law—We understand that the state ministers are to meet in June or July to consider the ratification of this convention. It is not the convention itself that we object to—the provisions of the Hague Convention we fully support; it is the 83 pages of legislation drawn up by the Family Court that we are very concerned about, seven pages of which have been released for public scrutiny. In those seven pages there are fixed obligations. It does not say fixed by whom, but it says they are fixed obligations. Those 83 pages have been drawn up without any public consultation whatsoever. It is those changes that will impose laws upon the states that we are gravely concerned about. That is just secondary to what we are here for today.

CHAIRMAN—That is my understanding of what is going on at the moment. I can give you assurances that that will happen in this committee process anyhow. What also happens when treaties are tabled is that, with each treaty you table, a national interest analysis is produced, which is a technical document that explores all the issues associated with the individual convention—who has been consulted, what those provisions are, et cetera. I would not want you to be under any delusion or illusion that things that are not happening are actually happening. It is under active review, but that is it.

Senator NEAL—I am not exactly clear on the proposed legislation that you are concerned about. Can you clarify that for me?

Mrs Carroll—The proposed legislation?

Senator NEAL—You are talking about an amendment to the Family Law Act that you are concerned about in relation to adoptions.

Mrs Carroll—I think the chairman has just covered it. We have been given an information sheet by the family services department. We have been given schedules of the family law convention on intercountry adoption, which contains a few things that give us some concern. We do not know where the national principles in adoption came from. It is a set of rules drawn up, a number of which are contradictory.

Senator NEAL—I do not know what you are referring to.

Mrs Carroll—Some government departments have not been able to supply us with these national principles in adoption, we have had to get them from other sources, yet they are going to enforce this law when this convention is ratified. It is meant to be on intercountry adoptions.

Senator NEAL—Who advised that? Where did you receive that from?

Mrs Carroll—We received this from the department of family services.

CHAIRMAN—I am very happy on your behalf as a result of this hearing to write to the federal Attorney-General and get the thing back in writing for you to confirm it. Our understanding—and this is the way it normally happens—is that there is a standing committee of Attorney-General's, the so-called SCAG, and that involves the federal Attorney-General and the state and territory Attorneys-General.

Senator NEAL—So you are not actually talking to them about an amendment to the Family Law Act at all.

Mrs Law—It is now emanating from the Family Court.

CHAIRMAN—It has probably come from the Family Court, as a set of principles, but obviously it is yet to be discussed at that Standing Committee of Attorneys-General.

Mrs Law—We have lodged a detailed submission to the Commonwealth Attorney-General.

CHAIRMAN—I am very happy to write on your behalf to Daryl Williams, the federal Attorney-General, and to seek clarification, but we have just been told from his department that it has not even been signed yet.

Mrs Law—We understand.

Senator NEAL—I have seen no amendments put forward, either in draft or any other way, to the Family Law Act, except for some minor variations that arose out of the family law select committee, so I do not know what amendments you are relating to.

Mrs Carroll—I think it is the other way around. Our concern is that adoption legislation at the moment is different in every state, and whether this is a good thing or not I do not know. We would like to see a uniform legislation, provided it gave people an option of full legal adoption confidentiality, which adoption legislation does not now; there is no option since the changes. Retrospectively, you can put in an objection to contact or release of information, but for all adoptions after this there is automatic disclosure once the child is 18. This is another thing that we are having difficulty with.

The proviso that is made in these schedules drawn up by the Family Court is that states and territories will be required to amend their legislation to conform with the national principles in adoption. With these national principles in adoption as we have been given them—there are two or three sets floating around, and I do not know which is the definitive one—a lot of them cancel one another out. They just do not make sense.

Senator NEAL—That is what I am saying; I have never seen any proposed amendment.

CHAIRMAN—Possibly what it is, and we are flying around a little bit here—

Senator NEAL—That is what I am asking: which ones are they?

CHAIRMAN—Normally what happens before even signature—not ratification, but initial signature—is that these things are discussed in that Standing Committee of Attorneys-General as consequential amendments to the legislation. If they disagree they do not even get to signature, let alone to ratification.

Mr TRUSS—I submit that all this is irrelevant to this inquiry.

Mrs Carroll—It is only secondary to what we have come here to talk about.

Mr TRUSS—You ought to be talking about what adoption has got to do with the Convention on the Rights of the Child.

CHAIRMAN—That is right.

Senator NEAL—I think it is relevant but if there are guidelines that relate to it, I would like to have them found and provided to us.

CHAIRMAN—Certainly we will do that for you and move on.

Mr TRUSS—I am interested in what this has to do with the Convention on the Rights of the Child. You indicated that you felt that the practices that are adopted by some of the states in relation to disabled children and Aboriginal children and others may be a breach of the Convention on the Rights of the Child. Has that been tested in court?

Mrs Carroll—I do not know. Our concern is that adoption, which is recommended by the Convention on the Rights of the Child, is not being propagated, that it is actually being discouraged. In the Convention on the Rights of the Child, which I have quoted, the child has a right to a nationality, to an identity, to protection and so forth. I think that is being jeopardised.

Mr TRUSS—But is it the fault of the Convention on the Rights of the Child that adoption is not being promoted?

Mrs Carroll—No. I thought that part of the inquiry was about Australia honouring its commitments, in its legislation, to its signature to the United Nations Convention on the Rights of the Child. We believe that a lot of legislation goes against the Convention on the Rights of the Child.

Mr TRUSS—And what is the basis of your belief?

Mrs Carroll—I thought I had just put it there.

Mr TRUSS—Yes, you said all of that, but you have no legal case law to support your comments—that it is a breach of the Convention on the Rights of the Child.

Mrs Carroll—No, I was not—

Mr TRUSS—Are you saying that the Convention on the Rights of the Child is wrong or that the law should be changed to conform with your view of what the convention says?

Mrs Carroll—No, we are not criticising the Convention on the Rights of the Child.

Mr TRUSS—Do you think the law should be changed to accommodate your interpretation of it?

Mrs Carroll—Which law?

Mr TRUSS—The laws that you are unhappy about in relation to adoption.

Mrs Carroll—I believe that a lot of the adoption legislation in Australia is denying children some of the rights which have been laid down by the United Nations

Convention on the Rights of the Child.

Mrs Law—The Convention on the Rights of the Child contains special social and legal principles. A special document has been drawn up relating to adoption. It sets out clearly there what governments should do when an adoption is processed. In Australia the effects of an adoption order—and it is written into law—says the child shall cease to be the child of any other person and becomes the child of the adopters, as if born to them in legal wedlock.

In Australia we now have a system where there are adoption orders enforced by law on prospective adoptive parents. J.C. Stark QC, in an article in the *Family Law Journal*, said that we now have a strong conflict of principles, one that is set down in law and says what an adoption order is and the other is the policies being implemented by government departments. Enshrined in law now is the counselling against adoption. Open adoption is allowed and promoted by government departments. That does not comply with the social and legal principles set out in the Convention on the Rights of the Child for adoption. It is very clearly defined that a child has a right to a permanent family.

Senator ABETZ—Even if we did not have a Convention on the Rights of the Child, you would be firmly of the view that the adoption legislation ought be altered to take into account the matters that you are promoting here today?

Mrs Law—I do believe that there should still be an opportunity for full adoptions, which was supported by the Hague convention on adoption. It is not very well known that at that convention on intercountry adoptions, adoption itself was discussed, over the four years, and a general consensus was reached for support for full adoptions for children. Australia was one of the countries who did not want to support it.

Senator ABETZ—Even if we did not have such a convention, or if the convention were to express something completely different, you would still be arguing for the changes in the law that you are promoting here today?

Mrs Law—I would still be arguing for laws that support adoption because of the great success it has been here.

Senator ABETZ—So if the Convention on the Rights of the Child expressed some different principle, you would not pack up your bag and go home; you would say that the convention is wrong in this area?

Mrs Carroll—That is a hypothetical question. I do not know that we would.

Senator ABETZ—I want to know on what underlying principle you are promoting your suggested changes to the Queensland legislation—

Mrs Carroll—No, Australian legislation.

Senator ABETZ—Okay. It seems to me that too often people just say that an international convention says such and such and that that in itself provides justification. We never look to see whether the convention makes sense, whether it is an appropriate document and we do not ask about the principles the convention based on. I am trying to get from you whether the convention itself is the basis of your submission or are you saying that, even without the convention in place, you would be of this view?

Mrs Carroll—I saw the advertisement in the paper inviting submissions—I do not have it with me—and I read it that there would be discussion about whether Australia was honouring its commitment as a signatory to the rights of the child.

Senator ABETZ—I understand all that.

Mrs Carroll—We are saying that the legislation in Australia is not honouring its commitments in these areas to the rights of the child, as laid down by the United Nations.

Senator ABETZ—If I said that I thought that those sections in the convention relating to adoption were inappropriate, and should not be implemented—chances are that is not my position—hypothetically, what would be your reaction? Would it be that the United Nations has told us this therefore we have to or are there some greater principles involved that would see you pursuing these amendments?

Mrs Carroll—I believe that that is so hypothetical that it does not apply here.

Senator ABETZ—So irrespective of whether the convention on the rights of the child is right or wrong, you are saying, 'Because it is in the convention, we have to do this,' without examining whether the public policy on which CROC is based is right or wrong?

Mrs Carroll—No. I think I am answering the question: is Australia honouring its commitments to the United Nations rights of the child? And I am saying that in these areas it does not. It so happens, that in these areas we are in agreement that these rights are necessary to protect children.

Senator ABETZ—It seems incongruous that if you are going to look after the best interests of the child, for adoption purposes, that somehow we decide that only infertile couples would make the best parents for these children to be adopted. I would have thought, all things being equal, it might be nice and fairer from a society point of view, if there are only a limited number of children, to give them to infertile couples. But, apart from that, I would agree with you that that does not seem to make sense from the best interests of the child. Do not get me wrong, I am just trying to get a handle on whether—I am not sure that I am going to get an answer to it—there is some underlying belief or

value system that you relied on for your submission, apart from that it is in the convention so we have to do it.

Mrs Law—Our underlying belief is that, in certain circumstances, adoption does serve the best interests of the child. That phrase has a very hollow sound when it comes to adoption because the needs of adults are being put ahead of the best interests of the child. Whether or not there was a United Nations convention, our organisation would be pursuing adoption as a means of alternative care for children who need a permanent family and cannot be provided with it in any other way.

Senator ABETZ—I thought that would be your answer.

Senator NEAL—My question was just about this idea of rationing and that you have to be infertile to have an adopted child. It really is about looking at the rights of parents rather than at what is best for the child, and you have already said that.

Mrs Law—We can see the logic in that. If you are looking at parents who do not have a child, then yes, they should be considered ahead of others. Unfortunately, those eligibility criteria are then passed on to special needs children. Because you have eliminated parents who may already have children and who are not infertile, when it comes to special needs children the group of parents from whom they can draw from has been narrowed down to infertile couples. We feel that couples who already have children may well adopt a child with special needs and they have already been eliminated by the eligibility criteria.

Senator NEAL—Yes, I understand your point.

CHAIRMAN—Thank you very much. That has been very helpful.

[2.44 p.m.]

SHEPPARD, Mr Derek Carey, 285 Reesville Road, Maleny, Queensland 4552

CHAIRMAN—Welcome. We have received your written submission. Would you like to elaborate on that briefly and/or provide a short opening statement?

Mr Sheppard—Yes. I am appearing before the committee as an individual, but holding various positions specifically in relation to education at the moment. To give you a bit of background first, I came out of banking and finance. I have been in banking and finance for about 20 years. During that time I have held various positions and also at the same time I have held various elected and appointed positions within a range of organisations, including Queensland Crime Stoppers Limited, the Australian Bankers' Association, the National Fraud Task Force, the Institute of Credit Management, the Institute of Financial Services, et cetera.

I have been instrumental in setting up a number of local economic enterprises within the Maleny area which included the establishment of about five cooperatives, most of which have created employment one way or another. It is out of that background of working in enterprise and seeing the results of our education system, and also being the father of five sons, that I wanted to do something about education.

I will read out a short address and will be happy to then deal with questions. Thank you for the invitation to appear at this public hearing and also for the opportunity to address your committee on issues which are important to me. Education, as we know it, has only been in existence for a relatively short time. In Australia education was the province of the churches until approximately 150 years ago. In order to provide a system of elementary education to a scattered multi-denominational population, national schools were established to provide secular education. The curriculum and text books of the national schools of Ireland were adopted as the foundation of this education system. As you can imagine, there was not mention of Australia.

Up to that time, and even for many years later, education was a luxury that many people could not afford in either monetary terms or in time spent away from changing the face of a frontier land. This is despite the provision of free education, interestingly first introduced to Australia in Queensland almost 130 years ago. To the enlightened at the time this must have seemed a huge step forward by providing mass education to a generally poorly educated population.

We have become more sophisticated in many ways since those times. Information is more readily available and the range of choices of occupation and lifestyle are dramatically different. Children appear to be more worldly and know more and mature early. However, we still expect children to act and be dealt with in ways that are not greatly different from those ways employed in the early years of the education system in

Australia. Certainly—and fortunately—we do not conduct education classes of 45 and 50 and corporal punishment is now denied to teachers, although this runs against the grain for some members of the community.

We now need to help young people prepare for life in a post-industrial society. This is now an age requiring great flexibility in thinking, building in adaptability to change and making provision for changes in occupation perhaps a number of times in a lifetime after school.

In supporting all of these factors, which are generally unknown and even unthinkable to many people in the Australian community, young people have to know more about themselves and be able to deal with such changes. The current education system in the main, in quiet contravention of the provisions of the Convention on the Rights of the Child and in stark contrast to what education should be all about in preparing children for a world beyond school, does not deliver many of the rights of children.

Discrimination under article 2 of the convention is regularly occurring because, by its very nature, the education system locks out unruly or disruptive students or, on the other hand, restricts children with ability or greater aptitude. Rights of expression under articles 12 and 13 are oppressed, and the right to be heard or be represented in any administrative proceedings is denied under article 12. These things work against the necessary valued input of a responsible person to society. They are undemocratic; they do not give a sound grounding in how people can and should have input into the workings of a healthy, thriving, vital democracy.

It is my belief that, in theorising the benefits of a heavily controlled, hierarchical, centralised and bureaucratic education system founded on standard curricula, we are severely limiting the potential of children. Somehow we have lost the ability to see that children need to get to know themselves in their own time and make their own choices based on interests and their own unique perspectives to interact with and learn from a range of life-experienced people who have and enjoy their own interests and skills. From these foundations in a supportive environment—not pressed to have to prepare for and run to the next class, which they have little or no use for—children will develop into people who are responsible for themselves, respect themselves and others, can assess their own performance, use initiative, are self-starters and are prepared to treat failure as a learning exercise and have positive views of their own worth and outlook on life.

I respectfully submit that the committee should recommend that laws relating to education in Australia, at both federal and state levels, be amended to include all relevant articles of the convention and that proper information about the convention be effectively disseminated into all schools so that all children have the ability to inform themselves of its provisions. Interestingly, of the five local Sunshine Coast libraries, not one had any of the United Nations conventions.

Secondly, independent and properly resourced commissioners should be appointed within the Human Rights and Equal Opportunity Commission to review and report on progress of the implementation of the convention by all states and the Commonwealth government, and to take and deal with any and all complaints from children. Thirdly, properly-resourced, trained and accessible representatives should be made available throughout the Australian community for children to approach without fear.

CHAIRMAN—Thank you very much. You have heard here today a lot of discussion about that potential conflict between the rights of children and the rights of parents. On Monday and Tuesday we had a woman sitting in who was a representative of the School Without Walls. I do not know how that relates to your setting. Is it similar?

Senator NEAL—No rules, no walls?

Mr Sheppard—We have rules, yes. It is a variation. It is a school with walls rather than without walls.

CHAIRMAN—How do you, in the school setting, set about reconciling those two conflicts? What practically do you do, in terms of education, in terms of practice?

Mr Sheppard—The processes that we have instituted within the school, and the school came into being after about 2½ years of research to find the best model of education that suits our needs—

CHAIRMAN—One thing wasn't clear to me. How many students are there?

Mr Sheppard—Very few at the moment. We are only starting; there are only about 18. But we have got a projection of about 150 in 10 years time. We do not want to be particularly large.

Mr TRUSS—Is there one school or two, incidentally?

Mr Sheppard—One. The name of the school is the Booroobin School, a centre of learning. It is operated by the Maleny District Community Learning Centre Ltd. The processes within the school effectively work in terms of democracy. All decisions in the day-to-day operation of the school are made by students and staff together; there is no hierarchy at all. The students and staff work out rules that fit situations that concern them, so you have rules from the point of view of hurting people, of not starting a water fight without the permission of someone else, to not damaging any of the resources within the school. Those rules are useless without a means of enforcing them.

The enforcement mechanism comes through a justice committee. The justice committee is very much like the justice system which I was involved in, during many years of fraud investigation. It is almost like a tribunal, made up of seven students and one

staff member. Of those seven students, two are clerks: they record details, take complaints, put information into student or staff files and organise meetings. The justice committee discusses any complaint about a break in the rules, and there is a form to fill in about any rule that is broken. That form is very much like a COR—a criminal offence report—that you might fill in at a police station. It talks about how and when an incident occurred, who was involved, what rule was broken and whether there were any witnesses.

Senator NEAL—Is it the policeman who gets the—

Mr Sheppard—There are no police involved; it is the seven students and the staff member who are the judges together, collectively.

Senator NEAL—How does it get to the tribunal?

Senator ABETZ—They are the investigators, so what about the separation of powers?

Senator NEAL—This could be great fun.

Mr Sheppard—Let me finish. The process of dealing with complaints is that the justice committee considers a complaint and works out if a rule—in terms of those rules written in a law book, which is accessible to everybody—has actually been broken. After that, if they decide that a rule has been broken, they have a hearing. That is when you have seven students and a staff member who hear from the complainant, from the person being complained about and from any witnesses. After hearing that evidence, they then consider what is to happen. It is an excellent process; it is one of the best and fairest processes that I have seen in any legal system yet—and I have been through all the courts, so I know what it is like.

Senator ABETZ—Not as a defendant, though.

Mr Sheppard—No; always as a witness—professionally, generally. After the justice committee hears from witnesses and others, those people leave. It then makes a decision as to whether the person is guilty or not and, if so, whether a penalty should be imposed. Penalties can range from a warning up to cleaning up the whole school in the afternoon, or they can be a dollar value. They can recommend to the school meeting—where the students and staff come together on a weekly basis—that the student be suspended, and they can even go as far as recommending expulsion.

Through that process—because all students get to sit on the justice committee at some stage—everybody has the opportunity to consider issues relating to them and their peers. The harshest judgment is the one handed down by your friends who are sitting in front of you, who have judged that something which you have done is wrong. Those same rules apply equally to students and staff. That is the justice system as it works within the

school.

CHAIRMAN—Let us take a hypothetical situation, in particular, with the parent and the child. Let us say that the parents of little Johnny say, 'Yes, you can have a mohawk haircut,' and he goes off to school. The school community then says, 'No, that is not acceptable.' How do you reconcile the judgmental thing that you are obviously going to do within the school with what the parents have said?

Mr Sheppard—The school effectively operates as a company. Like any company, it has its own memorandum and articles and, within the memorandum and articles of the company that runs this school, it is made clear that there are rules that those people who attend school must live and work by. As a shareholder in a company, you have a set of rules; but there are also rules that govern society at large. In our school, we respect the rights of individuals to make choices and we certainly respect the views of parents in that. But the students and staff—and the students have the numbers, so they can make the rules—have developed rules that take into account individual expression and individual rights, so that those two aspects do not become an area of conflict. The punishments set by the justice committee are ones that parents may have to help fund, if their student has been shown to have done wrong if they have broken something in the school.

There are rights in both of those areas and, within the school setting, parents are members of the assembly. Because parents approve the educational process within the school and the annual budget, they have the right to have a say, but in a different forum. If parents want to come to a school meeting, they have to apply in writing, because it is the students' forum; it is student-centred education, and it is their place. Parents understand that, because they go through an admissions interview with the students.

Mr BARTLETT—In your brief statement, you say that the school incorporates and, indeed, exceeds the Convention on the Rights of the Child. Was the school established with the convention in mind?

Mr Sheppard—No, not at all.

Mr BARTLETT—It just happens that you believe that you exceed the convention, does it?

Mr Sheppard—From my reading of it, certainly. I think you will find that a submission is coming to government from the First Asia-Pacific Children's Rights Conference and that, interestingly, it encompasses all the things that the school is doing.

Mr BARTLETT—Are there objectively verifiable standards of literacy, numeracy, matriculation and higher school certificate—all of those sorts of things—in the school? Have you had a long enough history to compare the performance of your students with that of others?

Mr Sheppard—Yes and no. Yes, in that our school is modelled on the Sudbury Valley School in Massachusetts, which has been operating for 30 years. It brings out a number of books through the Sudbury Valley Press, which is operated by students; and that has reflected what people who have left the school over a period of time have done with their careers. The school has found that 80 per cent of those students who approach a tertiary education institution enter the institution of their first choice, which is about double the rate of such entry for students in Australia. These people know what they want to do and what they are interested in, and they approach that with a commitment which you do not often see.

In our terms, students choose what they want to learn; and they effectively go through self-assessment. So we have students who will be doing literacy and maths classes and, with the assistance of a tutor or a staff member, will be assessing themselves.

Mr BARTLETT—What happens at the stage where they need to matriculate to university, for instance?

Mr Sheppard—We will assist students to go through whatever process they see as necessary to get to the stage that they want to get to. If they have to go through a tertiary education entrance process, we will assist them through that process and will facilitate that.

Mr BARTLETT—I know you said that students spend a large amount of their time playing. That sounds great, but I am wondering how that might impact on them when they reach 15 or 16 and start to think about the need to qualify for university. They might regret not having spent a little more time studying and a little less time playing in the earlier years.

Mr Sheppard—No. We generally find that people will utilise their time in a way that reaches the ends that they are trying to achieve. Because people get to know themselves and what they are actually interested in through this process, they start to work towards that well before they get to that magical 17- or 18-year-old mark where they have to hop out of the school system and into the university system. Students at our school—and this is what Sudbury Valley School has also found—are generally better equipped to get into a university situation, because they have had flexibility of time and have had to manage their own time.

Mr BARTLETT—So there is never any need in the school to put a bit of pressure on the students to do some maths or grammar or anything like that?

Mr Sheppard—Definitely not.

Mr BARTLETT—What happens if the justice committee decides on a punishment for a student that the student does not want to comply with, or refuses to comply with,

perhaps on the grounds of being deprived of their freedom of association, for instance?

Mr Sheppard—That would be the subject of another complaint to the justice committee, and the justice committee would make its own recommendation. If that means taking further action, such as suspension or counselling in some way—

Mr BARTLETT—Would suspension be the ultimate deprival of the right of association?

Mr Sheppard—Expulsion is probably the worst. As I have said at a number of justice committee meetings, I would strongly not pursue a course of suspension or expulsion. Generally, most people take on board the decisions of the justice committee far more willingly because it is their peers that have handed down a fair judgment rather than something that has been handed down by someone in a hierarchical position of authority.

Mr BARTLETT—Without any need for coercion?

Mr Sheppard—Definitely. It is just and fair; there is a big difference.

Senator NEAL—There is actually a school near Macquarie University called the International School, which sounds in its philosophy very similar. Are you aware of it?

Mr Sheppard—No, I do not know it. There are about 15 schools around the world from Israel to England, including the United States and Canada, modelled on this.

Senator NEAL—It sounds very interesting.

Mr Sheppard—Exciting.

Senator NEAL—Yes. It is probably a lot more work, I suspect, than the standard operating system. This is not strictly within the purview of our inquiry, I suppose, but how do you prepare in that sort of situation for university entrance? I presume you have got the same thing in Queensland: we have the HSC in New South Wales where there are X subjects, you are tested on these and the result you get will determine whether you get into university or the course you want. How do you fit that in?

Mr Sheppard—We have not reached the situation although I will give the instance of one student where we have had to deal with that. As I said before, if students want to take a particular course of action then we will assist them through that. We find the students are studying the things that they are really interested in, not things that are just laid on them. We have started to have discussions with universities about entrance criteria. There has always been a provision within Australian universities to accept students who have not necessarily followed the standard process of gaining entry. We believe that we will be successful with our students in getting them entered because of their commitment

and interest and showing the work that they have done in preparation for that.

Senator NEAL—You do not undertake the equivalent of HSC?

Mr Sheppard—There are requirements in Queensland to study certain things. They are not necessarily provided across the board in so far as independent schools have their own methodologies and stick by those.

Mr TRUSS—Do you get any state government or Commonwealth funding?

Mr Sheppard—We do.

Senator ABETZ—Because of our new schools policy you are not discriminated against because you do not have above 50 children. Is that right?

Mr TRUSS—You have got to be registered by the state, in other words, and have an approved curricula?

Mr Sheppard—That is right. What we have advised the government at both the federal and state levels is that we will draw on the curriculum as students' interests dictate and we do that effectively all the time. But—and this is one of the points that I made in that opening address—I get concerned about a curriculum that is applied across the board because a curriculum does discriminate in itself. It says that you have to learn maths from grades one to 12 in order to actually know it, but in Sudbury Valley's case—and I know that this can be done—you can shrink a subject down to a far shorter period of time and know it, which gives far more time for other things and greater flexibility.

Mr TRUSS—Do you believe that a set curriculum is a breach of the rights of the child convention?

Mr Sheppard—No, I do not.

Mr TRUSS—What about school discipline?

Mr Sheppard—School discipline is covered absolutely within our justice system.

Mr TRUSS—What about the school discipline that applies in other schools where it is meted out by the principal?

Mr Sheppard—I believe that that does not comply with the convention.

Mr TRUSS—It is a breach of the rights of the child convention?

Mr Sheppard—Yes. There are clear instances that I have observed and others of which direct information has been given to me, where decisions are made in the absence

of the child or the student. Decisions are made without the student being able to be involved or have some representation. There has been one instance where a student was expelled from a school. He is now a student at ours—a bright guy. For some reason he was expelled by his school when a group of parents insisted that he was disruptive in some way. It really did not take in any representation from that student at all. That is discrimination.

Mr TRUSS—So you think the current state laws around Australia that support the principal in these matters are a breach of the rights of the child convention?

Mr Sheppard—I believe state laws should take account of particular matters out of the convention.

Mr TRUSS—You said earlier that you believe there should be advocates available for children—at taxpayers' expense, I gathered you were saying.

Mr Sheppard—No, I do not say that. Although we might get government funding, the sooner we can be independent of all government funding the better, as far as I am concerned.

Senator ABETZ—I am pleased to know that.

Mr Sheppard—To me that is independence. We are not really being independent because we can therefore be affected by sways of government. I really do not want to be affected in that way.

Mr TRUSS—How is this system of child advocates then going to exist at a local level, bearing in mind that you said you wanted children to be accessible? You would have to have thousands of them around Australia, obviously.

Mr Sheppard—I think that they can be community based people.

Senator NEAL—A safe house scheme.

Mr Sheppard—There are so many community organisations that either do not get any funding from government or get so little that it really does not count for much anyway. In Queensland you have advocates under the justice system. I think that is a system that works free of charge. That is from volunteers. That is the sort of system I am talking about—people who can act as representatives in any forum for a child who do not necessarily feel that they can adequately express themselves.

Senator ABETZ—I will just ask a few quick questions. What is the socioeconomic background of your school's parents?

Mr Sheppard—Generally low income.

Senator ABETZ—I was just wondering how this sort of system might work, let us say, in a—

Mr Sheppard—It can work anywhere. We worked our fees off what a sole parent on a sole parent pension can afford.

Senator ABETZ—I read that. How many kids are in the US school that you refer to?

Mr Sheppard—It was 180; I think it has just increased to 200. It is not large.

Senator ABETZ—Would this type of school only work with relatively small school populations?

Mr Sheppard—Not necessarily. I have a personal belief that the larger the school the less the individual gets noticed and have the opportunity to have input into things.

Senator ABETZ—You tell us that the school records in the law book almost completely mirror the content of government legislation dealing with issues from privacy to the protection of school, et cetera. You are not going to tell us that that is just coincidental?

Mr Sheppard—I am. There was not one rule in place when we started the school.

Senator ABETZ—Has somebody done research to see what the state school system had in place?

Mr Sheppard—No. We did not want to. It was not something we wanted to copy.

Senator ABETZ—You tell us that four-year-olds can and will be heard or in effect will be heard equally with 14- and 19-year-olds and staff of any age. If there is to be a decision at the school, for example, whether there ought to be a condom machine available, would the four-year-old have just as much right to vote on that issue as the 19-year-old?

Mr Sheppard—Yes.

Senator ABETZ—All right. We will not discuss that, but I just find that astounding.

Mr Sheppard—You might find that astounding but that is input and that is reality. What happens at the school, though, is that it is a participatory democracy so that, if students are interested in special subjects that are on a school meeting agenda which is put

up well before—

Senator ABETZ—So you have got voluntary voting.

Mr Sheppard—Effectively.

Senator ABETZ—You tell us that your teachers receive low pay. Are they paid below the award?

Mr Sheppard—We are paid on the award but at the lowest possible rung because we are a new business. If you are operating a new business you do not necessarily draw out of a new business all that money that you might draw out in a salary when you are established, say, five years down the track.

Senator ABETZ—Let me ask you about the rights of teachers. I remember addressing an association of school principals and suggesting to them that parents as a community possibly ought to have a greater say in the appointment of principals to their school in the state education system. To a large extent that was met with shock-horror, especially those in the teachers union, who said, 'This is a fundamental breach of teachers' rights'.

Here again we have an example where you guys, possibly appropriately, have put kids' rights right up to the extent where they can in effect dismiss a teacher. What about the teacher's right and the teachers federation right to look after its member? They can come into conflict, can't they?

Mr Sheppard—There are about two or three things out of that. The memorandum and articles of our company, registered with the ASC, is the governing document that prescribes all the rights and responsibilities of students, staff and parents within that company and who might enrol their students at the school. All parents wishing to have students enrolled at the school go through an admissions interview. They hear what the rights and responsibilities are. Staff who become employed at the school generally come in as guests of the school for two weeks so that both can check each other out. After that, they are elected.

The staff are subject to a contract and that contract binds them to certain conditions. Within those conditions, like the set-up conditions that might apply to any person under an enterprise agreement, they show what rights and responsibilities they have and the students have within the school. Staff know that they can be terminated if they are not performing. Staff know that they are subject to election.

Senator ABETZ—The ultimate employment agreement! Thank you.

Mr Sheppard—The employment conditions are not done in a political context—it

is just a straight agreement.

CHAIRMAN—Thank you very much for your evidence.

[3.13 p.m.]

ROSS, Mrs Sharon Denise, Early Education Consultant, Creche and Kindergarten Association of Queensland, 14 Edmondstone Street, Newmarket, Queensland 4051

WHITAKER, Ms Susan Rosemary, Director, Community Early Childhood Services, Creche and Kindergarten Association of Queensland, 14 Edmondstone Street, Newmarket, Queensland 4051

CHAIRMAN—Welcome. We have received your submission. Do you want to add to or amend it, or make an opening statement, or both?

Ms Whitaker—I have a very brief statement to make. We did attempt to address the issues contained in the information paper. Whether or not that is the extent of our opinion in relation to the Convention on the Rights of the Child is probably up to you to further investigate.

Our major concern is that we believe in the Convention on the Rights of the Child. We believe that it is right that Australia is a signatory. What we are disappointed in, as an early childhood organisation, is that there does not seem to have been a full implementation of the convention. It certainly has not been overly apparent here in Queensland and I would have to say that, even on a national level, there has not been any apparent progress.

If it is necessary to legislate from a Commonwealth perspective regarding and determining a head of power, we would be supportive of that, although we would also like to believe and hope that the states and states' roles and rights would be participatory—that there would be a participatory function within that legislation which would ensure that there was common agreement and common implementation across Australia. We believe in the Commonwealth approach because, if there are children's rights and laws specific to children, we do not feel there should be any difference between the states in those rights, so if children move from state to state there will be a common approach to the way issues are handled for them.

One of the points I would like to make in relation to the convention—and this may not be a totally popular statement—is that I believe there is a need for a distinction to be made around children's needs and rights because their needs and rights are not always in line with others in the community—and I include here parents' rights.

Whilst I am not wanting to put the two in juxtaposition, I think there are some examples that I could pull out, even around the child-care arena, where I think children's needs and rights have not always been fully considered, and I think they should be. Whilst I say that, I believe that the convention therefore needs to ensure that parents' rights or needs are not overlooked by the convention, but should support parents through the

support of children's rights, so that they go hand in hand.

CHAIRMAN—Thank you very much. On page 2, you say:

The impression is that there appears to be little progress at either State or Federal level in complying with the Convention.

Then you talk about the 'spirit' of the convention. How educated do you think the community is in terms of the convention and what do you see as the way to enhance, improve or redress the lack of education in that area? That is the first thing. Secondly, in relation to the first compliance report—albeit a couple of years late—and the alternative report by DCI, to what extent was your peak body involved in either or both of those reports?

Ms Whitaker—It would be our opinion that the community is not fully informed about the convention. Around the time of the signing of the convention, there was quite a flurry of attention given to it in the media and there was a lot of differing opinion put up at that time as well. But, since then, there has been very little debate or public acknowledgment of the convention. There has not been a need for there to be, because it would seem that there have not been any public opportunities for people to either confront, disagree with or agree with matters in relation to the convention. So the answer to your first question would be that, in my view, there has been very little public debate, and very little awareness as a consequence.

As to how we might enhance people's knowledge of it, I suppose we tend to always resort to the notion of having public forums, public discussions, public information sessions or education programs across the community about any item that comes up that affects all of the community. I do not think we do that particularly well in Australia. There are a lot of other issues that are happening Australia-wide that may be to do with children as well which really deserves some public debate, but which do not get there. So, in the first instance, I would see there needing to be a public education campaign around the provision and also the consequences, ramifications or action that has been proposed or taken around the convention.

CHAIRMAN—Would that education program be generated by a crying need by people for knowledge, or for people to be informed of the shortcomings in terms of the present implementation of the convention?

Ms Whitaker—People need to be better informed about it and what it means. There was a fairly knee-jerk reaction to it in the first instance. People were afraid of it, it would seem to me, and maybe that was because they were not fully informed about it. The comments were generally reserved to those made by people most directly involved, such as parents or parent groups. There was not necessarily an involvement of the whole community in discussion around the convention and what it might mean. So, in the first

instance, it needs to be about information.

CHAIRMAN—What about the report and the alternative report?

Ms Whitaker—The Creche and Kindergarten Association of Queensland was not involved in either of those reports.

CHAIRMAN—Should you have been?

Ms Whitaker—Probably, but again I would have to say that the organisation itself was not proactive enough, or else whoever was responsible for ensuring that an organisation like ours should put in a submission was not proactive enough either because we did not receive those reports to make a response too. I take some responsibility for that. We should have been more proactive in that, but I do not think whoever was putting out the report to state based organisations did not send us a copy.

CHAIRMAN—I just wondering, with something as fundamental as creche and kindergarten, why you were left out. I would have thought that would have been fundamental.

Ms Whitaker—Maybe because we are state based.

CHAIRMAN—Yes, it could be.

Senator NEAL—You said that you were particularly interested to ensure uniformity across the states in terms of standards in relation to children. Do you see the convention and potential legislation that might be made federally as a good way of doing that?

Ms Whitaker—Yes, there should be uniformity but it should not be based on the lowest common denominator. The problem with trying to get uniformity, very often, is that there have to be compromises. That is just the way life is. Too often there are rules made or legislation brought in to try to ensure that not too many people, not too many states, not too many groups, are put in a disadvantaged position and so we end up reducing the quality, or we end up reducing the capacity for the very best for children to be implemented. I believe there should be uniformity, but not at the expense of it being at the lowest denominator.

Senator NEAL—I understand those concerns. They are always apparent with those sorts of issues, but what I was more interested in is whether you see the legislation that may arise at the federal level from the convention being a vehicle that might allow more uniformity across the states?

Ms Whitaker—I have to say that I am not conversant enough with

Commonwealth/state laws and the way legislation works, but from my perspective, from a layman's perspective, it would seem to us that if you have national laws, conventions, around which the states have an agreed position, it would seem to me to be a much better way to go than having each separate state developing their own conventions.

Senator NEAL—Just to give you an example, and you are probably aware of this, under the federal constitution the federal government has power over children arising out of a marriage, what used to be called those born in wedlock—that is not really a term we use any more—but it did not have the right to make legislation relating to ex-nuptial children. So as you are probably aware under the Family Law Act there was an agreement between the states to transfer that power to the federal government before they could include them.

Ms Whitaker—Was that done for the betterment of the children or was that done for some other reason?

Senator NEAL—It was done so that when you were dealing with a dispute regarding children, some of whom were born in a marriage, some born outside the marriage, they could all be dealt with within the Family Court. Previously, if you had a custody dispute relating to a child not born in a marriage you had to go to the Supreme Court, which was not really an appropriate venue. The trouble is, because the way our constitution operates and because the federal government's powers are pretty piecemeal, often it is hard to give a complete legislative solution because it is a bit like a Christmas pudding and the federal government's powers are currants and sultanas.

Ms Whitaker—To me, it does seem to require, in a very simplistic way, an agreement or an understanding by the states to whatever is suggested nationally. But it would seem to me that we do not really have any options. There may be some single states that take it up, but there may be others that do not.

Senator NEAL—That is exactly the problem.

Ms Whitaker—As I said, it is essential for children, if we are going to bring in some legislation, that it be legislation that can be addressed across the nation and not piecemeal.

Mr BARTLETT—What do you see, in fairly concise terms, as the main issues confronting early childhood services in Queensland?

Ms Whitaker—One of the major issues that I believe actually gives an example of this dichotomy between parents' rights and children's rights—and this is not just around Queensland; it is about the provision of child care generally—is that child care was established for working parents, basically. Under that umbrella of need, we have attempted to put in place a provision of child care which meets children's needs.

But if you go along with my premise that children's needs do not always fit in with a parent's particular need, I wonder whether we have actually got that underpinning quite right. If we are going to provide something on the basis of parents' needs which affects others that have no rights in terms of making choices about where they go, when they go, whether they are pulled out of bed in the morning without breakfast and put into a service, I wonder whether we as a society are prepared to put money into the development of a service based around parents' needs, and whether we do not have a huge responsibility to ensure that those particular services are right for children.

Mr BARTLETT—How would you respond to an argument that is often put—and I know that studies are being done to try and get evidence on it—that, in the early years particularly, children's needs are best met by staying with their parents rather than being put into child care?

Ms Whitaker—I think there is a general view going around at the moment about that. I do not believe that we, in the 20th century, are in a position to make a judgment about that because I do not think all parent-child relationships are the best that they can be. I do not think that all parent-child relationships offer the emotional security that you might want in that sort of environment.

Mr BARTLETT—But could it not be argued—and I am not necessarily arguing it—that taking the child away from the parent in those early years in fact exacerbates that problem?

Ms Whitaker—It will only exacerbate that problem if we have not made sure that what is waiting there for the child is of the best quality. What I am saying is that I am not totally sure that we have got that right. I do not know that we have got quite enough choices for parents and children in those circumstances. I do not know whether we have looked to the industrial arena well enough in terms of ensuring that, if what you say is correct, parents might be able to stay home longer with their children—up until the age of two, for example—and it not be a hardship. I am not totally sure—and we are in the business of providing child care—that we have actually got that right.

Mr BARTLETT—So, in considering the rights of the child, they are issues that need to be looked at perhaps, rather than rushing headlong into changing legislation to necessarily try and treat every article of the Convention on the Rights of the Child?

Ms Whitaker—I do not care really how we do that—that is just one example. If I could be assured that we would look into that—and I have not had any reassurance that in fact we are likely to—I would probably agree with you. If you had a convention or a system, I do not even know how it would look or whether there is a national children's commissioner that we should be considering to address not just issues about individual child care but the bigger issue I have just raised for children nationally. I have not seen a lot of progress down that track but, if the convention gives me that, I would be a much

happier person and I am sure children would be too. Children get lost in our desire to put our own beliefs and values into place. In this issue about working and non-working women, children get lost in the debate.

Mr BARTLETT—Absolutely.

Ms Whitaker—I go back to what I said before about our country compatriots—and I do not mean people in the country; I mean all of us—and the need to have an opportunity to talk about the broad societal issues which are toing-and-froing at the moment and which people are really confused by. Children just get lost in it, and I would like to see some way of ensuring that they do not.

CHAIRMAN—So do some politicians, with the lobbies that are going on at the moment! We are about to have one tomorrow in Toowoomba.

Ms Whitaker—Are you? Should we rush up there?

CHAIRMAN—No; I think Childcare are marching on my office tomorrow.

Senator ABETZ—Can you tell me upon what convention the federal parliament relied to overturn the Northern Territory's euthanasia laws?

Ms Whitaker—No, I cannot. As I said, I am not an expert and we are not experts in the state, territory or Commonwealth laws. But I would have to say that, in putting that down, the perception of a great many people is that in fact the Commonwealth did override a territory's decision. Irrespective of the debate about that particular issue, there is a lot of concern about the fact that—since a state, I suppose, in some ways represents people more locally than the Commonwealth does, and the Commonwealth represents in a broader way—their more local issues are overriden. But, in the case of children—

Senator ABETZ—Can you answer the question specifically? In our booklet that we have circulated as a committee, one of the issues of concern was that it enables the federal government to obtain a head of power from the states with which to override states' rights. In addressing that specific point, it would appear that you said that the reversing of the Northern Territory euthanasia bill is proof that the federal government will exercise that right. But there was no convention involved in that, and the federal constitution specifically provides that the federal parliament has the full jurisdiction to deal with territories, whereas there is no such statement in the constitution in relation to states, and so you are not comparing apples with apples.

Might I also suggest that the federal government was not involved in the euthanasia situation. It was a private member's bill and so it did not have the imprimatur of the federal government. It does not assist the debate when we merge those matters, and so I was wanting to know how you came to that position.

CHAIRMAN—Sharon wants to make a comment.

Mrs Ross—I guess that was used more as an example. As Susan has commented, we do not have the in-depth knowledge of whether it was a private member's bill or whatever. It came out of a compilation of concerns from people. While we agree—and Susan has spoken to that—that it is important to have a head of power and that there probably needs to be a national perspective, there is a concern that such a head of power may overturn things. That is why we have talked about the need for discussion between the states to get agreement. That is often very difficult to get, without them watering things down.

Senator ABETZ—I can understand where you are coming from. I suggest, with respect, that it substantially undermines the credibility of your submission when you rely on something which has no real relevance to the actual topic under discussion.

Ms Whitaker—Maybe there is a point there, though. Most people—and maybe we represent the common herd—do not understand those things. Maybe, however, the interpretation is as we have put it. It may very well be wrong and it may very well not be a good example, but it may give you an example of the fact that the community in general has a certain impression, and that that—rightly or wrongly—is how it is. When they asked a question about the head of power from the Commonwealth in relation to the states, that is the first thing that comes to mind.

Senator ABETZ—You do make the comment in your second last paragraph about the amount of ill-informed interest, and I suppose that you are saying that, just as you have a misconception about what happened in the federal parliament concerning euthanasia, so too have people a misconception about this convention. Are you able to provide us with an example of this ill-informed interest?

Ms Whitaker—As I said, I do not think we have had a great deal of debate of recent times. In the early days, not long after Australia signed the convention and there was much concern expressed about the undermining of parents' rights in relation to the convention, I think that it was ill-informed interest.

Senator ABETZ—So, when the Holy See, for example, lodges a reservation over this convention—and, specifically, its reservation was that the Holy See interprets the articles of the convention in a way which safeguards the primary inalienable rights of parents—do you consider that to be ill-informed as well? Why did the Holy See have to put that reservation on the treaty, if it was the view that the treaty in no way undermined the primary and inalienable rights of parents?

Ms Whitaker—Because, I suppose, there was ill-informed interest in the first place.

Senator ABETZ—The Holy See was actively engaged in the negotiations and signing-off but thought it necessary to make that reservation. You consider that to be ill-informed of the Holy See, do you?

Senator NEAL—You shouldn't really re-work their question. Maybe you should let them answer it as they would like to.

Senator ABETZ—I have asked them another question and I am sure they are more than capable of answering it.

Ms Whitaker—I have forgotten the question, actually.

Senator ABETZ—Allow me to ask it again. You have indicated at first that the Holy See must have been ill-informed—

Ms Whitaker—No. They made a response based on the fact that they were perceiving that the convention was being misinterpreted.

Senator ABETZ—They were engaged at the international level as a state party in this convention and signed off on it. You are saying that their representatives were less informed than you are today about the consequences of the Convention on the Rights of the Child and that you have more expertise in interpreting that convention than the representatives of the Holy See.

Senator NEAL—They have said twice already that that is not what they said. I really think that this is not helping.

Senator ABETZ—I am not sure that they have said that.

Ms Whitaker—I do not know that it matters whether we are in agreement with the Holy See or whomever. The Holy See is entitled to progress and do what it needs to do around the convention. I, as a representative of an organisation that is involved with young children, also have—I believe—a right to interpret to you how I see it.

Senator ABETZ—Quite.

Ms Whitaker—I am not disagreeing with the Holy See. The Holy See is entitled to—

Senator ABETZ—No, but would you not agree with me that you can have an appropriate disagreement on the interpretation? I will not take you through the whole raft of articles which are clearly open to all sorts of interpretations, but it is a lot different to say, 'This is one interpretation, whereas this is another which must be considered—in somewhat pejorative terminology—as ill-informed.' It does not allow you to say, 'This is

an appropriate interpretation, as is the Holy See's'. The one on parental rights is one which you nominated as ill-informed. I then provided to you evidence that the Holy See was of the view that it did potentially undermine parental rights and therefore ask if the Holy See was also part of that ill-informed interest?

Ms Whitaker—I do not know what sort of answer you want from me, other than to say that if you want to take it to the nth degree, I would suggest that if the Holy See found a need to defend parents' rights around it, they are entitled to do so.

Senator ABETZ—Right.

Ms Whitaker—As far as I am concerned, there was some ill-informed debate around parents' rights in Australia, which may well have been different from the debate that the Holy See experienced. I have no idea.

Senator ABETZ—Are there any other areas of ill-informed interest about the convention?

Ms Whitaker—No.

Senator ABETZ—Just parental rights?

Ms Whitaker—Mainly because that was the one that got the greatest media attention.

Senator ABETZ—Does the convention allow for corporal punishment of children?

Ms Whitaker—I am sorry, I don't know.

Senator ABETZ—Would you agree that a lot of parents in the community, rightly or wrongly, would consider the question of corporal punishment as being something of a parental right? You have just told us that people who are critical of parental rights being undermined were part of this ill-informed interest, yet you are not able to tell us whether the convention allows the parental right of corporal punishment.

Ms Whitaker—Yes. I do not put myself up as being an expert on the convention. What we have tried to say is that we believe that there are certain areas where children's needs and rights need to take some precedence over and above others' rights. It would seem to me that the convention is the vehicle for doing that. I started by saying that we are not experts in this particular area, but our concerns are about children.

Senator ABETZ—But you are willing to make those judgments about others being ill-informed?

Mr TRUSS—Earlier in the piece, you said that you believed it was important for the content of the convention to be publicised. Why?

Ms Whitaker—Because I believe people do not really understand what the convention is for.

Mr TRUSS—Does that matter?

Ms Whitaker—Yes, I think it does. If we want to progress it, if we want to ensure that the real purpose of it, the intention of it, is known to people, I think the better informed our countrymen are, the more effective it will be.

Mr TRUSS—Is our objective in dealing with child-care issues that we conform to a convention, or is our objective that we should provide quality child care for moral reasons?

Ms Whitaker—It may well be, and to me it seems that it gives another place, another position, another tool, if you like, for the provision of quality child care to be assured.

Mr TRUSS—Does having the convention assist you, as a lobby organisation, to obtain funds or to lift the standards in your various centres?

Ms Whitaker—I could not say that we have actually used it, and maybe this gets back to my original point, which is that using the convention, at this point, would almost be a waste of energy, a waste of ink, mainly because I do not think that the people on the receiving end of submissions are in any way influenced by the fact of the convention.

Mr TRUSS—So it has been irrelevant?

Ms Whitaker—It has to date, yes, because I do not think there has been any leadership, if you like, from the top about what should be done with it. It is a convention, so it is very nice but, in terms of actually getting some action at the state and federal level, how can that be done if there is no head of power to assure it?

Mr TRUSS—Do you believe that the people you represent have been disadvantaged by that fact?

Ms Whitaker—That it is not known?

Mr TRUSS—That nobody has done anything about it.

Ms Whitaker—I cannot categorically say that children in child care might be better off if we had alluded or referred to a convention. I cannot say that because we have

not had the option to do it really. But I cannot say the other way either. And it would seem to me that if we have a situation where children's rights or needs come in as a secondary because of a societal need, but still a secondary, it needs some broader support for us to be able to address that.

Mr TRUSS—Are there any issues on which you would like the Commonwealth to intervene to override the laws of the state in which you operate and on which it could exercise provisions of the Convention on the Rights of the Child as justification? Are you satisfied with the laws of your state?

Ms Whitaker—Say we talk about child care. I would have to say that the laws relating to child care in Queensland, in terms of regulations and all of those sorts of things, are probably better than in some other states, but that does not mean to say that they are absolutely the best they can be. For example, I would have liked some support for the notion that if we are going to have child care and we are going to put babies into child care, then the one to four ration—one adult to four children—is too large. I know there are cost factors involved in that, but it seems to me that one to four is stretching things a bit if we were really concerned about quality issues for children and a quality environment, and about those children who may be in child care and have to be in child care.

Mr TRUSS—But is there any role for the Commonwealth in changing that or do you just need to persuade your state that it should be changed?

Ms Whitaker—The Commonwealth may have a role by example, if nothing else. The more we put the responsibility back on parents to provide that quality, the less likely it is that we are going to have quality provision of that nature for babies. The Commonwealth is withdrawing support to some degree for the provision of child care. It did in the last budget and it may—

Mr TRUSS—But has that got to do with the Convention on the Rights of the Child?

Ms Whitaker—Yes it has because, in the end, when you take away funding and you create greater competition in the number and viability of services, the first things that go are the quality things that matter so much for children. The child-staff ratios start going up. People start combining groups inappropriately because they cannot afford not to. Qualifications of staff go by the board unless they are legislated for. It may well be a state responsibility to make sure that that does not happen but it is not supported by the Commonwealth. If it is not supported by the Commonwealth, I think it is very hard for the states to do anything about it.

Senator NEAL—In light of that question about whether corporal punishment was allowed under the convention, a witness put to us that they were under some doubt about

whether they would be able to punish their child because of a particular provision. I will read you the provision—and I am not asking for a legal opinion—to see what your view is.

Mrs Ross—An uninformed opinion.

Senator NEAL—It reads:

> State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

That was the provision that they thought might prevent them from punishing their child.

Mrs Ross—Yes.

Senator NEAL—So you have heard all that.

Mrs Ross—Yes. I think it is always open to interpretation of taking something to the nth degree.

Ms Whitaker—I would have to say that surely the spirit of the convention is not about a parent making a choice about how they discipline their child. If it is by a smack on the bottom, it is by a smack on the bottom. Corporal punishment, to me, means a deliberate, considered use of force or violence against a child. Other people may disagree with me. I think a parent who may smack a child on the bottom when they have done something, is something a lot of parents resort to. I, for one, would not believe that the convention should be interpreted as doing away with that.

Mr BARTLETT—You did say that you do not believe that the convention should be interpreted as doing away with that.

Ms Whitaker—Yes.

CHAIRMAN—Thank you for appearing today.

[3.58 p.m.]

PISCITELLI, Dr Barbara

CHAIRMAN—Welcome. In what capacity are you appearing?

Dr Piscitelli—I am appearing as a private citizen.

CHAIRMAN—We received your initial submission and we have just been handed a supplementary submission which will become part of the evidence. I now invite you to make a short opening statement before we ask some questions.

Dr Piscitelli—I apologise for the late submission and appreciate the fact that you can accept it at this time. In the interests of helping you to understand my submission, I will firstly emphasise that my particular area of expertise is early childhood. Therefore, my comments are largely restricted to children in the birth to eight age range. Also, my areas of expertise relate to children's artistic and cultural life, the education of children, and to public awareness and community education. Therefore, I have restricted my comments to those areas, and I would appreciate it if your questions could focus on those areas, as they are my areas of expertise.

I have addressed four specific articles in my submission. The first is article 31, which relates to children's access to cultural and artistic life and the protection of their right to play. I just want to emphasise to this group that, as an early childhood professional, my code of ethics asks me to ensure that the right of children to play is protected. It gives me great pleasure to see that the Convention on the Rights of the Child also recognises and supports children's right to play—something that, in this world, is often under pressure for children and which, as a professional and a guardian of children, I take it as my responsibility to raise in public any time I have the opportunity.

I would like to draw to the attention of this committee that much of the legislation and policy development around artistic and cultural life in Australia has focused on the artistic and cultural life of adults. More recently, the artistic and cultural life of youth has been put on the agenda, particularly by those who are concerned about the inclusion of 12- to 25-year-olds in Australia's cultural life.

However, there has been a significant neglect of children's cultural life at the early childhood level, particularly in relation to policy development and financial support for young children's involvement in the arts, and this is an area which I believe needs to be redressed—not necessarily by legislation but by review of current policies and their implementation in Australian public life.

I believe that children not only absorb culture but they create culture. If we are concerned about Australian life, we need to find ways in which children's participation in

the development and creation of a dynamic culture is ensured. I recommend in my submission that an overview of current policies and practices, particularly relating to young children's participation in the arts and cultural life, needs to be undertaken and, in particular, that that review should examine the financial commitment of this country toward children's participation in this aspect of their rightful entitlement.

In relation to education, I focused on articles 28 and 29. I also presented, at the time of my original letter on 10 April, a copy of a report which was prepared by the School of Early Childhood at QUT, with whom I am employed, which outlines our submission to the senate inquiry on early childhood education. That inquiry was specifically targeted at looking at factors which affect young children's learning. I hope that you will be able to refer to this information, as it is full of scientific information which may help you to understand our position on children's right to education.

I will add one bit of information which appears in my submission on the second page. This relates to new information that has just been published in the *Bulletin* relating to the White House conference in the US on early childhood development. At that conference, which was held recently, scientists produced considerable evidence that children's potential to learn is almost unlimited. However, they also indicated that many parents do not support very young children's learning, particularly parents who have low self-esteem, poor vocabulary and limited educational experience.

They indicate also that parents require considerable advice and support to learn how to interact effectively with their children in ways which will affect intelligence, thereby increasing their curiosity, their confidence and their problem solving. I believe that this is an important part of parental responsibility that needs to be taken into consideration by this committee when thinking about the child's right to their fullest potential of learning and the parental responsibility to their education.

In articles 28 and 29, the convention also specifically mentions that children should be educated about their human rights. In this regard, I want to provide you with information of a just completed research project which was undertaken by colleagues and me at QUT. In this project we worked with children in four schools in the Brisbane region to get them to talk with us about their perceptions of their rights. During this project we first of all discovered that many teachers do not specifically teach children about human rights in their classrooms, nor do they necessarily set up conditions which reflect a human rights perspective in their classroom environments.

Based on my experience in this project and those of my colleagues, we recommend that teachers across Australia should be informed about the UN Convention on the Rights of the Child and provided with relevant in-service education to introduce a rights perspective in their daily classroom teaching practice. Also, as a member of a higher education institution, I would like to draw to the attention of this committee that, while many students may receive information about the convention in their broad survey courses

during their pre-service training in teacher ed, few have the opportunity to examine carefully and closely the UN Convention on the Rights of the Child.

I teach a small elective subject with 17 students where we examine the ethical responsibilities of early childhood leaders. In that course, we examine carefully the UN Convention on the Rights of the Child and have studied the Australian report and the Australian alternative report as a means of enlarging students' awareness of the convention and their responsibilities under it. I would recommend that some review should be undertaken of teacher education programs in higher education to see the extent to which information about the convention is being systematically provided to professionals who will be working with children.

Finally, I draw your attention to a report by the Queensland Board of Teacher Registration in 1995 where they examined issues of social justice in education. In their report they indicate that it is vitally important that social justice is not seen as an add-on part of the curriculum in schools but rather that social justice issues inform the entirety of education. Their recommendations are listed there for you.

I want to focus my attention primarily on what I think is the most important component of the convention, and that is article 42 which calls for public awareness of the convention both to children and to adults. I believe that the convention itself is a singularly important document in that it sets high international standards to which Australia, I would say for the most part, complies.

To me, the convention serves as an internationally endorsed quality assurance process and in that way I think that we need to promote the convention as something that is a mechanism by which we can assure that children's rights are protected. The movement for ensuring children's rights, as I am sure you all are aware, started in 1924 and has had considerable action in the past 10 years. I believe that there is increased community understanding of the convention, but by no means is there clarity of understanding about the convention. Thus I indicate in my submission that there is a great deal of misconception and apprehension about children's rights in Australian society.

As I know you will ask me for evidence, I think that we just need to consult newspapers, talkback radio and anecdotal information around dinner tables to see the misconceptions that largely parents express about the UN Convention on the Rights of the Child. Many of those misconceptions are just that—misconceptions—because my reading of the convention clearly indicates that there is a responsibility of the state parties to recognise the importance of families and to support the families in the carriage of their duty to children. Where children are harmed in family life then the convention sets out methods and means for redressing that by using legislation.

Senator ABETZ—That is not a qualifying feature in the convention, is it?

Dr Piscitelli—I am not sure what you mean.

Senator ABETZ—That the states can only interfere in the event that the family is dysfunctional.

Dr Piscitelli—No, absolutely not. There is a partnership that is implied in the convention of families and governments and non-government organisations together working to enhance the position of children in society and to protect them from any harm that may come their way through abuse, and because of children's vulnerability they are susceptible to abuse.

Senator ABETZ—But it is not only limited to abuse, is it?

Dr Piscitelli—No, there is considerable neglect also, and ignorance of the potential of children. And so this document stands for me, as somebody whose professional life revolves around children, as a statement of our high ideals as a humane society, as a humane world.

I might just finish, because I do have a plan of action that I wanted to propose to the committee about public awareness of the convention. I think that this is an extremely important task, and I have broken it into several substeps.

I do believe that children themselves need to be informed about their rights. I would say, having worked with 400 school children from February until April of this year, that this will not be a hard task to undertake because children themselves already know and believe that they have rights. This is something that is not a surprise to children.

However, there are limited teaching materials available for teachers, principals and others in the community who want to educate about human rights. I believe that it is the responsibility of our society to develop those materials so that we can enhance that agenda and advance a clear understanding of children's rights by children.

The second target group I would want to mention is parents themselves. Clearly, parents have a number of concerns, and there is quite a bit of anxiety over the meaning of children's rights. I believe that a media campaign could be undertaken quite successfully, as has been undertaken on other large social issues, where we can inform the community about the intended partnership which underlies the convention—the partnership of the parents, the professionals and the government—in raising the platform for children.

Finally, I think that there is a pressing need for professionals themselves to apply our information about the Convention on the Rights of the Child. I have mentioned specific professional groups which are largely concerned with children, including teachers, social workers, medical professionals and those who are involved in the development of social policy.I believe that we need to find a way of educating them so that they can take

on, as Susan Whitaker said, the spirit of the convention as they develop policies and legislation which will reflect the best interests of the child as protected there. I am happy to take your questions.

CHAIRMAN—Thank you. I agree with you that, whilst the first three articles are important, article 42 is probably one of the most important, if not the most important.

In terms of the education program, I understand what you are saying about the three levels and I do not have any difficulty with that. But in terms of the legislative solution, do you see a piece of Commonwealth legislation which would encapsulate everything in the convention, or do you see parts of it being taken out and, if they are not already in there, be incorporated in other specific areas of legislation within the general children's area, if that is the right terminology?

Dr Piscitelli—Australia's position in relation to enactment of legislation is clear in the report. However, it puts Australia in a very ambiguous position in terms of compliance and implementation of the convention. It is my opinion that Australia needs to look at its legislation and adjust it to the child's best interests and to conform, where possible, with the convention and its intention.

Just as a piece of personal information, I moved to Australia 17 years ago. When I came to this country, I was astonished at the tremendous emphasis in Australia on commitment to and concern for human beings. As somebody who grew up in the US, I never had that same kind of feeling within the society in which I grew up. I have become an Australian citizen and I very much value the particular brand of social democracy which is part of this country. I would like to see Australia maintain its leadership in concern for human beings.

I believe that the intention of the convention is only to highlight that children require protection and that governments need to examine their existing legislation to ensure that it meets internationally agreed standards. Thus, if we need to change legislation in this country, I think we should be strong enough, brave enough and courageous enough to lead the world in doing what is best for children.

CHAIRMAN—You are reinforcing what is in the DCI alternative report in terms of the legislative solution?

Dr Piscitelli—Yes. I have to say that during the time that the DCI report was being drafted I was out of the country for eight months, thus I am not familiar with the exact position that they have taken, but I do believe that as a signatory to this convention Australia has made an in-principle commitment to follow the guidance of the United Nations in raising the platform and profile for children through protection. Legislation itself often provides the strongest platform for changing public opinion and moving on and advancing children's issues.

CHAIRMAN—So you support the establishment of a commissioner at the federal and all state and territory levels?

Dr Piscitelli—I do support the establishment of a commissioner for children. The details of that are best worked out in another arena. My opinion is that we probably only need one commissioner whose roles would be quite broad and who also would be able, through his or her office, to ensure that there was a gathering together of policies and overview for children.

CHAIRMAN—I am asking you for something that you may or may not have thought through: should the terms of reference for such a commissioner be with the emphasis on monitoring, or should there be an enforcement role of some sort in some areas within that?

Dr Piscitelli—In our submission to the Senate inquiry we recommend a children's commissioner or an office for children, and we have set out some terms of reference. Would you like me to review those?

CHAIRMAN—You could but, because we do not have much time this afternoon, perhaps you could table that and we will incorporate that into the evidence.

Dr Piscitelli—Yes, I would be happy to. Just briefly, we felt that the commissioner's role would be to set up a collaborative consultative process which would then set out a safety net, distribute funds for programs, oversee the implementation of various recommendations and advise on legislation.

Mr TRUSS—In your studies with the children that you spoke about in the four Brisbane schools, you spoke to them about their rights. Was that a one-sided discussion or did you also talk about their responsibilities?

Dr Piscitelli—Most definitely about responsibilities. In fact, the rights and responsibilities, as you understand of course, are inextricably intertwined, so it goes without saying that one without the other does not make for a good society. The children themselves very clearly already understood this. We did prepare for our project a set of notes and a resource booklet for teachers which I am happy to leave with this group.

CHAIRMAN—I am happy to incorporate all of those under that original document. If you could put them all together we will be happy to accept those into the evidence.

Dr Piscitelli—Thank you.

Mr TRUSS—You, and others, have spoken about some kind of national children's legislation, or a children's bill of rights, if you like. Since we do not have a bill of rights,

and the people have really rejected the idea of a bill of rights, have they in practice also rejected the idea of a children's bill of rights?

Dr Piscitelli—I do not know, but I think a children's bill of rights is superfluous. We have a convention. Do we need anything further?

Mr TRUSS—I am asking you.

Dr Piscitelli—I think that this is probably the strongest document we could hold in protection of children's rights. In my view, people need to become informed about it and understand it and alter behaviour, change legislation, alter financial commitment and change practice as a result of reading and complying with the intention of this document.

Mr TRUSS—Let me ask you the same question that I asked somebody else earlier. When we signed that, we were told we did not need to change any of our legislation to be in conformity with it. Do you agree with that?

Dr Piscitelli—It comes as a surprise to me. That is the first I have heard that.

Mr TRUSS—So you think we do need to change Australian legislation if we are going to conform with that?

Dr Piscitelli—I think legislation requires continuous review and updating. I know that is a kind of political way of getting out of it, but it is very true. I am aware that in the state of Queensland, the child abuse laws are currently under review and that it is the intention of the current government to alter those laws. Obviously, other laws also relating to children require review. I think the convention is just a prompt for us to continue doing that.

Mr BARTLETT—Following Mr Truss's first question about the balance between rights and responsibilities, in your comments regarding articles 28 and 29, you place very strong emphasis on the need to introduce a rights perspective. You quote in the daily practice of teaching that such courses should be compulsory in teacher training. Is there not a danger in this that there will be such an emphasis on rights and not responsibilities that children will lose a sense of balance?

Dr Piscitelli—I should clarify there. When I am talking of a rights perspective, I am using a tag that has been used in the literature. When I am talking about that, I also mean responsibilities. Human rights carry human responsibilities.

Mr BARTLETT—I suggest this needs to be stated. This needs to be explicit in any discussion of this because one of the areas of concern that parents have, and that a lot of other organisations in the community have, is that that is not explicit and that the whole convention and legislation enacting that convention leans too far on the side of rights and

does not consider responsibilities. I would be very concerned if there was continual emphasis on teaching of rights and not enough on responsibilities. As someone who has spent most of my life in the classroom, I am very aware that children—as you said yourself—have widespread awareness already of their rights. These are continually expressed by children but they are much more reluctant to express their responsibilities. I really am concerned that we do not go too far in that direction.

Dr Piscitelli—Just as a reply, I think it would be remiss of teachers not to teach about responsibilities.

Mr BARTLETT—I agree with that. But if we are saying here that courses in teacher education should be compulsory courses that require them to understand the Convention on the Rights of the Child and to teach rights, then courses in teaching responsibilities also ought to be compulsory. Would you agree with that?

Dr Piscitelli—Yes, but I think they can be embraced in the same course. When I am talking rights, I am talking about the resulting effect, which is responsibility as well.

Senator ABETZ—In your opening comments, you told us about a code of ethics under which you operate. Is that in the form of a document?

Dr Piscitelli—Yes, it is.

Senator ABETZ—Would you be able to take on notice to provide us with a copy of that? I would be very interested in that.

Dr Piscitelli—Most definitely.

Senator ABETZ—Thank you.

Dr Piscitelli—This is the Australian Early Childhood Association's code of ethics, drafted in 1989. I served on the working party of that group and the code was adopted in 1990, at the same time as the convention.

Senator ABETZ—Thank you for that; that will be helpful. You told us in response to Mr Truss's question that you also told the children at the time you were addressing them that there were responsibilities that they had to abide by as well. What sort of examples can you give of the responsibilities you indicated to them?

Dr Piscitelli—May I have my book back? I have been to China in the interval so I am in two minds here. Thank you. I will give you an example. In our handbook for teachers we have a couple of pages that give them ideas for implementing activities about rights and responsibilities in schools. One of the examples we show is to draw up a chart with the children. The children then list, on the left-hand side: 'My rights at home. My

rights with my friends. My rights at school.' Then, on the other side, they list their responsibilities: 'My responsibilities at home. My responsibilities with friends. My responsibilities at school.'

Given the age of the group that we are working with, which is largely children under eight, this was the simplest way of identifying just how every right carries a responsibility. If you are going to have a friend, then you have to be polite, and so on. It is a simple way of inducting children in the beginning to understanding that their right to have friends means that they have to participate in a certain way in interaction with them.

Senator ABETZ—That is fine, and I must say it is somewhat comforting to me to hear that. Whereabouts is that approach replicated in the Convention on the Rights of the Child? Where does it say, 'Sure, you have got a freedom of expression, but in exercising that freedom, you shall show due regard and respect to those who are older than you, to people that are disabled, to those that might be of a different ethnic origin, and abide by appropriate decent standards?' There is nothing of that nature in the convention, is there?

Dr Piscitelli—My reading of the preamble leads me to interpret that it is the intention of the preamble to talk about children growing up in a climate of love and happiness and dignity, and within all of those concepts are contained one's responsibilities. One does not acquire love, happiness and dignity without having responsibilities back to society.

Senator ABETZ—You would not get an argument from me on that. I fully agree with you. One of my concerns about the convention is that concepts of family love, family responsibility and things of that nature are absent from the convention.

Dr Piscitelli—That is not mine.

Senator ABETZ—In the preambular clause it tells us that the family is the fundamental unit of society, basically, but then it tells us in one of the articles that children have certain rights, that those rights are subject to direction by the parents but, of course, a direction, one would imagine, is overridden by a right. So a parent has a right to advise or direct, but the child has the right disagree. I suppose that is a detailed argument that we do not have time for today.

Dr Piscitelli—Article 5 clearly says:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians and 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.

Senator ABETZ—So the parental involvement has to be in a manner consistent

with the rights of the child recognised in that convention, and so the parental involvement is always subjected to that. I think that is the sort of concern that these parents have that I think you described as labouring under a misconception. What are the sorts of misconceptions that you have picked up around the dinner table, on talk-back programs and from other examples you have mentioned?

Dr Piscitelli—Many people do not perceive that children have rights. I think this is a fundamental problem not only in Australian society but in the world at large. In other words, there is a perception by some people that children are the property of their family.

Senator ABETZ—How many people actually believe that a child does not have a right to be safeguarded from sexual abuse, just as an example? I do not know of one person who would argue that.

Dr Piscitelli—I would agree with you there, but there are many—

Senator ABETZ—So that is one right. What about the right not to have their bones broken because dad is in a rage? Most people would accept that that is a right of the child, wouldn't they?

Dr Piscitelli—Of course, most people would, but there are many people who violate children's rights on the two counts that you have just identified.

Senator ABETZ—But if you were to put them in a room and ask them, I am sure that they would acknowledge that the children have a right to be protected, but they still behave in an absolutely horrendous and unacceptable way. It is not something that is embedded within the community, that children do not have rights. There is an acceptance that children do have rights.

Dr Piscitelli—I do not think we have enough information to make any judgment on that—

Senator ABETZ—All right.

Dr Piscitelli—because I do not think we have polled society to see what they know or feel or think about children and their rights.

Senator ABETZ—You tell us in your public awareness of CROC section in your additional submission that there has been nearly universal ratification of CROC. What do you mean by 'nearly universal ratification'?

Dr Piscitelli—It is my understanding that all but a handful of countries have signed the convention and that many of those countries have already submitted their reports to the Committee on the Rights of the Child and some have submitted their second

reports.

Senator ABETZ—Does that mean that because they have ratified it that they fully accept the convention?

Dr Piscitelli—No, but I believe they are in the process of reviewing their own state parties' commitment to the convention. That is the intention of the signature, the report, the review by the Committee on the Rights of the Child, and any subsequent alteration to national policy or legislation. Isn't that your understanding?

CHAIRMAN—They can't do that. Where they have injected a reservation, after ratification the country state cannot put a further reservation. You can object to somebody else's reservation but you cannot amend your reservation. What Senator Abetz I am sure will come on to now is some of these reservations, which are very extensive.

Senator ABETZ—Yes. Forty-seven countries have lodged reservations, some of them saying that they will abide by the convention just as long as it does not impact on their domestic law, just as long as it does not impact on the Islamic Shariah law which they consider to be fundamental. If a child gets caught stealing, one wonders whether that child may have his or her hand cut off under some Islamic law.

One then wonders how appropriate it is to tell the Australian community that there has been virtual universal acceptance of CROC when the countries that have signed up have said, 'Yes, we agree with CROC', but then basically disown the whole lot by their reservations. It just seems to me that it does not necessarily tell the whole story.

CHAIRMAN—Concerning Australia's reservation on 37(c), imprisonment of children with adults, it seems to me as an individual that that is somewhat puerile in relation to some of the fairly major reservations that have been inserted by other countries, albeit that they have still ratified it. There is a ratification, but there is a ratification with reservations. You have to look at some of the reservations to see just how deep they are. Some of them are very deep.

Dr Piscitelli—I thank you for giving me that information. I was not aware that there were reservations to that extent.

Senator ABETZ—Everybody who has come before this committee has tried to say Australia has got this overwhelming international obligation, nearly everybody has signed up on it, but nobody has volunteered the fact that a lot of the children—and chances are a majority of kids in the world, I would venture to say—live in countries that have lodged these very substantial reservations.

CHAIRMAN—This committee can do something for you.

Senator ABETZ—That is another—

CHAIRMAN—We will provide you with a copy of those reservations.

Dr Piscitelli—Thank you, I appreciate that very much.

CHAIRMAN—As there are no further questions, thank you for attending today.

[4.34 p.m.]

WALSH, Mrs Prudence, Early Childhood Educator, Play Environment Consulting Pty Ltd, 30 Argyle Street, Breakfast Creek, Queensland 4010

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

Mrs Walsh—I am working as a private consultant in the early childhood field, specialising particularly in the area of physical environments in early childhood centres. It is a highly specialised area.

CHAIRMAN—We have received your submission, for which we thank you. You have no amendments or additions to that submission?

Mrs Walsh—No.

CHAIRMAN—Would you like to make a short opening statement? We will then move to questions.

Mrs Walsh—As you would be well aware, there has been a rapid increase in the number of children in long day care, from 75,000 children in 1988 to 200,000 in 1996, and many more in the figures projected. The intent of looking after and supporting families was very well founded by the previous government, but a number of issues, on reflection, need to be looked at regarding the quality of provision and implementation. I would like to specialise in my remarks today on the issue of physical environments in early childhood settings. I feel that is one of the most neglected areas of quality in child care. This is an opinion that has been backed up by extensive experience overseas, particularly in Scandinavian countries.

Legislation and regulations need particularly to be addressed in this area. We find that we have a difficult situation with legislation in different states so that we often have many variables or inconsistencies between legislation. One of the things that I have noticed is that when negotiations are going on in this neglected area of quality, which in my area is physical environments, what they are doing is using one lot of poorly researched information as a tool of negotiation. You might be battling about child-staff ratios and qualifications, and often the figure that has suffered is the issue of physical environment.

Playground legislation varies between states. There is a considerable decrease from what was occurring in the 1950s under the kindergarten movement. The figure that was recommended by the national body—the Australian Early Childhood Association—was 20 square metres. In practice there is only one figure that works—that is, the figure of 18 square metres, which is referenced to the old kindergarten movement figures that were

accepted in the Northern Territory—and there are moves afoot for that figure to be decreased. I also found that not only is the legislation poorly researched, it does not work in practice. I would like to give you examples with overheads to emphasise why it does not work.

Overhead transparencies were then shown—

Ms Walsh—The main thing is that with this rapid expansion we have not had properly researched documents to support people who have never previously been involved in the care and education of young children. As you would be aware, we have situations where a large number—80 per cent in Queensland—of early childhood centres are now privately run. To quote the mayor of one of the major regional councils in Queensland, we have ended up with many kid ghettos and baby factories where, frankly, commercial profit has been a major motivating factor rather than the interests of children.

We have also had insufficient reference for other authorities, like local government. Just on the cost factor, could I just show you how the motivation for much of this has been misinterpreted. *Business Review Weekly* at the height of the child-care boom listed child-minding centres as one of the most profitable businesses in Australia, and that is not even child care as there is no approach to education or whatever. I think that was also featured last night on a program on the ABC.

Mr TRUSS—How old are those figures?

Mrs Walsh—Those figures are from two years ago. At the time there were projections of a quarter of a million dollars profit a year from a 75-place centre put out by so-called reputable firms of valuers. I think the most notable feature is that there was no consultation with the professional early childhood field when establishing a lot of those figures. And I have certainly questioned some of these valuers about what they are doing. The same applies to real estate agents and accountants who have become experts, but there is no reference to the professional field.

What I would like to show you is why the legislation does not work. This overhead gives you an idea that the legislation does not cover effective space provision, it does not set out what is an effective site requirement. It does not define what is a useable space to look after children's rights. So you end up with playgrounds on three sides of a building with a 1.5 metre drop. This is a centre I have visited and I was called in because the children were knocking down the fence because all they had to do was roll down in barrels.

CHAIRMAN—Good fun.

Mrs Walsh—That was the only fun they had, I can assure you. The next overhead shows that, because of the lack of effective legislation and effective back-up documents,

even when you do get a good site—and that is a 2,500 square metre site—the councils will often come in with car parking requirements. The councils, when you speak to them, say that they assume that the legislation is a responsible document that works in practice.

Note the playground space on the left-hand side. That space is for about 60 children and the tiny little space up in the top right-hand corner is meant for the babies. Notice the additional council requirements that have insisted on landscaping because of people objecting to the noise in the neighbourhood. What they do not realise is that tight space increases noise and unhappiness and causes a breakdown in children's behaviour.

CHAIRMAN—And, of course, the underlying theme in all of this is that it is flying in the face of the various articles in the convention.

Mrs Walsh—Absolutely. And when I read through the articles document very carefully, I find there was a huge cross-referencing to it. So rather than going into each specific one I thought it was better to number them for you and see how it relates to it.

CHAIRMAN—Yes, we have got a list of about 15 now.

Mrs Walsh—This is, again, fighting legislation. This is what is called a back-to-back centre and there are 75 children in each and to cut costs what happens is that you get a building facing to the north east. Notice the playground on three sides of the building. They mirror image the plan, so the bottom building is hot in summer and cold in winter. So there are not even basic design requirements that relate to good design being implemented. One hundred and fifty children are placed in that space. That is in Logan, near here.

Mr TRUSS—Are you saying that the market forces are failing?

Mrs Walsh—Yes, they are.

Mr TRUSS—If you have got 150 places, the parents have probably got four or five others to choose from.

Mrs Walsh—And fortunately I think that is what is needed, but the issue is the accountability. I think the physical environment should be one of the criteria that are used to protect children's interest and to close some centres. The sort of site information that people are wanting is what the reasonable size of a site is. The one on this overhead is one where there is a clearly defined playground, good indoor- outdoor access and so on.

The next one shows the car parking is not intrusive; it is supportive. This is to give you an idea on how the situation has dropped in the intervening years. This is a state preschool at New Farm just near here. That is a centre that was produced by the state government in Queensland for 25 children in 1979. That was not considered generous by

the preschoolers either. If that were turned into day-care centre, there is sufficient space for 115 children in day care. You are finding now that the children who have the longest hours of care are put in the worst physical environments, because preschool is sessional.

There are other major problems. Well-researched information is available for instance on how to allocate space and playrooms. It is a very easy to implement design issue, but in point of fact, what has been happening is they have been cutting out corridors and turning playrooms into corridor space. Imagine 25 children in that bottom space. You find the impact on the children is most notable: their play is less focused, they are much noisier, more aggressive and antisocial. It is much harder to run a program in that sort of space.

The legislation is also based on a space criterion per child: outdoor space of seven square metres per child, and indoor space of 3.25 square metres. These figures of space criteria worked out per child do not work. There is a break-even figure.

This shows the 3.5 legislation in a Queensland university centre. That is a babies' area with toddlers in it as well, which does not work. In fact, most of the babies were suspended in hammocks from the ceiling to protect them from the more mobile, but not necessarily more socially adept, toddlers. But is that a playroom? Is it a passageway to back up facilities like nappy change, bottle preparation and so on? Or cot rooms? Frankly, in practice, all it is is a corridor. It does not work.

CHAIRMAN—Is there a discerned difference between the provision within community based and private?

Mrs Walsh—Yes, there definitely is. The old kindergarten movement might have had many failings in many areas, but they were the best purveyors of quality. Certainly, their physical environment record, while not well documented, was actually very adept and very right. It is very interesting comparing the legislation now and the dimensions of the building. You find that in practice, their figures work. But do not forget they were dealing with kindergartens and preschools. They were not dealing with the far more complex design solution of a day-care centre, accommodating children from six weeks to five plus years. You can see why it just not there.

There is some research by Gary Moore in America that backs up my argument on this one, too. I have had discussions with him about it.

This is upside down, but it still gets the point across. This is a senior playroom for 25 children from three to five years of age that works. Notice how the room is broken up into sub-spaces: a dolls corner, a block corner, a book corner and so on. It also has very clearly defined access from the corridor space out to there. We have what we call uninterrupted play zones within the room that is developmentally based. Children are not socially ready to play 15 together; they only cope with being by themselves or in pairs, or

very small groups when they are nearer five.

I am finding that one of the tragic things is the total lack of regard for anything to do with ventilation and natural light. Often these buildings are built to the lowest parameters and you have got ceiling fans such that, frankly, if you lift a child above the head they get scalped, and that has happened. The ventilation issue leads to contamination. It is a breeding ground for viruses and you often find that these sorts of things occur.

They cut costs because that costs about another $1,000 on your roof. This one I would really like to show you in detail to emphasise how ludicrous the space situation is. Research by Kritchevsky and Prescott says you need 4.5 play spaces per child. This was done to show the Senate inquiry and also several state governments about failure in the legislation and lack of appropriateness. It is a fiddly exercise, but it gets it across.

When you build a sandpit as a play factor, and keeping children actively involved is actually one of the most important play provisions in a playground, do you build a sandpit that is about the size of the end of this table? If you have 75 children then obviously you need to increase the size of it. That is a 30 square metre sandpit, although not sited in the right place.

Then we have areas which we need for setting up play activities for children—things like water troughs and hollow blocks and things like that—because these are essential spaces for implementing an effective program that meets all developmental needs and interest levels, or has the potential to do that. These are what I call formal quiet areas, spaces that are large. It might be an area with a big tree, it might be a gazebo or something like that. That is the space you require for that.

We find, for instance, that to hold children's attention and let them be happily involved in play they need something like a big digging patch. That is a reasonable size for a digging patch—not overly generous. We also know from the implementation of safety measures as a result of the national injury surveillance unit results that we need a big soft fall surface area so when children fall from equipment over 500 millimetres—that is the Australian playground standard for youth—they do not injure themselves. That is about the space they need. There is a climbing structure to give you a bit of an idea in between. That space is not an overly generous one.

Next, we know too from research that children respond best of all to natural environments with an aesthetic beauty, that have subtle sensory changes in it, because the richer the sensory environment the more the arousal process to children's inquiry occurs.

Very quickly, we also need trees, not only from an aesthetic point of view but obviously for the shade, skin cancer policy point of view and things like that. There are your trees. I could go on and on. Children prefer a mound to a climbing structure. I will just put two things in now that I think tell it most of all. I have not put in swings and all

those things, or storage sheds, which are essential provisions. Here is the mound. We also know that if children do not have 15 metres of open running space it can impair their gross motor development, and that is a research study from Edith Cowan University. Taggart was the guy's name.

The next thing we need to look at is the fact that I think the most neglected area in child care, particularly from a physical environment provision point of view, and I think it relates to other areas as well, is babies. So, there are the babies. I said to you that Kritchevsky and Prescott's research says 4.5 play spaces per child. You can fit about 15 in the sandpit that is already on the ground. You can fit on each one of these about five to six children, maximum. The digging patch will cope with about another 10. The climbing structure, as long as it has planks and ladders and other things, will cope with another 10. We have 75 children. There is not even one play space per child in that playground, and that is better than a lot of the ones that have been built.

CHAIRMAN—What are the shade screening requirements? A lot of screening materials are being used in Toowoomba—

Mrs Walsh—Absolutely.

CHAIRMAN—Is there a standard for that sort of thing?

Mrs Walsh—Yes, there is, and you can look at the UV protection rate, but you find the playgrounds are so small that when you put in the safety measures for soft fall surfaces with a two-metre free fall zone, and you start putting in the shade shelters, and you find the lawn cannot survive, that you end up with artificial grass, artificial shade shelters and artificial impact absorbing surfaces which cost a fortune to implement and are never implemented properly. Think of Chiselhurst and you realise this is the complete opposite, if you are talking about Toowoomba. That is what we need, not what—

CHAIRMAN—Although Kath Dickson Occasional Care Centre—

Mrs Walsh—Yes, I have worked with Kath Dickson, I have designed a playground there. So really what I am saying is I am trying to prove to you that the legislation and the guideline documents have not worked in practice at a time of the most rapid expansion. I believe it is a neglect of governments in terms of not addressing an issue thoroughly and in enough detail. There has been insufficient reference, not only to the early childhood field on many issues, but particularly specialised expertise of relevant topics.

I am glad to report that there have been some changes occurring. There was support in the Queensland parliament, when things were at their height, by Santo Santoro MLA. There has been support from a number of organisations and a number of conferences that I have spoken at. I think most tellingly, a resolution was passed at the international play conference in Melbourne in 1993 and, when I spoke at the next

conference in Helsinki in August last year, one of seven resolutions at the international conference was to address the issues of space.

Just to give you a bit of a laugh, I think the Danish people said to me, ‘What is your legislation? What is it for outside?’ I said, ‘Seven square metres’, and they said, ‘No, no, that is inside.’ That is how inappropriate it is. It is below the plimsoll line.

CHAIRMAN—That is all right. Santo can stand up and say whatever he wants to say. The more important thing now is: what has the coalition government of Queensland done about it?

Mrs Walsh—Nothing. What has happened is that the Australian Early Childhood Association got together, and this document here on policy which literally looks at children’s rights in terms of space in early childhood centres has been accepted nationally. But I do not think it has been listened to enough yet.

Secondly, the government that is responding is the New South Wales government. They have introduced a document, *Best practice in physical environments*. They have taken account of and referred consistently to this document as recognition of professional expertise. I might add that I did write the document, but I had a review committee—and a tough review committee.

CHAIRMAN—Do you have copies of that which could be tabled?

Mrs Walsh—Yes, I have. Unfortunately, I did not get them until yesterday. They were sent from Sydney.

CHAIRMAN—If you would like to leave those with us we will incorporate them into the evidence.

Mrs Walsh—Yes. Finally, I feel, when we talk about children’s rights, that this is a reflection on Australian society not recognising children’s rights enough, as well as lip service, as distinct from well-considered thoughts and implementation being carried out. It is not a case of blaming. I think all areas of people involved are accountable, and I think it is a tragedy for children—the long-term consequences are profound.

CHAIRMAN—Thank you. I think it is something more easily understood, in terms of the problem, than some of the other wider, societal, behavioural things.

Mrs Walsh—This is the pragmatist stuff.

CHAIRMAN—It is a physical thing so it is easier, isn’t it?

Mrs Walsh—Yes.

CHAIRMAN—I think—not because we have got two minutes to go—

Mr TRUSS—I will not dare ask what it has got to do with the Convention on the Rights of the Child!

Mrs Walsh—Look at the references and you will see that I have related it to them. I have got ticks right through.

Mr TRUSS—I do not think we are likely to be taken to the International Court of Justice, though, because the playgrounds are too small.

Mrs Walsh—Does society respect children's rights to space so that their development and progress is not implemented? Do not forget that in my submission I talked also about the consequence to users. The consequences to users, I think, are the tip of the iceberg. I am noticing major patterns among children such that I notice gang warfare between three- to five-year-olds. I did not think that would happen.

CHAIRMAN—You referred on page 1 to those specific articles. Could you just take it on notice to give to us some examples in each of 3.1, 6.1, 13.1, et cetera. Could you give us something in writing as a supplement to what you have already given. That will fill in a couple of gaps that some of us have.

Mrs Walsh—Yes, very happily. That is excellent.

Mr TRUSS—Thank you. It has been interesting.

CHAIRMAN—Thank you very much indeed.

Resolved (on motion by Mr Truss):

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

Committee adjourned at 4.56 p.m.