COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

ADELAIDE

Friday, 4 July 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

BAYFIELD, Miss Juliana, Australian President, Australian National Section, International Board on Books for Young People, c/- Children's Literature Research Collection, State Library of South Australia, GPO Box 419, Adelaide, South Australia 5001 778

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BRAUN, Mrs Aileen Mary, Social Worker, Lutheran Community Care, 309 Prospect Road, Blair Athol, South Australia 5084 717

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REDMAN, Ms Julie Joy, Deputy Chairperson, Children's Interest Bureau Board, c/- Children's Interest Bureau, 10th Floor, CitiCentre, 11 Hindmarsh Square, Adelaide, South Australia 5000 724

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JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

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Friday, 4 July 1997

Present

Mr Taylor (Chairman)

Mr Bartlett	Mr Tony Smith
Mr Hardgrave	Mr Truss
Mr McClelland	

The committee met at 9.03 a.m.

Mr Taylor took the chair.

DOLGOPOL, Ms Ustinia, Coordinating Committee, Action for Children, 6 Ormonde Street, Millswood, South Australia

CHAIRMAN—I declare open this public hearing into the UN Convention on the Rights of the Child in Adelaide. This is one of a series of public hearings. Yesterday we took evidence in Perth after having taken evidence in Canberra, Sydney and Brisbane and next week we take evidence in Melbourne.

There have been in the region of 1,200 to 1,300 inquiries about giving evidence to this inquiry. We, at this stage, have received about 300 written submissions of varying sizes and contents. We expect to take evidence for the next three or four months and, hopefully, will be in a position to report to the parliament before Christmas.

Ms Dolgopol, we have received your written submission. Are there any amendments or additions to the written submission before we get onto the opening statement?

Ms Dolgopol—No, there are not.

CHAIRMAN—Would you like to make an opening statement?

Ms Dolgopol—A very brief one, thank you. I will elaborate a little on the issues that we have raised. That is not our full submission; we will be providing you with a longer submission within the next couple of weeks.

The organisation has a variety of members. They include doctors, family counsellors, social workers, early childhood workers and psychologists. Individual parents belong to the organisation. Other groups of people belong as individual members. There are some lawyers on the committee. In addition to that, we have 22 organisational members who have paid subscriptions to our organisation.The vast majority of people who belong to our organisation either have some dealings with children and issues affecting children in a professional capacity or are parents who have issues with respect to children and children's interests and rights.

The greatest focus of our organisation is for those under 12. Most of the people in our organisation have done more work in the under 12s than they have with the youth sector. So most of our perspective is based on that rather than work with adolescents, although we have worked on some issues with groups in the youth sector.

One of the main concerns of our organisation is the lack of public education, both generally about human rights issues and the Convention on the Rights of the Child. We believe there is a lot of misinformation in the community and a lot of misunderstanding about the convention: what it does and what it stands for and the operation of the United

Nations. More needs to be done to create both a human rights ethos in general within Australia and to give positive and accurate information about the Convention on the Rights of the Child.

As is clear from our points in the written documents you have, our organisation strongly supports the creation of a Commission for Children. We believe that there is a need for a monitoring mechanism independent of government in order to look at the profile of Australian children and young adults. The committee has before it a document which we prepared. It is still in draft form but should be finalised shortly. The final document will be sent to the committee. It details some of the issues we believe are facing children and young people in Australia in terms of their health status, poverty, lack of access to justice, plus issues about urban planning and lack of resources for mental health.

We also detail what we believe to be the role and functions of a commissioner for children. Most notably our organisation does not believe that such a commissioner ought to hear individual complaints. We believe that the existing mechanisms for ombudsmen and other complaint mechanisms at the Commonwealth, state and territory levels should be used and that specialist children's officers should be put in those organisations to hear complaints. We do believe that there is a need for a national mechanism to undertake legislative scrutiny, to look at the status of children and young people within Australian society, and to undertake research. We detail about 12 different functions that we see a commissioner being able to undertake.

In particular, we would say that a commissioner ought to have coronial type powers in terms of investigation, being able to call witnesses and get access to documents. There have been a number of occasions, particularly in the area of child protection, where state governments have not conducted thorough inquiries into deaths of children or severe abuse of children. Public confidence in all those institutions would be increased if you had an independent organisation that could conduct inquiries and make public statements and findings, and if people did not believe that some information was being hidden away some place. Whether or not it is in fact is irrelevant to whether people believe it has been. That is an important issue in terms of justice.

I just note, from the commission's background documents and its statement of concern, that some issues were raised about consultation with the states and territories before Australia ratified the Convention on the Rights of the Child. I arrived in South Australia in 1987. At that point, the state government here wrote to the Commonwealth Attorney-General and the Prime Minister of the time to indicate its support for the Convention on the Rights of the Child. The then community welfare minister of this state had a resolution passed unanimously at the Joint Standing Committee of Community Welfare Ministers in 1988. All the state and territory community welfare ministers indicated their support for Australia's ratification of the Convention on the Rights of the Child.

There was a lot more consultation than has been indicated on the public record. It was certainly indicated by some individuals and organisations. As you will see from the points that we have raised, I worked for the International Commission of Jurists, which was based in Geneva, for five years and attended the negotiating sessions on the Convention on the Rights of the Child for five years. I was always aware that the Australian delegation contained at least one person from a state or territory. It always seemed me that there was a fair level of consultation and that lots of issues were referred back to Australia for further consultation with the states and territories.

Another area of concern that was raised in the committee's background documents was issues about heads of power and standardisation of legislation. I would say that from those, in terms of working on the convention, no-one believed that there was one right answer to any particular problem. Individual states within the world community have very different legal approaches as well as social policy approaches, so no-one is suggesting that there is one right answer to any of the issues that arise.

On the other hand, Australia is answerable to the international community as a country and so questions will be put to Australia as one nation. That is important in terms of looking at Australia's obligations under international law. It is not this convention alone, but under international law Australia is answerable to the international community. Other treaties also have an impact on Australia's human rights performance and would have an impact on Australia's treatment of its children and young people.

Issues about discrimination on the basis of race would clearly be covered by the Convention on the Elimination of Racial Discrimination. I note that in some of the committee's prior hearings issues about corporal punishment have been raised, but it was in fact the human rights committee under the Covenant on Civil and Political Rights to which Australia is a party that first indicated, approximately eight years ago, that corporal punishment in schools could affect the human dignity of the child and might very well be a violation of the Covenant on Civil and Political Rights.

That was for all countries in the world, not just for Australia. So some of these issues are covered by other international instruments. The Convention on the Rights of the Child needs to be seen in that light—it is not something that created a host of new rights for children. It just made clearer that many of the existing human rights also apply to children because, as we have indicated, children and young people are often the marginalised group in our society and when people talk about human rights they often forget about children and young people as bearers and holders of human rights.

CHAIRMAN—Thank you very much. Can I just bring you back to a comment you made about misinformation and misunderstanding of this convention. Can you just elaborate what you mean, giving specific examples if you could, of both misinformation and misunderstanding?

Ms Dolgopol—In terms of media reporting on the issue as well as talk-back radio shows that I have either participated in or listened to, there are those people who would say that the convention undermines the rights of families. I would say that this a piece of misinformation. If anything, the convention strengthens and supports the role of families. There is a recognition that the family is the fundamental unit of our society. In fact, the convention calls on governments to provide more assistance and support to families in order to assist them in fulfilling their role.

The convention makes clear that there is to be no interference in family life unless the child is in danger of some sort, in terms of issues of abuse and neglect, so the notion that the convention could be seen as undermining families is misinformation. A better understanding of the convention would help to get over that hurdle.

CHAIRMAN—What suggestions do you have in terms of the educative process in terms of the convention? How do we put across to Australians what the convention really means?

Ms Dolgopol—A briefing kit was prepared by UNICEF quite a number of years ago when the convention was first ratified. It had the text of the convention itself, but it also had documents that explained the convention in simple language. I think that that sort of notion could be picked up on. Booklets were put out by the Save the Children Fund, for example, at the time that put the articles of the convention into simple language. That type of material could be distributed through community based organisations and made available.

I also think that pamphlets with accurate descriptions of the Convention on the Rights of the Child could be made available in the schools. The material should be written that contains age appropriate language for children and young people.

Unfortunately, there is some misunderstanding on the part of some educators—I would not say the majority—about the convention. On the other hand, people can go overboard about rights issues and act as if somehow or other the fact that you have a right means you can do anything you like. That is not the case. I think more accurate information being put through the school system would also help. I think that the Human Rights and Equal Opportunity Commission would have a role in producing general public information as well as preparing special kits for schools to use.

CHAIRMAN—To come back to the misinformation and misunderstanding again, I think it is difficult. Yesterday in Perth we had both ends of the spectrum in terms of whether it was clear or it was less than clear. In particular, article 5 and articles 12 to 16 are the ones that keep on coming up, and also the preamble which has got to be read in conjunction, in a legal sense, with the articles. How can we get over this misinformation and misunderstanding when a lot of these articles mean different things to different people?

Ms Dolgopol—One of the first things that anyone who is trying to educate the public about this needs to do is to make clear that, in any international treaty, it is a state that is being made answerable to the international community and that those rights are with respect to the state, the government of the country. That is what the convention really is about. It is the government of Australia that cannot interfere in the privacy of a young person. It is the government of Australia that cannot interfere with a young person's right to freedom of speech.

When this was debated, it was actually China that tried to push for a deletion of the article on free speech from the Convention on the Rights of the Child. Many of us pointed out that, if you looked at the history of South Africa, for instance, and the role that children and young people played there in the movement towards getting rid of apartheid, that that was a crucial role and you certainly would not want to stop young people from having rights of freedom of association and freedom of speech. That is the sort of example of the way you do not want a government to be able to stop and interfere with those sorts of rights.

The other issue that probably is overlooked is that those rights are also contained in the International Covenant on Civil and Political Rights. In fact, it is just the language of the covenant that has been carried over to the Convention on the Rights of the Child. If you look at the language of the Covenant on Civil and Political Rights it says that everyone shall have this right. 'Everyone' would include a child. There was some discussion when the convention was being negotiated as to whether it was necessary to restate these rights because they were already protected under the covenant.

If you look at the International Covenant on Civil and Political Rights, no Australian government has ever used that covenant to try to tell parents they may not regulate their child's conduct in terms of hours when they have to be in and in terms of reading material in the home. If an Australian government had wanted to do that, they already had the power under the International Covenant on Civil and Political Rights to do that.

Mr BARTLETT—Just to clarify one point, the convention does not actually limit those rights to protection against interference from the government, does it?

Ms Dolgopol—It says that the state party shall protect, and that is the whole notion of the language, that it is the obligation of the state to ensure that it does not interfere and—

Mr BARTLETT—But it does not narrow that down to only protection against interference by the state. This is one of the reasons for concern by a number of other parties, that it can be interpreted as restricting the rights of parents, not just the power of the state to interfere.

Ms Dolgopol—You cannot separate any of these conventions out from the notion of international human rights law. They are part of a body of international human rights law. Those sorts of interpretations you can use against any particular piece of language and statute that we have in this country. I think that that is a bit of misinformation and misinterpretation. As a part of international human rights law there is no question but that those articles are directed against the state. It is the state's interference with an individual's right that is of concern. It would be a gross misinterpretation—no country has interpreted otherwise nor has the Committee on the Rights of the Child interpreted those rights otherwise—that it is the state's obligation not to interfere. You need to look at it in the context of international law, not in terms of the way someone might like to construe or twist language around.

Mr HARDGRAVE—I would like to ask a philosophical question from a liberal democrat point of view. It surely is more the role of people in a society to demand of their government a certain course of action rather than in a purely undemocratic process people from outside that country and outside that government to direct that government what to do. Surely it is up to the people of Australia to demand certain standards?

Ms Dolgopol—From the 1800s, and probably even before that, the world has recognised that that notion of individual countries and their role in the protection of human rights is not sufficient. Clearly the impetus for the modern development of human rights comes from World War II and the whole notion of what one society can do to its own people, while the people within the country may not in fact be able to protect their own rights. The whole concept of the modern development in international human rights law is that violations of human rights can affect the peace and security of the world and are international issues.

To go to another point of view, look at the Council of Europe, for instance. Most people within the Council of Europe have seen the creation of a Europe-wide system for the protection of human rights as extraordinarily useful. It has in fact led to changes in their society that people would say are for the good.

There are other issues about the notion of human rights and what it gives you. In terms of philosophical perspectives, one argument that is always made is the issue of a trump card: that if you can say that something is a human right then it gives you more power in terms of negotiating. But there has been a longstanding philosophical debate about government obligations versus rights; and as somebody who has worked in this area I have a particular answer to that, and other people have different answers to that. But I do not see how you get at the issue of government obligations without someone being a right holder and being able to make a demand on a government.

Ultimately, you are right, no rights are protected in any society unless you have a commitment to some democratic form of government; but that is not to say that things cannot be improved and that there are not instruments that can be relied upon to help you

make progress. Nobody ever thought that any of these rights were going to be implemented and come to fruition overnight. This is seen as an ongoing process and a constant process of dialogue, both within Australia and at the international level.

Mr HARDGRAVE—I think the most telling piece of evidence you have offered today is that this is about the state's treatment of children rather than treatment within the family unit. I thought you spelt that out very well. But there are still urban myths that float around about this, so there are obviously some great problems as to the education of children, of parents and of practitioners. What are children being told, and who is telling them? Are they being told in the schools about this? Are they being told about this by bureaucracies like the Department of Social Security? What are they being told, and who is telling them?

Ms Dolgopol—I do not think any of us are in a position to answer that as a whole, because—

Mr HARDGRAVE—So nobody is telling anybody anything?

Ms Dolgopol—No, it is clear that some people are telling people some things, but I think you need to be careful. How could I possibly testify on what children throughout even South Australia are hearing? I do not sit in the public school system every day. I am not privy to their schoolyard conversations.

Mr HARDGRAVE—So what you are saying is that there is no official guidance given to children about the UN Convention on the Rights of the Child.

Ms Dolgopol—As far as I am aware, certainly in the legal studies program in this state some information is being given to children about the Convention on the Rights of the Child. I know that young people doing legal studies have gone to the Children's Interests Bureau, for example, to look up further information about the Convention of the Rights of the Child.

Mr HARDGRAVE—So the South Australian state education system is providing that information.

Ms Dolgopol—What I do not know, and unfortunately have not found out—obviously, like other people, through lack of time and other priorities—is what they have available to them in terms of curriculum development. I do not know whether they are just working from the text of the convention, or whether they have actually contacted the Human Rights and Equal Opportunity Commission to get additional background information on the convention. From my point of view, it would be better if the Human Rights and Equal Opportunity Commission were preparing educational kits, because then you would know that the information given to children and young people is more accurate. There have been, as you say, urban myths—and how accurate they are or how

representative they are, I would not know. But there have been stories of children being told, 'The fact that you have rights means you can stay out to any time you like', or, 'The fact that you have rights means that your parents cannot do this'. I would say that that is misinformation, and children should not be being told that because it is not correct. You and I cannot do whatever we like just because we have human rights. We all know that there are limits on the exercise of our rights, and children need to have that put in context for them as well.

Mr HARDGRAVE—What about bodies other than the education system: government departments, say, like the Department of Social Security, which looks things relating to homelessness allowance and those sorts of benefits that are given to younger Australians?

Ms Dolgopol—I think that is a very difficult issue. There probably are young people who have not stayed at home when things are not bad enough, or other people might not see them as so bad that they need to leave. But I also think that the use of social security benefits by children and young people has been exaggerated. When you talk to people who have actually had more direct contact—and not just Social Security but other services that deal with children and young people—their view is that the majority of children and young people who are getting access to the homeless allowance actually do have severe problems at home.

Mr HARDGRAVE—I am not pursuing the merits or otherwise of that allowance. I am trying to find out if you are aware of the Department of Social Security giving information.

Ms Dolgopol—No, I am not aware. I do not know whether they talk about the convention when they talk to young people.

Mr BARTLETT—Just pursuing this issue a little bit further. In relation to articles 13 and 15 where they have a right to seek information, these articles are to do with issues of autonomy. If the convention was enacted into legislation, are you saying then that you cannot see any situation where those articles would be used to protect the child's rights against interference from their parents, but rather they would only be used to protect the child's rights against interference from the state? Can you see the possibility that it might be used against the parents?

Ms Dolgopol—When conventions are enacted into national legislation in countries where that happens automatically there is already a different ethos and understanding about the nature of those rights. In a country like Australia, where that has not been the tradition, I think you need to look at how you put it into domestic law. When those articles were debated at the United Nations, they were debated in the context of interference from the state.

If you just took them and put them into domestic legislation in the language they are in, it might appear that the state here has power. I think that is where the difficulty comes in and the way they are written is a country being answerable to the international community.

One of the issues you need to be careful about, of course, is that type of situation that arose in Victoria where you had a community that wanted to absolutely isolate their children. At that point the Department of Community Welfare in Victoria thought that it was not in their best interests. That was done under existing legislation for child protection. But there might be instances where you saw parents trying to cut off their children to such an extent from the outside world that you might want to the government to be able to say they needed a bit more access, not necessarily exposure to everything.

But, as I said, that is already being done under existing community welfare legislation. So it is not clear to me that the convention is actually needed for that scenario. But that would be the only qualification I would put onto the statement that you are making, that it could be possible in extreme circumstances for children to be denied all access to any appropriate information.

Mr McCLELLAND—That really is the issue, is it not? These international conventions are framed in the language of international diplomacy, but it is up to the individual country and its expert parliamentary draftsmen to put it in the language of a statute. The parliament can elect how it construes that diplomatic language in enacting its own specific laws.

Ms Dolgopol—I would say that that is right with the one caveat: the enacting legislation should not give less protection than the convention itself. But, other than that caveat, you are correct.

Mr McCLELLAND—In terms of the ambiguity that has been argued to exist in articles 12 to 16 in particular in establishing, for instance, a commissioner for children, there could be a preamble wherein that preamble puts the Australian parliament's construction of those clauses. It is not intended to intrude into the rights of parents to legitimately bring up their children in the best interests of the children. That sort of qualification by parliament could assist as the initial stage before an education campaign as to what the thrust of the parliament's policy is.

Ms Dolgopol—Yes.

Mr TRUSS—I would like to take on board your comments that you were actually involved in the drafting of this convention. You indicated that you are concerned about disinformation campaigns and your definition of a disinformation campaign was, 'Those people who claim that this convention is deleterious to the rights of the family.' We have received evidence from people who suggest that a misinformation campaign would be to

the effect that, ‘This convention does not affect the rights of the family,’ and we have had lawyers, QCs, prominent university professors and community leaders on both sides. Could I suggest to you, therefore, that the drafting is pretty shoddy if it allows absolutely opposite opinions to be taken from the same piece of documentation?

Ms Dolgopol—I think that there are a couple of answers to that. I think there are issues about whether people actually know very much about international law and that is a concern for many of us. The other side to that is that you can make exactly the same comment about the United States Bill of Rights. You can make the same comment about the French Declaration on the Rights of Man. Some author has, in fact, described the French Declaration on the Rights of Man as ‘a single confused sheet of paper that has had a profound impact on the world’. It is not clear to me that the fact that something is broad and is aimed at trying to make it accessible to the international community is necessarily something that is shoddy.

Mr McCLELLAND—Indeed, you could probably go back earlier to the Magna Carta, could you not, upon which our Westminster system is based?

Mr TRUSS—Yes, and most of which is about matters of complete irrelevance in today’s terms. In the drafting process that you were close to, how much of it was a give and take compromise upon compromise?

Ms Dolgopol—That has to be. Just as the debates in a national parliament to some extent are give and take, it has to be. At any given time in the working group that was drafting the convention you had about 60 countries present. The Vatican was present. Then you had the non-government sector present. There has to be a give and take, given that you have such regional divergence, obviously a divergence of political systems and different levels of concern.

The non-governmental organisations that were participating in the drafting process worked very hard to get the developing countries to participate in that process so that their viewpoint would be taken up. If you look at the articles on technical cooperation in particular further on in the implementation part of the convention, those concerns were taken up. You probably actually had more people participating in the drafting of this convention in terms of states than just about any other one by the time it was finally adopted. Then UNICEF hosted two additional conferences that were very well attended by nations.

I do not know if you have spent any time at the UN either in New York or Geneva, but what you have to picture at these working groups is that they are done so that there were breaks about every hour and a half to allow people to go to the coffee lounge down the hall, have their private little chats and work out compromises. Also, the chair of this particular working group would create subgroups to go off and negotiate over particularly difficult articles. So there is a lot of give and take in the discussion.

Mr TRUSS—Did we end up then with a document or a great battle to find words that were acceptable to all people and we have ended up with a convention that is all things to all people?

Ms Dolgopol—Again, I think that you can make that comment about any document that is drafted in terms of the protection and promotion of human rights. I am not sure that issues that look at specificity of language is always the most useful process where they are then looking at the intent that underlies an article. I do not think it was all things to all people, in the sense that certain of the rights were already contained in instruments that had previously been drafted and were made more specific for children. They were rights from the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination and the Convention on the Elimination of Discrimination against Women.

There were also other existing international instruments, such as the Standard Minimum Rules on Juvenile Justice and the Standard Minimum Rules on the Treatment of Prisoners. Those things were there as a background and you had organisations like the International Labour Organisation, UNICEF and the World Health Organisation that also participated and had an influence. So you do have to take account. Australia does not stand in isolation. It is part of an international community and no document can just be reflective of Australian society. It has to reflect the various societies that exist in the world.

Mr TRUSS—What was the role of the United States through this negotiation process, bearing in mind that they remain a country which has not ratified the convention?

Ms Dolgopol—The United States has ratified almost nothing. It stands out there—

Mr McCLELLAND—Isn't there some particular significance in their process? When they ratify an international treaty, does it not automatically become part of their domestic law?

Ms Dolgopol—There are two issues in that. That is right, some of it is the difference in the US constitution. The United States has finally ratified the International Covenant on Civil and Political Rights—

Mr TONY SMITH—Do you actually know that? Are you expressing an opinion of law on that question?

Ms Dolgopol—My accent may be a bit softer, but I am originally from the United States. Even though I am now an Australian citizen, I am still a citizen of the US and I gained my law degree in the United States.

Mr TONY SMITH—So, you are not expressing an opinion one way or the other

on that?

Ms Dolgopol—Well, I am. The view that has been put before the US Congress, which has been debated to some extent, is that if the United States ratifies one of these international instruments then it automatically becomes a law of the United States and could be used in court against the government of the United States immediately, it needs no further enacting legislation.

There are some people who have disputed that and said that it might need something further because of the difference in the way it is written in comparison to other types of treaties—

Mr TRUSS—But if the convention is so good, that would not matter, would it?

Ms Dolgopol—The argument that most people have raised against the United States is that just about everything that is in the convention is already protected either through the United States Bill of Rights or in civil rights legislation in the United States. It has to do with different issues. There is still an outgrowth of Cold War issues. It has to do with United States parochialism, and that has lead to a lot of ill-will in the international community. I spent, as an American, five years in the international community and you hear a lot of complaints about the United States and its attitude towards these issues because it does play an extraordinarily active role in the negotiation of these instruments and treaties.

The USA is there, it is active, it can stymie discussion, it can say, 'No, we are not going to agree to that,' and hold everybody up and force people to a compromise and a position and yet it then chooses not to ratify and people do see that—

Mr McCLELLAND—It has signed, but not ratified.

Ms Dolgopol—It has signed. There was some suggestion at the time—and the domestic political situation in the United States also had something to do with it—that they might ratify the Convention on the Rights of the Child ultimately, but unfortunately that did not occur. I am not sure that given the complaints that are raised and the view of the United States of many people in the international arena that that is a model that you necessarily want to follow.

Mr TONY SMITH—I take it that there is no decision of the United States Supreme Court on the point?

Ms Dolgopol—There are decisions of the United States Supreme Court on some treaties, and this is where the argument comes in. In terms of treaties that are very specific, that look like they are directed, that look like they were supposed to be implemented immediately, they become the law of the nation as soon as it is ratified.

Other more generalised treaties that look like they are calling for specific pieces of legislation are not taken as being immediately ratified.

The view that has been forward by the Committee on the Rights of the Child and by some countries in continental Europe—

Mr TONY SMITH—You say 'immediately ratified'. It is the country that ratifies it, it is not—

Ms Dolgopol—In the United States there is one set of debates about whether this is an instrument that looks like it is directive in the sense that it is the legislation and this is exactly what the law should be, versus a treaty that would suggest further legislation is necessary. That is where the debate occurs within the context of the United States.

Mr TONY SMITH—And into what category does this treaty fit?

Ms Dolgopol—Because the United States has not ratified it, there is nothing there, there is no judicial controversy for a court to be answering.

Mr TONY SMITH—You are speaking about two arguments, one in a generalised treaty sense and one in a more specific sense calling for a legislative action.

Ms Dolgopol—You have people in the United States who have put forward both views with respect—

Mr TONY SMITH—On this treaty?

Ms Dolgopol—Yes. The official position of the United States government is that if it ratified this treaty it would immediately become a law of the United States.

Mr TONY SMITH—And that is a view based on the wording of the treaty, is it not?

Ms Dolgopol—Yes.

Mr TONY SMITH—And there is another view the other way, is there?

Ms Dolgopol—Yes, there are people who put forward the other view to say that you should ratify and then look at putting in place further implementing legislation.

Mr TONY SMITH—Which side are you?

Ms Dolgopol—I have not lived in the United States for 15 years. This is not part of a debate that—

Mr TONY SMITH—Is the more liberal side the other way, saying it should be ratified and we should look at it, et cetera?

Ms Dolgopol—I have not lived in the United States for 15 years. I would be very reluctant to comment on the leanings of each side.

Mr TONY SMITH—Let me ask the other question then: is the conservative view the other way?

Ms Dolgopol—I do not know. I have not lived in the United States for 15 years, so how can I possibly answer that type of question?

Mr TONY SMITH—I thought you may have read something about it. Just going then to some specific questions: I take it that where you say in your note to us that the convention does not attempt to interfere in the life of families, I take it that you mean to say that the state does not, by virtue of the convention, purport to or attempt to interfere in the lives of families. Is that what you mean?

Ms Dolgopol—I think I was actually addressing the sort of argument I mentioned before of people putting forward a view that the convention itself is somehow a call on states to interfere in the life of the family. So I was in fact referring to the language of the convention itself.

Mr TONY SMITH—I think you are saying that really the convention cannot do anything. It really is the state, is it not? The convention does not do anything, but it calls on state parties to do certain things.

Ms Dolgopol—This is where I was cut off when I was trying to explain before. In continental Europe, there are countries that have accepted that the convention, once they have ratified it, is part of their domestic law. So for those countries who take that view, the convention does do something. It then immediately is part of domestic law and so you are not put in a position where the state does it. If you are asking me whether, once it is part of domestic law, it calls on states to interfere, my answer, of course, is no. It does not.

CHAIRMAN—That latter is going to be the situation in Australia in the next few months as a result of the post-Teoh legislation. Do you agree with that?

Ms Dolgopol—Do I agree with the Teoh legislation?

CHAIRMAN—I think I probably know the answer to that. But do you agree with what the federal government is doing in terms of Teoh and the post-Teoh situation?

Ms Dolgopol—In terms of the post-Teoh situation and in terms of Australia's own

understanding of its international obligations, I would say that it is clear the Australian government has to put something in legislation that, under the law of Australia, there is no question that you need enacting legislation.

Mr TONY SMITH—Mindful of what you have just said then, and I am not sure that I understand it fully, you have also taken the view, have you not, that the drafters of the convention envisaged that there will come a moment in a child's life when it is for the child, not the care provider, to determine how to exercise the child's rights. You have taken that view, haven't you?

Ms Dolgopol—I am not sure that I would say that that is the view I have taken.

Mr TONY SMITH—Can I just say to you that someone has said that you have taken that view. So I have not quoted you, but can I just read what has been said here. Having regard to article 12(1), which I am sure you are aware of, it says:

Dolgopol points out that this must be read in conjunction with some of the substantive articles, such as that on freedom of religion, which make reference to the 'evolving capacities' of the child. She contends that when read together it becomes clear that the drafters of the Convention envisage that there will come a moment in the child's life when it is for the child, not the care provider, to determine how to exercise the child's rights.

Ms Dolgopol—Someone has said that. I have never actually said that and I would never actually say that. I think that is—

Mr TONY SMITH—So that is a wrong interpretation?

Ms Dolgopol—In fact, I have never written very much of anything on issues about freedom of religion. The article I have given to you is about children's access to justice and separate representation, and that is most of what I have in fact written on in this particular area. As a parent myself, I just—

Mr TONY SMITH—Can I just refer to the reference for that. The citation says, 'Dolgopol U. International Law—How It Can and Does Protect Children's Rights, SA Children's Interests Bureau Seminar paper, pp. 8-9.'

Ms Dolgopol—That is not what I said in that seminar paper.

Mr TONY SMITH—We do not have that here though, do we?

Ms Dolgopol—I have a copy of it. If you would like it, I am happy to provide it to you. I did not say that and would not say that. The notion is a much more complicated one than that. The evolving capacities of the child is a notion of looking at the difference between an eight and a 17-year-old child. I would think that most people who are parents would accept that it would be very difficult to physical force your 17-year-old child to go

into a church, a temple, a mosque or a synagogue if they were telling you that they do not want to go.

The image of your trying to drag your 17-year-old to this place of worship would become a bit difficult and most parents would in fact not do that. They would hope that the earlier training that they have given to their child or young person would come out again when they have passed through this rebellious stage and that, when they hit their 20s, they will see reason and go back to whatever the form of religion was. I think that this is an issue about parenting.

The person is trying to suggest that I see some interference in saying that every time a child says no, that you do not do anything. But even the High Court of Australia in terms of its understanding of the Hague Convention on International Child Abduction has said that, where a child is very clear that they do not want to go back to a state where one parent is living, that is something the court has to think about. The image of children being physically dragged places is something that most of us would find extraordinarily difficult to agree with.

That is different from saying, 'I don't want you to have *Penthouse* in your bedroom. I don't find *Penthouse* acceptable in my house. I don't find it acceptable at age 14 that you are out until four o'clock in the morning.' These are very different issues and I think that anyone who works in this field thinks very carefully about the difference and the type of problem you are dealing with—the age of the child and what is an appropriate response. I think most parents know that if you try and come down too hard on your children all of the time, you are likely to get an extraordinarily rebellious child.

Mr McCLELLAND—Or administering corporal punishment to a 17-year-old because she wanted to wear some particular dress to a dance would cause revulsion to most people.

Ms Dolgopol—I think it would. I have witnessed it. I think most people have, and there are debates and people have different points of view about corporal punishment, but I think most people find it difficult and unacceptable to watch a 17-year-old child being slapped in public because her parents disagrees with her dress sense.

Mr BARTLETT—I think the difficulty with all of this though is, when there is a disagreement, who decides what is in accord with the developing capacity of the child. Is it left up to the parent and the teenager to negotiate, or does the convention give some outside party the power to intervene? That is the fear of one interpretation of the convention.

Ms Dolgopol—I think in terms of actually looking at the convention, what the convention argues for are more support services of family counselling and mediation. The resolution that the convention and those who drafted it are looking for are services that

help families work through those difficulties.

Mr BARTLETT—That is not what it actually says. It is perhaps unfortunate that the language had not been more specific.

Ms Dolgopol—I think the language is very specific about the need to provide support services to families and that it is the obligation of the state to ensure that those support services are available.

Mr TONY SMITH—But there comes a point for arbitration though, you see. You talk about conciliation and support services and counselling, but there comes a point in time where there will be a view of the parent and a view of the child that are diametrically opposed. That is when you look at the impact of article 12 and, in particular, article 12(2). The way I read article 12(2), it provides an avenue for the child to seek relief in a judicial or administrative sense, to overcome a parent's wishes. That is the argument, that is the capacity for article 12(2) that could apply in a host of situations where the conciliation, the negotiation and all those things have been exhausted, and you are now at a point where the parent is saying, 'No, you can't do that', and the child is saying, 'Look, I'm old enough to do that.'

Ms Dolgopol—But article 12(2) says:

. . . the child shall in particular be provided the opportunity to be heard . . .

'To be heard' is a very—

Mr TONY SMITH—For this purpose?

Ms Dolgopol—But to be heard is not to get a judicial determination in your favour, all it is saying is that you have a right to make your views known. It is ultimately up to the court to decide what the resolution of a conflict is. That is our understanding—

Mr TONY SMITH—That is precisely what I am saying.

Ms Dolgopol—Are you suggesting that a child should never be able to put forward their views in a child protection matter, that if a child has been physically or sexually abused that they should not be allowed to be heard about the fact that they have been abused? Are you suggesting that if the parents—

Mr TONY SMITH—We are talking about this point. Have you ever—

Ms Dolgopol—That can be done now. If you look at a text on family law, if a child is extraordinarily unhappy in their family situation, you can actually go to the Family Court now and get an order out of the Family Court under the family law and

Australian common law about the regulation of these issues. The convention does not change the position.

Mr TONY SMITH—Which common law? What is the common law point?

Ms Dolgopol—I would have to go back to Helen Gamble's book because it has been a long time since I have looked at it, but there is—

CHAIRMAN—There is a book written by Flick called *Natural Justice*. Essentially the theme of that book is that before any action is taken to anyone's detriment, be they child or adult, procedural fairness dictates that that person—child or adult—be given a right to be heard in their own interests.

Ms Dolgopol—There is a procedural justice issue but in terms of a child's ability now to have some of these issues regulated, Helen Gamble has written a book called *Parents and Children* and she talks about some of these issues in terms of a child, a 17½-year-old who does not necessarily want to follow her parents' religion. Those are things that can happen now under the law of Australia.

Mr TONY SMITH—We have heard evidence from someone who has said that a child has a right at some point in time, equated with puberty, to express a view about age of consent. Having regard to article 12(2), if there was a children's commissioner, in effect that right could be enforced by means of a mandatory injunction.

Ms Dolgopol—I think that that is an overstatement of the position. At the moment our criminal law has an age of consent and there is a discretion with respect to the model criminal code of actually lowering that age of consent. Whether or not the states and territories—

Mr TONY SMITH—Should children be able to express a view in relation to that?

Ms Dolgopol—I think most children and young people do express a view whether it is articulated in public or not. I think that most young people have, over the history of the world, expressed a view about age of consent and when they think they are capable of consent.

Mr TONY SMITH—At what age should they be able to express a view on that?

Ms Dolgopol—Are you asking me as a lawyer or as a parent?

Mr TONY SMITH—I am asking you as a witness.

Ms Dolgopol—My views have to be tempered by being a parent and by having a strong recollection of my own adolescence. I think that for most children and young

people, somewhere between 12 and 14 there are some issues about consent and consent to various levels of sexual expression and that any parent who is trying hard to fulfil their parenting role will have conversations with their children about those sorts of issues. But I think we are all aware that ultimately you cannot be there watching your child's activities every hour of the day. I worked in summer camps with young people throughout my college career and I know that it is impossible to keep an eye on people. They are expressing a view. They may not express it in words to you but they are certainly expressing it by their reactions to you.

Mr TONY SMITH—I will give an example. There is a children's commissioner in Queensland. Let us say a child of 12 says to mum, 'I'm going to the children's commissioner because I want to discuss the age of consent. I think it is too high'. The parent then says, 'No, you can't do that.' All negotiations break down and the child says, 'I have a right to express a view by virtue of article 12 and I'm going to seek that right to be enforced at law.' That is an interpretation that is surely open when one looks at this convention, isn't it?

Ms Dolgopol—What is being done is to say the fact that a child might pick up a telephone and call someone, or even walk in the front door and say that this is my view, somehow equates to a child being given permission to do this. The fact that you are allowing me to come and give testimony this morning does not mean that you agree with my view and you are going to accept it. It is the ability to make yourself heard. I could never envisage a situation where a commissioner would have any power to determine the matter for a child of any age. The criminal law regulates the age of consent in sexual matters. That is the end of it.

Mr TONY SMITH—I am not worried about that side of it. I am saying that there is a point in time when, on that issue, the parent will say, 'No, you are too young to discuss that matter with anyone bar me. I'm not going to permit you to do it.' The child will say, 'Article 12(2) says that I can do it. I've been told about that at school. So I'm afraid, Mum, I'm going to do it.'

Ms Dolgopol—But how can you police this? I may not want my son to see a movie like *Jurassic Park*. He sits in someone else's home, and they put on the movie. I am not there. I find out two hours later that he has just watched *Jurassic Park*. That is life. These things happen. Your children end up having experiences or doing things that you do not always agree with.

I have problems with the notion that if a parent says no, someone is going to police it. You may tell your child no, but we all know that, as individuals, when we were young, we did it. We did not tell our parents everything we did. We went and did things that they told us not to do. Other children will as well. You cannot prevent a child when they are not in your presence from picking up a phone and expressing a view.

Mr TONY SMITH—But when we were young, we did not have the potential for a policing authority to intervene in that relationship. This convention does provide that potential.

Ms Dolgopol—That is where I disagree with you. I do not think any police officer in Australia or any government of Australia would ever tell a parent that you cannot say this. There is a difference between telling a parent, 'You can't tell your child that,' and what happens once the parent has said it and the child goes off and does what they want anyway outside the parent's sight and hearing.

Mr TONY SMITH—Ms Dolgopol, have you practised law?

Ms Dolgopol—Yes, I have.

Mr TONY SMITH—For a lengthy period at the private bar?

Ms Dolgopol—Yes, I have.

Mr TONY SMITH—Where?

Ms Dolgopol—In both the United States and Australia. I worked for a judge in the United States.

Mr TONY SMITH—Are you saying that the interpretation that I have placed on those articles is not an interpretation that could be argued in a court of law?

Ms Dolgopol—You can argue anything in a court of law. Whether a judge, acting in the spirit of both international human rights law and the common law of Australia, would accept that interpretation is a different point. I do not see a judge in Australia accepting that point.

CHAIRMAN—I have a question about the committee that is overseeing the implementation of this. Looking at the composition of the committee, one would have to ask—it has been asked in evidence before this committee—about the credibility of the membership of the committee. Would you like to make a comment about that?

Ms Dolgopol—I have not been in Geneva since the committee started. I have read reports of the committee. I have certainly watched the other human rights committees at work. There is the committee that oversees the economic, social and cultural rights covenant as well as the committee on the elimination of racial discrimination. In watching the proceedings of those committees, I have always been extraordinarily impressed by the dedication of the members of the committee and their attempt to work through issues where there are differences. I probably learn more about international law in different societies by listening to the debates within the human right committee on various notions

of rights and what they might mean in an individual society.

I have met individual members of the children's committee at different times. They are carrying out their job with a high regard to their duties and with a sense of integrity and a real commitment to the issues in front of them.

CHAIRMAN—Can you understand the attitude and perceptions of some people? I am not talking about the personalities, because they do not know the personalities; they know the countries that they represent. There are question marks about some of the countries involved in the human rights committee and some of the things they do. So it really comes down to questions of the countries they represent, not the individuals.

Ms Dolgopol—But they do not represent countries. I think that is the difference. In the treaty monitoring body, you are elected as an independent expert. My experience of the members is that they take that on board and are very serious about maintaining their distance from their government. Even during the Cold War, as you listen to the debates in the human rights committee, the experts from the then East Germany and the then Soviet Union were not putting forward views that were acceptable to their governments. They were trying to find ways of compromising with other points of view.

CHAIRMAN—A lot of these things are about perceptions. Those perceptions colour interpretation. I come back to your first point that I raised with you in terms of misunderstanding and that sort of thing. That is what can generate with some of the misunderstanding.

Ms Dolgopol—The members of this committee in particular have always indicated their willingness to travel to countries to make themselves known. I think an invitation to some of the committee members to come to Australia and to sit in public forums would be very welcome by the committee. That might alleviate some of the concerns.

The committee has sat in various regions of the world. It has sat in Asia, Latin America and Africa just so people can see the committee at work. They can come along and watch it in its discussions with various countries. It has gone out and met with groups of young people. It has sat with organisations working with young people. It has held meetings, for example, with the International Committee of the Red Cross about the situation of children in armed conflicts. This committee is playing a very consultative role and wants to be known to people.

CHAIRMAN—Under UN auspices, they might be able to get here. Would it be in your view desirable or essential that we discuss some of these issues with one or two members of that committee?

Ms Dolgopol—Yes. I think it would be very useful. It might alleviate many concerns if a couple of members of the committee came. I met one of the members of the

committee in a seminar organised by UNICEF in Bangkok. If there were an Asia-Pacific tour, that would be a possibility in terms of UNICEF contributing to the funding. The UN does not always pay committee members directly. There are some issues there. They get some reimbursement for attending meetings at a time. They are not on salary with the UN in any sense. Certainly some UN agencies would be able to provide some funding to them.

CHAIRMAN—Thank you very much. The reason we have gone way over time is that we have enjoyed the dialogue. As we have said to a number of witnesses before, it may well be that we have to go around the buoy in getting some more evidence. Is there any other final comment that you would like to make before you leave us?

Ms Dolgopol—No. In terms of a community-based organisation and an organisation where the vast majority of our members are also parents, we see the convention as very important in our work. We do not see any conflict between our role as parents and the Convention on the Rights of the Child.

Resolved (on motion by Mr McClelland):

That this committee authorises publication of submissions Nos 138, 139, 147, 151, 158, 227, 327 and 341.

[10.06 a.m.]

LES, Ms Eva Helena, Chief Executive Officer, Child and Youth Health, 295 South Terrace, Adelaide, South Australia 5000

CHAIRMAN—We have received your submission. Do you have any amendments or additions to make to the submission?

Ms Les—In my statement that I have prepared for you, I would like to make some additional statements. I am here to support Australia's continued commitment to the principles of the United Nation Convention on the Rights of the Child. I will be talking about the convention from three different and complementary perspectives.

First of all, as a context for articulating and meeting what I believe are our global responsibilities to children. As a context for guiding services to ensure best outcomes for children and as a framework for monitoring the impact of our policies and decisions. If we take the global context first, Child and Youth Health is committed to enhancing the health status of children and young people. Child and Youth Health is a widely respected and credible organisation. We are a state wide service and most families in South Australia choose to use our services to ensure optimum developmental outcomes for their children.

In addition, we provide targeted programs for children with special needs, including children who are disadvantaged, Aboriginal children, children with disabilities and children who are at risk of abuse and neglect. We also provide a range of innovative health services to young people and with young people. Our organisation is driven by a range of values which guide our policies and practices. One set of values relates to our commitment to providing children and young people with the best possible start in life. Our motto is 'start healthy, stay healthy'.

At the same time, we acknowledge the importance of supporting the role of the family to provide protection, love and nurture to children. To that end, we strive to work in partnership with parents and families. The United Nations Convention on the Rights of the Child provides us, our organisation, with guiding principles that put our services in the context of both national and global responsibilities towards children and young people. We are part of a global humanity.

Child and Youth Health's concerns are not just about the wellbeing of children in our state, but about the condition of children throughout the world. Thus Child and Youth Health maintains strong links with other countries and we provide training and support to developing countries. We choose to speak out against the atrocities and hardships which make children innocent victims of our own failings as adults, collectively and individually, to ensure those children quality of life. The articles of the convention give us that place in a global humanity. They unite us in a common understanding with the rest of the world about the value of children and young people and our responsibilities to them.

If I take the moral context, there is much misunderstanding, as has already been highlighted, about the articles of the convention leading to fears that, by protecting and giving children a voice, the role of the parent will be usurped. The article 18 is explicit in its recognition of the importance of the role of parents and of the responsibility of government to support parents and the family unit.

There is also much misunderstanding about the status of the convention. The articles are not law. They provide us with a moral framework to guide our actions. Rights are not mutually exclusive. Therefore, there will always be grey areas of potential conflicts of interest where specific issues will need to be debated. However, the specific issues should not be allowed to detract from the merit of the broad principles of the convention—that is, that children deserve a quality of life, that we collectively have a responsibility to ensure that quality of life and that we collectively have a responsibility to care for, protect and support children who are disadvantaged, exploited or victims of other damaging adult behaviours.

At the global level, children are being killed, tortured, exploited and abused. Many are starving, sick and homeless. Many are living in fear or dying unnecessarily. At the same time, as outlined in our submission to you, we have significant problems of our own in Australia. The health status of Aboriginal children is still appalling. Children are still being abused, neglected and killed. Children are still living in poverty. We cannot ignore these problems and the convention gives legitimacy and a voice to our concerns.

Children who have the love, protection and support of their parents are fortunate, as are children who have access to adequate housing and food and quality health and education. But what we do for the many children who are not so fortunate will determine whether we, all of us here, are part of a humane society.

Finally, I want to make some comments about the United Nations Convention on the Rights of the Child as a framework for monitoring the impact of our policies and decisions. I want to talk about our need, as responsible and humane adults, to look at our own laws, policies and behaviours with humility. We act with good intention and there is no doubt that, in South Australia, for example, we have many services for children and young people of which we can be proud. However, we need to guard against complacency.

As we make progress in some areas, we are in danger of significant losses in others. I want to give two examples which specifically impact on our own work at Child and Youth Health. First of all, there is the potential erosion of our early childhood services. South Australia has a positive track record of supporting children through universally available and free health and preschool services, as well as a network of child-care programs. Our investment in these services has been our commitment to ensure that all children have a good start in life. These services have also played a vital role in providing a safety net for children at risk of poor health, developmental and educational

outcomes.

But the rising cost of child care and the prohibitive cost for parents on low incomes are now putting those services out of reach of the children who need more, not less, care. At the same time, the recent changes which will deny young people access to unemployment benefits assume that all families are robust, cohesive and both willing and able to meet the significant extra financial and dependency burdens that are being placed on them. At a time of life when young people are needing to establish their independence, we are extending their dependent child status. We are potentially denying them the financial means to establish their independence, yet we have failed to provide them with jobs. We need to be sure that we are not starting a trend where young people will need to get pregnant or married to get access to income support, or live on the streets or offend to escape family or financial difficulties.

The convention supports us in saying that the best interests of children should be a primary consideration and that families should be supported in their caring role. The articles provide us with a framework for testing the humanity of our economic and social policies.

CHAIRMAN—Thank you. I congratulate you on a very balanced contribution. Let me just come back to your written comments about the inadequate achievements by Australia under article 24 of the convention. Listening to what you have just said, measured against our own standards, we perhaps in some people's minds have not achieved the optimum, but if you take it in the context of the international community, you would have to say that we have achieved quite a lot.

Ms Les—Indeed.

CHAIRMAN—I would just like to hear a little bit more about this inadequacy. Whilst I agree with the term 'inadequate', I think it needs to be qualified.

Ms Les—It will always be a matter of judgement, so I agree with you on that point. I have no quarrel with that. I made the point earlier that there is also an issue that we not become complacent. There are still issues to be dealt with. The aim of the submission is to make that point. In particular, the issues that we have raised have been spoken about for many years. We still have Aboriginal children who do not have access to even basis standards and quality of living. We still have children living in poverty. There is an argument that in fact that number is increasing. We still have children who are being abused and neglected in large numbers. As long as those problems remain, we still have a job to do.

Mr McCLELLAND—Do you think, in terms of the international community, Australians have a legitimate interest in knowing the progress in other countries regarding protecting or promoting the rights of the child. In other words, does the information and

scrutiny process enable other countries to look at what is being achieved in third world countries. That is the first point. Do we, as Australians, and other countries have a legitimate right to know what progress is being made in other countries?

Ms Les—I will answer that question from a personal point of view. I am an international person. I am an Australian citizen. I have Polish parents and their own background is very varied. My own sense of identity is as an international person who chooses to live in Australia. One of the things I feel really proud about in Australia is that I think those views are the views and condition of many people in Australia. So, at a personal level, I do have concerns about my family, my extended family, my place of origin and the conditions that they are facing.

Separate from that, I find it very difficult to understand how we can go into other countries and provide aid and support unless we are really clear that we are not coming from a high moral ground, or that we are not coming, perhaps, with the colonial kind of mentality that occurred before. The only way we can justify our own presence, our own joint partnership in terms of dealing with some of those global problems, is to say, 'Yes we do have an interest.'

CHAIRMAN—What are the questions that you are suggesting we should ask ourselves before we offer that aid? Do you agree that we should be putting the emphasis into health, education and housing rather than to bricks and mortar? We are digressing a little bit, but you have raised a very interesting point.

Ms Les—I do not know that I am qualified to answer. Off the top of my head, clearly, in terms of some of the programs that we have been supporting and people that we have been training, our focus has been on assisting with a range of things that may impact on the health of the child. So it may be bricks and mortar and the provision of housing and adequate water, but it may also be maternal and infant health care.

In Australia we have been particularly outspoken about some of the practices with regard to nutrition and approaches to breast feeding as opposed to infant food formulas, for example, and the potential impact on child health. We are there, we already have a voice, and that should be based on some kind of principles and values that we can be tested against.

CHAIRMAN—But what you are saying is that we should practice what we preach.

Ms Les—Absolutely.

Mr BARTLETT—You quite rightly raise the issue of health of indigenous children and you mentioned in your letter that there needs to be more funding through the federal Department of Health and Family Services. There is no doubt about that.

Increasingly, it seems to me that governments throughout the country are becoming aware of this problem. In fact, we had a submission yesterday that detailed a number of projects where governments are addressing issues of the health of Aboriginal children.

Do you see the main way ahead as being to put resources into these areas through the Department of Health and Family Services? If we do that, is that sufficient without establishing a commissioner for children or applying the convention in any other way apart from seeing it as a set of principles to which we ought to aspire? If there was a choice of funding, does the funding go into Aboriginal health or does it go into establishing a bureaucracy around the convention? Which do you think would achieve the better results?

Ms Les—That is a tough question. I would probably, being ever optimistic, try to argue for both.

Mr BARTLETT—If you had to make a choice?

Ms Les—I am not in the position to make a choice and I do not think that I am fully informed about, at this point in time, the implications of either choice, but I very much welcome the opportunity to be involved in the debate about that.

Mr BARTLETT—Could I perhaps just rephrase it. Is it, in your view, possible that if we focused our funding on the key issues that we could significantly raise the standards in those areas without having to apply the convention in a formal structure?

Ms Les—I think that is correct. One of the points that I was making in my introductory statement was that, while we make progress in one area, we are unwittingly actually creating other problems for ourselves in other areas. If we were going to go into a philosophical discussion about whether society has progressed since the time of the Romans, I think that there will be views that there are highs and lows and swings and roundabouts. I think that is also true with regard to the way we leave the structures that we have to guide society.

So I think both are needed. We need to be really clear that those actions, laws, policies or whatever that we are involved in at the moment are taking us in the right direction, as well as addressing the wrongs that we have perceived from the past.

Mr HARDGRAVE—I wondered if, in your additional comments, you may have misrepresented the situation as far as benefits for young people—16- and 17-year-olds who are unemployed—are concerned. Certainly it is not my understanding that things are as draconian as you were attempting to paint them. Essentially, if young people choose not to participate in education or training activities but simply stay at home and watch television, yes, they are going to lose benefits; but if they want to participate and continue to participate in their education and their own personal advancement at such an early age,

then obviously it is a different matter. I would invite you to refresh your opinion on that, perhaps, and gain all the information you need on it. That leads me on to the central point, and that is that the position is pretty good for most kids in Australia. Would you agree with that?

Ms Les—No.

Mr HARDGRAVE—So you are saying most kids are not in a good position in Australia?

Ms Les—No, I would not say that, either. I think it is relative.

Mr HARDGRAVE—I said the position was pretty good for most kids and you said no.

Ms Les—I think that that is a very contentious statement. How can I say that the pain, the inhumanity, that one child is experiencing is an equal balance to the comfort that another child is experiencing? It is not an issue of 'most children': there are issues of number, degree and quality, and I do not think the question can be answered in that way. I personally feel very distressed and horrified when I hear some of the experiences that even one or two children, let alone 20 or 100 children, may be experiencing in Australia.

Mr HARDGRAVE—I think we are all humanists and I can relate to what you have said. What I am trying to get at is that the position is essentially pretty good for Australian children, by comparison with other countries. I guess that would be a more fulsome way of putting it. You have quite rightly—and Mr Bartlett has also raised this point—emphasised the health issues of indigenous children, abuse, neglect and those sorts of things. There are some pretty horrible cases that can be identified here in Australia, despite the pretty good position for most kids which is my contention.

So I guess there are two things: firstly, would you concede then that the convention, after seven years of being around, has obviously failed to lift the standards? Secondly, should we perhaps be concentrating on these very worst cases and perhaps emphasising our efforts to thwart all the bureaucratic mumbo-jumbo that seems so far to have prevented results?

Ms Les—That is a very good question. It is hard to know what has led to some changes—what specific action or series of actions has led to some changes—but perhaps I can take as an example an area that I have been much involved in. It is in relation to children with disabilities. Children with intellectual disabilities, as we all know, even fairly recently would have been locked away in institutions and denied even the most basic rights. Here in South Australia those children now have access to education, they have access to family life and a caring environment, and they have access to the community. There is no doubt that some of the debating about rights and about our obligations to

those children has led to the significant changes that have occurred in the last 10 years.

Mr HARDGRAVE—There is also a statement that has been paraphrased for my benefit with regard to high levels of child abuse and neglect which seem to reflect underlying family and social stresses. Can you elaborate on those comments?

Ms Les—There is a view that raising children is a very difficult task for parents, and some parents are saying it is becoming an increasingly difficult task. I was reading in the paper only today about a meeting of leaders in Europe who were highlighting the commonalities across the European countries, despite the borders that are there, in terms of experiences and issues for adolescents and parents. I do wonder whether we have been very successful, and to what degree we have been successful, in terms of breaking some of the cycles of poverty and dependence and abuse over multi-generations.

Mr HARDGRAVE—Are you saying poverty, neglect and abuse begets poverty, neglect and abuse?

Ms Les—Yes, I am. It is quite clear that that is the case, and it is quite clear that it is the case with violence too.

Mr TRUSS—You have indicated to us almost a litany of problems confronting children, many of which I think most would agree with. We have been in this convention now for quite a few years. Has it therefore failed?

Ms Les—I find that a difficult question to answer because I do not think that we have been clear in terms of all targets and standards with regard to the convention. Off the top of my head I find that a difficult question to answer in any specific sense. All I can do is repeat that I believe that there is still some way to go, but I believe that we have made some progress. I think that the values and the principles of the convention have given us a framework for taking steps forward.

Mr TRUSS—How much of the progress in South Australia has been driven by the convention and how much has been driven by the commonsense of the people?

Ms Les—Again, I cannot answer that question specifically because I am part of a community and community services in South Australia is part of a community that has taken the convention quite seriously. We talk about it, we debate it and we look at the implications. From the particular environment that I come from, I would say that the convention has been very influential.

Mr TRUSS—If we were to renounce our association with the convention, what impact would that have on South Australia and the services that you supply?

Ms Les—I would wonder about the extent to which the legitimacy of the voice

that we raise would be lost, or weakened.

Mr TRUSS—On the international stage?

Ms Les—On the international stage, but also locally. I think there is the potential to do that.

CHAIRMAN—There are no further questions. That was good evidence, thank you very much.

[10.28 a.m.]

CASTELL-McGREGOR, Mrs Sally Naomi, Council Member, Child Health Council of South Australia, 295 South Terrace, Adelaide, South Australia 5000

WIGG, Dr Neil, Council Member, Child Health Council of South Australia, 295 South Terrace, Adelaide, South Australia 5000

CHAIRMAN—Welcome. Dr Wigg, I understand you are appearing in two capacities today. In what other capacity are you appearing?

Dr Wigg—I am also appearing as a representative of the Australian College of Paediatrics.

CHAIRMAN—Dr Wigg, we took evidence from one of your colleagues in Western Australia yesterday on this same subject, and I notice that your written submission is very similar to what he put into the evidence. However, before you make an opening statement, are there any amendments or additions to the written submissions?

Dr Wigg—We have brought with us some additional material that we can leave for the committee.

CHAIRMAN—We will take that up next. Is there anything that you to add or amend in terms of what you have already put in?

Dr Wigg—No.

CHAIRMAN—We might deal with the paediatric side first. If you want to make a quick opening statement on that, we might get that side of it out of the road first and then deal with the broader issues. Are you happy to do it that way?

Dr Wigg—I am very happy to do it that way.

CHAIRMAN—Do you want to make a short opening statement in your capacity as a member of the college.

Dr Wigg—Thank you. Members of the committee will recall that in our submission from the college we simply raised two matters and we wish in this appearance to reiterate both of those matters.

Firstly, it is our belief, as members of the College of Paediatrics, that there is a general lack of understanding right across the community with regard to the convention. Therefore, the benefits that the Australian community might derive from the convention are probably weakened by the lack of awareness and understanding of the convention. We

believe that it is a framework which can guide the formation of policy and legislation and, as such, needs to be understood by the wide community. We believe that one of the ways in which the convention can achieve usefulness within our community is to make the community aware of the convention and its implications. We are encouraging the Australian government to take steps to make the convention better understood across the community.

Secondly, we believe that the convention has been utilised quite effectively in a number of ways within the Australian systems at the moment. For example, the principles of the convention have been the basis for developing the national child and youth health policy. We therefore see that as being a useful document and we recognise that there needs to be leadership taken in order to fully implement that particular policy and others as they relate to the affairs of children. We are encouraging the Australian government to establish a central coordinating mechanism which will both monitor and speak out on issues on behalf of children.

CHAIRMAN—Yesterday we did hear—it is spelt out in the Perth evidence—of this national office, which is small and has an advisory role rather than an investigative role. That is basically what your college is recommending?

Dr Wigg—That is correct.

CHAIRMAN—Do you want to make an opening statement in relation to the broader issues? If you wanted to table some additional information, we are happy to take that. We will accept that into the evidence straight away.

Dr Wigg—I can leave this with you so you can circulate it now.

CHAIRMAN—Yes, we can do that, or we could do that at a subsequent meeting. Would you like to make an opening statement in relation to the broader issues?

Dr Wigg—Mrs Castell-McGregor and I are here on behalf of the state Child Health Council. We would like to inform the committee that the state Child Health Council is an advisory mechanism for the South Australian government, particularly to the Minister for Health and the state health commission. The Child Health Council comprises about 16 members, who range from community representatives through to specific experts in various fields of child health care in South Australia and other related departments of government.

The Child Health Council has taken an active interest in a wide range of issues affecting children here in South Australia over the four years that it has existed. The question might be raised as to why the Child Health Council takes a specific interest in the United Nations convention. The view we would like to put to this committee is that the state Child Health Council takes a very broad view about the determinants and also the

influences on children's health.

It is not simply a matter of being able to look at issues within the health care system itself in order to repair children's health and to promote children's health. Therefore, we take a very broad view about what is required in order to achieve good health for children. It is therefore important that a whole range of social, environmental, physical and other factors which affect children's health are taken into consideration in our work.

We see that the convention does provide us with a mechanism for addressing or considering a wide range of issues. If one works through the particular articles of the convention, one can get a very comprehensive view of those factors which affect children. By taking that broad view, one can then take comprehensive consideration of all of the factors in our society which may contribute to the well-being of children.

As the Child Health Council progresses through policy review or when commenting on draft legislation, it takes the convention as a framework for our understanding about the needs of children. We find the document a very useful document and a very useful framework and believe that it can be used effectively and can be used more widely across the Australian government system.

Our second point that we wish to make is that we are currently living as a society which is ageing. There is no doubt, demographically, socially and in other ways, that there is an emphasis which is shifting away from children and shifting towards the aged end of the population. Whilst for most situations that is not of concern, on the Child Health Council, we believe it is our responsibility to monitor the impact of that shift and to ensure that the health and wellbeing of children does not suffer as a result.

Therefore, we believe that the articles of the convention, which stipulate the requirements for children in regard to protecting their interests and promoting their wellbeing, are useful in monitoring how children are faring in our country and in our local community and, therefore, what the impact of the ageing of the population might be in regard to children's affairs. We believe that children's health would be best served if children, as citizens of our community, actually receive an equitable share of the community's resources in relation to child health care.

In summary, we believe that the convention has very explicit uses, that it is a useful framework for policy and legislation and that it is also a useful framework for the workings of bodies like the child care council. Mrs Castell-McGregor has made some analyses of the responses that you have received to date in the documents and she would like to make a few comments about our view on those things.

Mrs Castell-McGregor—I would like to make a number of points. Firstly, I think it might be useful to actually have some concrete examples of how the convention can be

used because often debate can be very abstract. As far as the council is concerned, we have used it in a number of critical policy areas. As many of you know, in many of the states and territories, we are moving towards a funder provider purchaser model of service delivery where, increasingly, the government is outsourcing or contracting out much of its service delivery.

I am not here to make any philosophical personal comment about that other than to say that this is happening. When we looked at the impact of that on children's health, particularly in terms of purchasing services for children—for example, in remote country areas and in Aboriginal child health—we were very concerned that the commission here in this state actually addressed the needs of children when they started looking at their purchasing priorities. So we actually used the convention quite successfully as a bargaining point, if you like, as a point of reference, to actually put on the table the need to address that particular group as part of the commission's structural organisational chart, because children were not actually mentioned as a particular group. I think we had a measure of small success there.

We also managed, through negation, again using the convention as a reference point, to actually have a designated person with a very strong child health background, as a reference point in the commission itself. So that when the government is looking at its own polices, there is somebody there who can actually say what this would mean for the population of the state who are under the age of 18.

Another area where we have used it was in the recent debate about the age of sexual consent, and you have a copy of the submission that the council made on that point. We are in contrast to some of the views in the submissions—and I can explore that in a minute—where, in a sense, I think children's rights are perceived by many as 'a libertarian charter'. There were some wonderful expressions used. In fact, I do not know whether you would regard many of us who have come here arguing for the rights of children as particularly libertarian or particularly radical. I think we are reasonably sensible, calm, adult members of the community who care about one section of the population.

In that particular case, we took a very strong view that we were concerned about the so-called restricted age of consent being 12. Although we recognise that was going to be a two-year age difference and that it was not going to be open slather for paedophiles, as it has been presented, we were concerned for a number of child health reasons, such as there is some medical evidence that early onset of sexual experience is a health risk for young people and, to me and to the council, 12 is simply ridiculously young. So in many ways, we took quite a conservative view compared to, say, the Dutch, who have the age of 12 as the consent to sex.

Another area is access to pornographic videos through the Internet, which has been a topic of quite substantive public concern. Again, the Child Health Council was

concerned about the mental health implications of children witnessing certain material in and on the media, and particularly on the Internet where the controls are very hard to police. The council was represented at a major Canberra gathering where that whole issue was debated, and our concerns were documented.

We have used it, in a sense, in recognising that childhood is a time where we need to be careful about, if you like, exercising or promoting notions of autonomy that maybe children are not old enough to exercise. You will find that people like me, who are well known for their child's rights views, will always come down to that balance, and will say that when adults actually use notions of autonomy to put decisions on children's shoulders that they may be too young to make, that is a concern.

Having said that, I think there is a big difference between putting decision making capacity completely on the shoulders of children and respecting their right, to use that word broadly, to participate and be involved. I think every parent with children knows that, as your children get older, you negotiate some of those limits.

In looking at the submissions, I think they fall into six major categories. There are those who see it very much as being the United Nations telling parents what to do. I think that is a nonsense. The UN is not going to tell parents what to do. However, they might make some very broad statements about standards.

Then, of course, there is the whole states rights debate. People say this is going to be the federal government encroaching on the states. I am not from Australia, but it is obviously one of the vexatious areas of Australian life that we live in a federal system and that can be extraordinarily frustrating, but it also presents some challenges. The states in fact cooperate on a whole range of matters to try to get some consistency of views on a number of things. I do not think we should let that deter us from trying to get some agreed common ground.

I heard it presented today that it has no relevance in a country which, by many standards, is very privileged. Of course, we do not have the problems of Rwanda or Zaire. Some of my past life has been spent travelling in those countries, and we do not have the appalling problems they have. We have a different set of problems and challenges. It does not mean that the convention is not relevant; it means we might apply it in different areas and ways.

Even the federal health minister, in looking at the whole immunisation take-up rate, was pretty appalled that we fell behind Zambia, Tanzania and Libya. It did not look too impressive. He has taken that on board, and that is something to be commended.

There are then people who say that the convention is okay, provided it is about protective articles: protecting children from harm—child abuse, neglect, children who are runaways because of abuse or neglect, children who are accessing videos. But as soon as

it is about autonomy, that is where we get the tensions. I would like to come back to that, because I think it is very important. It is on the domestic level that these tensions often arise.

Then there is the argument that it has done nothing to improve the health status of Aboriginal children. What has improved the state of Aboriginal children's health over the last 20 to 40 years? It is one of the most worrying and distressing challenges that we will have to face. What we can do is say, 'We have a priority here.' Again, we would use the convention, and have done so, to put that priority on public notice. We have to do something more than we are doing at the moment.

I would like to get back to what is, I suspect, the nitty-gritty as you travel around this country and have parents appearing before you talking about the convention undermining their interests and position. I would like to talk about that. I am pretty familiar with it. I have done enough talkback radio in my time, and I have managed to debate with a lot of people the reality of the domestic level where children come home from school—we all know what it means—and say, 'I've got the right to do X. I was told at school I can do X.' There you are, preparing a meal and you have all these demands. It is pretty aggravating.

There are a couple of points I would like to make. I think we need to be very careful we do not confuse notions of children flexing their muscles, as all young people will do with rights. We all have rights; we all have needs. Parents have rights to say, 'I am worried because you are out till 2 o'clock.' In that sense we need to be very careful that we do not confuse what human rights are all about with muscle flexing. I think there is a difference.

As to encouraging children to leave home, I would refer the committee back to the Morris report. One of your own committees made this report. It is an excellent report. There is a very good analysis in here of precisely that question: have children's rights and knowledge of rights encouraged children to leave home and be given youth income support, et cetera? I think it knocks it on the head. But what it does do—and I think this is absolutely fair comment, having worked with parents in these distressing circumstances—is very much recognise that when you are dealing with painful domestic conflict sometimes the language of rights is not helpful, sometimes it is.

Of course you can argue every child has the right to be safe. A child has the right not to be sexually abused and not to be beaten. With the exception of those where you are looking very much at abuses against the person, a lot of them are conflicts in terms of rules, views or attitudes where young people and their parents come head on. I think sometimes then we need to reflect, be calm and just give everybody a fair hearing in a dispassionate, fair way. My experience is that often parents will then sit back a bit and say, 'Yes, there are problems, and no, we are not communicating very well.' Often it is because it is a remarriage or whatever. There is a whole raft of reasons.

I do think we need to be careful. I hope the committee is very careful when a lot of these views are presented. We need to be very careful that we get both sides. If the professional message is anything, it is that you need to look at both sides, because people making the decisions—for example, with runaway teenagers—are faced with both having to protect young people from genuinely abusive situations and also respect the authority of parents who are there in a guardianship capacity until they are 18. So they are a couple of things. Am I going on too much? Would you like to maybe ask me a couple of things? I could go on all day, if I am not stopped.

CHAIRMAN—For the benefit of the *Hansard* record, first of all, the Morris report you were referring to, is that the youth homelessness report?

Mrs Castell-McGregor—Yes. This is the youth homelessness report.

CHAIRMAN—If you could just read the title of the report into the *Hansard* record, just to make it clear.

Mrs Castell-McGregor—The Parliament of the Commonwealth of Australia. It is the House of Representatives Standing Committee on Community Affairs. The report is dated May 1995. The report title is *Report on Aspects of Youth Homelessness*. The chairman was Mr Morris. I would refer the committee to chapters 5 and 11, in particular.

Resolved (on motion by Mr McClelland):

That this committee authorises for publication supplementary submission No. 151A, the Child Health Council paper of 25 June with attachments, which has just been circulated; a response by the Child Health Council of South Australia of 28 April to chapter 5 of the model criminal code discussion paper *Sexual Offences Against the Person*; an extract from *Children's Legal Rights Journal*, volume 16, No. 1, winter 1996 an article entitled 'Why has the best-interest standard survived?: The historic and social context'; and an article entitled 'Crossing the line from physical discipline to child abuse: How much is too much?' from *Child Abuse and Neglect* volume 21, No. 5 1997, pages 431-444.

CHAIRMAN—On page 2 of your basic submission you talk about jurisdictional problems. Are you suggesting that it is too difficult to have some sort of legislative framework encompassing the general thrust of the Convention on the Rights of the Child? If it is achievable, in what sort of a time scale might it be achievable?

Mrs Castell-McGregor—This is one of the most complicated aspects of your terms of reference. I think we should be able to come up with some legislative framework. It would be a hell of a challenge. The other thing which I think would be very useful—and I put this on the table for the committee to think about—is an issue which many people find confusing. It is in the complex area of constitutional law and state/territory relationships. I think it would be very useful if at some point some sort of issues paper could be presented as a mini report from this gathering that actually looked at some options.

CHAIRMAN—That is what our report might do, of course.

Mrs Castell-McGregor—Yes. It will, but also sometimes something as complicated as that needs to be flagged independently as well, because it is at the crux of many of the things we are talking about. You like to think that most things can be worked out by people being civil to each other, cooperating and sitting around a table, such as at the Standing Committee of Attorneys-General and the standing committees of social welfare administrators and income support administrators. A lot of things are worked out at that level.

But then I pose the question to the committee: what do we do? What do we do when we have 12-year-olds being locked up in WA? That is a major worry. That is my view. You might not agree. I think it is a major worry. What do we do when we have imprisonment which is affecting Aboriginal young people at a most appalling rate? It is something like 58 times the national average in places like WA. I find those things very disturbing and it seems that nothing can be done about it.

I would like to present it as a very complex matter which needs to be addressed. I am not a constitutional lawyer and I am not really sure of the best way to go about effecting reform.

CHAIRMAN—For example, how do you reconcile what you have just said? I am not criticising that comment, because a number of others would have the same view. From what you have heard this morning and from what we have heard at previous hearings there is this misunderstanding, misinformation and in some cases disinformation in relation to some articles of the convention. In particular there is that vexing question of the rights of children in an autonomous situation, which is the area that you have referred to, as against the rights of parents. In particular, there are articles 12 to 16, article 5 and the preamble, even though the preamble really does not have any legal impact.

How can we possibly come up with some sort of legal framework at the federal level, if indeed that is what is required? It must be borne in mind that a lot of these are states issues, to take up another issue of yours. How do we find out whether it is desirable, whether it is feasible or whether indeed it is possible without further confusing an already confused area?

Mrs Castell-McGregor—Are you asking me, do I think there should be a national implementation of the UN convention at the federal level?

CHAIRMAN—Yes. That is what I am asking you.

Mrs Castell-McGregor—That would be jolly good. There could be some merit in that but I wonder how the states would react. Again, in terms of enforcement when—as you rightly point out—so many areas affecting children are at state level, such as juvenile

justice and child protection to name a few. The federal government is in fact acknowledging that it has a critical role in some of those areas as well. Yes, I think there is some merit in that.I am not quite sure how the bill would look. I would be interested to see it, but yes, I think there is some merit in that idea.

The Child Health Council is committed to commissioner for children. We talked about that in our submission. Again, not to be all things to all people, but the whole point you have made about misinformation, distorted information or confusion is a very real one. I think parents can be forgiven for being confused, frankly. When you look around the states and territories and see the plethora of laws and the different ages, where do they stand? We have a social policy at the moment which is in a sense extending the dependence of children way beyond age majority. They are legitimately very confused.

It was a great shame in a way that, when the convention was first ratified by this country, there was not a lot more time and attention given to public debate at the public level. I mean in church halls and going round into the bush and talking to families. Because when we have done that, we have actually found that when you talk face to face, a lot of misunderstandings can be cleared up. People say, 'What about when my kid did this?' and you can actually talk about it and put things in perspective.

CHAIRMAN—Let me just pull you up there. We cannot turn back the clock 6½ years but that is why it is so important, between the signatory and the ratification stages, that you have a parliamentary committee like this which goes around, as you are suggesting, at the grassroots level. We do not meet only with governments, state or local, but we meet with individuals and non-government organisations. We cannot do that at this point in time after ratification, but at the same time this committee, under its joint resolution of both Houses, is entitled to look at it.

That is why we are looking at it, because we feel that after 6½ years it should be looked at. We do not have an agenda. There is no agenda, let me make that very clear. Some journalists have tried to push the line in recent months that we are just a mouthpiece for the government. We are not. We are here to receive evidence and we will make recommendations accordingly.

This particular inquiry is very different from others that we have been involved in. This is probably the most hard-working committee in the whole parliament, simply because of the 15-sitting day rule where we have to report back to the parliament within 15 sitting days or else. But where you have an extant treaty, which this is, we are still entitled to review it. This is a real test case for us in terms of this sort of treaty, even though a lot of water has flowed under the bridge. Some people would even take the view that the horse has bolted.

Mrs Castell-McGregor—The expression 'the horse has bolted' implies that a crisis is going to ensue and I would certainly take issue with that. You probably used the

expression very loosely. But there is another structure which would be valuable because things do not stand alone in isolation. Things tend to work in a combination of relationships. There is a committee of parliament which looks at treaties, isn't there?

CHAIRMAN—That is us.

Mrs Castell-McGregor—Are you the one that look at all of them, the whole thing?

CHAIRMAN—Yes, we look at the lot.

Mrs Castell-McGregor—I think there may be some ongoing role for that committee as a monitor. For example, with the convention, a federal commissioner could report to your committee. That could be a very useful check and balance. There are a number of possibilities, but that is another idea. That is what I mean about an issues paper, about what sorts of things are possible and how these various groupings relate.

We have the Australian Law Reform Commission's report on children entitled, *A matter of priority: Children and the legal process*. I am a honorary consultant to the commission on that matter. You will notice there that there is a major recommendation there about an office for the child. I think we need to look at all those various structures and see how they could interact.

CHAIRMAN—That is what this committee will be doing. That is our task, to come up with a series of options, some of which we will probably dismiss within the committee but others we will recommend to government. It is up to the government to accept those recommendations. We have had evidence in terms of denunciation and maintaining the status quo. The extreme situation for us is to recommend that we denounce. Some within this committee might take that view. It is too early to say, but it is possible, even though it does have some very sensitive international relations problems if we do that. Nevertheless, it is an option.

Mr TRUSS—A number of people have suggested to us that there ought to be a national or state based children's commission or commissioner, but you have adopted a far more radical approach in your submission. You have suggested we should have a bill of rights and a European court of human rights where children and their parents can bring cases to this court. Have you thought that through? Are you really advocating a multi-million dollar human rights court with a cast of thousands, lawyers by the hundreds, and judges making eccentric rulings. Is that really the way to advance the cause of children?

Mrs Castell-McGregor—The reference to the European court of human rights was by way of example. In the European Union, this is a structure which is available to people to use. It was there as an example. In terms of the bill of rights—

Mr TRUSS—In your submission, you did actually say that Australia needs one of these.

Mrs Castell-McGregor—There needs to be an avenue. That is what I am saying. I do not come from the position that for every single disagreement you leave off and litigate in the court. That would not be the Child Health Council's view. It is really looking at structures and systems. But there are times, and it might not be very many, when there is a complete breakdown and you cannot get any further and some quite serious injustices occur. There does need to be some redress.

Again, that was put down as an idea. On a bill of rights, again, people might disagree with that. It is the council's view that some entrenched recognition of human rights is valuable. Nobody, I do not think, would want to see some enormous bureaucracy, with people feuding and lawyers getting rich and—

Mr TRUSS—But do you think the European Court of Human Rights has been effective, because obviously you have to acknowledge that it is an enormous bureaucratic organisation, or whatever the words were that you used.

Mrs Castell-McGregor—It is a bureaucratic organisation and it is dealing with an enormous area, with a number of different countries, with enormous populations. Its bureaucracy would be bigger. But the point was to have a mechanism, whereby people, in circumstances where grave injustice has occurred, did have an avenue. That is my point.

Mr TRUSS—Would you reject the idea of a children's commissioner or an ombudsman, or someone or other like that, as a satisfactory model?

Mrs Castell-McGregor—Yes, we would.

Mr TRUSS—You would reject that?

Mrs Castell-McGregor—No, I accept that. I think that is a very important part of, if you like, a systemic process.

Mr TRUSS—Would you accept that, instead of a European style court of human rights?

Mrs Castell-McGregor—I might, depending on how it was presented. I would have to see how it was argued. I am sure you were told this morning by Action for Children about a model for a commissioner for children, which has been, in fact, presented. I think you heard that this morning, am I right? That was at 9 o'clock—perhaps it was a long time ago.

Mr TRUSS—To be fair, I think we have also had it said to us and argued quite

persuasively that a children's commissioner should not act as an ombudsman or in a dispute resolution process, but merely should be monitoring legislation to see that it is child friendly.

Mrs Castell-McGregor—I agree. That is my view. I think that it could become an enormously unwieldy system if it dealt with complaints. But I do think that the existing complaint bodies that are there need to be much more able to respond to children and family matters than perhaps they are at the moment.

CHAIRMAN—This is where the College of Paediatrics—and we heard this yesterday and we got into the detail—is an option. We have not discussed it, but as an individual, it attracted me to the basic framework.

Mr HARDGRAVE—As an advisory body?

CHAIRMAN—Yes, it is small, it is advisory. It is not investigative, but you can use the ombudsman mechanics to cover the sorts of things—

Dr Wigg—The College of Paediatrics also believes that even though we are health oriented, that indeed that body needs to sit outside of the health system for reasons I stated earlier, and that we believe that the whole raft of things that influence children need to be considered.

CHAIRMAN—That can be considered too.

Mr McCLELLAND—My question is related to that too. One of the previous witnesses—I am not sure if you were here—said that the convention itself has to be viewed in the context of an evolving process and perhaps the commissioner for children could be part of that evolving process in terms of analysing various bits of legislation, perhaps evoking debate as to whether the Western Australian legislation is appropriate and, over time, things such as standardisation of children's rights could result from that review process. These things are always better, do you think, in terms of being cooperatively achieved, rather than coercively?

Mrs Castell-McGregor—I think anybody who would come in saying that the preferred way to solve human dilemmas was to be combative is wrong. One thing about an office dedicated to children, whatever it is called—the commission or an office of the child—is that we need to be very clear about whether it is in government or out. With one, your constituency is government; with the other, your constituency is the public. That is a big difference. We all know that public servants cannot talk about government policy. They can talk about it in-house, but not outside.

But, one thing it does do is that you are able to argue from a position, if you like, of knowledge. What do we know about this particular thing? Take physical punishment,

which has been raised a lot, as an example. What does the literature say about physical punishment? Does it harm children? If it does, in what circumstances? Is a smack on the bottom abusive?

Sometimes you do need to present some cold, hard factual evidence on very contentious matters before the debate gets completely out of control. I think the article which has been tabled today is one of the best that I have read. It is trying to, if you like, disentangle that particular dilemma of when smacking becomes more. To have somebody or a group of people who are very knowledgeable and who keep abreast of the literature, keep abreast of what is happening and who can actually speak authoritatively—not in an authoritarian way—about a matter, I think is very important so that you can get some decent and informed debate.

CHAIRMAN—What about the wider concept of an office of the family rather than office of the child?

Mrs Castell-McGregor—That is at a federal level. There is nothing wrong with an office of the family. I do not know what Neil's views are but I think the council would still see the need to have the interests of children as a separate entity, because they can get forgotten and because family can mean looking after elderly parents. It can mean a whole raft of things.

CHAIRMAN—And then you have got a basic question of what do you mean by family.

Mrs Castell-McGregor—How long have you got?

CHAIRMAN—That is right; that is what I mean.

Dr Wigg—Certainly, that was our experience during the International Year of the Family. We got bogged down in debate about what is family and lost the essence of what the family is attempting to do. It is a view of both the council and the College of Paediatrics that focus needs to be primarily for children.

Mr HARDGRAVE—There has been some comment, Mrs Castell-McGregor, about the convention as a reference point. How widespread is the practice of this convention forming a reference point for policy decision making?

Mrs Castell-McGregor—I think a lot. I note that, after I have given my evidence, you are going to be hearing from the Children's Interests Bureau and they can tell you how they are using the convention now in this state. When I headed that organisation, we used it a lot, and I gave some examples of the Child Health Council. In my previous life, we also used it in the debates around female genital mutilation, for example. We used it in debates on young offenders legislation. We have used it in debates on IVF—children born

from assisted reproduction. I noticed a couple of submissions raised that in terms of making sure that the interests of the child were the primary concern, even though the child is not yet born or even conceived. In this state, in particular, it has been a very important reference point in policy and in law.

Mr HARDGRAVE—More so than other states, perhaps?

Mrs Castell-McGregor—It is difficult for me to know. Probably, it has been a bit more consistent in SA because it has had a long tradition of a strong, if you like, child advocacy focus. I know that New South Wales now has an office for the child and I suspect that we might be seeing a bit more emphasis in that state, too. It does happen. ACT, I note, are wanting to look at their child welfare law within the context of how it measures up to the convention. So it is happening, certainly, dare I say, to the Family Court. The Family Law Reform Act certainly addresses the convention. It incorporates the principles if it does not mention the convention actually by name.

Mr HARDGRAVE—You would be well aware of the folklore that surrounds the Convention on the Rights of the Child—the urban myths, if you like. What instruction of children on CROC has taken place in South Australia?

Mrs Castell-McGregor—Again, I suspect it is probably—I stand to be corrected on this—pretty ad hoc in terms of within the school system. I know that those officers with a mandate to give information would do their best. But often it is how subjects are taught. When you are looking at a busy school curriculum, if you are talking about human rights and rights of children, you do need to have a properly worked out curriculum, so you do talk about it in terms of human rights and what that means about respect for people, treating each other decently, responsibility to get to adolescence.

Mr HARDGRAVE—We had a witness earlier this morning who suggested that it is part of the South Australian education curriculum. It seems that there is instruction on the Convention on the Rights of the Child. But you do not necessarily agree with that or perhaps it is beyond your expertise.

Mrs Castell-McGregor—I am not involved with the department of education and children's services. If they are saying that is the case, fine.

Mr HARDGRAVE—You would welcome such instruction?

Mrs Castell-McGregor—Yes, I would, provided the curriculum materials have been well thought out and the people who were teaching were actually well versed in the subject matter.

Mr HARDGRAVE—And hand in hand with an instruction on rights should also, I guess, come the social responsibilities implied by those rights.

Mrs Castell-McGregor—Of course they should, particularly with adolescents. I do not think anybody should argue that the convention is a licence to do as you like. That is mythology.

Mr HARDGRAVE—What about other government departments, or other levels in the federal sphere—perhaps the Department of Social Security, which has direct access to children's issues? Is there anything that you are aware of there?

Mrs Castell-McGregor—Not that I am aware of. I do not know—dare I say it—whether with the latest decision about cutting off income support for 16- to 18-year-olds the convention was a reference point. I do not know.

Mr HARDGRAVE—You need to be careful how you put that. There are a lot of issues to that. It is not a case of cutting off income support, it is a little bit more than that.

CHAIRMAN—You did raise one issue which has come up, and I think it is perhaps time to ask a comment of you on it. You talked about female genital mutilation. Some people will say, 'So what? What has that got to do with it?'. It gets back to the basic ratification process of this particular convention; and it does raise question marks because, as you know, a number of Islamic countries have ratified without reservation and indulge very widely in female genital mutilation. But that does raise some questions marks, does it not, about the overall status of this convention and the ethical underpinnings in some national areas for that?

Mrs Castell-McGregor—Yes. I certainly noted that about the human rights track record of many ratifying countries. But also I know that there are many people in those countries who are working very hard to raise the status of children through such groups as UNICEF and the Save the Children Fund. Both of those organisations do use the convention a lot. I think UNICEF has a very broad policy goal of informing people about the rights of children and having total ratification by the year 2000. I think that is one of its aims. The challenges are a lot greater in some of these parts of the world. I know that very well.

Mr McCLELLAND—Just on that note, are you saying that it gives those in the country who oppose female genital circumcision, for instance, a flag to fly with? Are you saying it gives them an argument to hang their opposition on?

Mrs Castell-McGregor—I think it is used unfairly—that is my personal view—to actually say, 'Look, compare us to Rwanda or Uganda or Libya or something; we don't have anything like they do. We don't recruit young 12-year-olds—'

Mr McCLELLAND—Yes. But my point is that even if the governments of those countries are approving of or promoting a policy of genital mutilation, inevitably a number of people within those countries oppose that practice. Do you think the existence of the

treaty gives those people who oppose the practice something to hang their hat on?

Mrs Castell-McGregor—Yes, I do, and I think often you have the government, too, opposing it. For example, in Sudan, which has amazingly high rates of genital mutilation, the real opposition is coming from the mullahs and at grassroots level in the villages, and so they have enormous challenges in terms of trying to get the message through at the grassroots. But places like Burkina Faso have done that remarkably well. They have had a major impact in terms of changing practices using the women there, and that has worked. A lot of the writings from black African women on this particular subject have very clearly used the convention as a reference point.

Mr McCLELLAND—Right. That is very interesting.

Mr TONY SMITH—In relation to article 13, which talks about freedom of expression and so forth, with the qualifications in there, at what age do you think a child should be able to exercise that so-called right?

Mrs Castell-McGregor—Can I give an example? Would that help?

Mr TONY SMITH—Let me be more direct. Let us say a child has a view about the voting age and about politicians who say the voting age should not be lowered. Say there is a debate going on about the voting age, and a child wants to express a view. What age do you think would be appropriate for a child to get involved in a debate like that, in a public sense?

Mrs Castell-McGregor—About voting to take part in the life of the state, do you mean: exercising civil rights?

Mr TONY SMITH—Yes, voting for the government, and in a public sense.

Mrs Castell-McGregor—If you look at child development literature, there is a lot of evidence that says that by the time a young person is 16 they are able to make complex decisions—weighing up different points of view, working out that if they voted this way, this would happen, and that way, the other would happen. There is quite a lot of evidence around that supports that, which is why I think 16 has been adopted in quite a few jurisdictions as the age where you can drive, where you can do certain things.

In terms of involvement, I think it starts a lot younger. I think it starts in young children being involved in decisions at school council level. I know 7- and 8-year-olds who are actively involved as part of the school decision making process. It is about things that matter to the school, and that can start quite young. It is on things that affect them in their school environment. Freedom of expression can also be taken to include play. I say 16 in terms of the civil—

Mr TONY SMITH—So in terms of actually expressing an opinion about the public debate on a theoretical lowering of the voting age, you would say 16 would be the age where they ought to be able to engage in discussion of a public nature.

Mrs Castell-McGregor—Yes, there is a difference between—

Dr Wigg—It depends entirely, in my view, on where the child is expressing the view and for what purpose. If the child is expressing the view for the purpose of coming to a collective decision within the classroom, then it might be appropriate for the child to express their personal view much earlier than that. There are very few children in our community who would have these skills or indeed have the wish to express a view about things like the voting age in a public forum, because it is not a matter that is of concern to most children.

I think the question that you are asking depends entirely on whether you are talking about a child speaking on behalf of themselves or whether you are talking about a child expressing a collective view on behalf of children. So I think one has to interpret the question differently depending on the circumstances.

Mr TONY SMITH—I suppose I am trying to lure you into committing yourself to something because I am particularly concerned about the defamation laws. Adults have difficulty with the defamation laws let alone children, and obviously adults are very careful, or ought to be very careful, particularly in our profession, as to what they say publicly. We have a penal side to that. We can be taken to the cleaners. On the other hand there is a difficulty, do you not concede, with the notion as far as children are concerned?

A child or a group of children in a public venue could deplorably defame somebody and yet that person has absolutely no rights to sue or, if he or she does have those rights, it is absolutely pointless because children are generally children of straw. Legally, they do not have a right anyway given the way the convention is framed. Do you see the concern there—rights without responsibilities in other words?

Mrs Castell-McGregor—Yes. That has run through those autonomy articles. I know that some people have rubbished article 5 as being window-dressing, but a lot of those exercising of autonomy rights are also qualified by the parental guidance clause of article 5. I really do not think anybody—I certainly would not and, Neal, I am sure, you would not—would be arguing for complete licence to do and say what you wish. None of us has that licence. I can see your problem. I can see what you are getting at. I am trying to think of a really witty riposte.

Mr TONY SMITH—If I can give you an example though, a few years ago there was a controversy when John Hewson's boys were interviewed on *60 Minutes* and they said things which, from a politician's perspective, were inappropriate. If he had—and he is not that sort of fellow—said, 'You had no right to do that, I am going to administer

corporal punishment' that would have caused revulsion. If you take the logical extreme of complete parental autonomy, is that not one of the consequences?

Mrs Castell-McGregor—I think that is the tension. In that case, two of the children were very young. One was 17. Ethical reporting is another dimension in that case.

Mr TONY SMITH—You may not be able to give an answer to us now, but you could take the question on notice. You mention in your report the South Australian child welfare law and state that a number of policies reveal that convention principles have been considered. If you have particulars of all of that, I would be really grateful if you could give them to us.

Mrs Castell-McGregor—I am sure that my colleagues from the Children's Interest Bureau, who will be giving evidence soon, will be able to give you further information. I am very happy to do that, if you would like me to.

CHAIRMAN—Thank you.

Mr TONY SMITH—This is not meant to be a personal criticism, but the flavour I get from your report is that we are looking after a very affluent country like Australia. But article 24 enjoins us to look at the developing and Third World and Fourth World countries. We never seem to hear that in the reports we get from various interest groups here. You say in your report that the convention is concerned for all children. Are you saying you are mindful that those concerns are for all children, irrespective of geographical location?

Mrs Castell-McGregor—I think there are a couple of dimensions. I will be quick, because I know you are running out of time. I did make the point about relativity. Some matters that we might pick up as needing attention may be very different from those in other countries. From my experience, parents are looking for some assistance. They will turn to an office, a group or a person who they see as being there for the child. It might be that they are having real problems negotiating a complex bureaucracy, for example, and that they feel aggrieved in some way or that something has happened. In a family with loving parents, it is an issue that has cropped up in their dealings with the system. They are seeking someone to assist them through it. I see a lot of cases like that. We used to try to help negotiate some reasonable outcome. They were not children that had special circumstances or problems, but a particular situation cropped up in that family's life and they came face to face with the bureaucracy for some reason.

On the other hand, you have the really quite chronic situation of Aboriginal child health, which is a distressing and systemic matter that needs addressing. It just depends. Parents often need to have recourse to an office or a person to help them negotiate and to really gain something on behalf of their child. It is about parents having advocates and using other people to help them. You then have the whole system's advocacy, where you

need to look at how policies are formed, how money is being spent and where the children are falling off. Does that answer your question a bit, Mr Smith? No, not really?

CHAIRMAN—It will whet his appetite. Thank you very much indeed. You have been a great help.

[11.24 a.m.]

HANDSHIN, Miss Mia Ruth, Member of Management and Executive Committees, Youth Affairs Council of South Australia, GPO Box 2117, Adelaide, South Australia 5001

MACDONALD, Ms Sarah, Sector Development Officer, Youth Affairs Council of South Australia, GPO Box 2117, Adelaide, South Australia 5001

CHAIRMAN—Thank you very much for coming along. We have received your written submission. Are there any amendments or additions that you would like to make to that submission before we invite you to make a statement?

Miss Handshin—No.

CHAIRMAN—Would you like to make a statement?

Miss Handshin—Yes, we would.

CHAIRMAN—Please do.

Ms Macdonald—I will start by outlining what the Youth Affairs Council of South Australia is all about. We work to encourage young people and those working with them and for them to achieve meaningful improvements in the quality of young people's lives. The Youth Affairs Council of South Australia is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. YACSA is also responsible for liaison and cooperation with government youth services and policy makers and for advocacy to state and federal governments on a range of matters which affect the lives of young people in South Australia. Our mandate covers young people between the ages of 12 to 25. We therefore have an abiding interest in treaty, legislative and policy frameworks which concern the lives of children and young people under the age of 18. Mia will now give a brief statement.

Miss Handshin—The Youth Affairs Council of South Australia strongly supports and encourages the implementation of the Convention on the Rights of the Child. It is our belief that children should be treated as people in their own right, and that they are and should be entitled to be treated as holders of human rights. For far too long, children have not been considered full and equal citizens. YACSA believes that the primary objective of the convention, which is that all policy regarding children be made with the children's best interests in mind, will empower children with full and equal citizenship through the recognition of their rights and benefit the community enormously.

We believe that a recognition of the rights of children directly displays the fact that

children are valued as citizens in their own right and that, by valuing them, they will in turn value themselves. It is YACSA's belief that much can be gained from a recognition of children as the holders of human rights. Article 12 of CROC states that children have the right to express views freely in all matters affecting them and be provided with the opportunity to be heard.

In ratifying the convention, the Australian government endorsed children's right to express opinions and have those opinions considered in matters which affect their well-being, exercise freedom of thought, meet with others to join or form associations and have access to and share information. It is our belief that the convention has played an integral role in raising community consciousness regarding the importance of involving children in decision making processes.

YACSA has been enriched by the South Australian government's youth participation pilot program, which is aimed at giving young people the opportunity to participate in decision making in the operation of various boards and bodies. This initiative gives effect to the convention's participation provisions and has been extremely successful. The fresh insight and unique perspective offered by children in all matters, but particularly with regard to decision making that directly affects their lives, must be harnessed. Involved, informed, participating children will in time become responsible, participating adults. If policy is to be framed in the best interests of children, surely decision makers need to be aware of the opinions of those whom the policy concerns. As such, children must be given avenues through which to participate in decision making processes.

YACSA believes that CROC sends a strong message to the community that children and their views do matter. To further the process of the creation of a more equal society and more active participating youth population, YACSA urges the Australian government to enforce the provisions of the convention in a comprehensive and consistent way throughout Australia. It is certain that the hope for a better, more equitable and peaceful world hinges on the attitudes of policy makers and that it is the attitude of tomorrow's politicians, today's children, which will make the difference. Children are the stakeholders of the future. As such, YACSA believes that children should have a role in shaping that future.

Although there have been steps taken which have been instrumental in implementing CROC's participation provisions, there is still much to be done. YACSA has perceived a selective application of CROC and calls upon the Australian government to provide mechanisms for the uniform and consistent application of the convention. YACSA is aware of the belief held by some community members that CROC undermines the role of the parent, destabilises the family and gives children the licence to challenge authority. We believe that these assumptions are erroneous.

YACSA perceives that the primary roles of CROC are to safeguard the wellbeing

of children, provide a standard by which governments operate when framing policy pertaining to children and offer a defensive mechanism to ensure that all decisions regarding children are made in their best interests. Gary Melton, a US academic, states that the convention is both expressly and implicitly pro-family.

The convention poses that the family and children who are afforded human rights can exist in harmony and are complementary. The preamble states that the family environment is essential to the development of the child. As such, promoting the provisions of the convention means upholding the notion that the family environment should be one of happiness, love and understanding.

Article 42 commits signatories to educate both adults and children of the convention. YACSA believes that much of the public fear and uncertainty regarding the implications of the convention are due to inadequate community education on the actual intentions of the convention. In order to combat public misconception about the intentions of CROC, YACSA supports the proposal for a children's commissioner under the auspices of the Human Rights and Equal Opportunity Commission. The commissioner would ensure that there is community education on the convention, including educating children, and would ensure that the convention is being adhered to and enforced nationwide. There must accountability at the highest level for the welfare and interests of the nation's finest resource: its children.

YACSA wishes to emphasise that, although all rights are attendant on responsibilities and that an application of the convention would be incomplete without a recognition of this, we are concerned that too much of a focus on responsibilities may detract from the importance of children's unqualified rights to a number of the provisions of CROC. In particular, in the case of a physically abused child, YACSA argues that the child's right to a family environment which is nurturing and its right to protection from physical abuse should not be conditional upon any responsibility on the part of the child.

Laws pertaining to such circumstances must be clear, unequivocal and consistent to ensure that a balance is maintained between the family, the child and the role of the state. As such, YACSA argues that child protection and juvenile justice laws be uniform throughout Australia.

Despite Australia's ratification of the convention, there has been a far from uniform approach to its implementation. Children, by and large, remain undervalued, under-resourced and unequal members of society. The convention provides a foundation for combating these issues and a framework for a globally consistent approach to policy making pertaining to children. YACSA urges the Australian government to accept accountability for its international obligations and to take responsibility for the promise it made to the children of the nation when it signed the convention.

CHAIRMAN—Thank you very much. Tony, you can open the batting on this one.

Mr TONY SMITH—Do you admit that there are two sides to the argument in this case? You are quoting Gary Melton. You say that he says it is pro-family and pro this and that. Do you not accept that there is a debate on the other side of the coin that says it is anti-family and that it exacerbates conflict?

Miss Handshin—Yes. In my opening statement, I did express that there is a great deal of public fear and concern over the implications of the convention. YACSA believes that that is primarily due to a misreading of the actual intentions of the convention.

Mr TONY SMITH—There are some very eminent people, such as QCs, lawyers and academics, who take that other side of the argument. Are you saying that they have misread it or misinterpreted it?

Miss Handshin—We believe that the convention is pro-family. In that sense, we are obviously offering the other side of the case. To us, yes, it would be to a certain extent a misconception of the actual intentions of the convention.

Mr TONY SMITH—What you have acknowledged in that statement is that the convention, because of interpretation, promotes, on its face, a conflict between what you say it does and what other people say it does. Dr Solomon said:

Parents do not trust the Convention because their intuition tells them it will merely exacerbate the ordinary development conflict between parents and children and influence negative relationships between child and family, family and State . . .

Will it not do that?

Miss Handshin—Are we able to take that question on notice because I feel that we cannot offer a comprehensive response to that right now and we would actually like to make further—

Mr TONY SMITH—One other question: you speak about community education. In all debates of significance—and this is a debate of great significance, you would concede, I imagine.

Miss Handshin—Yes.

Mr TONY SMITH—In all debates of significance, it is right and proper to have both sides of the argument put. So in community education I am sure you would admit that, yes, children do need to be educated about the positive sides and also the negative sides of CROC.

Miss Handshin—Yes. I feel and YACSA believes that in educating children in particular about the convention there is a necessity to educate them about the

responsibilities which are attendant upon those rights and that there is a need for both sides of the story to be put.

CHAIRMAN—What you are saying is that with rights go responsibilities?

Miss Handshin—Yes; but that those responsibilities should not in any way diminish the rights—in many cases the unqualified rights—to certain things.

Mr TONY SMITH—I do not know the law of South Australia but in the Queensland criminal code there are very serious duty provisions in relation to parents. There have been at common law in England many cases where parents have neglected their children and have been very severely punished by the courts for doing so. Do you not accept that we have in place some very good measures, both at statute law—if you do not know, just say so. Perhaps this is a bit unfair because I do not know whether you know the South Australian law situation. Generally speaking, I imagine that South Australia would have a number of duty provisions where parents must do certain things, must behave reasonably and so forth in relation to children. Is that not a community response which has brought about what most people would perceive a fairly good standard of living for children on average in Australia as opposed to looking outside and saying we really need an international purveyance of what we are doing? Do you get what I am saying? When international people are looking in, we would resent that of itself, or some people might resent it. So is it not best to get a community response within and accordingly develop our law around that?

Miss Handshin—YACSA believes that the convention can only enhance that. We put that there should be national consistency on those types of protection laws. It is also important to recognise that we are now part of a growing global community and that international consistency is also of benefit.

Ms Macdonald—Given also that Australia is instrumental in the development of the convention, it would look a bit odd, would it not, if we were to disregard what the convention is saying and rely on only domestic law.

Mr TONY SMITH—So you are saying that the convention as it stands should be implemented into Australian law, that we should just legislate, are you?

Miss Handshin—Yes; to a certain extent. I think it needs to be obviously scrutinised before it is implemented in an unqualified way but, yes, we do feel that CROC has been important in actually creating a lot of the community perception and forming the basis of laws which have been made regarding child protection issues.

Mr TONY SMITH—So in what way could it do more than what we have already done?

Miss Handshin—National consistency in those laws.

Mr HARDGRAVE—Mr Chairman, listening to these two impressive women, I suspect that in 10 or 15 years time I might be sitting on the opposite side of the table and they will be conducting a hearing such as this. You mentioned before, Miss Handshin, that a strong message was sent to the community about the rights of children from this convention. But you also said in your submission—and others have said it, too—that few probably really understand what CROC means. So could you sort of rationalise that or explain that for me, please?

Miss Handshin—Yes. I think that, particularly in the youth sector, the convention has raised consciousness. To a certain extent in the broader community it has also been instrumental in that. On the other side, there has also been a lot of misconception, as I have stated, and there is a lot of public fear because there perhaps has not been adequate education on the convention in its broadest possible way.

Mr HARDGRAVE—I see that you are both representing an organisation that is good at advocating the rights of youth. Again, in your own submission this morning, there are misbeliefs—I think you called it 'erroneous assumptions'—in the community. So what has YACSA done to undo this? There is a sort of responsibility on your organisation, if you like, to dispel some of the urban myths. What have you done?

Miss Handshin—I think that YACSA has encouraged young people to participate in the decision making process directly as being members of the Youth Affairs Council. It has also encouraged young people to speak on behalf of the council in the public sphere.

Mr HARDGRAVE—But what about some of those specific urban myths—that your mum and dad cannot tell you what you can or cannot do and that your bedroom in your home is your own private territory and all those sorts of things that are being said? Have you addressed some of those? Have you taken some of those things on board to try to dispel them?

Ms Macdonald—As and when they come up, yes, we do, as we are here today. As you will see on YACSA's written submission on page 3, in 1993 we were part of a child protection coalition and lobbied successfully for some fairly significant changes to the new South Australian child protection legislation.

Mr HARDGRAVE—And yet these urban myths continue. We have had many, many witnesses before these hearings around the country who continue to tell us all these so-called dreadful things, and I said that in context for *Hansard*, that CROC does. Who do you think is doing this? Who is spreading this urban myth? Are bureaucrats, public servants, advising children incorrectly? Are teachers telling them incorrectly? It just seems to be going on and on and on. We keep hearing these same myths over and over again. Do you have any theories?

Ms Macdonald—It is part of the democracy of debate, isn't it?

Mr HARDGRAVE—Misinformation?

Ms Macdonald—I did not say that.

CHAIRMAN—You are obviously already a politician, I can see that.

Mr McCLELLAND—Just consistently with that: it is interesting, from an organisation that represents the interests of youth, that you would say, in response to those people who say that this CROC is about breaking down the right of parents to give legitimate direction and guidance, that that is not what the youth of Australia is seeking through CROC at all; they are acknowledging the legitimate right of parents to give appropriate direction and guidance in the stages of their lives as youth. Is that right?

Miss Handshin—Yes.

Mr BARTLETT—Do you see then any potential conflict, say, with articles 12 to 16—conflict between the rights of the child and the rights of the parent? Do you presume that we do not see any conflict then?

Ms Macdonald—I would say that they were complementary.

Mr BARTLETT—Can you see a situation arising with young adolescents, teenagers, where there might be conflict—freedom of association, freedom of expression, freedom to seek information et cetera?

Miss Handshin—I think there possibly could be. But I also think that when you look to the primary objective of the convention, that is that all decision making is conducted in the best interests of children, you see that that can be perhaps, in those instances, an overriding consideration.

Mr BARTLETT—Who would decide what is in the best interest of the child?

Miss Handshin—I think that is perhaps the role of the commissioner.

Mr BARTLETT—Rather than the parent? What if the commissioner disagrees with the parent as to what is in the child's best interest?

Ms Macdonald—It is very difficult to answer a question with such a broad parameter. Cases will need to be taken on merit individually.

Mr BARTLETT—Can you see the possibility though where the decision might be taken out of the hands of parents who argue that they know best and that, because they

have raised the child, they know the thoughts and needs of the child better than an outsider?

Miss Handshin—There is obviously the argument that the state would be intervening too much in the private lives of individuals. There must be a balance struck between those arguments. Part of this inquiry, obviously, would be to thrash those issues out.

Mr BARTLETT—This is one of the central problems to the application of the convention. I just ask a different question then. You have said that really the convention is pro-family and that all these rights of the child need to be interpreted in the family context. Would you see that the convention could be applied then by establishing a commissioner for families—listing the rights of parents in conjunction with the rights of a child—rather than establishing a commissioner for children? And with a charter to look at both together.

CHAIRMAN—Would you like to take that on notice?

Miss Handshin—Yes, we would.

CHAIRMAN—In relation to article 42 and the education process, it is pretty clear to this committee and, I suspect to you, that the education processes—whether with young people or with more geriatric people like myself—are not there at an optimal level at the moment. What are you doing within YACSA to enhance that and what do you think people outside YACSA should be doing to enhance the education in terms of the CROC? Do you want to take that on notice?

Ms Macdonald—I think we would be able to give you a far more detailed answer.

CHAIRMAN—All right. I do not think we have got any more questions. All I can say about Mia and Sarah is, 'Look out Canberra, here we come'. Thank you very much.

[11. 47 a.m.]

BRAUN, Mrs Aileen Mary, Social Worker, Lutheran Community Care, 309 Prospect Road, Blair Athol, South Australia 5084

MORRISON, Mrs Glenis Marie, Manager Family Services, Senior Foster Care Worker, Lutheran Community Care, 309 Prospect Road, Blair Athol, South Australia 5084

CHAIRMAN—Welcome. We have received your written submission. Are there any amendments to that written submission?

Mrs Morrison—No, there are no amendments?

CHAIRMAN—Would you like to make an opening statement?

Mrs Morrison—Yes. This morning our aim is to elaborate on two aspects of our submission. Lutheran Community Care strongly supports the United Nations Convention on the Rights of the Child. The convention provides an excellent statement on the rights of children. Our submission highlighted several concerns about the implementation of the convention in its current form. Our comments were influenced by our day-to-day contact with families and children who receive our services.

The focus of our work in the alternative care program is with children living away from home and this includes the whole dimension of child protection issues. Within this system, we are highly concerned about the community resources that are available for children and young people, particularly in the areas of education and mental health.The mainstream services in the current infrastructure do not always help these children and young people. Children and young people are expected to fit the system. But to benefit these young people, with issues specific to children who are or have been in care, we believe that the system should better fit the child.

In the area of education, many of our children cannot fit the curriculum. Many of our children are developmentally delayed due to the effects of trauma and abuse. They have both academic and social problems, and often become victims of other children and the education system which cannot accommodate their needs because they fall through the gaps in service provision.

Children who are assessed as below normal intelligence or three years behind can get a negotiated curriculum plan. For children who are not three years behind, the alternative for extra help is the learning assistance program, which offers around one hour a week, one to one with the child, or the CIRI funding which is allowed for not longer than two years per child. That resource is very limited as well.

Children who are getting further and further behind in the mainstream education system are developing behavioural problems due to low self-esteem and have no sense of achievement due to not being able to complete set tasks. Several of our caregivers have noted that their children are far less stressed during the school holidays and have fewer behavioural problems and anger outbursts when they are not attending school.

In the area of mental health, there are very few professionals with a good understanding of the issues specific to children who are in care and how to treat them. When there are difficulties, our children are subjected to lengthy psychological assessments. These assessments can often go on for 12 months; and by that time the child's situation could often be different and another psychological assessment could be needed. These assessments are conducted in office situations, and during all of this time the child feels very different. We are advocating strongly for trained professionals to be able to offer therapy for children which is interactive, which is different, which is targeted more to the needs of the child and which is as normalised as possible, and therapy which is in the child's environment. This is all very expensive, and is certainly not offered in the current situation.

We would also like to see better training of professionals in the areas of separation, grief and loss, attachment and bonding, and identity issues. These are very pertinent to children who have been removed from their birth families. We have had very little success with the blocks of mainstream therapy currently offered for these children.

We would also like to express our concern about the lack of independent children's advocates. Children's advocates are needed to listen to children and to put forward their views. These people need to be highly trained professionally. Often our children will tell their caregiver one thing and tell their social worker another. It is very difficult to find out what the child really wants. The professionals often have a certain view of what is in the best interests of the child and often this is not what the child really wants. It is really hard to find out what the child actually wants. In some cases, the child will tell their caregiver that they do not want to have contact with their birth family, but they will tell their social worker that they do want to have contact with their birth family. This creates an enormous stress about trying to find out what the child really wants.

We also believe that a children's advocate needs to take on the role of advocating for the types of services that we think are necessary for children who are in care. We are concerned that the history of neglect and inaction by governments for children removed from their birth families is not perpetuated.

We are also aware that there is a lack of information in the community about the convention, and some ignorance and fear. If the convention is enshrined in law, we strongly recommend that a community education program be developed to dispel negative images and misunderstandings of the objectives of the convention.

Mr BARTLETT—You said that if the convention was enshrined in law that a community education program would be needed. Are you recommending enactment in law?

Mrs Morrison—Yes, we are recommending that.

Mr BARTLETT—I am interested in your response to article 32. You are concerned that children are employed to distribute newspapers, and you are suggesting that that is a breach of the convention.

Mrs Morrison—We are suggesting that children may be exploited, and that it could be viewed as a form of child abuse if pressure is put on children that this is what they need to do maybe even to meet their basic needs. In some cases it may be viewed that this might be part of the family income. That is our concern.

Mr BARTLETT—An alternative explanation, though, is that this provides an opportunity for young people to gain experience and to earn a bit of pocket money. That is not exploitation but part of their education.

Mrs Morrison—Certainly. That is fine if that is age appropriate.

Mr BARTLETT—So you are not against the idea as such?

Mrs Morrison—We are not against the idea as such, as long as it is age appropriate. We are talking about children as young as seven and eight who are collecting newspaper money—that is quite common in suburbia.

Mr BARTLETT—In response to article 3(1), on page 2 of your submission you raise what seems to me to be one of the central issues. You say, 'We are unclear as to who determines the best interest of the child.' Is it your view that generally it would be the parent who would be the best determinant of the child's best interest?

Mrs Morrison—We need to keep in mind that we are discussing children who are in care at this point. For us it is the myriad of professionals out there who want to determine what is in the best interests of the child. This can be the medical profession or the mental health profession or psychologists. It can be a myriad of people and it is very difficult at the end of the day to bring all these people together with a consensus on what might be in the best interests of the child. Often the child has a limited input into that.

Mr BARTLETT—The parent has a limited input as well, quite often.

Mrs Morrison—In the work that we do, birth parents are included in the decision making for the child.

Mr TONY SMITH—Are these children that you are talking about in care?

Mrs Morrison—Yes.

Mrs Braun—Often the parents will still have input even though the child has come into care. The difficulty lies where we have children under the guardianship of the minister, parental rights have been suspended and decisions about what is in the best interests of the child have to be made right from the beginning of the child's life to 18.

Mr McCLELLAND—How do you cope when parental rights have been suspended? Do you nonetheless try to give the natural parents the opportunity to have a say in what happens?

Mrs Braun—At that point they are consulted but the ultimate legal right lies with the—

Mr McCLELLAND—Yes. But nonetheless you try to hear their views?

Mrs Braun—Sometimes some of our children have parents that are not connected with them at all. That is not unusual.

Mr HARDGRAVE—You raise the spectre of back door adoptions too. What do you mean by that? How is that occurring?

Mrs Morrison—It has been my experience through our agency that we have had on occasions inquiries about private adoptions. Speaking from personal contact with at least two of those instances, the request was for us to negotiate or mediate an adoption between parties that the state was not privy to.

Mr HARDGRAVE—Has this got something to do with the fact that there is such a long queue for adoption generally around the country?

Mrs Braun—Yes.

Mr HARDGRAVE—What about the inconsistency of adoption laws from state to state? There are inconsistencies there, too.

Mrs Braun—Of course. I believe a national, consistent approach to the legal aspect of children under these circumstances should be given the utmost consideration.

Mr HARDGRAVE—Are you suggesting that, under the imprimatur of this convention, this particular course should be adopted?

Mrs Braun—Yes.

Mr HARDGRAVE—The other thing I want to pursue is the exploitation of young children in a commercial industrial relations environment. Mr Bartlett quite rightly pointed out, and you agreed, that children literally clamour to go to earn a bit of pocket money doing particular jobs. There have been some occupational health and safety aspects associated with selling newspapers in Brisbane, from where I come, with children in the middle of main highways at 6.30 in the morning selling newspapers. I think it is a practice that has now been, thankfully, outlawed.

I remember when I was 11—which is not too many years ago—that the bloke over the road had a leaflet drop business. I remember he took me out and literally dropped me in the middle of a suburb where I knew no-one and had very few support mechanisms. I was left there for several hours, half the day or whatever and I picked up some money. I was grateful for the money, but it was a really hard slog. I offer that as an observation, only because it seems to me that maybe you are raising the question of some sort of standardised wages and conditions for children involved in these things or that would be an anathema, too.

Mrs Morrison—No, it is not. It is the exploitation of children that we are concerned about and the fact that children may be doing this because of parents who are wanting their children to go out and earn money at an inappropriate age and the responsibilities attached to this. We did quote collecting newspaper money. The concern around that for us also was that other older children know that these younger children collect newspaper money as well. There is the opportunity for these children to be harmed by other children who take the money away from them as well. So, it is about exploitation. It is child abuse that we really are concerned about at this point and Aileen does have another point.

Mrs Braun—I would like to raise another point on that. I think there have been instances where children are going door to door selling lollies. Now, on the one hand we are saying 'stranger danger'—although that is not terribly in vogue at the moment—but on the other hand we are saying it is quite legitimate for children to knock on a complete stranger's door.

I would suggest to you that paedophiles in our community are quite in tune with young children going door to door selling lollies. I just quote that as a balance as to what you are saying about children's rights to be able to earn pocket money. Yes, certainly. Being probably a fairly articulate youngster at 11, you would probably know when you were in a safe environment or not.

Mr HARDGRAVE—Actually it probably never occurred to me.

Mrs Braun—That is right, because you probably never fronted that issue. But I would suggest that we do not really support children going door to door and selling, particularly under those sets of circumstances in today's community.

Mr HARDGRAVE—I do not want to labour this, Mr Chairman, but I think it is an interesting piece of evidence. You have kids who will be enthusiastic about learning and there will be amongst the value systems of some parents in some of our socio-economic groups an encouragement for kids to go and do that. But then you are raising issues of paedophilia and assault from other children to get the money off them. One suspects that they are themselves criminal law matters which would be dealt with within the current confines of the law.

Mrs Morrison—We would like to see our children protected in the first instance from that.

Mr HARDGRAVE—Your suggested form of protection in fact would be a prevention of them even acquiring the skills, the motivation or the experience of picking up the money.

Mrs Morrison—At least up to the age of eight or nine, yes.

Mr HARDGRAVE—I cannot say I disagree with that.

Mrs Braun—We are debating the age at which you should be allowed to do that.

Mr HARDGRAVE—I guess what it does come down to is a parental responsibility and some parents are not capable of exercising that responsibility. I do not particularly want to see my children wandering the streets selling something even for the school charity unless perhaps I was waiting out on the footpath. But I would like to facilitate them experiencing it. I guess what you are saying is that, because some parents are inadequate as far as their skills in that area are concerned, you would much rather see a focus on perhaps banning the practice.

Mrs Morrison—No, at an age appropriate level.

Mr HARDGRAVE—So there is no need for industrial relations laws or occupational health and safety standards on this.

Mrs Morrison—No.

Mr HARDGRAVE—It is more a case of age appropriateness.

Mrs Morrison—Yes.

Mr TONY SMITH—As long as the convention does not promote conflict between parents and children you would support it, is that right?

Mrs Morrison—Yes.

Mr TONY SMITH—I declare my bias here. You make a comment about overseas adoption. I am very sympathetic to that and I noticed your comment about it. For example, in the PRC there are orphanages where children are virtually starved to death. It is a terrible situation and there are many other examples across the board on other countries. Are you saying that we should limit the adoption of children from overseas?

Mrs Morrison—What we would like to see is far more education and training for people who may decide that this is what they want to do, because our experience in children who have been in foster care—and this is particularly children who are in long-term foster care and in cases of adoption—is that we have lots of adoptive cases on our files where we continue to support the family. For these children, just by the very aspect of their separation from their birth families—and I am talking about the children who are here—there are many issues for them.

Whereas the children who come in from overseas have lost their whole culture and their whole identity and there are many more issues, as these children get older the adoptive parents will be better equipped to keep the family unit together, because, as we all know, a lot of these overseas adoptions do break down when the children get to be 15 or 16. I think a lot of the reason behind that is because of the lack of support for the adoptive parents and the lack of ongoing training. We would like to see that the prospective adoptive parents are given a good training, a good training also about the culture that the child comes from and ongoing training and support.

CHAIRMAN—As there are no more questions, thank you very much indeed.

[12.07 p.m.]

REDMAN, Ms Julie Joy, Deputy Chairperson, Children's Interest Bureau Board, c/- Children's Interest Bureau, 10th Floor, CitiCentre, 11 Hindmarsh Square, Adelaide, South Australia 5000

Ms Redman—Just for the record as well, I think you have recorded it as the Children's Interest Board. The correct title is the Children's Interest Bureau Board. In my opening statement perhaps I can make some explanation about what the differences are.

CHAIRMAN—We have received the board's written submission. Are there any amendments or additions to that particular written submission?

Ms Redman—No, there are not, but I have brought with me a summary of the role of the Children's Interest Bureau in South Australia as it is one model of policy development and community education for children which you may be interested in. I have also brought some educational material that has been produced by the Children's Interest Bureau. I do not know whether the committee is interested to see some of that material.

CHAIRMAN—We will formally accept all of those as exhibits.

Ms Redman—There is a final document that you have been handed. I listened to the evidence of Tina Dolgopol earlier in the day and there was some debate about a reference that we made to this article in our submission. Just to clarify the issue really for the sake of Tina, I think there was some misunderstanding on her part as to what document we were referring to. This is the document that was referred to in her earlier evidence.

CHAIRMAN—Yes. This is where she said that she did not quite say that.

Ms Redman—She did not say that. You will see that she did, but in fact it was in a limited context of children having a say in medical issues.

Mr TONY SMITH—I cannot recall the precise question, but I just picked up the quote that you extrapolated in your article which suggests that she did say what you said she said.

Ms Redman—Yes.

CHAIRMAN—We will come to that in a moment. You are going to pick that up anyhow, are you not? Would you like to make an opening statement? In the context of the statement, I guess you will pick that anomaly up, will you?

Ms Redman—All right. I really believe that our document speaks for itself and I am quite happy to take questions on that. So that the committee is aware of the role of the Children's Interest Bureau in South Australia, it was started in 1983 and it is embodied in the Family and Community Services Act. At the back of the handout, you will see the actual section of the legislation—section 26—which established the bureau.

The bureau's main functions are to advise the Minister for Family and Community Services on policy issues in relation to children, to carry out research and to develop within the department the services for the promotion of the welfare of children and to monitor, review and evaluate the policies of the department.

Since the commencement of the bureau in 1983, it has evolved in its functions and until 1993 it also had a very strong child advocacy role with child protection matters which has now been removed from it.It now has two quite separate functions in that the Children's Interest Bureau Board is a community board, the members of which you will see on the second to last page of the document. It is a very multidisciplinary board and has members from the Aboriginal community, disability services and youth. We have four youth representatives on the board. We have people from the health sector, myself from the legal area and people from education.

We have an independent function in that we can speak quite independently of the Minister for Family and Community Services and we do hold community education programs and prepare submissions such as you have received today, which may not be in line necessarily with the views of the government of the day, but we have that independent voice. We are serviced by a team of four staff which are within the Office of Families and Children. Those staff are public servants and they actually provide support and policy advice to the department. It is now broadening into across-government policy advice and assistance. They also serve the independent board. So you really do need to see it as having different functions. So that is the position of the board.

You will see from our submission that we are very much supporting the establishment of an independent office for children at a federal level and at a state level. We believe that the present structure we have in South Australia—which has been quite unique really for so long—could be refined and that it could really be given a more appropriate place, not within Family and Community Services or the Office of Families and Children, so that it has more of an independent voice and also is able to enhance the rights of every child to have a voice.

It is particularly difficult at the moment with its placement within Family and Community Services because of Family and Community Services role in looking after vulnerable children and yet vulnerable children really do not have an independent body that they can go to when there is some conflict that might arise. So we are certainly interested in there being more of an ombudsman role somewhere, as well as the need for a national agenda and policy that can be coordinated throughout Australia.

Mr HARDGRAVE—That ombudsman role means somebody being involved directly in disputes which would mean a massive bureaucratic support, rather than a policy advisory role. That is what you are suggesting?

Ms Redman—We see that the federal office for children would not necessarily need to have that ombudsman role. Obviously we do not think a huge structure at a federal level is what is necessary, but there does need to be a children's ombudsman somewhere and that could be overseen by a smaller federal office for children with equivalents at state level. I think it needs to be seen as a federal system.

Mr HARDGRAVE—So a central agency policy advisory role would then devolve the practicalities out through existing systems.

Ms Redman—That is what I would see, but I think it needs to be strengthened much more than it is at the moment. There really is no voice for children or a complaint mechanism for children at the moment. So you would need to develop that.

CHAIRMAN—On page 5 of your submission you talk about the barriers. I am talking about within the family law jurisdictional area. Is that restricted just to South Australia or are you making a holistic comment on this one from a national perspective? If so, what are the solutions?

Ms Redman—The Family Court is, of course, a federal court so the problem is throughout Australia. I think we have to commend the Australian government for certainly improving the Family Law Act last year with the reform act. They have embodied new objects in the act which are straight from the Convention on the Rights of the Child. But we believe that it did not go far enough and that in fact it does not also embody the voice of the child and the free expression of the child.

It certainly has always had the paramount interests of the child and the best interests of the child as the focus, but as a child representative myself in the Family Court, I am well aware of the difficulty. When do you say that the voice of the child overrides the other submissions that you would want to make in the best interests of the child? I think there are difficulties with that model.

Mr McCLELLAND—Your submissions are very detailed and comprehensive. In summary, what you are saying is that the convention itself has had an impact on the development of policy and law in Australia. Even though it has not been implemented in its terms at a federal level, do you think it has, nonetheless, had a constructive influence or obstructive influence?

Ms Redman—No, I believe there has certainly been some move forward, but we do not think it is enough by any means. Part of the reason why it is not enough is that there is no coordinated approach. There is no national agenda or federal incentive at all to

take the convention seriously enough to say, 'Let's look at this in a coordinated way.'

So certainly we have some excellent steps forward. People are talking about the convention, but I think the education has been very limited and there is a lot of scaremongering around. I also agreed with the youth in that I think the convention speaks very strongly about the family as the fundamental group in society and that keeping the family together is important. We are only talking about children having responsibilities and rights evolving with their competencies. We are not saying that children have overriding rights at an early age at all. So I think the convention is an excellent document, and we should be taking it more seriously.

Mr HARDGRAVE—The coordinating role problem that you have identified anecdotally in the children's areas—I am sure you would agree—is a pretty standard problem across a lot of portfolio areas. States have different varieties of laws, and criminal codes are different. Would you agree with that?

Ms Redman—I would agree with that, but I think we are moving much more towards recognising that we can deal with it on a national level. There are quite a lot of areas. There is a model criminal code. Family law itself is an example of how we have progressed in that the states have now handed over their responsibilities for a de facto's children so that they can be embodied in the Family Law Act. So we now have all children, at the time of breakdown of marriage, being dealt with in the one court, whereas before we had it in a state court for de facto children.

Mr HARDGRAVE—We are all members of the federal parliament. Despite the fact that there are three of us from Queensland and a couple from New South Wales, we try to look at things from a national perspective. The thing you do find, of course, when you are dealing with state politicians and state bureaucrats always will be that particular state's bailiwick first and foremost, and that is fair enough. So what I am trying to work out in my own mind as part of this process is: how do you overcome this natural tendency of people from states to fight for their right to do things their way and not be told by Canberra? Do you have a best practice scenario? This is a federation of states argument.

Ms Redman—It is a very big question.

Mr HARDGRAVE—But it is a real question that we have to deal with. If we were to come down on the side of a central Canberra based agency, literally pushing the states around, it is not going to work.

CHAIRMAN—Let me just bring that down to a specific question. This is going to come up later on this afternoon in the Festival of Light submission—some of which you may have had access to, I am not sure.

Ms Redman—No, I have not seen it.

Mr HARDGRAVE—What the Festival of Light is saying—indeed, this is a view expressed by others, and we heard this yesterday in Perth—in part, is this:

1. Because the UN Convention on the Rights of the Child as a whole is biased towards the rights of children and against the duties and responsibilities of parents in rearing their children in a caring atmosphere. Australia should immediately withdraw from the Convention.

That opens it up a little. Perhaps you could make a comment on that and take up Mr Hardgrave's question at the same time.

Ms Redman—I just violently disagree with it. I think it is a wrong interpretation of the convention. As I said previously, this convention is very family based and family oriented. It is not saying, 'Children have rights superior to the family.' I think the emphasis is that we should—

CHAIRMAN—What particular article do you base that on? Do you base that on article 5 or the preamble?

Ms Redman—I will work through that. The preamble states:

Convinced that the family, as the fundamental group of society . . . Recognising that the child . . . should grow up in a family environment.

Article 2 says:

States Parties shall respect and ensure the rights set forth . . . to each child within their jurisdiction . . .

Article 5 says:

States Parties shall respect the responsibilities, rights and duties of parents . . . in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights . . .

So that is why our submission spent some time talking about—

CHAIRMAN—I will just interrupt you. The view of the Australian Family Association was that, in itself, article 5 has a qualifier. What article 5 says in total is:

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 or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child—

as you just indicated—

. . . appropriate direction and guidance in the exercise by the child of the rights—

and then it goes on to say—

. . . recognised in the present Convention.

This is where the critics say that the present convention excludes the parents.

Ms Redman—I can see how that interpretation could be put on it.

CHAIRMAN—Yes, that is their interpretation, but it is an interpretation that you do not share.

Ms Redman—I do not share it. I do not believe there are many people working in the area of children's interests and rights who would in any way see that as a fair interpretation of this document.

Mr HARDGRAVE—What is being done to dispel all of these urban myths that float around about the UN Convention on the Rights of the Child?

Ms Redman—Community education is somewhat limited at the moment, and I believe that we should have far more community education. I guess commissions such as your own are going to be very important, as to the attitude that you take, as to whether or not some of those fears are dispelled.

Mr HARDGRAVE—I do not wish to devalue you or any of the other witnesses who have a vested interest—that is, the people who are directly involved in this area—but there is so much knowledge about this convention there. Supposedly, so many people are being helped by all the various contributors to child welfare and child related matters, yet it is still out there. It is still pretty thick and fast on the ground that parents do not have a role anymore. It seems to me the practitioners, while full of knowledge, have not really passed it on through the community.

Ms Redman—Maybe we need to try harder. Certainly in South Australia it has been an issue that is continually debated in that we now have an Office of Families and Children, whereas before the Children's Interests Bureau was more of an independent body than it is now. It is part of an office that now includes families as well. I guess the state government saw that as a way of saying, 'Look, we are not saying children should be quite separate. We should see this in the context of the family.' I think that is devaluing children if you do not also say, 'Children should be listened to at any age.' At a certain age, what children are saying just has to be credible and has to be listened to in debate. It does not mean that it has to be overriding in any way; it just means that they should have full participation in the debate.

Just on our own board this year, we have had four young people—two Aboriginals and another two under the age of 18 were elected from the community—and their contribution to our board has been incredible. The contribution and their ability to debate topics has amazed me.

CHAIRMAN—As a practising lawyer in family law in particular in terms of legislative formulation, would you agree that, because there are so many question marks in so many quarters as to what this convention really means, it would be very difficult—perhaps even impossible—to have any sort of umbrella legislation which would clarify the situation, whether that be at federal level or at state level? In our case, we are a federal committee. Would that be possible or would we, if we attempted to do that, confuse the situation even more?

Ms Redman—No, I think the opposite. I think it would help the situation if there were a small body at a federal level that was seen as a commission for children, which was very much on policy and coordination and also very much part of the community education process. It would help to calm some of the concern that this was—

CHAIRMAN—That is the administrative side. What I am talking about is creating some umbrella legislation. Do you feel that that is possible also, or is it an administrative solution?

Ms Redman—I think you would need legislation to give any credence to a commissioner for children, for example. I would see that as legislation in some sort of a framework. I do not know how much more I can go with that.

Mr TONY SMITH—There is a body of quite respected opinion—I think it is a little bit more than an urban myth—which suggests that the convention has the capacity to, or arguably can, exacerbate ordinary developmental conflict between parents and children. So that is the argument; is it not? You can say, 'Well, we need to educate people that it does not do that,' but that is one side of the argument.

The other side of the argument is that the convention has the capacity to exacerbate conflict. If you go through the various articles, particularly articles 12 to 16, you see that that potential exists. There are arguments there which would suggest, for example, that in a dispute between parents and children, if there were an agency responsible for children, ultimately that agency might have to arbitrate that dispute. Thereafter, the child may have recourse to judicial or administrative procedures. That is there in the articles concerned. I see you shaking your head, but as a lawyer I can tell you that, if you had to argue that articles 12 to 16 did give those rights, I would find myself fairly comfortable with that argument because the articles quite clearly suggest that.

Ms Redman—I have to disagree with you, just from personal experience. I am dealing every day with conflicts between children and parents in the family law arena.

That is exactly what we are dealing with. Now that the Family Law Act has embodied some rights of the child into their objects, I do not think there are any more children jumping up and down saying, 'I need an overriding say in this.' The best interests of the child are always paramount. It does not mean that their rights and what they are saying are going to override parental rights.

Mr TONY SMITH—No, we are not saying that. The problem really is that somebody at some stage may have to decide, having regard to article 12 in particular, an issue where there is dispute between a child and its parent. That is the area of potential conflict that exists there. I think it is very difficult to argue against that because the potential is there. We do not have it enacted into our law. It is not part of our law. There are those who are saying it should be enacted holus-bolus. So the more cautious would say—particularly having regard to Teoh's case and the parameters that that enlarged upon—that we must be very cautious with these sorts of things in enacting them into law, as they are.

Ms Redman—Teoh's case did not say, 'Children have overriding rights.'

Mr TONY SMITH—I know exactly what Teoh's case said.

Ms Redman—I think that we are taking this to absurd lengths. All we are saying is that children have the right to be heard, to express their views.

Mr TONY SMITH—Yes, but what if a parent says, 'I don't want my child to be heard,' in relation to the age of consent, for example. What if he or she says, 'No, you are not to be heard on that issue because you are too young'? Then the child says, 'Well, hang on. Article 12(2) says that I have a right to be heard. I have been taught about article 12(2) at school. Therefore, Mum or Dad, I am going to speak to the children's commissioner about this, because I think I should be heard.'

CHAIRMAN—Let me just take that a bit further. Again, I want to quote from the Festival of Light submission. It says, in part:

> If Australia does not withdraw completely from the Child Rights Convention, then it should declare a reservation on Articles 12-16 and 28—

the point that Mr Smith raises is particularly in relation to 12—

> to the effect that Australia interprets these Articles in a way which safeguards the primary and inalienable rights of parents to make decisions in the best interests of their children, in particular in so far as these parental rights concern education, religion, access to broadcast, print and other media, association with others and privacy.

Do you think that is a falsely based assertion or do you think there is some merit in what that says?

Ms Redman—I think it is falsely based because I think their interpretation of articles 12 to 16 is wrong. This is not saying the child's rights are overriding; it is merely saying the child has a right to express an opinion and to be given information. I just do not know how you stop children doing that. I have got a 12-year-old child and, if they have an opinion, they have an opinion. Surely it is just good parenting to allow them to take part in discussion. I certainly am concerned about issues of pornography and access to the Internet and all those sorts of issues.

CHAIRMAN—But you would agree that, from what you have heard this morning while you have been sitting here listening to others and from the questioning, it is not quite as black and white as some might indicate. You take a particular view that legalistically it is very clear and that there is a very straightforward solution. Others take a rather mottled view of it. The difficulty for this committee is to come to a conclusion that will clear the way ahead in terms of some sort of clarification.

Mr HARDGRAVE—Do you think we need to define what is meant by articles 12 to 16 in particular, if they are the source or the basis of so many of the urban myths?

Ms Redman—Maybe that would help. I do think that it is not at all what the articles are intending and maybe we just need better community education—

CHAIRMAN—Is one element of the solution for us to go back to the architects of this convention and talk to them? There are various interpretations—we have heard them here today and we heard them yesterday in Perth—on these particular clauses. These clauses are the ones that were emotional and emotive in 1988-89 and, in some quarters, they are no less emotional in 1997 irrespective of the ratification of the treaty.

Ms Redman—This is a document that has to be read in context and that has to be read with evolving changing societal attitudes. I just think it is an excellent starting point. For us to go backwards and say that we should not be part of the ongoing dialogue would be a very retrograde step.

Mr TONY SMITH—If we are looking at article 5, for example, there are so many elements that you can break it up into. It says:

. . . in a manner consistent with the evolving capacities of the child, appropriate direction—

Article 5 has the capacity to permit an outside body to determine those things if the parents of the child say, 'We think that we are giving appropriate direction,' et cetera. Therefore, you have got the subjective and the objective situation, and it just opens up the door.

The other thing I want to ask you concerns the words 'capable of forming his or her own views'. You would know as a practitioner in the Family Court—and I do not

know whether you have practised in the criminal jurisdiction at all as well—that children are constantly being manipulated both by way of what they say in the courts and frequently by unscrupulous parents on one side of the case or even on both sides. They are constantly being manipulated—or attempting to be manipulated—to express a particular view about which parent they wish to go with and so on and so forth. Do you accept that there is a capacity to manipulate children to a particular point of view?

Ms Redman—I think it is probably far more limited than you are expressing—

Mr TONY SMITH—I am sorry, I fundamentally disagree with you. After 13 years in the criminal jurisdiction, I have to say that.

CHAIRMAN—Let Ms Redman continue.

Ms Redman—I think that is why the role of the separate child representative is very important in the Family Court and a similar model could be used in other jurisdictions so that the child has an independent voice. In that role we use psychologists and independent experts to try to determine whether there is influence from one party or another; so we can try to cut through some of that. It is just so important that children be able to have an independent voice so that we can determine whether there is manipulation going on or whether there are concerns.

Mr TONY SMITH—So that experts think they can.

Mr BARTLETT—Ms Redman, in recommendation 9 you highlight the need for 'sufficient financial, material and human resources' to address the needs of children and particularly in recommendation 10 you say that all governments and communities, as a matter of urgency, tackle issues of social, health, educational and legal situations for Aboriginal families and children. Clearly, the need to direct resources into those areas is a key need.

Do you concede that there could be a conflict between those two recommendations and recommendations 4 and 5, which deal with the establishing of commissions for children 'to carry out a wide range of functions to achieve these ends' and that that be duplicated at state and territory levels as well. That might lead to a fairly large and expensive bureaucracy which might eat up a lot of those resources that ought to better be directed into tackling issues you raise in recommendations 9 and 10.

Ms Redman—I just want a bigger pot, I guess—

Mr BARTLETT—This is the problem, of course, in a world of limited resources.

Ms Redman—We are not advocating a huge commission for children body, but I do think there has to be some body there to coordinate it.

Mr BARTLETT—But if it is a commission for children with a wide range of functions and there is a federal commission and then state and territory commissions, is it not a possibility that that would be a fairly expensive operation with all the attendant bureaucracies and assistance to back that up?

Ms Redman—If you would like us to, we could put to you a more specific model because we have not tried to do that. This is obviously a very general recommendation.

CHAIRMAN—Would you like to take that on notice?

Ms Redman—If you would like us to, yes.

Mr BARTLETT—There was a suggestion in one submission yesterday that it might be done much more economically with an office of children attached to the government at a federal level and perhaps at state levels. That would be on a much more smaller scale with a much more limited operation, but that would still oversee policy initiatives to ensure that they were compatible with upholding the main principles of the convention. Would you be happy with that sort of arrangement?

Ms Redman—It would not be ideal because I think we see the independence as being very important. But if we had to take second best, that would—

CHAIRMAN—With that particular submission—and we have heard it again this morning—the emphasis is on small and the emphasis is on advisory as against investigative capacity. You still want some investigative capability but not necessarily in that office. It could be done at an ombudsman—

Ms Redman—Yes, that is right. If there was a role for children within our own ombudsman function here in South Australia, that may well be sufficient. I think what you are suggesting is more in line with the recommendation of the Australian Law Reform Commission's report *Children and the legal process*—

CHAIRMAN—And yesterday it came from the College of Paediatrics. But it seems to have a reasonable basis on which we could build. I am not saying we are going to go that route, but it is a start—

Ms Redman—I think the placement of it, depending on where you are actually going to put it, would be very important. I do not think what we have here is ideal, which is with Family and Community Services. I think it needs to be either with the Prime Minister or Premier—

Mr BARTLETT—But given that that might make more resources available for these key issues of health, education, social disadvantage and so on, that would seem to be a sensible approach, wouldn't it?

Ms Redman—Yes, as a fall-back position.

Mr HARDGRAVE—Mr Chairman, just one last reflection, if I may: do you think perhaps this charter, which has been written so broadly because it has to fit into so many different value systems in the international context, could be a case of it meaning different things to different people or perhaps all things to all people?

Ms Redman—It is not a black and white document; it is a document for dialogue. I think we need to use it as best we can within our Australian context.

CHAIRMAN—Thank you very much indeed. If we could have some further written comment on that model, that would be very helpful. We will adjourn the committee now until 1.10 p.m.

Luncheon adjournment

[1.15 p.m.]

RUMPE, Mrs Inta, Administrative Officer, Ethnic Schools Association of South Australia Inc., Robson Road, Hectorville, South Australia 5073

CHAIRMAN—Welcome. We have received your written submission dated 27 June. Do you want to make any amendments or additions to that submission?

Mrs Rumpe—No.

CHAIRMAN—Would you like to make an opening statement?

Mrs Rumpe—Yes. Our submission is in response to article 29 which states that:

1. States Parties agree that the education of a child shall be directed to:

. . . .

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, . . .

In addition to the home, it is the ethnic schools sector which provides formal and structured support for the maintenance and development of a child's cultural identity and language. We see that it is the ethnic schools which provide a high degree of linguistic and cultural authenticity, as the languages being taught by them are used naturally by their communities and are in their proper socio-cultural context.

Deviating from that, we would just like to add that it is realised that in a practical sense it is not possible for the existing institutions—that is, the education departments of the states—to provide the language that every child comes to or brings with him, either through his ancestry or on arrival in Australia. We see that this is the role that the ethnic schools fulfil.

CHAIRMAN—In the submission you refer to a piece of legislation that went through the federal parliament last year and you say:

. . . clause 65 which proposes broadbanding of certain financial assistance paid to government schools.

And then you go on to say:

For the reasons above, if the Australian Government is to be seen as being genuine in its commitment to the development of the child's own cultural identity and language then: "The Commonwealth needs to ensure that the ethnic schools sector is formally recognised as a complementary languages and culture education provider . . .

Would you like to expand on that a little more? What exactly do you mean by that?

Mrs Rumpe—In South Australia, ethnic schools are recognised as a complementary provider of languages and cultures in the sense that the Ethnic Schools Association is the representative body of the languages and culture providers. There also exists an Ethnic Schools Board, which is an advisory committee to the minister for education in this state and is responsible for the registration and accreditation of ethnic schools and their teachers. When the state receives funding under the various Commonwealth programs, it is the Ethnic Schools Board which then administers the allocation of those funds to the ethnic schools sector.

Our concern is that there are no mechanisms in place in the sense that at the end of the year when accounting is being done from the state to the Commonwealth to say, 'All right, we received these funds under the community languages element programs, and ethnic schools are seen as being the providers of the community languages element, how much of that money in that state has gone to the community languages element from that education department?' The decision has basically been left to each state and territory.

We, in South Australia, are in a very privileged position because we have very active support but, from a national point of view—and we as an organisation are involved with other ethnic schools associations—we are fully aware that this is not happening in other states and territories. Therefore, if we are saying that at a Commonwealth level we should be equitable to all, this is not occurring.

With respect to broadbanding, the concern is that it is one bucket and then the states decide how much of that funding is to go to community languages and how much is to go to what, under the National Languages and Literacy Institute policy, came to be known as languages of high priority, for which the states are, to some extent, given the funding. Under this broadbanding arrangement, the decision as to where those funds will go is made at state level. In other words, if the state or territory decides all of it is to go to the priority languages, then the ethnic schools in those states and territories can lose out altogether.

CHAIRMAN—Yes, but the bottom line in this convention is that under article 29 there is a general provision to that end, but in the Australian context it needs to be and should be optimised. That is basically what you are saying, isn't? it

Mrs Rumpe—Yes. It should be optimised, and I guess to some extent it should be formalised so it is not left to the discretion of various states and territories as to how they treat this issue, because a family alone cannot teach them.

Mr BARTLETT—This is a difficulty, though, within our federal system where the responsibility for education is a state responsibility. The federal government gives funding to state governments—and, at the moment, increasing funding—for education, but it is the

responsibility of state governments to determine how that is spent according to their priorities and the perceived needs.

Mrs Rumpe—We fully understand that. That is the reason the situation exists as it does.

Mr BARTLETT—So you would advocate, in fact, an increasing centralism in educational administration?

Mrs Rumpe—Whether it is advocating an increased centralism or whether it is simply brought into the act or the bill that, if moneys are given for specific things, the state or territory should be accountable for saying that the money was spent for whatever purpose it was given.

CHAIRMAN—Okay. That was short and sharp, wasn't it? You took the shortest time today. Thank you very much.

[1.24 p.m.]

McINNES, Ms Elspeth, Co-Executive Officer, National Council of Single Mothers and Their Children, Torrens Building, 220 Victoria Square, Adelaide, South Australia 5000

CHAIRMAN—Welcome. We received your submission dated 21 April this year. Are there any amendments, additions or omissions to that written submission?

Ms McInnes—I think I could elaborate on that submission quite considerably—it covers a fair bit of ground—

CHAIRMAN—We will do that in a moment. Have you any editorial changes to the submission?

Ms McInnes—No.

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

Ms McInnes—Yes. Two of the main issues—I have raised them here twice—are child sexual assault and the abuse of children, particularly around the Family Court. With both those issues there is a link to the current criminal provisions, particularly the evidential provisions relating to children as witnesses in criminal proceedings when they are victims of assault. This has ramifications for the way that instances of allegations of assault are dealt with in the Family Court; namely, that current legal thinking requires that children appear as witnesses—that is, with adult status—in courts to give evidence on the same terms as any other person who alleges a crime has been committed against them. Yet, the legal understanding of children's evidence is that it is not as adequate as that of an adult. Therefore, if it is uncorroborated it needs to be discounted. It is seen as unsafe to convict on the uncorroborated evidence of a child alone.

Given that sexual assault particularly is a private crime that is usually denied, and that it is only in some instances that it leaves any forensic evidence, children are routinely unprotected by the criminal jurisdiction where certain provisions—such as no witnesses and no forensic evidence—apply. This has ramifications in the Family Court where no evidence is able to be put that a criminal prosecution has succeeded in the matter. In that case the child's statements are again able to be discounted, particularly when there are disputed views, and particularly where there is no forensic evidence. So we have a situation where the children of people who have been through these processes that we see are still in situations of jeopardy and that is of great concern to us. It rolls right through the legal system.

Mr TONY SMITH—You have raised a couple of very interesting areas that I have a particular interest in. In terms of corroboration, are you talking only about sexual

cases?

Ms McInnes—Yes.

Mr TONY SMITH—Just tell me if you can about the South Australian situation. Do you understand the committal proceeding process and so on?

Ms McInnes—I do, yes.

Mr TONY SMITH—In cases of sexual interference with children, are the children interviewed on video by the police and does that then become evidence of the fact as far as the committal proceedings are concerned?

Ms McInnes—It is my understanding that that is not the case. They are interviewed on video and that is usually done with trained child protection workers and police present where there is reason to suspect a crime has been committed. Where a child is under seven and there is no corroborating evidence and no forensic, physical evidence, the usual course of action is not to proceed with a criminal course of action.

Mr TONY SMITH—Is there an actual directive to that effect or is that written into the—

Ms McInnes—No, that would not be a directive, it would be I suppose, a convention.

Mr TONY SMITH—Or is it a discretionary thing?

Ms McInnes—Issues are run by the Department of Public Prosecutions in South Australia and Mr Rofe has been publicly quoted within the last month saying that there is a concern with the processes around dealing with child sexual assault, particularly in families, and proposing a diversionary system away from criminal prosecution more towards a rehabilitative and therapeutic approach for family offenders in children under seven where there is no gross evidence.

Mr TONY SMITH—What I am interested in particularly is that I think you said that there is no evidentiary process whereby a record of interview between a police officer and the child by way of video is admissible as evidence in chief in the committal proceeding. Is there no such process? There is in Queensland. In Queensland, we have section 93A of the Evidence Act which permits a child to be interviewed on video. That evidence then becomes, generally speaking, the prima facie case, so that accused are invariably committed because the children are allowed to be cross-examined in the committal proceedings on video but they do not have to repeat the evidence again because, as you probably know, the test at committal is could a jury reasonably instructed convict—not would, but could. Generally speaking, that is a great process for getting the

process into the higher court for the formal inditement.

Ms McInnes—The concerns I am raising are prior to the committal proceeding. It is that choice of whether or not we proceed to even the committal stage. In terms of when the video evidence is allowed at the committal hearing, I could not be definitive about that. I am not a lawyer, but I do know that the complaints are looked at by the Department of Public Prosecutions to determine whether or not they will proceed to a committal and it is at that stage that cases are particularly vulnerable to dropping out.

Mr TONY SMITH—They do prosecute in cases involving children under seven in Queensland, but convictions are, for obvious reasons, very hard to secure. What I think is important—and you may well agree with this—is that while convictions are hard to secure, it is important for the law to take its course.

Ms McInnes—I would agree with that. I would prefer to see a system much as you say where a forensic interview is conducted with the child under control conditions which preclude leading questions, et cetera and that that becomes the evidence in chief and that the child itself, however, is not required to appear in court to be cross-examined on it. The investigator who has decided that an offence has taken place, is the person who answers that in court, with the child's record of evidence being a text as it were, to be critiqued, interpreted, argued about, but it remains and stands simply as the text of that child's accounts of its experiences.

Mr TONY SMITH—So you are arguing for no cross-examination in court?

Ms McInnes—Of the child in court, correct. That system applies in Israel where the examiner of the incident can decide whether or not the child will be made available for court processes and that is based on whether they believe the child is capable or whether it is meaningful for the child to take the stand. Obviously, it is not meaningful for a three-year-old to take the stand. My argument would be that a child's evidence could be viewed in much the same way as the evidence from a corpse in court. A corpse cannot speak but it can speak through interpretation of forensic evidence. Similarly, the fact of the child's statement is the fact of the child's statement. It could be attacked or defended around how it was taken—the processes for taking it—and the person who is arguing for particular interpretation and conclusion arising from that evidence can be, again, critiqued, cross-examined or otherwise. In cases where there is a reasonable chance that the child can appear in court, the person who heads that investigation can make the child available for it.

Mr TONY SMITH—You are saying that this is where there is no evidence of, say, penetration and you have no other evidence, other than an allegation, that something happened?

Ms McInnes—Yes. For example, a three-year-old who has made statements

indicating that she has been masturbated over. There is going to be no evidence there, except what the child says and there are going to be no witnesses. But you have got a three-year-old who is making statements or behaviours in that way. How do you deal with that? And these are the cases, particularly where they are in family, where there is no evidence of physical traces of human being that can be determined.

What we are doing at the moment tends to leave the child unprotected, because we cannot proceed with the prosecution, we cannot proceed with therapy and we cannot proceed with safety procedures. For instance, if the family splits up as a result of the discovery of the abuse, once again, in the Family Court processes, the same conundrums apply. However, the problem is even worse, because that court is not set up to determine whether or not an offence took place.

Mr TONY SMITH—You said before—and I may have mistaken the note—that no evidence of the conviction is admissible in the Family Court. Did you say that?

Ms McInnes—No, I did not say that. If there was a conviction, then there is, of course, some evidence that there is a concern.

Mr TONY SMITH—Secondly, even the fact of a charge would be admissible. If the process had gone through and he was acquitted, the fact that a prima facie case was found at committal stage would be admissible evidence in the Family Court, I am sure.

Ms McInnes—It would. However, as I am saying, a great many of the cases drop out before there is a committal. There is a decision not to proceed with the committal because there is no real prospect or sufficient evidence—for example, in the case of the three-year-old that I mentioned before—beyond the word and indications of a three-year-old to therapists or to the child protection workers.

Mr TONY SMITH—There is the downside, is there not and perhaps there is one thing worse or at least as bad as abuse of a child and that is an innocent person being convicted of same and sent to prison.

Ms McInnes—I would agree with that and my focus, in this inquiry and in the paper I put forward, was around the Family Court process, whereby, currently, where there are conflicting allegations, there is nothing to prove and there is the additional concern that, in divorce, false allegations of this nature are more likely. That is a common view, although it is not proven or sustained by research.

Mr TONY SMITH—Can I just stop you there. There is a comment in a book written by Mortimer QC. John Mortimer was the author and writer of the Rumpole series but he practised extensively in the family jurisdiction in the late 1960s and 1970s. He made a comment that, during that time, every imaginable allegation was made in contested divorce matters but, rarely, if ever, did he strike an allegation of interference. So that, in a

sense, is evidence. He said that now it is the first allegation that is made, when allegations stretch to things such as, 'You didn't clean the bath,' as being an allegation that should go to mental cruelty or something. Do you see the point? There is some evidence from him saying we now have it, whereas we did not have it even with all the allegations that are made, but now it is the very first allegation that is made.

Ms McInnes—I would point out that until the Family Law Reform Act 1995 there was no directive within the face of the act to refer to the issue of violence as relevant in any way to the interests of the child.

Mr TONY SMITH—I am talking about sexual interference.

Ms McInnes—Even in that case—I classify sexual interference as a form of violence. The Family Law Act 1975 had no specific reference in the face of the act as to whether or not there had been any kind of risk of violence in the family. That does now exist.

Mr TONY SMITH—But people did raise it.

Ms McInnes—People did raise it, but they were advised by their lawyers that it was not relevant to what was being raised in the court, particularly around domestic violence. If there was no back-up evidence to sexual assault—

Mr TONY SMITH—If there were matters going to custody, I can assure you that it was raised regularly in custody and access matters.

Ms McInnes—That brings me back to the issue around where there are conflicting allegations and there is no proof. What we are doing in the Family Court at the moment, from what we are seeing, is saying, 'Let the child be in contact,' often without satisfactory supervision arrangements as there are very few supervised access and handover centres. We are at the moment saying, 'If we can't prove it, we will err in favour of continuing contact.'

The problem I have with that process is that if the child is being interfered with then it is the child that bears that risk alone, whereas were we to say, 'We must protect the child as a priority,' we would say that where there is some doubt, there should be some supervision. If it were on a user-pays basis with an income tested subsidy, and both parties were bearing a cost towards that safety, then it may be that if there were allegations of a frivolous nature which were entirely unfounded, they would not sustain a hip-pocket nerve.

However what we are seeing at the moment, after the processes are gone through and the people who are coming to see us are in therapy and are really not seeking anything beyond healing, is that their continuing concerns about the sexual safety of their

children is repeatedly evident. On a weekly basis, I get new clients with this kind of complaint. Sufficient to say that it is happening. It is unacceptable, and a great deal of distress is occurring.

Mr BARTLETT—Ms McInnes, on page 1 of your submission you referred to parents 'physically assaulting their children in the name of parental discipline'. I take it, then, that you object to any forms of physical punishment at all for children?

Ms McInnes—Yes.

Mr BARTLETT—On what basis? What evidence do you have that that is harmful?

Ms McInnes—The principal problem with it is that it places children in the position of lesser citizens—citizens who are able to be assaulted; who can, under certain circumstances, justifiably be assaulted.

Mr BARTLETT—You are assuming that assault then is synonymous with any use of physical force at all?

Ms McInnes—That is the state of the adult law. Were I to even use threatening words to you, I would technically have committed an assault if I caused you fear. If I tapped you on the shoulder, were that to be threatening to you, and perceived as threatening to you, I would technically have committed an assault under the law. Whether that would in fact be prosecuted and convicted is another question. It is whether we use the law to establish principles of conduct.

The concern I have with saying 'reasonable punishment' is that we then debate what is reasonable when a child assault occurs by a parent. At the same time, we are not putting out an example to children that violence is not a way to solve problems.

Mr BARTLETT—I put it to you, though, that there is a difference between violence and use of physical coercion.

Ms McInnes—I do not think so. To me, violence is violence. It is perhaps compounded by the fact that a 200- pound person can act in a violent way towards a 40-pound person and that that not be considered a prosecutable offence.

Mr BARTLETT—I choose to differ with you on that.

Ms McInnes—Fair enough.

Mr BARTLETT—If it is administered in love and with due restraint, it is actually not violence. In terms of the convention then, you would argue that the right of the parent

to punish their child in love, albeit using some degree of physical force, ought to be restricted?

Ms McInnes—Absolutely. I would argue that parents have such enormous powers of control over their children in terms of the facilities for their daily life, let alone their enjoyment of that life, that parents have enormous powers to be able to restrict children's access to things that they might enjoy or to use other kinds of parental discipline.

Mr BARTLETT—So you are saying that depravation or psychological coercion would be better than physical coercion?

Ms McInnes—I would not like to go as far as saying psychological coercion was okay or that depravation in any way that threatened the child's wellbeing was okay. I am talking about things like restriction on access to TV hours, restrictions on access to sweet treats or promised outings and restrictions on simply being able to participate with the family until the child can behave in a way that is acceptable to the family. These are a huge range of options available to parents. I believe we need to be leading with the principle that hitting children does not solve problems for children or anyone else.

Mr BARTLETT—If the convention were to be enacted into legislation in Australia, would you then advocate that this be included in that legislation?

Ms McInnes—I would.

Mr BARTLETT—Could you understand that that would cause considerable concern to a number of parents who feel that the convention is a threat to their parental rights?

Ms McInnes—I do. I do understand that. I would go on to say that the spectre raised when one proposes a law such as this is we would have to gaol half the population. My rejoinder would be that, in real life, between adult assaults with the laws that we have, only quite serious assaults are in fact prosecuted. But it does set a principle that we as adult citizens cannot go around threatening or acting violently towards each other.

Mr BARTLETT—But surely the principle is that parents raise their children in love and discipline them in love in order to teach them the difference between right and wrong.

Ms McInnes—I agree. In an ideal world, a world that you might live in and other people might live in, this would be the case. But the reality is that there are abusing parents. The loophole of this act being done in love allows abuses to be perpetrated under that banner.

Mr BARTLETT—But surely those abuses can be perpetrated regardless of the

letter of the law in any case.

Ms McInnes—They can, but it does set a principle. It sets a standard of conduct towards children in Australia that says that we do not agree with hitting them.

Mr HARDGRAVE—Looking at this convention and the fact that it has been around for seven years in a ratified sense and probably 10 or 12 years or more in its debating sense, we have obviously let down the side a bit on the current laws relating to penalties for those who are involved in the physical assault of children. Would you agree that the penalties are not sufficient?

Ms McInnes—I do not know that the penalties are not sufficient. I would probably be more concerned about the processes of implementation and the resourcing of child protection services. We have had people ring us to say that they have just rung Family and Community Services, which is the child protection body in our state, to report a child's disclosures of assault to which they were responded, 'Well, they probably picked it up from TV. We're not going to do anything,'—click.

You start to see that there might be a connection between the level of resourcing of departments who deal with child welfare and the quality of service that they are able to provide and the degree of protection that they are able to extend to children. We have had huge cuts of millions of dollars and hundreds of staff out of this particular department in South Australia in the last couple of years. There has been a deterioration on the basis of the presenting clients we have to us in terms of the quality of service. I do not think the penalties are the issue. I do not think the laws are the issue. I think it is about resourcing and taking seriously the implementation of the laws that we have.

Mr HARDGRAVE—Are you saying that there are a lot of unreported assaults as a result of the system?

Ms McInnes—There are unreported assaults but there are also reported assaults that are not acted on to the extent that reporting is seen to be a useless exercise.

Mr HARDGRAVE—Would you suspect this area of child abuse by neglect, by sexual misconduct or by whatever means is the most glowing indictment on Australia's reaction to this particular convention?

Ms McInnes—Yes, I would. The situation of children in terms of abuse, neglect and sexual assault is appalling at the moment.

Mr HARDGRAVE—So we need to resource it more rather than penalise those who do the wrong thing?

Ms McInnes—We already have penalties in place for people who do the wrong

thing. The problem is encouraging those who might be able to do the right thing if they are given some support in the process, such as neglectful parents. Many of those do not set out to make their children's life a misery. They do so because they have not really got their life supports or life structures such as secure housing, adequate income and those kinds of issues which mean that a child is leading a settled, stable, happy and secure life, which is the ideal obviously.

The laws are one thing. I would like to see physical assault of children banned. That is the only real change there. In terms of having family and parental support services in place that are actually able to deal with those families needs of having adequate income and housing for people who are in need, those kinds of supportive structures mean that families can in fact care for each other in ways that we would like to see.

Mr HARDGRAVE—You would not be the first Australian to prescribe Utopia. What you are saying is right and fair, but we all know that the abusers of today tend to have been the abused of yesterday. There is a cycle that is created. I put to you that the penalty structure, the sanctions, the deprivation of access to children or whatever and the gaoling of someone who abuses—in other words, the taking away of something from someone who abuses—not just simply assists the abused today but also breaks the cycle for tomorrow. That is why I wanted to get your reflection on the penalty side of things. Do you see scope for improving or for more defining of the penalties?

Ms McInnes—Yes. The model criminal code is a step toward that process. If we have at least national uniform standards, we are more able to cooperate across jurisdictions. That is one aspect. In terms of the cycle of violence, I would utterly agree that an unaddressed issue in childhood is going to create, in some cases, problems for the person in adulthood either as a victim or as an abuser. I would see both as outcomes of histories of abuse. I would propose that a lot of the people that are the targets or the clients of welfare services and child protection services are people who have never really had adequate services to recover from and be protected from past trauma. I think that we are dealing with at least a good part of our nation as traumatised people.

Mr HARDGRAVE—So this convention, if you like, provides a benchmark, which is a term used a lot in submissions to us, for action?

Ms McInnes—Absolutely. Child protection and an address to violence in families is perhaps the single biggest target that we should be going after in improving the situation of children. I have put in our submission that a children's ombudsman or, as others have proposed, a children's commissioner is something that is needed to make sure that children have some area of redress or some avenue to secure action of their behalf when the system has failed to deliver.

Mr TONY SMITH—I would like to expand a little more on what Mr Hardgrave said. It has been said by a very wise judge that, if a person is going to goal—and,

generally speaking, people who commit offences against children are going to go inside no matter what, even if they are first offenders—the fact of going to goal is almost inherently present in every sexual offence involving a child. If that factor is already there, the duration is irrelevant. What we need is the process. We have to get these people convicted. The trouble is that too many of them are found not guilty because of the process.

Ms McInnes—I agree. That, again, would be the thrust of my argument. It is not that we need more draconian laws. It is not that we need to risk sending innocent people to gaol. It is simply that we need to do a lot more work around the evidentiary components in dealing with assaults on children, preferably as a uniform national standard or approach. I understand that there is some work going towards that.

I pulled out a *Children as Witnesses* conference proceedings from 1988. The same stuff I am talking about is all in there. It is debated every 10 years. It is recycled. The proposals are made. The proposals are put on the backburner. The children continue to suffer.

CHAIRMAN—Thank you very much. That was very good evidence.

Ms McInnes—Thank you.

[1.52 p.m.]

HOFMEYER, Mr Christopher John, 29 Penang Avenue, Colonel Light Gardens, South Australia 5041

CHAIRMAN—Welcome, Mr Hofmeyer. In what capacity are you appearing before the committee?

Mr Hofmeyer—As a private citizen. I was not ready to speak; I was just coming to listen. From my point of view as a non-custodial parent, what happened in my situation, and what often happens from my understanding, was that from the time of separation I lost contact with my children—other than when the other parent allowed me—until I could invoke the judicial system to come to my assistance or, more to the point, my children's assistance. Until that time, the children are denied contact with the non-custodial parent.

In my case, I had significant contact with my children and, for about three months, I was seeing them for about nine hours a week. Prior to that, I saw them every day of their lives, and every day I had off I saw them. I work shift work, which gives me a lot of opportunity to see my children. So the initial thing is that my children are denied the level of contact they had.

Then at the same time I am automatically denied any decision making input into their lifestyle. I am expected to pay maintenance. I have no problem with actually paying maintenance but, when I do have contact with my children, I have to provide my own clothing. I pay maintenance for clothing, but I never get access to that. I actually have to provide my own.

My concern about that is that it is a duplication of resources. There are a lot of issues about poverty with custodial parents. In this situation, the custodial parent is invoking more opportunity for poverty for my children because I am having to also duplicate resources. I am denied access in terms of resources for the property and so forth until we have a property settlement. That reduces my opportunity to provide for my children. Again, their best interests are denied.

There was mention earlier today about the media. One thing that concerns me is that the media has a very strong stereotypical approach to men—I do not know if I am supposed to say that. What concerns me is the recent issue about the supporting of divorces. I belong to a group and my group was asked what our opinion was about whether it should be advertised or reported. In terms of accountability of the judicial system, we thought it was appropriate, but that point of view was not put into the paper. Only the other point of view was put in.

My concern about that is that the community does not get a balanced view of what really does happen in family law and how men are actually perceived as non-custodial

parents. I have actually submitted a second submission, and in that submission I provided a couple of articles of non-custodial mothers and fathers, and they both suffer the same. My concern is that, when a non-custodial parent suffers, it has a direct influence on the children.

With the whole issue of conflict, the thing that really gets up my nose is that from the time that I separated, I was treated like a bad person, like a criminal, like I do not have any rights myself. Subsequently, my children do not have any rights, and I just do not understand how the system works that way.

Again, in the submission that I put forward, the group that I am in put forward a couple of documents that pertain to different ways the judicial system handles this. One is mandatory mediation and the other one is abuttal presumption of joint custody, where it is not automatically assumed that one person is pulled out of the system and has to fight their way back in, but they are automatically equal in the system and the children are seen as the prime focus.

The other thing about the system is that it seems to me that we are not treated as individuals. I am treated as part of a global community. I am a registered nurse with 13 years experience. I have a whole range of nephews and nieces. I have extensive knowledge in how to care for people, yet I am treated like a stereotypical male who does not care about his children.

CHAIRMAN—Some of these issues continue to come up before this committee. We can’t, as you will understand, get involved in individual cases, but matters of principle need to be raised. There is a specific ongoing committee of the parliament looking at all aspects of the family law legislation.

Mr Hofmeyer—I am aware of that.

CHAIRMAN—Of course, within the government parties, we have yet another government committee looking at the same thing as well. I will ask my colleagues if they would like to ask a few questions. Tony Smith might like ask questions. I would just advise you to also get in touch with the secretariat of that ongoing committee, the House of Representatives Committee on Legal and Constitutional Affairs. The secretariat could provide you with some contact points for that.

Mr Hofmeyer—I have written letters to the Prime Minister, the Attorney-General, the Treasurer and so forth and I have had extensive contact with my local MP and provided all these—

CHAIRMAN—Who is your local MP?

Mr Hofmeyer—Andrew Southcott. I have provided him with numerous articles

and so forth and have asked him to pass them on. As I said, I have made mention of numerous articles in my following submission. I do not know whether you have that or not. I have asked that they be tabled, because I think they are fairly important documents.

CHAIRMAN—Of course they are important documents; all of these are important. If the secretary could take a telephone number, she can get back to you with some contact points for you, because I think you need some assistance. Andrew Southcott has undoubtedly done that, but what you are saying is that you have not had any feedback.

Mr Hofmeyer—I have written a lot of letters to politicians but I get very little information that actually answers the questions.

CHAIRMAN—That is the nature of the beast.

Mr Hofmeyer—Unfortunately, yes.

Mr TONY SMITH—You have just posed the sort of almost insoluble problem that arises when breakdowns occur. Effectively, you cannot do what Solomon was going to do—cut the children in two. It is a question of how you work it out. Do you perceive that really it is almost an insoluble problem?

Mr Hofmeyer—I know what you are getting at, but I suppose my concern is that, from the moment of separation, it was not treated as an individual case. It was like a global thing, where I was just automatically excluded. Surely there could be a system put in place where, from the moment of separation, my wife and I front a panel or a psychologist or something and from that instance some more assistance is put in place. As I said, for two or three months, I only saw my children for about nine hours a week. You just cannot do that. You have to be more consistent in terms of what is best for the children.

Mr TONY SMITH—That goes to court time, doesn't it? You couldn't get to the court to get your application in quick enough and all of that?

Mr Hofmeyer—No, it took eight weeks before we got to court.

Mr HARDGRAVE—It also goes to the systemic problems. Mr Smith and me—I am not sure about Mr Bartlett necessarily—participate in that government member's committee and it is obvious to us that 40 government members have told basically very similar stories to the one you have told. The story is that essentially, upon separation, you are reporting it to the authorities, the Department of Social Security, and you are automatically sent off down certain paths. So you are identifying systemic problems within the bureaucracy that may be contravening the spirit of this particular charter.

CHAIRMAN—The bottom line for a lot of this, as Mr Hardgrave is implying, is

the Child Support Agency. This government committee is putting a lot of work into the failings of the Child Support Agency, which are many—I do not have to tell you that. They go far wider than the processes of the CSA; they get into things that you have mentioned, like the maintenance formulas and all this sort of stuff that needs to be covered. That is an ongoing process within the legal and constitutional committee of the House of Representatives. Within the government parties it is ongoing, as well, with a particular push in terms of all of the problems associated with the Child Support Agency.

Mr HARDGRAVE—I would urge you to talk to Dr Southcott to pass your information on.

Mr Hofmeyer—Can I just clarify about the child support? I pay a certain figure; I could argue that it is too high, but I do not really have a problem with that. I would prefer it was not that high—

CHAIRMAN—A lot of people have a real problem with the formula.

Mr Hofmeyer—Certainly, but my point is that the best interests of the children are not considered because I do not get access to anything that ensures that the maintenance I pay benefits the children. That is my beef. If I paid half my pay that would not be anywhere near as annoying to me as the fact that I get no say in what actually happens to that maintenance. That, to me, is ludicrous.

CHAIRMAN—I understand. Cheryl will give you some contact for legal and constitutional. Get in touch with Andrew Southcott's office and mention that you have appeared before this committee and that we have emphasised his role in making some communication possible for you, particularly with the government committee which is looking at a wide range of issues associated with family law.

Mr Hofmeyer—I know he is on a committee pertaining to family law, but he says it is a limited brief, though.

CHAIRMAN—It is the Child Support Agency, but the Child Support Agency has a very wide ramification, as I do not have to tell you.

Mr Hofmeyer—Thank you very much, I appreciate your time.

[2.08 p.m.]

BUCHANAN, Ms Fiona, Member, Children and Domestic Violence Action Group, PO Box 221, Rundle Mall Post Office, Adelaide, South Australia 5000

OLAFSEN, Ms Lisa, Member, Children and Domestic Violence Action Group, PO Box 221, Rundle Mall Post Office, Adelaide, South Australia 5000

CHAIRMAN—Welcome. We received your undated written submission in the secretariat on 2 April. Are there any additions or amendments to that written submission?

Ms Buchanan—No.

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

Ms Buchanan—Yes, there are several points in the submission that we would like to draw attention to. Firstly, there is the issue about family courts, Family and Community Services—FACS—and the inability of FACS to intervene in many cases when children are before the family court. We see it as quite problematic that children who are going through family court proceedings are, we feel, not investigated under child protection because of the proceedings that are happening elsewhere. As a practitioner working with children who have witnessed domestic violence, I have come across that several times.

Secondly, there is the issue of legal aid and separate representatives. We are concerned that, because of a reduction in legal aid—or proposed reductions in legal aid—separate representation for children might be reduced. It is our understanding that the right of children to have a separate representative in court proceedings helps children to have some voice or at least have some representation which they otherwise do not have. We were very pleased that this move was afoot when separate reps were brought in.

Ms Olafsen—In Victoria, the guidelines for legal aid funding for children are that, unless both parents are funded through legal aid, there is an expectation that one or both of the parents will pay for separate representation for children. If somebody is paying for legal representation on behalf of their child, we have concerns around the child having independent representation. It seems at odds to us.

CHAIRMAN—Mr Smith might like to explore this a little more. On the question of legal aid reductions—the federal Attorney-General's Department has made numerous statements on this in the last few months—my understanding is that the point that has been made is that states will pick up state matters and the federal government will principally pick up those matters which cover federal legislation. In other words, family law is one area; children are a bit of a grey area, I know. Tony, do you want to ask some questions on that?

Mr TONY SMITH—Only in terms of legal aid.

CHAIRMAN—Just before you start, I think we had this yesterday in Perth and again to a lesser extent this morning in terms of child-care reductions. The reality is that that is not the case. Some of these statements need to be qualified both in child care and in terms of legal aid. Yes, there have been some adjustments in a budgetary sense to legal aid, but that is to bring to the fore the responsibilities of states. Some states, like Queensland, have set up a separate legal aid bureau or whatever they call it, and I think other states are considering that. I do not know what is happening in South Australia.

Ms Buchanan—I am not sure what is happening in South Australia. One thing I know is that for children who are actually not having any success in proceedings, it does not matter to them if it is state or federal.

CHAIRMAN—Yes, exactly.

Ms Buchanan—It is the children who are—

CHAIRMAN—But the statement is often made, simply because there is a reduction in legal aid, that situation X is occurring. I am not being unduly critical of some people making that comment, but it is a little simplistic in some areas.

Mr TONY SMITH—I agree that there is more involved than that. I think that concerns about funding generally, particularly in the Family Court area, are fairly valid. I think that there needs to be a good look at it. You are talking about, effectively, areas of custody, access and changeover. You are talking about changeover centres and that sort of thing.

Ms Buchanan—Yes.

Ms Olafsen—Very often children are used, particularly in a domestic violence situation, as a means of maintaining the power and control over women by men. So, yes, we definitely have concerns about the handover stage.

Mr TONY SMITH—In your organisation, do you have a centre for that? Do you advise women about centres and so forth?

Ms Olafsen—There are some access handover centres in South Australia, but my understanding is that they have a limited life. It is not the case that a child may be three and therefore for the next 15 years you can go there and hand your child over to the other parent. It actually has a limited life. There are X amount of visits that you can actually use the centre for in terms of handover. It is not an ongoing thing.

Ms Buchanan—There is one access handover centre in South Australia which is

not accessible to the wider community. On a similar issue, I have some concerns about supervised access. Basically, my perspective is that if a person is not able to spend time with their child unsupervised, then why are we allowing this person to have contact with the child? Is this in the best interests of the child? I am just raising that as a point.

The Children and Domestic Violence Action Group is actually made up of workers from different agencies. We are non-funded, we do not employ anyone, but we are concerned practitioners from a variety of health education—

CHAIRMAN—So it is an umbrella group?

Ms Buchanan—It is an umbrella group, yes. What we bring to it, from our individual practitioner perspectives, are our own observations and concerns about children that we are meeting who are in domestic violence situations.

Mr McCLELLAND—We have received some evidence that organisations such as Family and Community Services, in dealing with abused youths or youths who allege that they are abused, have acted too readily, that they have assisted the youths to remain away from the family situation. In fairness to such agencies, they are almost damned if they do and damned if they do not. It seems, however, that what may be lacking in some instances is a concept of procedural fairness on the part of the individual officers, that is, hearing from all parties before they make a decision.

What is your experience in South Australia? Is there a practice whereby, in determining these matters regarding the welfare of the child and whether they need to be removed from a particular situation, they do consult with both parents—in this case separated parents—and also the child, or do they form a focus on one particular viewpoint and go that way?

Ms Buchanan—My personal experience with clients has been that they make every effort to keep the child at home. Sometimes I would actually put a different judgment in the cases. For troubled youngsters, and in particular teenagers, I think it is very hard for them to be heard. I certainly have not come across a case where a child has wanted to leave a good home.

Mr McCLELLAND—Sorry, you have not found that?

Ms Buchanan—I have never come across a case where a child wants to leave an adequate home.

Ms Olafsen—I would have to agree. I speak, too, as somebody who has been a FACS employee in the past. I would have to say that it is absolutely a last resort. I guess the current issue is around Aboriginal children who have been removed. My experience of social workers in Family and Community Services is that they are very aware that removal

of children from homes can be more detrimental, and so it genuinely is a last resort.

In terms of contact with FACS, I think FACS suffers some of the same frustrations around domestic violence and children that we do. They have a mandate that says children should not be living in at-risk homes, and they should not be subject to emotional abuse. Very clearly domestic violence is emotional abuse towards a child. It may also be other forms of abuse towards a child, but not necessarily. Our working experience is that FACS, because of their workload, are often unable to investigate children who are victims of domestic violence. That is very frustrating, because we know the long term effects and inter-generational effects of domestic violence in the community.

Mr BARTLETT—I want to clarify a comment you have just made there. You said you have never found a case where a child wants to leave an adequate home. How do you define 'adequate'?

Ms Buchanan—A safe, loving environment where there are adequate limits would be my broad definition.

Mr BARTLETT—You have never had a situation where a child has complained that they have been too restricted in terms of their freedoms and therefore wanted to leave for that reason?

Ms Buchanan—Yes, I have come across that situation, but I have never known a child to actually act upon it. There has, in these cases, been an ability to resolve that. I mainly work with teenagers, and some of these young people who have been homeless for some time have made several attempts to get back home to make things better with their parents, because they actually do crave a home life.

Mr BARTLETT—But you have never found a case where a teenager has wanted to leave because they have been too restricted—they have not been allowed the freedom to go out with their friends when they have wanted, or to do what they want?

Ms Buchanan—No, I actually have not—

Ms Olafsen—Without other issues.

Ms Buchanan—Without other issues.

Mr BARTLETT—What sort of investigation goes on to determine what those other issues are? Is the word of the teenager taken in that sort of situation, where they say 'Look, we've got all of these other problems at home, this is why I need to leave'?

Ms Buchanan—I am not actually a FACS worker. I do not work with a child

protection agency, I work with a health agency, so I would not be doing that investigation. If I were seeing a young person in that sort of situation then I would probably be speaking with the parents as well, and taking a family systems approach.

Mr BARTLETT—So it is part of the normal procedure that parents are consulted as well?

Ms Buchanan—Yes; but, as I said, I do not actually have a mandatory role in determining whether young people stay or leave.

Mr BARTLETT—Does FACS interview the parents as well in that sort of situation?

Ms Olafsen—There is a difference between a child leaving home and a child being removed by Family and Community Services. If they are doing a removal of a child, which means that the rights of the parents as the legal guardians are in question, then yes. If it gets to a point where they are considering removing a child, if there is any option at all of the child being placed within the extended family that is FACS' preferred option.

CHAIRMAN—What about in the context of the social security youth homelessness allowance, in making a judgment there? Is there full consultation?

Ms Olafsen—I do not know. Social workers are employed by Social Security. I know there are interviews that take place before you can access a young homeless allowance, but I am unclear about who is interviewed.

Mr BARTLETT—Do you see a possibility whereby a wider adoption of the Convention on the Rights of the Child is likely to lead to a greater incidence of removal of children or teenagers without adequate consultation with their parents?

Ms Olafsen—Removal by FACS? So it would be like a statutory agency?

Mr BARTLETT—Yes.

Ms Olafsen—No, I do not see that happening. Can I also say on that point that I think often children and young people who run away, for want of a better term, from home are often carrying with them lots of guilt and lots of shame associated with what has gone on at home, because they are often from quite abusive environments. It is actually very difficult stuff to talk about and so often I think young people say things like, 'My folks are giving me a hard time. They wouldn't let me go out until 11 o'clock, or whatever time.' I think it is actually easier to talk about that with their peers and with the adults in their lives, than it is to say, 'I have been sexually abused since I was eight years old and I am now 16 and I have had enough.' Sometimes I think what we hear is in fact not always the truth—the full picture.

Ms Buchanan—Certainly, the research that I have read has shown the majority of young people who leave home of their own volition are actually coming out of either child sexual abuse or domestic violence situations or both and there has been proven to be a correlation between domestic violence and child sexual abuse.

Mr BARTLETT—In the majority of cases, but not all?

Ms Buchanan—Not all, but the majority.

CHAIRMAN—But there will be exceptions.

Ms Buchanan—Yes, there will be exceptions. There are exceptions to everything.

CHAIRMAN—I should ask a final question in relation to the commissioner for children which you are saying should be appointed. A commissioner for children can mean a lot of things. Do you have a particular model in mind?

Ms Buchanan—We have not actually thought that through.

CHAIRMAN—Should it be advisory or investigative?

Ms Buchanan—I would hope advisory. From my perspective, it should be somebody to represent the views of the children—that is, to actually take a focus on children rather than on parents—and to be a spokesperson, if you like, on the needs of children.

CHAIRMAN—You made a rather bland statement at the end of your submission which says that a commissioner for children should be appointed to advocate and act on behalf of the needs and rights of children. Could you take on notice to expand a little on what you mean by commissioner in that context?

Ms Buchanan—Do you want us to answer that now?

CHAIRMAN—You can go away and write to us on that.

Ms Buchanan—Yes, we would be happy to do that.

Ms Olafsen—Can I just make one other point and that is about counselling services for children, particularly children in domestic violence. The largest state funded counselling service that exists in South Australia, considers urgent appointments to be young people and children who are suicidal. Very often, children from domestic violence situations are not necessarily exhibiting suicidal behaviour. Consequently, it is roughly about a month from contact to initial appointment. If it is deemed to be not urgent, then in a metropolitan area, you are looking at somewhere between six to eight months before you

will get an appointment. In rural areas, it is somewhere between 14 to 18 months. That is a real concern for us.

Ms Buchanan—That is a huge concern.

CHAIRMAN—Perhaps that is one reason why the prevalence of youth suicide in rural areas is much higher than it is in other areas because they do not get help soon enough. Is that what you are saying?

Ms Olafsen—Yes, but we do not have the answers. It is just a concern to us.

CHAIRMAN—Thank you very much for appearing today.

[2.24 p.m.]

BRINDAL, Mr Grant Kennion, President and Life Member, South Australia Association for Media Education Inc., PO Box 300, Ingle Farm, South Australia 5098

CHAIRMAN—We have received your written submission of April 1997 in relation to the UN Convention on the Rights of the Child. Are there any amendments or additions to that written submission that you would want to make?

Mr Brindal—I think the submission will stand.

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

Mr Brindal—After having looked at those four volumes of submissions that came in, our executive were surprised at how broad the submissions were. We do not envy your task of trying to come to some agreement or consensus on that. Our issue, of course, is mainly education—media education. We did note that of those submissions, there were 12 that included some reference to the media and children and that there were three, including ours, that specifically addressed the area of media and media education.

On top of that, we also noted that a few of the submissions referred to government inactivity and government cuts in various programs. While a lot of those were not specifically related to the media and media education, probably in the light of that part of our submission also reflects that view that past governments have spoken about media education and about children's needs for it and yet have not delivered. We probably echo some sympathy there with that.

CHAIRMAN—When you say 'governments', do you mean governments at all levels?

Mr Brindal—Yes, I mean state and federal, and previous governments as well as the current one. The only other thing that we would probably add is the notion of literacy and what is actually meant by literacy because our understanding is that literacy is now a broader term. It is not just literacy of the written word but, in the sort of society we live in now, we are talking about visual images as well and whether that definition of the term 'illiteracy' actually includes that definition and whether being illiterate means that you do not fully understand visual images. Connected with that is the spread of Internet and things like that.

CHAIRMAN—Would you like us to go to questions or would you like to make a few other points first?

Mr Brindal—I think that is the main thrust of the things we would want to get across.

CHAIRMAN—You make the specific point about article 17 and the addition to that article. The practical difficulty, of course, is that this treaty has been ratified. Australia's reservation, which was under article 37, has already gone in and there is no way that Australia can submit a further reservation at this point in time other than to respond to reservations from other countries. That is not to say that we cannot take it on board and make mention of it in the report and see what can be done in the international community, but I just make the point that there is a practical constraint to what you are suggesting.

Mr HARDGRAVE—I welcome the opportunity to talk to the witness. I guess we are arguing about such things as media education because we are an affluent country and so we obviously have a fairly broad range of media.

CHAIRMAN—Mr Brindal, I might add that you are dealing with a former media practitioner.

Mr HARDGRAVE—I will declare my hand even further. I started on a children's program called *Wombat* about 18 years ago. I am particularly interested in children's media and suspect that Australia has done a pretty good job in the overall scheme of things.

I would like to talk to you about a couple of things. Firstly, to my mind, the specific types of media that are exclusively available for children have declined since those halcyon days of *Wombat* 15 to 18 years ago. Would you agree with that? I hope you do.

Mr Brindal—I would.

Mr HARDGRAVE—Why would you make that observation?

Mr Brindal—There is a dichotomy between the commercial needs of the media in terms of what is cheap, effective and economical and the needs of children who are not seen as being a very strong part of their marketing. That is why our government has long recognised the need for some sort of regulation in that area.

Mr HARDGRAVE—So then we step through to the sorts of general programs that are available that children choose not to watch or may want to watch. News programs tend to be not necessarily watched by children. Is there a timing problem with the timeslot involved?

Mr Brindal—No, I would not say it is the timeslot; I think it is more the nature of the program.

Mr HARDGRAVE—The content of it.

Mr Brindal—Yes.

Mr HARDGRAVE—What about government controls on other program material that some would destine should not be watched by children? Are you happy with the way things are classified?

Mr Brindal—I think overall we are. Our association over the years has been involved, for example, with the self-regulatory thing that FACS came up with where we put a submission in for that and the recent re-doing of that. The media, generally, are responsive and the government are looking after it as well. But, in the end, and this is one of the sad things about children's television regulations, when you look at what kids are watching and what their popular programs are, you see that unfortunately the C rated programs do not figure strongly; it is things like *The Simpsons* that are general exhibition. We have tried to cater specifically for children by coming up with children's programs. When you ask the children themselves what they think of them, they do not seem to respond as much.

Mr HARDGRAVE—In your submission you talked about television advertising perhaps being a form of exploitation of children. Is that a fairly bold assertion or are you really confident of your ground there?

Mr Brindal—I think so. Just recently YMA—when they talk next they may highlight this—were instrumental in giving Agro a rap over the knuckles. Under the regulations, in the morning breakfast program there is supposed to be very clear distinction between the role of the person who is the personality and the products they are endorsing, yet with Agro the lines were being blurred. The point is that perhaps kids do not quite recognise that this is an advertising segment and that Agro is actually instrumental in that advertising.

Mr HARDGRAVE—I have just two other things. The anecdotal thing for me is that, since pay television has come in, my children are asking for fewer things at the shops, because they are watching pay television, which I know can take some ads as from this week. We have found that, for children watching even the cartoon network without watching ads constantly, it has changed their consumption demands. Is there other more scientific evidence to backup that anecdotal—

Mr Brindal—No, I would not—

Mr HARDGRAVE—Have you heard that before?

Mr Brindal—From my point of view, being a teacher and dealing with kids, it is probably still too early—probably in South Australia anyway. I am finding now that maybe 20 per cent of the class are hooked into Foxtel. Free to air is still the major thing that is happening.

Mr HARDGRAVE—One other thing I wanted to ask about was the Internet. The House of Representatives passed legislation last week to give the ABA broader powers to inquire into aspects of the Internet. What are your association's opinions on Internet access? Obviously there is the restriction of certain types of material. But do you think the Internet is a major influencer of children?

Mr Brindal—Not yet, but I think it is going to be. While we support the notion of regulation, our thrust, perhaps like other organisations which are saying that we should be stiffening those regulations and making them more clearly defined and policing them, is more that you can regulate as much as you want but in the end if we really want kids to be armed or skilled you need to educate them. It is not only advertising. It is so that, when they are watching the news, they are capable of looking at how the news is presented. *Frontline* is a classic example of—

Mr HARDGRAVE—It is the best current affairs show on Australian television.

Mr Brindal—Yes; but it is also classic in teaching how images can be manipulated to create a new meaning. They are things that children really need to grasp. Even though some academics believe that kids are far more literate nowadays and they are really into fast moving, pacey images and they read—that is one of the current terms—the text far better than we do, my experience of sitting down and watching an episode of the *Simpsons* with kids is that a whole lot of things are happening that they just do not realise. They do not understand because they have not got the background, they have not got the experience.

Mr HARDGRAVE—But the same was true of the *Flintstones* 35 years ago, it would be argued.

Mr Brindal—That is right.

Mr HARDGRAVE—Just to round it off and bring it back to this convention: there is a suggestion that perhaps we should have an office of the children or commissioner for the children who can provide some sort of central policy direction role. You would obviously see your concerns in this area being one of the things that office should look at.

Mr Brindal—Yes.

Mr McCLELLAND—I suppose the question becomes what to do to encourage it. I recall that in the period of the Whitlam government a controversial measure was introduced with the point system. That system allocated points according to Australian content of programs, additional points for Australian and educational content and just points for educational programs. Is that too heavy-handed? It did not receive a lot of support. It was seen as too much government interference in the autonomy of the media. I

suppose my question is: what is the way forward to encourage and/or coerce television stations to run educational programs?

Mr Brindal—We go the other way. What we are saying is that, if we make our young people more critically literate of the products that they are receiving, they will then hopefully somewhere down the line start putting pressure back on the stations. That is how the stations respond. It is the bums on seats mentality. It is what the ratings show. If we start creating a more intelligent, articulate audience, that will put pressure on the TV stations and the industry to give them back that sort of product.

Mr McCLELLAND—So you see the solution through the education system and through parents being equipped to educate their children?

Mr Brindal—Yes.

Mr TONY SMITH—Just a comment rather than a question, I suppose, but you might want to comment on the comment. It seems to me that a lot of the television programs now are just deplorable in their substance and content. Are you saying that in relation to their effect on children, particularly of some of the more American TV comedy programs, we should be doing more to see that, first, we maybe get more Australian content or, second, we regulate it more, or what?

Mr Brindal—I heard an interesting proposition at a conference in Perth where the suggestion was that American television was actually becoming Australianised. Because of Murdoch taking over Fox, there is an Australian influence through programs like the *Simpsons* and *Married with Children* where you have that sort of Australian sense of humour coming through. The suggestion was in fact that the so-called cultural imperialism of America was being eroded away by groups like Murdoch. A whole lot of Japanese companies have also bought into it. I do not know whether that is true but certainly—

Mr TONY SMITH—I think Murdoch is more American than America, isn't he?

Mr Brindal—I think he is whatever he wants to be, isn't he, as long as he makes money. In terms of quality of programs, we, in teaching, try not to put value judgements on programs and instead we try to come back to the idea that what we are basically looking at are forms of communication. Some of those forms of communication are not as good as others but we are wanting to get people to realise that there are messages inherent in that, and stopping and looking at what those messages are is a major step forward.

I suppose we are not really looking for the government to suddenly start pouring millions of dollars in, although we would not refuse it. I have been involved in media studies since 1976 and over those years time and again people have responded quickly to issues about media, about violence, about children. We saw that happen with the shootings in Tasmania and how quickly the government reacted. Constantly they say there is a need

for media education, but that has not translated through into practice.

If we go to the education arena we see that with the national profiles and statements, again the media is well represented. I do not know if you are up on all this but in the eight learning areas the media is clearly under the arts. It has a nice peg in the English area, in society, in the environment and in technology. There are four areas so that one would say, ‘We must be doing that in schools.’ But the reality is when you look at the practise, there are many schools that do not offer their children any type of media education. We are really looking at something happening instead of just saying, ‘Yes, we support it.’

Mr HARDGRAVE—You have raised a serious area when you stop to think about the role of the media as an electronic babysitter and an influencer of children. Children can get values and perceptions from the media—television or whatever—and you have agreed with those statements I have made. This then brings into play children distinguishing between reality and fantasy, what they see on television versus what they see in real life and the question of violent movies that they may see as adults and whether or not they believe it. Would you agree with that particular analogy?

Mr Brindal—Yes.

Mr HARDGRAVE—You say that investment in education of media including ‘This is make believe and this is real’ would be a valuable investment in the good conduct of our society.

Mr Brindal—Yes. To take that one a bit further, one of the issues I have been talking about with my own students has been how the media will choose a particular person. That person will become the centre of a lot of activity and the person we considered just happened to be a member of federal parliament called Pauline Hanson. I was dealing with Year 8 students who were 12 or 13 years of age.

My point was to get them to see why Pauline Hanson has become such a public figure. But before I could get too far down the track they already had their own opinions. There were divisions in the class. I then paused to ask, ‘Can you tell me who your local member of federal parliament is because Pauline Hanson is just a local member of parliament the same as yours?.’ They scratched their heads and out of a class of 20 I got two kids who could correctly name Trish Draper as the local member. And that is no reflection on Trish Draper.

That goes to show that apart from all the issues of violence and those more obvious ones, that that influence is there and it is setting an agenda and it is setting an agenda with our kids. In fact, in a recent letter to the *Advertiser* we called her ‘Hansonstein’, a monster created by the media that then wreaks havoc on the country. To get the children to stop and realise the role the media plays is very important. The media

is very good, once they have done that, at sitting back and feeding on all the controversy it has created and then wash their hands of it. The members of the media say, 'We didn't know it was going to cause ripples in other countries.'

Mr HARDGRAVE—But the question then becomes: does the media shape our values or do our values shape the media we consume?

Mr Brindal—And the answer is yes.

Mr McCLELLAND—To both?

Mr Brindal—Yes.

CHAIRMAN—Okay. Thank you very much indeed.

[2.51 p.m.]

BIGGINS, Ms Barbara Edith, Executive Director, Young Media Australia, 69 Hindmarsh Square, Adelaide, South Australia 5000

JUPE, Ms Toni Heather, Project Officer, Young Media Australia, 69 Hindmarsh Square, Adelaide, South Australia 5000

CHAIRMAN—Welcome. The committee has received your written submission. Do you have any amendments or additions to that written submission?

Ms Biggins—I do not have any amendments, but I do have a few comments by way of elaboration.

CHAIRMAN—You would like to make an opening statement?

Ms Biggins—Yes. The submission has as its focus, article 17, and Australia's implementation of those provisions. In summary, that article requires: firstly, a provision of material of positive benefit to children; secondly, the provision of mechanisms to meet the linguistic needs of children belonging to minority or indigenous groups; and, thirdly, protection from material injurious to children's wellbeing.

In our written submission we concluded that, regarding positive provision, Australia has in place well established and sufficient mechanisms to promote that. By way of elaboration on this point, we would like to say that Australia's system of quality quotas for children's material and pre-school children's programs is unique. Having travelled fairly widely, I have found it is envied in many countries of the world. It is a system about which Australia should be justly proud and it is worthy of ongoing preservation and protection.

I would like to emphasise the preservation and protection because it is a source of concern to groups like ourselves that the television industry in Australia still seems unhappy with that system of quality quotas for children and pre-school children, even after 18 years of operation of standards that require those quality quotas. The industry is still very prone to try to challenge and undermine the provisions from time to time. Such challenges are, I guess, reflective of the costs of making a quality provision for children by way of television programs, especially of materials made in Australia and for Australian children. We can only hope—and try to play our part as a community organisation—that the Australian Broadcasting Authority continues firmly in support of those provisions. It is something of which we should be proud.

What I have just said should not be taken to mean, however, that everything in the garden is rosy for Australian children in relation to the media. It is not, but we would speak more about that under a third heading of harm to kids.

The second main point that we made regards the linguistic needs of ethnic or indigenous children. We made the point that there is little or no provision in that area. No network provides any such material for children on a regular or even a frequent basis. SBS used to provide programs for children in different languages. It now provides practically nothing in that field.

Far from providing material in indigenous or ethnic languages, there is often precious little acknowledgment that such children actually exist in Australia. Young Media Australia has attempted to redress this need to some extent in that we last year produced a video called *Put Me in the Picture*. We have brought a copy with us. The committee might like to have a look at it or put it in the Commonwealth parliamentary library. It is only 15 minutes long. Our aim in producing it was to encourage producers to truthfully reflect the cultural diversity of Australian children in their productions, to portray that diversity as a natural part of life in Australia and to celebrate what diversity has to offer.

We extensively consulted with the ethnic and indigenous communities in the production of that video and tried to reflect their concerns and also tried to show producers that there actually was an untapped audience out there for material which truthfully reflected Australia's cultural diversity. There may well be audiences who like to see themselves on television—as all Australians do—but it is mostly only the Anglo-Saxon Australians who really get to see themselves on TV. We would commend that video to you as one community group's effort to try to do something to support that aspect of article 17. Basically, Australia falls down in that regard.

The third area is where we would want to put the emphasis of our submission—that is, the protection of children from harmful media material. While there are some provisions on paper which would purport to give protection to children, we are very much concerned that the provisions that are there are not well enforced and that, by and large, they are provisions on paper—to some extent, wallpapering or window dressing, you could describe it as. The big point we want to make under the issue of harm is that too often the monitoring of where the harm is actually happening to kids is left to parent and children's groups, all of whom are very poorly resourced in terms of trying to remedy the situation against the weight of commercial media.

We believe that there are some provisions on paper but they are not based on an adequate understanding of child development nor on an adequate understanding of what materials are likely to be harmful to children at different ages and stages. So our concerns actually, to go into more detail, centre on the impact on children of an increasingly commercialised media environment with which they are developmentally not able to cope. There is insufficient understanding of how advertising and which forms of advertising mislead and deceive children.

I think in terms of Australia's ability to enforce or to actually incorporate article 17 into its legislation and regulation is well reflected in the fact that in commercial programs

commercialism is on the march. As a community group we are really concerned about the onslaught of commercialism in all of children's media—an onslaught that is way beyond their abilities to cope with and an onslaught that parents find very difficult in fact to have any remedies for. As a group we are trying to work very hard to find some remedies to actually slow the highly targeted, highly sophisticated marketing campaigns that are being directed at our children.

We believe that the industry is more creative now in finding fresh ways of increasing the commercial thrust of programs than they are at producing programs of benefit to children. We would like to refer the committee to the recently published Australian Broadcasting Authority's investigation on *Agro's Cartoon Connection*. This organisation has now lodged a series of two or three complaints about the increasing commercialism of *Agro's Cartoon Connection*.

Our frustration about the lack of progress in that area is that the enforcement of standards that are on the books, which you would think would provide the appropriate protection of children from harm, depends on groups like us—on parents who are there trying to mind their kids or get the tea ready. The enforcement of them depends on public vigilance and complaint. Parents are not impressed with the situation that pertains at the moment; they are not impressed with the slowness of the process of resolving complaints.

It seems not to fit with the objects of the Broadcasting Services Act. I table a copy of the objects of the Broadcasting Services Act. The very last object, which is the usual place where children's priorities get put, item J, states that the Broadcasting Services Act actually requires that an object of the act is:

> . . . to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material that may be harmful to them.

The Australian Broadcasting Authority is charged with that obligation. It is a source of great concern to us that complaints from the community can take 15 months, nine months and seven months, in our experience, to resolve. That is not, in our view, placing a high priority on the protection of children from harm, as required by article 17.

A similar situation which pertains to advertising pertains to the impact of violent materials on children. There is little real knowledge in the industry of harmful types of media violence and vulnerable ages and stages of children, and there is very little real help for parents to understand and avoid those problematic types of materials. Young Media Australia, as a community group, is working in this field, to the extent of its limited resources, to try to remedy those situations.

We would like to draw the committee's attention to a particular form of TV programming—and it is perhaps not commonly appreciated just how much it is likely to cause viewing children considerable harm. We have recently lodged a complaint with the

Nine Network about *Australia's Funniest Home Videos* program—because of our ongoing concern and the ongoing concern of our constituent child organisation members—and the fact that the program exhibits a particularly callous attitude to the exploitation of children. Children are made fun of, injured and laughed at. We do not believe that that is a situation that should be happening. We would just like to show you one episode out of that program to illustrate the point. There does not seem to be a double adaptor, so I will keep talking to save time.

The other point that we wanted to make under the heading of harm is that provisions are there on paper but do not actually protect children. A very serious area of concern is that of home videos. Here we have a situation where the home video classification system is based on the principle that adults should be free to see and read what they want provided that children are protected from harm. It seems to us in Australia that it is always the case that adult freedoms are more important than children's rights to protection.

In the home video market where the availability of R- and X-rated video material in the home situation ensures that adults' freedoms are granted, the actual practical ability to keep children away from that material once it has left the Canberra hire centre for X-rated videos or the local home video shop is not there. We simply cannot keep it out of the hands of children. One solution we have suggested from time to time is that, in order that the two freedoms might be balanced, R- and X-rated material should only be available in a cinema. That would allow parents a sporting chance of keeping their kids away from R- and X-rated material.

The cries of outrage that greet that, surely, is a demonstration of the fact that adults' freedoms would be limited by that. Adults would not be able to see X-rated and R-rated material in their own homes. But we have to say to ourselves, 'Where is the proper balancing of adult freedoms and children's right to protection?' It is not there in the home video situation. We can show you that example; this is *Australia's Funniest Home Videos* show.

A video was then shown—

Ms Jupe—The dialogue is as important as the picture. We are illustrating there what we consider to be one of the worst possible manifestations of a lack of understanding in many ways of how TV can affect children, because *Australia's Funniest Home Videos* show is one of the top 10 rating programs among children aged 5 to 12 years. That age group is particularly vulnerable to portrayals that are frightening and scary.

At the same time, research has shown that one of the worst aspects of this type of thing is that it is portrayed as also being funny. In this case, a lot of people's immediate reaction is, 'Oh, isn't that funny?' But if you stop and look at the expressions of sheer terror on the faces of those two boys, it is pretty obvious that they did not know that that

was going to happen to them. It was pretty obvious too, if what the mother—who was presumably the one doing the taping—was saying as she was coming up the stairs was true, that they had watched a scary movie and they were in bed together with the lights on because they were already frightened and possibly even having nightmares. What was done to them would have just exacerbated any trauma that they were suffering.

Children watching that and either thinking it funny themselves or seeing their parents thinking it funny, it would be difficult to tell what they would think of it. I think you would be hard-pressed to deny that it is trivialising something that should not be trivialised. It is desensitising or it has the potential to desensitise kids to that type of activity, when in fact studies show that it is a pretty violent act. I would go so far as to say that I think it is a criminal act to do that to somebody's children and it is inexcusable for a TV station to then put it on TV when they know children are watching.

ACTING CHAIR (Mr McClelland)—What would be your procedure in making a complaint about that? Briefly, what are the stages?

Ms Biggins—You have to write a letter to the network or the channel that you were watching. You may wait for 60 days for an answer. If you are not satisfied with the answer, you then have to write to the Australian Broadcasting Authority and set out the reasons for your dissatisfaction with the answer and ask the ABA to investigate further. You may then wait. The minimum time that we have had to wait with a complaint so far is seven months for something to happen.

ACTING CHAIR—And they determine whether they prosecute, do they?

Ms Biggins—They do not prosecute. In the case of the *Agro's Carton Connection* decision, which came out two days ago, they got a rap over the knuckles, 'If you do it again, we might make a standard and make it a condition of your licence.' By the admission of a member of the Australian Broadcasting Authority staff on the *World Today* program yesterday, there is very little difference between a rap over the knuckles and taking their licence away, as a remedy, if in fact the station is found to be in breach. I guess there is a bit of public humiliation if the press writes about it.

ACTING CHAIR—I suppose that is something to be taken into consideration the next time they come up for a licence renewal.

Ms Biggins—That is pretty much an automatic process these days.

ACTING CHAIR—Because the infrastructure is so extensive the authorities are reluctant to consider not renewing it.

Ms Biggins—There are no public licence renewal hearings any more, so the opportunity for the public to have a big input at renewal time no longer exists. It is a

rubber stamp process behind closed doors.

Mr TONY SMITH—I recently received an enquiry from a constituent that I am in the course of following up. At 11 o'clock on 11 May one of the pay TV programs showed 11-year-olds—I remember all these 11s; it was an extraordinary juxtaposition of 11s—in the United States engaged in contact kick boxing. The constituent rang, I think it was Foxtel, and said, 'This is outrageous. These kids are being physically hit and injured in this kick boxing exercise.' The response was, 'There's a big demand for this sort of thing.' It was 11 o'clock at night, so, generally speaking, it would be unlikely for kids to see it, but it is possible. And the age of the participants is outrageous. I was just wondering whether you could bear that in mind. I am following it up myself. I would think that sort of behaviour is just totally unacceptable. Wouldn't you agree?

Ms Biggins—Certainly, the evidence, from the very extensive research on violence, indicates that children are most influenced by other children performing violent acts or their heroes performing violent acts. I would certainly be wanting to keep children away from that sort of material showing successful applauded violence.

Mr TONY SMITH—About a year ago, it was a Saturday when I got home between 5.30 and 6.00, I flicked on my radio when I got home—and I usually have it on Radio National—they had a program on which I later ascertained was the *Coming Out* program. I just could not believe what they were talking about. It were giving explicit depictions of intercourse between lesbians in the most graphically descriptive way you could imagine. I thought I needed to wash my ears out and had to wonder whether this was correct, whether I was actually hearing this from a national broadcaster.

I wrote and complained about that. That to me is as gross an example of potential child abuse as you could imagine. If an adult gave that description to a child in person they would be charged with an offence under the Queensland criminal code. I wrote to the ABC about it and the only mild chiding that they gave themselves was that it was considered quite culturally and something else valuable, but that they would have to look at the timing. Do you get complaints in relation to those sorts of matters, as well?

Ms Biggins—We have very little to do with radio. Most of our work is in the field of films, home videos, television and more lately with the Internet.

ACTING CHAIR—Would the same prosecution proceed or the same discipline procedures be applicable in the case of radio as the ones that you have outlined?

Ms Biggins—In the extreme it would. Basically, you have to complain to the ABC, and it is the ABC's codes that would have to be reviewed.

ACTING CHAIR—They have a review officer of some sort, I think.

Ms Biggins—That is right. They have someone who evaluates community complaints. If ultimately you were really dissatisfied with the answer, you could take it to the ABA.

ACTING CHAIR—Is it under this Broadcasting Services Act that these procedures are prescribed?

Ms Biggins—Yes.

ACTING CHAIR—Would there be an appropriate role for a commissioner for children to look at the procedures, for instance, under the Broadcasting Services Act to see if they needed to be tidied up, for instance, to bring forward those response times and even perhaps to consider such things as the radio or the television station forfeiting the advertising revenue during that particular broadcast. Would there be a role for—

Ms Biggins—Any children's group which has been trying to make their voice heard about any aspect of the United Nations Convention on the Rights of the Child will tell you that it is like crying in the wilderness: it is falling on deaf ears. There must be an office for children. If there can be an office assisting the Prime Minister on the status of women, where is the office for children? Groups like ourselves never have enough money to be able to shout loud enough to have these concerns heard. There must a representation for the child at the highest levels of government.

Mr BARTLETT—It would seem to me though that the more useful way of using that money would be to better resource groups such as yours so that you could more actively do the job of monitoring what is happening in the media. I am not necessarily saying that an office of children would not do it, but I am just wondering whether it might not more effectively be done directly.

If we were looking to an office such as a children's commissioner to take care of this problem, I just wonder whether, for instance, there might be a conflict of interest created with regard to article 13 in the convention, which says:

> The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers—

And regardless of the type of media. That might create a conflict of interest. The commissioner of children then is weighing up the conflict between the right of a child to access any information they want and, on the other hand, the right of the child to be protected. This is another example of the sort of conflict you are talking about, the conflict of interest between the right of the adult to view whatever they want and the right of the child to be protected. I am not sure that the establishment of an office of children would necessarily correct this situation given what appears to be some contradiction of rights within the convention. Could you comment on that?

Ms Biggins—We certainly would not say no to being much better resourced than we are. We have long thought that we could do a far more effective job. You are right in the sense that a group like ours which has been operating in this field for 25 or more years has enormous expertise and experience and a great many information resources and worldwide networks which enable us to make a very well informed input into this field.

If I had to choose between an office for children and—you are not asking me to choose, are you? I do think there are areas which do require particular expertise, and we are certainly one of those groups. We just know that there is a crying need out there, particularly from parents who want to be much better resourced to be able to deal with the impact of the media on their children than they presently are, particularly in the face of new media which are harder to regulate and where increasingly the responsibility for moderating and mediating their children's use of those new media is falling on parents who are given very little help in actually having any hands-on experience at all in the media sense.

Ms Jupe—In relation to whether there is a conflict there with article 13, we consult a lot with child psychologists and psychiatrists and I think their response probably would be that there does not necessarily have to be any conflict. Because what we find is that, particularly with children under 12, at that age they are still seeking guidance from their parents to a certain extent. It is when the parents would like to be able to give the guidance but they do not know how to give it—they do not know how to help their children make good choices—that they get into a bit of bother.

If it was interpreted I suppose that that would mean that children have a right to make choices where they are already being well guided in a way by parents, or they have been given certain boundaries, that makes sense.

ACTING CHAIR—On that point, have you seen article 13 recently? For instance, clause 2 says:

The exercise of this right—

that is, free speech and access to information—

may be subject to certain restrictions . . . For the protection of . . . public health or morals.

Ms Jupe—We operate on the basis that we often get people saying to us, 'What is a good program and what is a bad program?' We say, 'We are not prepared to name names.' Obviously there are some examples where the practice is over the top and it has to be complained about. I would like to also say that, although Barbara has been talking about *Agro's*, in particular, and other shows, they are only examples of—unfortunately particularly with TV programs—where there are problems like these happening throughout the commercial television industry. We are not actually picking on any one show because

it is the only one like it. It is just, in some cases, the worst case scenario.

We say to parents, 'We can try to inform you about what we know and what the research shows is harmful to your children so that you can help them make worthwhile choices,' rather than, unfortunately, as happens in a lot of places, children are not given any guidance or there is not much control. Even when there is, parents are trying to exercise control, but they are not sure what to do with it.

ACTING CHAIR—Just another point, and I will cut across Mr Bartlett again: your submission seems to be interesting in the sense that you are talking about the convention being used to assist parents to protect their children from external corrupting, or unfortunate or inappropriate experiences. That is an interesting thrust of your submission. Is that an accurate assessment of where you are coming from?

Ms Biggins—Yes. But we also see article 17 as placing an obligation on broadcasters and regulators to see that the supposed protections that are put in place actually provide the protection that they are meant to do.

Mr BARTLETT—You see that that role could be done just as effectively through better resourcing of your own organisation?

Ms Biggins—In this particular area.

Mr BARTLETT—In this particular area.

Ms Biggins—Yes, we believe it could because we have particular expertise.

Ms Jupe—We find that there is an unfortunate lack of this level of expertise within the organisations, even like the Australian Broadcasting Authority, to help the people that are making those decisions keep in mind the child's perspective on things. In other words, we even had talks last week with one of the pay TV channels, which are trying to be very responsible about this area, and it had not occurred to them that if they had a child developmental expert on staff they might get towards their goal better than if they just guessed at how children react to things or the impact they are having on them.

With some of the decisions that have come out of the ABA recently, they have actually more or less said that they treat all children as being about the age of 14. The law says up to the age of 14, but from 15 on it is a different set of rules. They often put in their decisions what a reasonable child of 14 might be expected to think of something, and we are talking sometimes about children as young as four. We know that, for a child of four, the impact of some things on them is totally different to what it might be on a child of 12, 13 or 14. That is recognised at the ABA, but it does not seem to come out in the way they consider some of the complaints.

Ms Biggins—If I could just make one point about an office for children versus a well resourced community group—and I am not wanting to put them in opposition. I think, particularly in the field of media which is such a rapidly changing field where it is all that a group like us can do to keep up with the constant changes and constantly monitoring the research that is coming out worldwide, you would have to have an extraordinarily well resourced office for children if it is going to be able to have a full range of expertise over all of the areas that the convention covers.

A bit of an example of that might be South Australia's former Children's Interests Bureau which now does not exist. It broadly looked at child welfare issues. People could ring up and raise issues with that Children's Interest Bureau. But it tended to look to a group like ourselves, who had particular expertise in media, when there was something in that area. An office for children which is supported and works in parallel with some specialised areas may well be a way to go.

ACTING CHAIR—This video may be useful in the current debate regarding that notable politician about whether we live in a multicultural country or not, and the perceptions that could evoke from people identifying with characters of particular ethnic backgrounds. Do you think that would be valuable there?

Ms Biggins—We think it is a video which has many uses, not just for producers. We have had people say to us, 'I would like every child in my child's school to see that video because I am the father of half-Japanese, half-Australian children; my children get a terrible time in school. If they saw that video they would have a much better appreciation of the worthwhileness of other kids who look different and what they might have to offer my kids.'

Ms Jupe—We laughed when you talked about the certain politician, obviously because of the timing. We launched that a year ago and in the last six months we have had a lot of requests to come and talk to people about why we made the video and what is in it, because of the debate that has been going on. We see that as healthy and we think we have a lot to contribute in that form, but we would not like it to be seen as something we produced because of that.

Resolved (on motion by Mr Bartlett):

That the video, *Put Me in the Picture*, be adopted into the evidence and that the extract of the Broadcasting Services Act be incorporated into the evidence.

Ms Biggins—We would just say one thing in closing. We would like to draw your attention to—you may already be aware of it—a couple of recommendations out of the Australian Law Reform Commission and HREOC recent report, *Children and the legal process*. There are two recommendations in there in relation to children's media and children's advertising that we would like to support. They are in relation to doing more

research about what harms children.

ACTING CHAIR—Have you got copies of those?

Ms Biggins—Yes.

Resolved (on motion by Mr Tony Smith):

That the extract from the Human Rights and Equal Opportunity Commission report, *A matter of priority: children and the legal process*, be marked as an exhibit.

Ms Biggins—Those recommendations call for an office for children to do research and to develop guidelines for the media.

ACTING CHAIR—You have highlighted 3.5 and 3.6.

Ms Biggins—That is right. Equally, to take up Mr Bartlett's point, we believe Young Media Australia is ideally placed to try and meet those sorts of recommendations and see that Australia does reflect article 17, that what is there on the books is realistic and reflects what we know about the research and that it is properly enforced.

ACTING CHAIR—Thank you very much for appearing.

[3.34 p.m.]

BAYFIELD, Miss Juliana, Australian President, Australian National Section, International Board on Books for Young People, c/- Children's Literature Research Collection, State Library of South Australia, GPO Box 419, Adelaide, South Australia 5001

ACTING CHAIR—Welcome, Miss Bayfield. We have received a copy of your submission on behalf of the International Board on Books for Young People. We have had the opportunity of reading it and we will shortly invite you to speak to it. Are there any amendments or additions that you have to that?

Miss Bayfield—No. I have a statement of about five minutes.

ACTING CHAIR—Certainly. I call upon you to speak to your submission.

Miss Bayfield—Instead of saying International Board on Books for Young People, can I please say 'IBBY', because I just want you to understand that the length of the other is a bit off-putting for everybody. It is known as IBBY anyway.

I would like to just amplify a few points about IBBY world wide and the UNESCO association that has been there for many years. Then I would like to talk a bit about the importance of the book 'in the life of the child' and go on to say a bit about Australian IBBY and what we do, because you might not have heard of us and I thought it was relevant to just outline some of the activities we do.

IBBY world wide is a member of the two United Nations non-governmental organisation committees dealing with children, books and reading. These are UNICEF, with IBBY's permanent representatives in New York and Geneva, and UNESCO, with an IBBY representative in Paris. The inclusion of children's right to have access to books in the convention on the rights of the child was strongly advocated by the IBBY representatives to UNICEF because they have actually been on those committees all the way through.

IBBY world wide is committed to the principles of the international convention on the rights of the child ratified by the United Nations in 1990. It particularly supports the right of the child to a general education and direct access to information and the resolution to encourage all nations to promote the production and distribution of children's books. Those are IBBY's laws really—the things that we abide by internationally. These principles are expressed in articles 17 and 29 of the convention.

IBBY's emphasis is on children's books and literature, including traditional literature or the oral tradition and the importance of recording that for the future. The book still has a crucial role, and I feel I need to say this today because sometimes the

book can get forgotten when we are all thinking in terms of the media in general, the development of computers and that sort of thing. I just want to make the point that IBBY believes that the book still has a crucial role in the upbringing of children and in their social, spiritual and moral wellbeing in the spirit of articles 17 and 29 of the convention on the rights of the child.

The book, for example, is able to bridge generations. It builds special relationships between young children and their parents and grandparents as a result of sharing books and stories together. The book can still give children an inner life of imagination and an insight into their own country's values and traditions as well as those of others. The first part of IBBY's mission is to promote international understanding through children's books and, therefore, it strongly supports articles 17 and 29 of the convention.

The first part of IBBY's mission is to promote international understanding through children's books and, therefore, IBBY strongly supports articles 17 and 29 of the convention. I want to talk about IBBY and Australia's role in promoting Australian children's literature and the activities of the Australian national section of IBBY. IBBY consists of about 60 countries around the world and each national section has its own responsibility towards literature in that country. What IBBY does in a particular country depends on other organisations when dealing with children's books in a particular country.

From the start, I should point out that, in Australia, as you probably know, there are many groups dealing with children's literature. For example, the Australian Library and Information Association has a group, as well as the Children's Book Council and the Booksellers Association et cetera. IBBY Australia has always picked up the things that these other organisations do not do. We promote Australian children's literature overseas, through book lists in Australia, seminars and that sort of thing. That is a point that I would like to make. I do not think there are very many submissions dealing with children's books that have come forward to date. I would like to make that point, too. I am not answering on their behalf. I am only seeing it from this point of view.

IBBY Australia contributes every two years to the IBBY honour list of outstanding recently published books around the world. IBBY Australia selects an Australian author and an illustrator for this honour list. These books are then exhibited at the IBBY international congresses which are held every two years and at the Bologna book fairs. They are included in travelling exhibitions, which usually go around Europe, but they have travelled around the world.

Australian IBBY has also participated in nominating for, and in judging, the prestigious Hans Andersen award for children's literature and illustration. Two Australians have won this award, Patricia Wrightson for writing and Robert Ingpen for illustration. The Hans Andersen award is often looked on as the junior Nobel prize for children. It is a very prestigious award.

ACTING CHAIR—To interrupt, we have got an outline of IBBY and the work that it does, which we appreciate. As you can imagine, we are bogged down in an awful lot of evidence and we want to get to the nuts and bolts of what you have to say about the convention itself, as opposed to IBBY. We recognise the valuable contribution and the position of authority with which you can speak in terms of your knowledge of the interaction of books on children. I ask you to start to focus on what you think about the Convention on the Rights of the Child in terms of whether or not it assists IBBY in particular.

Miss Bayfield—Well, it does. We believe in this. I do not think I quite understood your question.

ACTING CHAIR—I was just asking you to focus. You are spending a lot of time filling us in on the background of IBBY and this is valuable to us. I was just asking you to start to swing that around into a submission regarding the attitude of IBBY on the particular convention concerning the rights of the child that we are examining. I am just asking you to start to direct your submission that way. Keep following your train of thought; I do not wish to interrupt that.

Miss Bayfield—I do not think I can really add to it, apart from what I have said in the submission. I was just wanting to expand on these things because I did not put the details of IBBY in the submission. I think it was said in the former people's submission that most of these bodies dealing with children and with children's literature or film and television, and those sorts of things, are all very poor bodies.

ACTING CHAIR—Yes.

Miss Bayfield—None of us are financed. IBBY, for example, is a branch of the Australian Library and Information Association, which pays the dues. Any work that we do is done either privately or, if we are lucky, through the resources of the places where people work.

ACTING CHAIR—You have said in your written submission that IBBY is committed to the principles of the International Convention on the Rights of the Child, but I asked you a short time ago what you thought of the convention—

Miss Bayfield—I am only talking in relation to those two articles, which I am satisfied with.

ACTING CHAIR—In so far as those two articles are contained in the convention, do you think it is or is not appropriate for Australia to be a party to the convention?

Miss Bayfield—Yes, of course. I think it is appropriate: I thought I had made that perfectly clear.

ACTING CHAIR—This is one of the issues we are examining. The committee may, after deliberations, come up with a recommendation that Australia denounce the treaty, for instance, so we want to hear from you as to whether or not you think the convention is of—

Miss Bayfield—We are fully in support of it.

Mr BARTLETT—I have a question on the adequacy of current legislation to prevent children having access to harmful reading materials. Do you think the current legislation is adequate? If not, how do you think that could be strengthened?

Miss Bayfield—I do not think I could comment on that. I could send you something on it, if I may.

Mr BARTLETT—Okay, if you could. Do you think that the establishment of an office of children or a children's commissioner would improve the chances of that happening?

Miss Bayfield—Yes, I do. I did hear some of the conversation that you had with other people earlier, and I also think that person would need advice from specialists in the area.

Mr BARTLETT—Such as yours.

Miss Bayfield—Yes, or these other groups dealing with children's books, depending on the kinds of issues that were involved. If it is a publishing issue, for example, it would be a different kind of advice that you would seek. We do not want to see another superstructure developing. That is going to mean a lot more money, and to use the resources that we have is a better idea, I think—to involve these other organisations, perhaps, as you suggested, by giving them some money to organise things better.

But I do think one person should be appointed to oversee these rights in the way that they do for adult things, because children's things are always overlooked. In any organisation where you have children's things vying with adults' things, the first to go is the children's section. That cannot be stressed more prominently anywhere.

ACTING CHAIR—Do you think there is an adequate emphasis, for instance, on the availability of children's books to assist children from other cultures—books with their background?

Miss Bayfield—I think we can still do a great deal in terms of the Aboriginal communities. There are quite a few Aboriginal publishers now who are publishing in the field, but they still need assistance. We are not really doing a lot with translation here in Australia. There have been some attempts, but I think we could do more in terms of the

multicultural elements of society. Those are some of the issues I think that this person would need to be aware of.

ACTING CHAIR—They are things that need to be brought together. I suppose there is a question of funding, and the amount of resourcing that you would put towards such an official as opposed to funding organisations. There would inevitably be competition between your organisation and a number of organisations that you have referred to as to which body was the appropriate voice.

Miss Bayfield—Yes, the appropriate one at the time.

ACTING CHAIR—So there would need to be a coordinator to just look at who was who in the zoo so there was not duplication.

Miss Bayfield—I think so, yes.

ACTING CHAIR—Is any work being done in Aboriginal communities to ensure that Aboriginal or indigenous children have access to literature about their culture?

Miss Bayfield—I think very little. You would need to ask that group specifically, but my feeling is that not a lot is being done out in the far-flung areas of South Australia and other states. This is something that definitely should be looked at, which is one of the reasons I put down that maybe one of these UNESCO seminars could be held here. To date they have been held in only the Third World countries, because their aim is to try to get an IBBY established in an area where they have no other bodies dealing with children's literature, but I do not see any reason why we could not put to them that such a seminar should be held here for the Aboriginal areas. I think that kind of thing is very important.

ACTING CHAIR—Yes, certainly. To focus on the issues of the convention, I may have cut you off earlier in full flight, which certainly was not my intention. Are there any points you would like to make to us to bring home any points that you think we should consider but we have not considered?

Miss Bayfield—I do wonder whether you are going to seek from other organisations any opinions about children's books and dissemination in Australia.

ACTING CHAIR—We are looking at the terms of reference generally, and we have advertised those terms and are travelling all around Australia. We have received submissions from various educators and media organisations that have been presented before us, but we are not specifically seeking out any particular organisation. We have advertised widely, as is demonstrated by the extent of the work that we are getting in the submissions that we are receiving. Any other organisation is free to make a submission. Is there anything further you would like to add?

Miss Bayfield—I do not think so. I think we have made it perfectly plain what IBBY is and what we do and that we certainly would support the signing, the continuation of Australia's involvement and, if possible, the appointment of somebody to oversee these various things relating to children, which I think is sadly lacking in Australian society generally and in institutions.

ACTING CHAIR—Thank you very much for your submission and coming along today.

Miss Bayfield—Thank you.

[3.51 p.m.]

BRIGGS, Professor Freda, Professor of Child Development, University of South Australia, St Bernards Road, Magill, South Australia 5072

VEALE, Mrs Ann Vickers, Head of School, Institute of Early Childhood and Family Studies, University of South Australia, St Bernards Road, Magill, South Australia 5072

ACTING CHAIR—I understand you wish to substitute your submission forwarded by post with a new document which has been handed to us.

Prof. Briggs—Yes, please; the reason being that I was overseas when this first arose and we developed the paper since I returned.

Resolved (on motion by Mr Bartlett):

That this committee accepts the document as a submission.

ACTING CHAIR—Professor Briggs, we have not had the advantage of reading this submission, but obviously the thrust of your earlier document we have had the advantage of reading. Perhaps you would like to speak to it rather than read it.

Prof. Briggs—First of all, we would like to reiterate that we would support the creation of a national commissioner for children with a secretariat to promote the convention and its implementation and to present children's interests. It is very clear to me that there is a need, having spent three months in New Zealand, where there is a commissioner for children. I have listed in the document some of the issues that the Commissioner for Children in New Zealand has brought to public notice in recent times. There needs to be somebody who can oversee what is happening to children, especially children in the care of the state. You will have seen in today's paper—I think it is right there—that 13,000 children in Australia are in the care of the state at this moment in time. Given the cuts to Australian social services, which are much the same as in New Zealand, we cannot assume that Australian children are being treated any better here. To the contrary, we are aware of lots of problems, not just in this state but in other states as well.

Secondly, we are concerned, along with the Children and Domestic Violence Action Group, that very little support is given for children who are in situations of domestic violence. We know from international research evidence as well as Australian research evidence that there are powerful links between witnessing domestic violence and using violence in later social and sexual relationships.

We are also concerned about children's lack of voice in the family law court system. Some time ago there were recommendations that there should be counsellors in

family courts who were there specifically to represent children and who had early childhood development qualifications and expertise but that does not seem to have materialised. Only yesterday I was told by lawyers that anyone can represent the best interests of the child and that in fact it is a very popular thing to do because apparently 'there is good money in it', regardless of whether this is in the best interests of the child. We are personally aware of very dangerous arrangements that have been made through family courts on the recommendations of counsellors who clearly had no expertise in either children's needs or the dynamics of child sexual abuse and the problems.

I have indicated some of the problems for parents in the document. Reading the document we were very concerned at the number of submissions supporting parents rights to smack children. At the university, we train teachers and early childhood specialists to manage children using positive child management techniques for the simple reason that smacking has been banned in schools and preschools for a very long time and we are aware that better methods are available. The only problem is, of course, that parents do not know those methods. It seems to us that there has to be an emphasis on parent education to provide alternatives to smacking before any legislation can be introduced and if that legislation is to be effective.

We support many of the issues in the Lutheran Community Care submission. Unfortunately, because of the reductions in services, families are not getting the help that they need, which would reduce the risk of abuse and neglect. It has been demonstrated most dramatically in Hawaii with health services there. If you can get early intervention—by early, the intervention takes place when the child is born and the parent is assessed to see what the needs are likely to be—they have found that they have been able to cut down reports of child abuse to an absolute minimum.

In South Australia there have been proposals for this system to be introduced. But, unfortunately, the media regarded this as evidence of South Australia being a nanny state, and they refer to it as a child abuse program, as a result of which it received a very unfavourable reception.

ACTING CHAIR—In a way, is that assessment of risk based on an assessment of the parents' likelihood to abuse the children?

Prof. Briggs—Not just parents' likelihood to abuse the children, but parents' needs and parents' history. We support the submissions of paediatricians in the documents and others who oppose the non-medical circumcision of male children and the circumcision of all female children, because we believe that this constitutes child abuse, irrespective of religious or cultural factors.

Our main concern is that, by signing the convention, countries agreed that the child shall be protected against all forms of neglect, cruelty and exploitation. In Australia, we would like to point out that victims of child abuse are being victimised by the very

institutions created to provide protection and justice. I have given several examples in this document, such as the long waiting lists for victims of sexual abuse to be assessed and the long waiting lists for cases involving children to get to a court, if they ever get to a court at all. I also refer to the fact that police only prosecute if the children themselves have very sophisticated language and good communication skills to be able to deal with the legal questioning, the legal jargon and the trickery that goes on to discredit children's evidence. We see this as part of the psychological abuse of children that occurs after the offences have taken place.

We are also concerned that children with disabilities, who are up to 700 per cent more likely to be abused than non-disabled children, get the least of everything—the least education and the least knowledge about their rights. Of course, the previous Prime Minister and Cabinet were aware of this. They set up an extensive inquiry back in 1993, I think. But as far as we know, no major changes or improvements have taken place since that time.

Another concern is that little or no account is taken of children's developmental levels, their language or their intellectual capabilities during cross-examination in the court system. Young children are often kept for several days at a time in the witness box, regardless of their concentration spans. We view this as another example of the psychological abuse of children—victims who have already been abused—by the justice system.

Appeals also ensure that children have to repeat their traumatic stories again and again. In Adelaide recently, a child had to describe her experiences to three separate juries and be cross-examined three times. There was a conviction in the end, but what a trauma that must have been.

Another example is that in South Australia we have been very much later than other countries—certainly much later than New Zealand—in introducing video evidence where children can be interviewed in a separate room so they do not have to have eye-to-eye contact with an offender, which can be very nerve-racking, especially if threats have been involved. We have had this facility for 15 months. Only one child so far has had the opportunity to use the facility, and that was comparatively recently.

This is not unique to South Australia. It is a national and even an international trend. At the Australasian conference on child abuse and neglect the explanation given was that judges and defence lawyers believe that the accused has the right to have eye to eye contact with the child witness or, alternatively, that crown prosecutors believe that a tearful and very distressed child makes a deeper impression on a jury than a confident child on a television screen. In other words, the children's wellbeing is not the issue.

Our concern is that child sexual offences always involve children. We have known for many years that the investigation and justice systems are adding to the psychological

damage to children who have been victimised already. We find that caring parents are increasingly refusing to expose their children to the courts, with the result that offenders are free to re-offend. Justice Kingsley Newman and many others have been concerned, suggesting that these cases require a different kind of court which caters for children's developmental needs, reduces the delays and the adversarial aspects of the adult system, and looks at the problem in a way that would help the offender as well as the child.

The issue of education for children concerns us. Child protection education is available in most states, but it is optional. New South Wales at the moment is in the process of writing a personal safety curriculum, intending it for all children. But there, as here, it depends on the whim of the teacher whether or not it will be taught.

In our research in South Australia we have found that teachers will teach protective behaviours spasmodically. They are selecting the parts that suit them rather than the parts that children need and the vital information that children need is often missing. Parents then are being deceived. They think their children are being protected, when in fact they are not. We do not think that the teaching of such an important subject should be optional, because we found in Australian and overseas research that without personal safety education children cannot identify or report sexual misbehaviour. So they are extremely vulnerable.

We are also concerned about the exposure of children to pornography. In particular, we feel that the government should be able to do something to protect children from paedophile activities on the Internet. I realise that that is a difficult issue. But I was concerned when I saw that in the United States a couple of days ago it was decided that the rights of adults to see what they want and to put what they want on the Internet took precedence over the safety of children. It should be borne in mind that pornography is widely used in the seduction of children by adults.

Finally, the wording of some of the United Nations convention recommendations have clearly resulted in various interpretations. There are lots of fears in the community. In the submissions one can see the opposition from family and parent focused organisations. We feel that, to maximise support for the convention, wording should be amended and clarified where misinterpretations have arisen. The recommendations are in the document.

ACTING CHAIR—Thank you. Just on that final point in your paragraph 9, as you would imagine, issues of construction will inevitably be the subject of discussion just among committee members. But the Vatican, in ratifying the convention, included clauses where they described their construction of particular controversial clauses. You may or may not be aware of this. It is difficult, now that the treaty has been ratified, to go back and amend it. It would require the agreement of all countries, which would involve a process over again. But Australia could nonetheless, in enacting some act, whether it be to establish the commissioner for children or it be in some other form, put the Australian

legislature's particular construction on those controversial clauses.

After that long introduction, do you think that would be useful? If so, you would favour an interpretation which removes any doubt whatsoever that the family and parents are the predominate institution, if you like, in giving direction in raising children. Would you comment on that?

Prof. Briggs—I would certainly feel that it would get much more support if the family, as an institution, was strengthened and that parents were able to feel that the convention was not undermining the family unit and parents' capacity to parent.

Mr TONY SMITH—In your submission, in talking about our Aboriginal children, and it is a bit of a critical analysis of Christian missions, you say:

> . . . control was even more extensive because it replaced Aboriginal spiritual beliefs with Christian dogma of various kinds.

Some people might take exception to that. 'Dogma' in my Oxford dictionary says:

> an arrogant declaration of opinion.

There would be many Christians who would say that they are entitled to the same respect that you give to the Aboriginal spiritual beliefs for their Christian spiritual beliefs.

Prof. Briggs—Can I explain. I was overseas at the time. Ann contacted me by fax and asked me which direction we would like to go in. I was unaware that that document had been sent until I received a copy of it from Cheryl the other day. That is an article that was written for a journal in the United Kingdom and it was not intended as a submission, which is why I said that this is the document that we wanted you to consider.

That was simply an article on the institutional abuse of children where I looked at the whole gamut of problems that were arising with the stolen children, with the Western Australian experiences of children in the care of the Christian Brothers and with the New South Wales Royal Commission. I looked at the whole area.

Mr TONY SMITH—Do you adhere to the distinction you make between beliefs and dogma, or was it a slip of the pen?

Prof. Briggs—I see beliefs and dogma as not necessarily the same.

Mr TONY SMITH—So what you are saying is that you give more credence to Aboriginal beliefs than Christian beliefs?

Prof. Briggs—I am sorry, I do not see the purpose of this pursuing this argument

because, as I said, that is an article that was intended for a journal.

Mr TONY SMITH—But it might cause some people to say that that sort of a rhetorical statement, if it is seen that way, could undermine the credibility of your submission generally.

ACTING CHAIR—If I could clarify that, that is not your submission, you have withdraw that submission.

Prof. Briggs—Yes.

ACTING CHAIR—You are not submitting that point of view.

Prof. Briggs—I sent a fax to Ms Scarlett pointing out that I had not been aware—

ACTING CHAIR—We got the briefing notes before we got the fax.

Prof. Briggs—Yes.

Mr TONY SMITH—I think the question has probably been answered. During thousands of years of human experience, the Koran, Judaism and Christianity have all adhered to propositions like 'He who spares the rod hates his son, but he who loves him is careful to discipline him' and, 'The rod of correction imparts wisdom, but a child left to himself disgraces his mother'. Thousands of years of human experience have accepted those ways of bringing up children. However, you are saying that the modern view, the 20th century view perhaps, is that that is all wrong and that not only should a rod not be used, but not even a tap on the backside should be used.

Prof. Briggs—We are talking about corporal punishment now, are we?

Mr TONY SMITH—We are talking about parents' rights to smack children. You are suggesting that, notwithstanding those thousands of years of human experience, the better view is that a parent ought not to be able to smack his or her child, and further that, if an educational program has been undertaken and the parent continues to smack the child, state intervention is warranted.

Prof. Briggs—I am not saying that at all. What we are saying is that legislation of this ilk has been introduced successfully in a large number of countries around the world. The United Kingdom and Australia are among the few who have opposed it. We are saying that we know from our professional experience that there are other methods which are better than smacking, because violence breeds violence.

We do not hesitate to say that there would be problems in introducing legislation to stop smacking unless we can teach parents what those other methods are. Most of us know

only the methods that we experienced in childhood, and most of us were smacked.

Mr BARTLETT—Are you advocating that that sort of legislation be introduced into Australia?

Prof. Briggs—It is being proposed quite widely, is it not, that this—

Mr BARTLETT—Are you advocating it though?

Prof. Briggs—We are saying that if we are going in that direction then we need to get education in first—legislation preceding education would not succeed.

Mr TONY SMITH—I have principals in my electorate who are up to their necks in rebellious children, children who are quoting their rights back at them, and they are at their wits end because of the libertarian view, the non-interference, the non-smacking view. Don't you think that one of these days it is all going to turn around?

Prof. Briggs—I doubt whether we will return to advocating violence. When schools were banned from smacking children they were up in arms; they thought discipline would go out the window. But they too have realised that there are better methods of working with children.

Mr TONY SMITH—There are many saying that those so-called better methods are not working now. You must have heard people saying that.

Prof. Briggs—Bear in mind that we are from the Institute of Early Childhood and Family Studies. Our area of expertise is specifically with children under the age of eight.

Mr TONY SMITH—In terms of violence, any physical contact whatsoever, or even a threatening injunction by an adult on a child—I take your point, you are talking about children eight and under—is just not on as far as you are concerned?

Prof. Briggs—We are saying that there are better ways of handling things than using violence but most people would not know what they were simply because we learn from our own experiences and our own parenting. We are also aware that it will be very difficult to get parents to go to parent education classes. Classes would probably have to be introduced at the time when children were born when mothers, in particular, are in contact with mother and baby nurses.

Mr TONY SMITH—Turning to the area of the court process: I do not know how much experience you have had in that but I have acted as defence counsel in sexual cases for 13 years prior to coming to parliament—

Prof. Briggs—I have prosecuted them.

Mr TONY SMITH—There is a comment 'tricks and jargon' used to discredit evidence. There would be a lot of judges who would take issue with that because the role of the judge is to ensure that there are no tricks or jargon in the questioning of children. While nobody is perfect, I can assure you that most judges who I have appeared before in relation to the cross-examination of children in these sorts of cases will stop you very quickly if you step over the line.

Prof. Briggs—As I said, I spent eight years in court also, but on the other side—and I am sure you are right that judges should stop tricks and jargon—you are assuming that judges understand children's language and that judges have expertise in early childhood development. The reality is that they are experts in law, just as lawyers are experts in law. What we are saying—and what some of the judges themselves are now saying—is that this is not sufficient.

Mr TONY SMITH—With respect, I would disagree with you there. I think that many judges are not expert in law but they are expert in life, and training in the law is a training in life depending on the extent of practice that you have. While there are some judges, I agree, who have difficulty with some of these issues, there are many judges who are unexceptionable in these sorts of areas—just with the training of being at the bar and so on.

Mr BARTLETT—I want to pursue that question again of smacking children. I know you said that you would not advocate that sort of legislation without an education program first, and you also said that you would see that it would be difficult, but can I ask you again: would you advocate legislation to prevent children being smacked by their parents?

Prof. Briggs—If we could ensure that the vast majority of parents had other methods available to them, probably yes.

Mr BARTLETT—You would advocate that?

Prof. Briggs—Yes.

Mr BARTLETT—Would you concede that that might be seen as being an infringement of the rights of the parents to raise their children in the way they see fit?

Prof. Briggs—I concede, yes, very easily, that parents would see that as an infringement, but when you encounter parents who are already parenting without using violence, they do not understand what the problem is.

Mr BARTLETT—Yes, but I would put it to you that there are many on the other side who would say that a smack is quite appropriate as well and that it has worked quite effectively also. I would also put it to you that there are a lot of us adults, who

experienced a bit of a smack, who feel that it did us no harm either.

Mrs Veale—I think there is the situation where some parents are so stressed by their life experiences—poverty, unemployment, the various things that afflict people nowadays—that it is very easy for a parent to be driven to lose control and the smack becomes almost like an assault.

Mr BARTLETT—But that can happen, can it not, regardless of whether a smack is legal or illegal? It happens under the current system; it could happen as well if any sort of smacking was outlawed.

Mrs Veale—I think it is part of an attitude change. It is difficult to say to people, 'You can't smoke. Smoking is a health hazard,' because it interferes with people's liberties to make choices, but the education programs have been very effective in promoting the health dangers of smoking. I think that it can be done in an educational way without coercion, and probably should be.

Mr BARTLETT—So it is the attitude that is the problem rather than the act?

Prof. Briggs—Yes.

Mr BARTLETT—So the act can be administered with a correct attitude?

Prof. Briggs—Yes.

ACTING CHAIR—You are expressing a point of view, which you are entitled to do, about the desirability of smacking and so forth, but there is no article in the convention which obliges Australia to introduce legislation outlawing smacking.

Prof. Briggs—No, I was commenting on the submissions that you have already received from other people.

ACTING CHAIR—But you expressed a particular point of view rather than what you see as something emanating from the convention.

Prof. Briggs—Yes. We are aware—especially from our own Children's Interest Bureau—that there has been a substantial movement towards legislation; largely, I think, on the grounds that Australia is one of the few Western societies that has no legislation.

ACTING CHAIR—What I am getting at is that you appreciate that your point of view is one which evokes controversy and there will be, inevitably, members of this committee who will or will not agree with that. But if that controversial point of view is attached to something which necessarily flows from the Convention on the Rights of the Child, you are aware that that controversial point of view will, in some ways, taint the

perception of the convention. I do not want to be seen as leading you, but your point of view is a point of view rather than something which you say follows from the implementation of the Convention on the Rights of the Child. Is that a fair comment?

Prof. Briggs—I was merely responding to the submissions that you have already received. We would certainly prefer that we could change attitudes without having legislation.

ACTING CHAIR—Without having coercive legislation?

Prof. Briggs—Yes.

Mr TONY SMITH—Going back to the justice system, I am very interested in your comments about video evidence. In Queensland, the Evidence Act permits evidence in chief to be given by children of a certain age and in certain circumstances, and that evidence will be given at committal and will form the basis of a prima facie case. Usually, the evidence is admitted as evidence in chief and then, I think almost without exception, the defendant will be committed for trial as a result of that evidence in chief.

That is really the evidence of the record of interview between the child and a police officer trained in interviewing children. I do not know whether you have that in South Australia, but that is what happens in Queensland. In relation to your comment that in South Australia only one child has taken advantage of video evidence, do you mean to say that a judge has only ordered that to happen or what?

Prof. Briggs—It was in the media only about a week ago that, although we have had this facility for 15 months, a little girl was the first who has been able to use this facility. The reason I bring this up is that Professor Kevin Browne, who is at the University of South Australia, did international research and found that this was a trend. Even when we have the facility there which would reduce the trauma for children, children's interests are not being considered. The court system is for adults, not for children.

Mr TONY SMITH—We will check this anyway with the South Australian law, but do you know whether this was in relation to a committal or a trial?

Prof. Briggs—No, I do not know. But of the ones that Kevin Browne brought to the attention of the conference—there were something like 450 cases where video evidence was used—something like 10 per cent of the cases were actually allowed in court.

Mr TONY SMITH—In relation to the comment about eye-to-eye contact with a child witness. There is also legislation in Queensland permitting a barrier to be erected between a complainant and the accused so that at no stage when the complainant comes

in—and again, this is done in almost every case in relation to a child—can the accused see the child. I might just say that I always instructed my clients—the only time I ever gave them instructions—never to look at the child, no matter what, because the jury is watching all the time. The jury does not like it, in my experience.

I agree that, looking at what you are saying, the justice system is not helping to convict the guilty. There are a lot of people who are going free because of the system. However, the upside of that is that, in my experience, the trauma of that trial for an accused—and generally speaking these are first offenders almost without exception—

Prof. Briggs—Can I interrupt?

Mr TONY SMITH—Yes.

Prof. Briggs—Just because somebody is in court for the first time, it does not mean that they are a first offender.

Mr TONY SMITH—Yes, I understand that.

Prof. Briggs—In fact, the research shows that most child molesters have been molesting since adolescence, since they were abuse victims themselves. The research shows that they have committed, on average, 580 crimes before they are first convicted. Our concern is that these men or women are not getting help. They are not being treated, because, as you say, very few of them actually reach court. If they get into court, because children are not equal to adults in any way, they are not convicted.

Mr TONY SMITH—The experience would seem to be so devastating for some of these accused that the experience in itself is a huge deterrent, firstly, because, financially, for those who are not on legal aid, it is crippling, and, secondly, the experience itself. I have never had a repeat offender come to me after an acquittal—that does not mean he has not repeat offended—but I am just saying that that is my experience.

What I am interested in teasing out is, and it is a point that I just thought of in reading your submission, these convictions are so hard to get because of the balance that needs to be struck. As I said to another witness much earlier, there is probably only one thing worse than child abuse, and that is someone being found guilty and sent to prison who is innocent of it. Is there a case for saying, 'What about an inquiry? What about an inquisition into allegations?'

Prof. Briggs—Yes. This is what Justice Kingsley Newman suggested publicly. We should be looking at the aspects of somebody's behaviour that caused the allegations to arise in the first place and what can be done to help. He likened an inquiry as in a mental health problem rather than a criminal activity, especially if it is somebody within the family. Very often, children want the behaviour to stop, but they do not want the accused

to go to gaol, especially if it is their father.

Mr BARTLETT—Page three of your submission states:

Quite clearly, 'best interest' decisions should only involve professionals who have expertise and qualifications in early childhood development . . .

Is that said in context of the issue of sexual abuse, or do you mean that to apply generally?

Prof. Briggs—In particular where there are allegations in relation to abuse in the Family Court, yes.

Mr BARTLETT—What about in the other areas that are more contentious, such as articles 12 to 16 which are areas of autonomy of the child rather than protection of the child? Do you think that that statement should apply there or not?

Prof. Briggs—I think it would be advantageous certainly for counsellors to have credibility. This suggestion actually came from lawyers that I was talking to yesterday. They felt that there should be some sort of accreditation for people who are going to represent children's interests in the Family Court in particular, bearing in mind that children are not in that court themselves.

Mr BARTLETT—But when you say 'only', you are not suggesting there that the 'only' involve professionals and exclude parents?

Prof. Briggs—No. We are talking about counsellors and lawyers. Not any old counsellor or any old lawyer should be allowed to interview a child, assess what is best for that child and then advise the court.

Mr BARTLETT—But the advice of the experts should be taken in conjunction with the advice of the parents?

Prof. Briggs—Yes.

Mr BARTLETT—You made the comment that children are often abused by the institution set up to protect them. You talked about the delays in the court system, for instance. How would you respond to the suggestion that bringing about justice really requires putting more funding into reducing the delays in the system rather than establishing another commission and bureaucracy which, in fact, in itself, might become subject to the same delays?

Prof. Briggs—Certainly many of the problems that we are facing at the moment

are the result of cuts to funding, especially funding to family services—the family services where you would have had early input, found out what parents problems were and given them help in that area. It is now being left too late.

Mr BARTLETT—Which to you would be a greater priority—reducing those waiting lists or establishing another office or commission for children?

Prof. Briggs—I do not see them as being competition.

Mr BARTLETT—What if there were not enough resources to do both?

Prof. Briggs—That is a hard one because one would hope that, if you had early intervention, you would not reach the crisis stage. What is happening at the moment is that too many children and too many families are reaching the crisis stage and then you are having the wait. If a parent thinks that a child has been abused and then has to wait six weeks or eight weeks to find out whether in fact the abuse is taking place, it is not helpful to children's sound development.

ACTING CHAIR—Thank you very much for your evidence.

[4.31 p.m.]

D’LIMA, Mr David Terence, Field Officer, Festival of Light (SA), 4th Floor, 8 Twin Street, Adelaide, South Australia 5000

PHILLIPS, Dr David Michael, Chairman, Festival of Light (SA), 4th Floor, 8 Twin Street, Adelaide, South Australia 5000

PHILLIPS, Mrs Roslyn Helen, Research Officer, Festival of Light (SA), 4th Floor, 8 Twin Street, Adelaide, South Australia 5000

ACTING CHAIR—Thank you very much for coming along. Your submission has been provided to the secretariat. We have had the opportunity of studying it on our plane trips both to Perth and over here. Are there any additions or amendments that you would like to make before I ask you to briefly speak to it?

Dr Phillips—Yes, we do have a supplement. I have 16 copies. The top is unbound; the remainder are stapled. You might like to distribute some of those.

ACTING CHAIR—The committee agrees that the supplement be accepted as a supplementary submission.

Dr Phillips—The nature of the supplementary submission is that it addresses a subset of the 45 questions which the United Nations committee on the Rights of the Child have addressed to Australia.

ACTING CHAIR—Thanks for that. You have to bear in mind that we have had the opportunity of studying your primary submission, but obviously not the new one. We have to be literally flying out the door by five, otherwise Mr Smith and I will have our own domestic problems. We want to leave sufficient time for questions at the end, so that you can elaborate on the points that you would like to make. At the end of those questions, I will invite you to make some supplementary points or to tidy up. To get us into the feel of things, you could speak to your submissions as opposed to actually reading them.

Dr Phillips—I will give a brief introduction. My wife will follow with responses to some of the things that have occurred during the day. Then we will leave it to you to ask us questions. I would like to sum up our whole position on the child rights convention. Whereas we were quite happy with the 1959 Declaration on the Rights of the Child, the convention takes a totally different philosophical stance and we find ourselves totally opposed to the underlying philosophy of the convention.

The convention turns on its head the traditional understanding of parent-child relations within a common law country such as Australia. In a common law country, it is

understood that the parents who give birth to the children have the primary and inalienable responsibility for raising those children and governments are subservient to that primary allegiance within the family.

The convention, particularly as it is interpreted by the child's rights committee, is turning that on its head and saying that there are certain standards set by the committee that must be met otherwise the parents forfeit their right to raise their children. This is not spelt out, but the implication of the philosophy is that parents lose the right to raise their own children by government intervention.

Professor Hafen, in his paper in the *Harvard Law Journal*, makes it very clear that the previous declaration on the rights of the child was concerned with care and protection of children; whereas the Convention on the Rights of the Child totally changes that philosophy to one of child autonomy, which is really abandonment of children instead of protecting and caring for them.

The second concern is that this convention along with a whole lot of other United Nation conventions are given effect in the domestic law of Australia by what we believe to be an abuse of the external affairs power of the constitution. Some of the highest legal minds in the country—former High Court judges and so on—have been arguing that the recent decision of the High Court making extraordinary use of the external affairs power is an abuse, and that should be amended. We consider it an abuse and conventions like this should never be imposed on the states. We believe the state governments are more sensitive to the people they represent, and it should be left in their hands.

Thirdly, we believe it represents an abandonment or an overriding of the sovereignty of the nation of Australia to an external committee. It was only relatively recently that we abandoned appeals to the Privy Council on the basis that law should stop in Australia and that appeals should not go beyond that. But the whole United Nations system, with the optional protocol to the human rights convention, allows an external body. In the case of the child's rights committee, half of the members of the child's rights committee come from countries which, in the assessment of Freedom House, are not democratic. So we are allowing ourselves to be judged as a nation by representatives from other nations which are not democratic, and that is overriding Australia's sovereignty. So those are our three primary philosophical reasons for being in total opposition to the philosophy of this convention.

Mr BARTLETT—You have recommended that Australia withdraw from the convention but, if it does not withdraw, you have then suggested a whole lot of reservations that ought to be included. Bearing in mind that it is actually too late for Australia to make reservations because we have ratified the treaty, would you see an alternative approach to alleviating your concerns could be tackled, for instance, by establishing an office of children, that explicit recognition of the rights of the parents be listed clearly and that the rights of the child be listed in conjunction with those rights of

parents; do you think that would be a way of solving the problem?

Dr Phillips—My first comment is: who said that, once a country ratifies a convention, it cannot withdraw from the convention—

Mr BARTLETT—We can withdraw but we cannot add reservations to our current ratification.

Dr Phillips—Presumably we could withdraw from the convention and, if we wanted to, we could then assent to the convention again with reservations. So I am sure legal minds could find a way of achieving the objective. But we believe that Australia should not continue in the current situation with only one minor reservation. That is our preferred position.

If that is not adopted, then I think we would want to commend the approach taken by the Vatican in saying that we understand the convention to be read in the light of certain things. For example, the preamble to the convention does acknowledge the rights of parents. There are other contradictory statements in the civil and political rights convention and I think elsewhere—I am doing this from memory now—where it is stated in the first instance that the parents shall be responsible for their children. So it would be possible for Australia to make a statement to the effect that we understand the convention in the following terms.

Mr BARTLETT—Do you think that could be achieved as well—as I suggested before—by having that included in the charter of an office of children, if such an office were to be established, so that within that charter the rights of the parents were clearly enunciated?

Dr Phillips—We oppose the idea of a children's commission. In fact, we would like to see the Human Rights and Equal Opportunity Commission disbanded. We believe this is a matter for state governments, not for federal government. We believe that the Human Rights and Equal Opportunity Commission establishes a bureaucracy which acts as a kind of watchdog over political correctness and enforces views which are contrary to the wishes of many Australians.

Australians have never been given the opportunity by way of referendum to say that they wanted this kind of watchdog set up. Our preferred position is that no children's commission be established, and that the human rights commission be disbanded so that the states can exercise their responsibility.

Mr BARTLETT—We have had suggestions in other submissions, though, that, rather than a commission being set up, an office attached to the government be established. It would be a much smaller structure and it would not have the same degree of autonomy as a commission.

Dr Phillips—The smaller the better.

Mrs Phillips—I believe it would be more money spent in a way that would not be productive. We have been very negative about the United Nations Convention on the Rights of the Child: I would like to be very positive about an earlier United Nations document entitled *The declaration of the rights of the child*. The Festival of Light praised this in 1978 and produced a charter for the child based on it. We feel it very fully expresses the rights of the child in relation to the responsibilities and rights of the parents.

We wholeheartedly support the wording of this declaration, and we do not know why the convention could not have followed the philosophy of this declaration. We would like it to replace the convention, if possible, because it would avoid all the problems that you have discovered with parents being very upset about certain articles in the convention, and yet it would recognise the need of children for protection, which so many of the groups giving evidence today obviously want. We believe the declaration is a better vehicle for it.

Mr BARTLETT—Reading through here you have got a lot of concerns, but largely with regard to articles 12 to 16. To what extent does article 5 alleviate some of those concerns?

Mrs Phillips—That is another cause of my frustration. All through today you spoke to Tina Dolgopol, who asserted with great authority, it seemed to me, that parents misunderstood article 5—this was echoed by Julie Redman and others, yet it is neither her opinion nor my opinion which counts; it is the opinion of the United Nations Committee on the Rights of the Child which oversees the implementation of the convention, and they have already ruled. For example, in paragraph 13 of their concluding observations to the Holy See in November 1995 they say:

> With regard to the relationship between articles five and 12 of the Convention be clarified. In this respect it wishes to recall its view that the rights and prerogatives of the parents may not undermine the rights of the child as recognised by the Convention, especially the right of the child to express his or her own views and that his or her views be given due weight.

There is the ruling that article 5 is subsidiary or subservient to article 12 and other rights given in the convention to children. That is why parents are rightly concerned. It is not misinformation. It is not a myth. I was very upset by Mr Hardgrave’s assertion that these myths are circulating. They are not myths.

The United Nations Committee on the Rights of the Child is no myth, and it has made a ruling that disturbs parents. It has put this ruling into place in its concluding observations to the United Kingdom. It has told the United Kingdom that it is very concerned that parents in the United Kingdom are allowed to withdraw their children from sex education classes in schools. This right is given to parents here in South Australia, but the committee said this should not be because of article 12; it is the child who should be

asked his or her opinion of the sex education class and that opinion given due weight.

It goes on to talk about other matters of dispute; for example, excluding the child from school. They do not say what they mean by that, but I presume that some parents want to exclude their child from school to home school. But here, again, it is the child's opinion, not the parents' opinion, which is important.

They go on to say that there should be legislation to prohibit physical discipline or physical punishment to children, not only in schools but also in the home. There it is—the ruling of the United Nations committee. That is why parents are, justifiably, very upset about this convention and what pressure will be exerted on Australia by the United Nations to conform to these rulings.

Mr TONY SMITH—Do we have copies of those rulings?

Mrs Phillips—You can download them yourself, as we did, from the Internet.

Dr Phillips—They are in the UNICEF web site. The actual wording of article 5 is qualified in a couple of ways. Firstly, the supervision of parents must be 'in a manner consistent with the evolving capacities of the child', so that is a qualification. Somebody has to determine whether it is 'consistent with the evolving capacities'. Secondly, it is also 'appropriate direction and guidance', so someone has to determine what is appropriate and what is not appropriate. Thirdly, the end of articles 5 says, in relation to rights that the parents can exercise, that it is 'guidance in the exercise by the child of the rights recognised in the present convention'. So it is really making the parents subservient to the rights of the child recognised in articles 12 to 16.

ACTING CHAIR—Reference was also made to article 18, in particular the second sentence of clause 1. Have you had a look at that? It reads:

> Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.

Mrs Phillips—Yes, but the United Nations committee seems to have not regarded this in its criticisms of the United Kingdom and also Canada, which I could have brought along. It strikes me that Professor Freda Briggs was incorrect in saying the vast number of Western countries have adopted legislation prohibiting physical discipline in the home. That is not true. The United Kingdom, Canada and New Zealand have all been criticised by the committee for not doing so.

Moreover, in our supplementary submission, which you have before you, it goes into detail on the studies that show—contrary to what Professor Freda Briggs may have told you—that, when properly administered, physical discipline is a very effective means

of punishment of young children when used with love and with other methods as well. The parents who are forbidden to use physical discipline sometimes find that time out and other variations are unsuccessful. It is when they get so stressed, because the child is still rebellious, that they then lose control. We are most concerned at sweeping statements being given that physical discipline is wrong and does not work. We have evidence in our supplementary submission here that the contrary is correct.

Dr Phillips—I would like to make one more comment. Certainly the second sentence in article 18, clause 1, is a helpful statement. The third sentence says:

The best interests of the child will be their basic concern.

One can imagine a court saying that that gives the court the power to determine whether parents are acting, in their view, in the best interests of the child. So that is a helpful statement, but I am not sure it is helpful enough.

ACTING CHAIR—Isn't it up to the Australian parliament or a state parliament to legislate as they see fit? There is no suggestion that the legislature would simply enact these clauses. As the deputy chairman of the United Nations said over the past few days, because Geneva or New York sneezes in terms of international treaties, it does not mean Australia catches a cold. There is no suggestion that—

Dr Phillips—It did in relation to the Tasmanian homosexual laws case where—

ACTING CHAIR—That is because the federal parliament had enacted legislation consequent to that treaty. But there has been no—

Dr Phillips—But the stimulus for enacting legislation was a decision of a United Nations committee. The process by which that committee operated would not be accepted in Australia as an acceptable process of law.

ACTING CHAIR—But it was not the treaty that overrode the Tasmanian law; it was the federal legislation based on the treaty.

Dr Phillips—That is understood.

ACTING CHAIR—It is up to the Australian parliament as to how it enacts laws and the draftsmen as to what construction they put on these clauses, which, as you see by article 18, compared with the earlier articles, can go in both directions in terms of suggesting constructions.

Dr Phillips—I fully accept everything you have said. It is up to the federal parliament to legislate or not to legislate. Our concern is that, in the example of the Tasmanian homosexual laws case, there was international pressure applied to Australia on

the basis of a committee which does not work according to the Australian rules of law. It did not cross-examine the evidence. Some of the evidence presented to it was, according to other people who are knowledgeable, false.

ACTING CHAIR—This is an issue of controversy, of course, as to the extent to which Australia should be able to rely on the foreign affairs power, which you note in your submission. They are the competing debates there.

Dr Phillips—Yes.

Mr TONY SMITH—What you seem to be saying—and I would love to ask you more questions, but I am mindful of the time—is that what is going on here is really a very insinuating process. What happens is that we have signed and ratified a treaty that has never been near parliament. We now have a set of norms and precepts that people are touting all around the country as being the norms and precepts for Australian society. We also have, because of signing and ratifying that treaty, a United Nations committee, which also does tours of Australia and New Zealand and everywhere else, which takes its evidence in private, does not have cross-examination, does not observe the normal rules that we expect and is composed of people who come from non-democratic countries.

Dr Phillips—Indeed, and that is one of our big concerns.

Mr TONY SMITH—They then make a ruling. That ruling is touted all around the country and the world indicating that Australia is falling short. Then the whole process puts us on the back foot. It is an insinuating sort of process that gradually pushes us a bit further—as if that is the right way to go. What they are saying has to be right because we are part of the treaty and they are saying that. Therefore, it pushes us that bit further along the track. Ultimately, by a dint of subterfuge, effectively, we are being governed as a country by this non-democratic organisation, this non-judicial group of people whom would hardly understand democracy let alone practice it.

Dr Phillips—Indeed.

Mr TONY SMITH—So, in effect, what we are seeing is, in many ways, having regard to what has happened in the last seven years, since 1990 anyway, that more and more of this sort of philosophy is being inculcated into Australian society with the result that, in trade terms, it is putting pressure on the government.

Mrs Phillips—Exactly. That is the kind of impression that is dangerous.

Dr Phillips—Yes. That is one of our concerns—that there may well be hidden agendas, that maybe half of the committee on the child's rights convention come from non-democratic countries, which may also be underdeveloped countries, and they may well want to pull down Australia as a developed country, in trade terms, in order to generate a

more favourable situation for themselves. How better to do that than throwing mud at some other country?

Mr TONY SMITH—Or having regard to the European situation with the human rights clause. It could be seen, on one side of the coin, as part of the process of that nature.

Dr Phillips—You have put it marvellously. I echo every word you have said. That is why we believe Australia should preserve its sovereignty by not binding itself to international scrutiny by non-democratic countries.

Mrs Phillips—One of your witnesses this morning—I am not sure whether it was Ustinia Dolgopol or Julie Redman—said that she personally knew some of the members of the committee and she sort of gave them a strong personal recommendation. She was sure they would act independently. In contrast to that, in an address to the Samuel Griffith Society in 1994, Senator Rod Kemp, whom you probably know, gave evidence that Justice Elizabeth Evatt, who is our Australian member of the Human Rights Committee, a similar committee of the United Nations, admitted that other members of that committee, although they were supposed to be on that committee on the basis of their expertise and not on the basis of their belonging to a particular country, were nevertheless briefed by their governments as to the line they should take on particular issues. She regretted that and said, 'We don't live in an ideal world.' What that means to me is that, regardless of your personal liking for a particular member of a committee, the way is open for that sort of corruption. I do not think our government should submit to that kind of potentially corrupt process.

ACTING CHAIR—Does the Festival of Light think it is a legitimate role or a legitimate concern of Australians to be interested in the standard of living and welfare of children in other countries?

Mrs Phillips—Yes.

ACTING CHAIR—What other means are there for the international community to discuss and evaluate the treatment of children in other countries and take steps to address it if it is not by signed instruments obliging those countries to focus on those issues?

Dr Phillips—We would prefer the model of the declaration which states a set of values but which is not an attempt at international enforcement of law.

ACTING CHAIR—So what? They are declared. What happens then?

Dr Phillips—Then it is up to the sovereign nations to govern themselves.

ACTING CHAIR—What if they do not?

Dr Phillips—That is not our primary responsibility.

ACTING CHAIR—You do not think the international community has a legitimate role in voicing its concern about the maltreatment of children in certain countries?

Dr Phillips—There are limits, because there are two models. There is a totalitarian model, where somebody in a central place of authority imposes their view on the rest of the people under that governance, or there is the democratic model, where there are self-governing communities.

ACTING CHAIR—So you are saying that the international community can legitimately voice its concern about the treatment of children in totalitarian countries, but not if those children are being abused in democratic countries such as India, for instance?

Dr Phillips—What I am saying is that we like the model of the declaration which sets up some values and, by persuasion or encouragement, encourages any countries, developed or undeveloped, to act responsibly. But we do not like the model of the convention which seeks to set up a remote international law. We favour the notion of self-governing communities. In the history of mankind, the greatest problem that has emerged with governments is of totalitarian rule. The greatest safeguard against that is for government to be local. So we believe it should be a local responsibility.

ACTING CHAIR—Wasn't the Nazi government of Hitler a local government?

Mrs Phillips—No. Hitler abolished the state governments and he took over total control. That is precisely the danger.

ACTING CHAIR—I see. When you are saying 'local', you are saying 'state'.

Mrs Phillips—Yes, indeed. In order to safeguard Germany after the war, they returned to the federal system. That was the best thing they could have done to prevent the rise of another Hitler. There has been a lot of discussion about a children's commissioner solving problems. I do not think it would, any more than ATSIC has solved the Aboriginal problem. It is just adding another layer of bureaucracy. It is not putting the money where it is needed. If you have any money, please give it directly to groups which can help children, not to another layer of bureaucracy.

ACTING CHAIR—Finally, if I can pin you down a bit, do you have any concerns other than clauses 12 to 16?

Dr Phillips—Yes, it is in our supplementary submission.

Mrs Phillips—Article 19 has been interpreted in a most bizarre way, and we have great problems with that.

ACTING CHAIR—We should read those supplementary submissions. Thank you for appearing before us today.

Resolved (on motion by Mr Bartlett):

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

Committee adjourned at 4.55 p.m.