COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

SYDNEY

Friday, 9 May 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

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

For inquiry into 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

JOINT STANDING COMMITTEE ON TREATIES

UN Convention of the Rights of the Child

SYDNEY

Friday, 9 May 1997

Present

Mr Taylor (Chairman)

Mr Bartlett

Mr Laurie Ferguson

Mr Hardgrave

Mr Tony Smith

The committee met at 9.07 a.m.

Mr Taylor took the chair.

HAFEN, Professor Bruce C., First Counsellor, Pacific Area Presidency, The Church of Jesus Christ of Latter Day Saints, PO Box 350, Carlingford, New South Wales 2118

CHAIRMAN—Welcome. Would you please state the capacity in which you are appearing before the committee today.

Prof. Hafen—I am a professor of law at Brigham Young University in the United States of America. I am currently living in Sydney as a member of the Pacific Area Presidency for the Church of Jesus Christ of Latter Days Saints, which is the sponsoring church for Brigham Young University.

CHAIRMAN—We have received and will accept into the evidence the article from the *Harvard International Law Journal*, Spring 1996, vol. 37, No. 2, entitled 'Abandoning Children to their Autonomy: The United Nation Convention on the Rights of the Child' by Bruce C. Hafen and Jonathon O. Hafen. Is that your brother or your son?

Prof. Hafen—My son.

Mr BARTLETT—I move that the article be accepted for publication.

CHAIRMAN—So moved. I now invite you to make a short opening statement.

Prof. Hafen—Firstly, my co-author on that article, my son, and I have been talking about legal rights for children since he was old enough to speak. He began speaking in complete sentences when he was seven and he wondered why he did not have the right to vote. He said that he knew more about the candidates than his grandmother and grandfather did so he and I have worked together for a long time on these issues. It is a source of satisfaction to me that he helped co-author this article. He is now a lawyer.

I have been a professor of law in the United States since 1973. I have been publishing and teaching about the legal rights of children for more than 20 years. My first article was published in 1976. It was cited by the United States Supreme Court in a key case on legal rights for children. My publications have appeared in such scholarly journals as the *Harvard Law Review*, the *Michigan Law Review*, the *Duke Law Journal*, the *University of California Law Journal*, the *American Bar Association Journal*. The paper you have before you on this subject was published last year.

I have spoken on this topic in the last 18 months in Zurich, in Prague and in Belfast. I was the Dean of the Brigham Young University Law School in the United States for four years before coming here. That is the largest private university in the United States with 30,000 students. The law school is recognised as a national leader. It has some formal ties with Queensland University here in Australia.I was also the Vice-chancellor or Provost at Brigham Young University, the chief academic officer. I have been a consultant

to United States federal agencies and national accrediting associations in higher education.

I am here because some Australian lawyers and others saw the article that you have before you. They called your committee and notified me that they had called you and urged my participation. I am glad to be here. I am now living in Australia for a time. I want to compliment the committee on this inquiry. I think it has international significance because my view, rather simply stated, is that this convention was adopted by what is now virtually all of the international community, uncritically, without their realising that, for the most part, this convention has built into it the concept of the autonomous child. That breaks new ground. It has never been in United Nations treaties before. It has never been part of the law of any country in any form resembling what it is in this convention.

My view, based on a fairly thorough study, is that the nations that have ratified the convention did so without fully realising this. They adopted the convention without subjecting it to the scrutiny that would normally be involved in significant changes to the domestic laws. If Australia now shows the leadership to say, 'What did we do, and what does it mean?', the whole world needs to hear that. I might add, incidentally, that the United States is now the only major country not to have ratified the convention. Although the US ambassador to the UN has signed the convention, it still needs to go to the US Senate. It is my projection that it will not pass, that it will not be ratified by the US. One of the reasons is that it will be subject to greater scrutiny than has been the case in other countries.

I have no quarrel with the bulk of the provisions of the convention, which reaffirm the UN's prior commitment, a commitment I share, to the protection of children. The UN Declaration on the Rights of the Child from the late 1950s, the League of Nations statement in the 1920s, and much of what is in this statement, which is commendable, important and significant, motivate governments everywhere to care more for children, for their protection. My concern with this UN Convention on the Rights of the Child, the CRC, I will call it for brevity, is that it has adopted a new idea and a bad idea that the child is an autonomous person. That idea, which is reflected primarily in articles, 3, 5, 9 and 13 through 16, ought to be rejected by Australia and by the rest of the world.

Just to give you a sense, the United Nations publications catalogue, from which I ordered my copy of this convention a few years ago, describes the new children's rights convention, and the words that they have used should give you some clue about this new concept. Again, I stress it is not everything about the convention that is this way. Mine is not a kind of categorical uncritical rejection. It is this concept of the autonomous child that is the problem. The catalogue states that the convention promotes a 'new concept of separate rights for children with the Government accepting the responsibility of protecting the child from the power of parents.' When the government protects a child from the power of parents they prevent, so to speak, parents from influencing and teaching children. That is not in the interests of children or parents or society, as I will try to say briefly. I will just hit a couple of highlights in my approach in our limited time.

I want to point out that in my research, which is fairly extensive on this subject, nowhere have I found any evidence that children have increased capacities to assume the responsibility of being autonomous persons, legally or socially. No-one has made that argument. This is an ideological debate, not a debate based on evidence that children suddenly can care for themselves and do not need guidance.

The traditional view in the US and throughout the western world particularly, with which I am most familiar, was that children needed to be prepared to enter democratic society. They needed education; they needed protection. The greatest exponent of human rights in the literature, John Stuart Mill, in his famous essay on liberty said that he was not talking about children who had not acquired the capacity to enter into the democratic process. What they need is education protection so that they can enjoy that process and contribute to society. So the idea in the CROC is a brand new idea. It is not a reflection of traditional human rights thinking in any sense. So I urge you to reject that concept.

I want to tell you quickly why you should do this and why other countries need to hear the message that Australia can send. It is a moment when international leadership is needed and your inquiry is significant. I do not know of another country that has had this courage and it is an important opportunity. There are two erroneous assumptions on which this CROC has been advocated and adopted throughout the international community. The first erroneous assumption is that the concept of the autonomous child reflects American law. It was American lawyers who took the lead in the debates leading to the drafting and ratification before the UN.

My testimony to you, as an expert on American law and the international perspectives in this field, is that the autonomous child concept has never been adopted in the United States. My paper describes in some detail the history of the children's liberation movement in the United States. The United States has had an enormous commitment to the education and protection of children, including an elaborate juvenile court system and a very expensive public school system. But it was only in the 1970s that the concept of children's liberation entered the US dialogue, and that concept was considered carefully and sympathetically in many courts and legislatures.

When I first became a law professor in the early 1970s, I watched with great interest as this began to occur. I wrote about it; I taught about it. I have studied the cases; I have watched the legislatures. The concept was basically rejected on the grounds that it was not in the interests of children or parents or society to suddenly treat children as autonomous legal persons.

I give a few specific examples of provisions in the CROC that go beyond US law. The language of the convention can change the basis for state intervention into functioning families. The language can change from traditional age limits to subjective determinations based on the evolving capacity of the child, which is a dangerous and completely unproven concept. The experience in the US with the notion of subjective determinations

of a child's maturity to make a choice is all negative. Judges cannot evaluate capacity on an individual basis. It would paralyse administrative and judicial machinery, and is based on something that is unsound psychologically or forensically in terms of the way courts and legislatures function.

Other specific provisions that go beyond US law are not only this new approach to age limits, but also privacy rights, unrestricted access to information, religion and expression. Under US law, there is the right of parents to direct the upbringing of their children in general, such as sending them to a religious school rather than a public school. That very case came before the US Supreme Court in the 1920s and another case, based on a similar issue, came before the court in the seventies. The court has consistently upheld the right of parents to direct the upbringing of their children.

The CROC which is now before you adopts the position taken by the dissenting justice in the most importance case on this subject from the early seventies—Yoder v. the state of Wisconsin. Yet those who have written about it would have the world believe that the approach of the CROC reflects American law. It does not reflect American law. It reflects some of the rhetoric; it builds on some of the direction toward giving children more constitutional protection. The CROC does not reflect American law, has not been adopted there and is not likely to be.

The second erroneous assumption on which this document has been adopted so widely in the international community is that it reflects established United Nations principles. Most of the document does. Most of the convention dealing with protection for children reflects traditional UN commitments. But this new concept in the articles that I mentioned—the concept of the autonomous child—was never in any international documents before it. It was never in the laws in the fully developed form in which you see it in the convention. This was not the law in any nation.

The northern European nations had toyed with some of these ideas, but this portion of the convention came to the UN through the leadership of American lawyers, who tried to sell this idea to the American judges, the American legislatures. They failed. After a review of the evidence—I did not expect to find this when I first began researching the topic and my article that you have documents this—my view is that these avant-garde thinkers about liberation ideology wanting to free children from all legal restraints failed in the US, took their idea to the international human rights forum, where the idea was less critically examined. The UN adopted this convention without a vote. As I have said, I do not think most people knew what they were doing when they voted for it. It is just that nobody wanted to be against human rights.

My footnote 6 cites Mary Ann Glendon, a professor at Harvard Law School, as saying that what we have been seeing from some of the UN conventions recently—and this one is a very good example of that—is a tendency for ideas that do not survive normal democratic processes to go off some place to die. That is what ought to happen if

they do not survive scrutiny, but the international community has become so uncritical in the area of human rights that some of the least popular and least substantial ideas will be adopted in uncritical forums, far removed from public scrutiny, far removed from academic scrutiny and practical scrutiny. Then they are brought back home and unveiled as international norms. That is what happened in this case.

On page 458 of my article, I quote extensively the work of an American lawyer named Cynthia Price Cohen, who was one of the drafters of the convention and one of the leaders in the efforts among the non-governmental organisations that drafted this document. She did not disclose all this before the CROC was voted on by the UN General Assembly or by the countries that have considered it.

Now that it is a fait accompli, she tells the story that the ideas in this autonomous child concept were never advanced by member nations. They were developed in advance by non-governmental organisations, by lobbyists who would find sponsors in certain governmental organisations and bring them forward. She states, in so many words, that children as autonomous beings is a brand new concept in international jurisprudence and, because she was one of the drafters, she takes great pride in this path breaking step. That is clear documentation for my second point about erroneous assumptions. This concept does not reflect traditional United Nations or international principles.

If the nations that have ratified this convention had examined it thoroughly, they would have found that the concept of the autonomous child is bad social policy, bad for children and bad for families for four reasons. First, it is a bad idea for any nation to have its domestic laws especially determined by an non-deliberative international group that did not subject the ideas to scrutiny, did not develop them in the experience of local context and did not follow the normal processes for sound decision making. That is a general observation.

Second, the concept of the autonomous child, as it is portrayed in the CROC, undermines the long-term development of children. That is one of the most ironic and pernicious things about it. The title of my article that you have is *Abandoning Children to their Autonomy*.

I have here a picture that I took on a recent trip through the islands. In Tonga I saw a child wearing a t-shirt and I thought, I have to have a picture of that. I do not know where he got the t-shirt but, for me, it reflects the problem we are talking about. This is a candidate for the new UN poster child. He is wearing a t-shirt that says, ‘Leave me alone’. He is standing there innocently eating an ice-cream bar. I said, ‘May I take your picture?’ So I did. The idea that children should be left alone is perverse and ironic. How can thoughtful parents and societies decide the best thing we can do for our kids is leave them alone? That idea serves the interests of parents and those who have a commercial interest in leaving children alone. And there are plenty of parents who are, I think, deceived by the notion that their kids are just fine—‘Kids are people too; they can take care of themselves;

so if we leave them alone we will all be better off and, besides that, that is what the United Nations wants us to do.'

I do not mean to overstate this. The language of the UN convention I think attempts to reflect a concern for parental rights but my analysis, as I have given it to you, will reflect that the concepts here will undermine children's development. For instance, freedom of expression—a fundamental kind of civil right. What does freedom of expression mean to a child? A child is not free to play the piano or to write an essay simply by being free of censorship. A child does not have freedom of expression by being left alone. A child has freedom of expression by being taught to read and to write and to express ideas, and children cannot do that out of the vacuum with which they begin their lives. Their right is to be taught and prepared, given the skills, so that they make choices and then can express themselves. There is freedom of expression that comes from removal of censorship, but the more meaningful form for them is to be given the tools and skills to express themselves. Then they are free.

I am almost done. The third of my four points is that the concept of the autonomous child undermines parental commitments to children. There are too many parents who are all too willing to accept the idea that they do not need to be concerned with their children. That is a growing and dangerous tendency documented throughout all the social science literature now. One of the biggest problems in the US—based on my reading of social science literature, and I have been reading it closely for years—is children being left alone, single parents who essentially abandon them. Parental neglect and abandonment was historically one of the worst things that parents and society could do to children, and now we have a legal concept that seems to tell parents that is what they should do. That is the last thing children need.

Finally, the fourth reason why the concept of the autonomous child is bad policy is that it is anti-democratic. It confuses a fear of state paternalism with a fear of parental paternalism. Children are inherently dependent by nature, so the question is: who is going to teach and prepare these children? They cannot do this for themselves. They will pick it up on the street; they will receive it from the government; they will receive it from parents. In developing coherent and substantial governmental policy, who should care for children? Historically, the democratic tradition has taught us that children should be taught by their parents the values, the skills, the attitudes that they need to become contributing members of society. That is why the US Supreme Court said in one of its landmark decisions that is still good law in the US that the child is not the mere creature of the state.

Children come to parents. Parents have the primary obligation in a democratic society to teach and rear children and to ensure that parents are held to legal obligations to do that. If they abuse or neglect them, if they fail to protect and educate them, they have failed the children in this society. The concept has been that leaving that responsibility in the hands of parents in a pluralistic society develops many alternatives, develops many

opinions. When you remove parents from that equation and you turn the child-rearing process over to some monolithically directed view that inevitably will end up being governmentally sponsored with the approach that the CRC takes, then children become the creatures of the state, which really feeds into the root ideas of totalitarianism, not democracy. Now that is abstract. I do not mean to be just arm waving but, philosophically, that is where this idea comes from. That concludes my statement, Mr Chairman.

CHAIRMAN—Thank you very much. We thank you for your paper and for those comments. We have a very tight time scale today, but it is worth reading into the record how we came about doing what we are doing. It we will clarify the situation for you. Indeed it is something that we will consider in the context of the report on this convention, the so-called—as we refer to it—CROC, rather than the CRC. We have given it the short title 'CROC'.

In this country, we ratified the convention in 1990 without any parliamentary debate. Yes, there was some consultation with state and federal governments on it, but my government, then in opposition, was critical that there was not enough; hence the rationale for this committee. It was one of the initiatives of my government in the first few weeks after coming into office last year.

I do not know how long you have been here but, back in 1989-90, early 1990, you are quite right, there was a lot of public debate about this convention. There were lots of perceptions and lots of emotional views about what it might or might not mean. Nevertheless it was ratified.

Under this committee's terms of reference, whilst we principally deal with all treaties—unlike the United States where it goes through the Senate for formal ratification—what happens in this country is that we sign to start off with, and, once we have signed, at an appropriate time the government will table the convention or treaty, whatever you want to call it, in both houses. My committee then has 15 sitting days in which to report back to the parliament whether or not a particular treaty should be ratified. It is then up to the government because, under our constitution, the ability to make treaties is an executive role.

So what we have been doing principally since the middle of last year is considering those treaties that have been formally tabled. There were something like 80 over that period until the seventh report that I tabled only a month ago in the House of Representatives.

As a committee we decided, as a result of a paper that was produced by this committee secretariat over the Christmas-New Year break—a very neutral paper, no bias—to look at all aspects of it, all criticisms of it, the pros and cons of the issue. We considered what we should do, and we felt that, after 6½, going on seven years, it was appropriate for us to revisit that convention.

So that is what this is all about. That is what we decided some weeks ago on a bipartisan basis. As you know, this committee is from both houses; it is cross-party. Unanimously we agreed that we should review the convention and that, in due course—we hope by October-November—we will table a report on this convention.

We put that out to the national media. As a result of calling for expressions of interest and submissions, in the first 72 hours after we announced it we had over 1,000 letters or telephone calls. We have already had 160 written submissions on it. So what that says—and it reinforces a point perhaps that you are making—is that there is still a lot of feeling out there in the community here in Australia about what the convention says or does not say and what implications it has for domestic law.

One other dimension is, and you may be aware of this, that there is a High Court case in Australia called the Teoh case. In fact my government will be moving in the next few months to legislation which will clarify once and for all—as the previous government did on the other side of the political fence in the last parliament, and it was only prevented from doing so as the result of the proroguing of parliament with the calling of an election—irrespective of the ratification which, as you would know better than I, has the result of putting us into the international legal arena very legalistically, that domestic law is it. It should not be, as we have heard, and as a number of us have said before, that just simply because New York or Geneva coughs we should get a cold. That is the perception of lots of people out there in the community.

This is the fourth hearing. We have had two preliminary hearings in Canberra; we have had one hearing in Brisbane last week, and one in Sydney. I have no doubt, looking at today's agenda, that we will be coming back to Sydney in due course. But we expect, over the July-August period in particular, that we will be travelling a lot further to look at all the sorts of things that you, if you accept that you are at one end of the spectrum, and others at the other end of the spectrum and lots of people in between have to put to us.

In a media comment in the last 24 hours I said that this committee has no agenda. We are not a mouthpiece of government. We are a parliamentary committee which will look at the issues, I hope very objectively, and we will make the appropriate recommendations and comments to the parliament and, therefore, hopefully to government.

As you would again know better than any of us, once you ratify—as we have done with one reservation in terms of article 37(c) on the imprisonment of children and adults together—you can no longer make further reservations. What you can do is make comments on other countries' objections, and there are lots of those, even from countries who have ratified. Today we may get an opportunity to explore some of those qualifying statements by countries that have actually ratified, but it would be fair to say that there is still lots of emotion out there in the Australian community. By the end of the year we hope to put that in writing to the parliament to let the parliament and the government make whatever decision is appropriate.

As you would know, with this convention, like most other conventions, we can de-ratify. Now that is something that I am saying is right at one end of the spectrum. We can make lots of other comments without going to that extreme measure but, nevertheless, that is a possibility. I cannot say at this stage that we would not be recommending that; it is far too early to be saying that. I hope we are trailblazing a bit, even domestically, on this one. Hopefully, on an international plane, that may be seen as well.

I wanted to get that on the record so you might know the rationale behind our setting up and where we are at. We have not got too much time for questions. I think you have made your points very strongly, both in your written and oral submissions, so I will ask Mr Ferguson to open with a question.

Mr LAURIE FERGUSON—There is just one point. You said on the way through—and, quite frankly, this might not be that material to the overall argument—that this convention had internationally not been, let us say, looked at as thoroughly or examined as widely as some comparative conventions. Could you cite some of the other conventions that you would see that internationally attracted in a variety of countries far more overview?

Prof. Hafen—No. What I am saying is that, generally speaking, in the last few years the UN approach to treaty making dealing with human rights has been removed from the normal dialogue and participatory process, and that is true not only of this convention but of several others.

Mr LAURIE FERGUSON—Could you just clarify how that has developed?

Prof. Hafen—I think it has developed as a technique from lobbyists who have found that the world is shrinking. We have an emerging global village and, if they can go to the right places and have adopted an agenda that they promote—and they can come from many perspectives—then the world establishes that as international norms. That is a very effective, efficient way to establish a point of view and legitimate it through processes that circumvent the ponderous machinery of democracy.

Mr Chairman, could I just respond to one of the things that you said? You may not realise how significant your approach is. I would like to offer simply an international perspective on it.

I am aware of a number of countries already, European ones particularly, which use the language of the CRC. Actually, your word CROC, which comes from an American phrase, ‘a crock of baloney’—which is what you get when you cross a crocodile with an abalone, a crock of baloney—is not a bad phrase except that it is too large to suit my taste. Mine is not an unqualified rejection.

On this one point you are blazing a trail—that is, many countries are using the

language of the CRC for guidelines in neighbourhood welfare administration. I know of a lawyer in Denmark who says there are people in that country who monitor the decisions which come from social welfare agencies to see that they conform to international norms. For you to take the position that Australia is not ready to do that yet until these ideas have been considered one by one and consciously adopted into your domestic law seems to me a very intelligent approach that ought to be shared more widely. There are too many people who uncritically assume, 'If this is an international norm I guess we have just got to go along with it'.

CHAIRMAN—We do not have time to explore it today, but in Canberra and in Brisbane it came up in hearings that, if you just take the ratification of the Holy See and the qualifier that was expressed at the time of that ratification, it raises the sorts of issues that you raise—the balance between the rights of parents and the rights of children. Whilst they are ratified, when you read the qualifying statement it does still raise some very fundamental questions about some aspects of the treaty.

My personal view is a bit like yours that, in terms of this particular convention—I do not want to have to use the word 'motherhood'—most of it is something, I would suggest in legal terms, the reasonable man would accept. There are some clauses, in particular 13 to 16, which—when you go back to 1989 in this country—were the areas that were being criticised, particularly among some of the church groups, et cetera.

Before Mr Bartlett asks questions, I should also point out why we are looking at this convention when we, up until now, have been dealing with treaties that have been just tabled. In the joint resolution of both houses, both the House of Representatives and the Senate, we are entitled, as a committee, without reference to ministers, to be able to visit those treaties—and we have about 1,000 treaties at the moment that are extant, bilateral and multilateral. It was a unilateral decision by this committee that we do just that. That might clarify a question that you may have had.

Mr BARTLETT—On page 489 you comment that many members of the international community have simply not understood either the CRC's language or its conceptual novelty. Would it be your evaluation that that would be a reason why so many of those countries did apply fairly significant reservations in their adoption of the treaty, and reservations which, for instance, with a lot of the fundamentalist Islamic countries, basically subjected the treaty to take second place to their own Islamic law?

Prof. Hafen—Yes. I would like to build on that question and tie it with a comment from the Chairman. On the page you refer to, I give the example of the Vatican's approval. The reservation language in the Vatican statement is very mild. My view is that they still did not grasp how significant this concept was. Indeed, I can offer this as a pointed illustration of what I was saying. As I was doing my research for this article, I ran across the statement from the Vatican in which they said, 'We are adopting this because we think it reflects time honoured United Nations principles'—that was their

language. They offered mild reservations about parental rights even then. I think if they had fully understood the concept of the autonomous child that this document contains, their reservations would have been infinitely stronger and may have caused them to reject the whole thing.

When I drafted this portion of my article, where I was essentially saying that the Vatican staff did not understand what they were doing when they adopted this, I was concerned enough about that allegation to share my draft with a person who had access to the staff of the Vatican. I was informed that, upon reflection, they felt that the conclusion I had reached was substantiated by the evidence: they did not understand that the CROC contains a new concept that was not clear to them.

Mr BARTLETT—Would you think there would be a case for amendment to the convention to clarify a lot of the ambiguity in the terminology of the convention? Do you think the principles of protective rights of the child could be upheld and at the same time overcome a lot of the suspicion and fears?

Prof. Hafen—Yes. The way I would think that should be done is to use the language from Cynthia Cohen who was one of the drafters, where she says that the new concept here, beyond protection of children, is autonomous personhood and choice for children which leads to debates about 10-year-olds having the right to vote and the right to marry and all the rest of it. It seems nonsensical but that concept really is embedded here. If you could remove that concept and talk about how can we protect children more, then you have gained a lot. It would be impossible to go through every phrase and argue and fuss over it. But, conceptually, go back to the point before this new idea was introduced to people who did not understand it and you would make progress.

Mr BARTLETT—If the wording was clarified and if the convention stressed protective rights rather than rights of autonomy, would you support US ratification then?

Prof. Hafen—In general, yes. I would obviously need to see the kinds of protections that are there, but, yes, I would.

CHAIRMAN—I think most of us in this room would have seen some of the press reporting—some of the TV reporting in particular—of that case involving the young child who wanted to divorce his parents in the United States. In fact, a lot of people have indicated that is happening in the United States. They do not understand that the United States has not ratified this treaty in the first place. Secondly—and I hope you would confirm this—the reason for that is because a lot of the matters relating to children are dealt with at state level under the federation in the United States. That is true, isn't it?

Prof. Hafen—Yes, that is true.

CHAIRMAN—That was more driven by a state legal system than anything in

terms of the United States?

Prof. Hafen—Yes, that is correct. The fact that domestic law is reserved to the states under the American constitution is an important factor. But the other one I want to stress is the notion of the child being able to divorce his or her parents. That idea was seriously talked about all through the 1970s in the United States. I can give you cases, chapters, verses. There was serious talk about removing the concept of minority status and not to require people to be 18 to vote and 16 to shoot firearms and drive vehicles.

Hilary Clinton herself, in a very famous article that I ran across in the early 1970s, before she married the current president, made the argument that age limits should be removed and the child's capacity to perform this or that legal act should be individually determined. In the absence of evidence of incapacity, they should be free to act. It was avant-garde thinking. It was provocative and made the country think about what they were doing. There were children for whom the idea of divorcing parents was seriously talked about. My point is that, after a lot of experience and reflection all through the 1970s and early 1980s, it did not work and it was rejected.

Mr LAURIE FERGUSON—If you go through the US, is it not the case that on guns, alcohol, driving and the right to be executed, there are a lot of states with age limits of 16, and that it is not all 18?

Prof. Hafen—That is right, there are varying age limits. My point is that the proponents of children's liberation, who are the sponsors of the child autonomy concept, wanted to remove all age limits in general and make determinations individual rather than by age limits. They thought age limits were unfair. In a sense they are for the precocious child, but age limits have guided us for years and we are still using them.

CHAIRMAN—As there are no further questions, Professor, thank you very much for what you have written and what you have said this morning. As I indicated before, I would anticipate that we may have to invite you to come back and talk to us later on, amongst others, because this is a very complex and a very emotional subject. Thank you very much and we look forward to seeing you again.

Prof. Hafen—Thank you. I appreciate the opportunity and commend you for your good work.

[9.51 a.m.]

FRANKOVITS, Mr Andre George, Executive Director, Human Rights Council of Australia Inc., PO Box 841, Marrickville, New South Wales 2204

GURR, Ms Robin Lynette, Member, Human Rights Council of Australia, PO Box 841, Marrickville, New South Wales 2204

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

Mr Frankovits—First of all, thank you for the opportunity to address you in relation to our submission concerning the reference on the Convention on the Rights of the Child. As you will be aware, the Human Rights Council of Australia is a private NGO seeking adherence to the International Bill of Rights and other human rights instruments, both internationally and domestically.

The council has been supportive of initiatives enabling parliamentary scrutiny of Australia's treaty making processes and of attempts to clarify the relationship between international and domestic law. Together with the Human Rights and Equal Opportunity Commission, which is mandated to advise the government on the consistency between Australian law and international treaties, your committee plays an important role in enabling public oversight of Australia's treaty obligations.

The Convention on the Rights of the Child is the human rights instrument with the highest number of ratifications in the United Nations human rights system. I do not need to tell you that nearly 190 countries are a party to the convention. Unfortunately, many state parties have lodged reservations to various clauses in the convention, and it would be appropriate for this committee to recommend to the Australian government, committed as it is to the rights of children, that the government should use its diplomatic channels to encourage those states with reservations to withdraw those which you feel are appropriate.

A fundamental principle of the law of treaties is that they are binding on the parties and must be performed in good faith. This is the doctrine of pacta sunt servanta. In our written submission, we refer to the High Court decision on Minister of State for Immigration and Ethnic Affairs versus Teoh. In that case, the High Court reaffirmed that the provisions of international treaty to which Australia is a party does not automatically form part of domestic law. However, it supported the 'in good faith' principle of the law of treaties by stating that there is a legitimate expectation that decision makers would act in accordance with such treaties, but that this expectation can always be displaced by statutory or executive action. As we all know, there has been public confusion over this distinction and this is an added argument for the introduction of legislation incorporating the convention into domestic law.

The Human Rights Council believes that the drafting of such legislation will enable clarification of the administrative implication of the convention and lead to increased procedural fairness. The Joint Standing Committee of Foreign Affairs, Defence and Trade gave a reference to its human rights sub-committee to consider and report on 'Australia's status in relation to the various United Nations human rights conventions'. That sub-committee recommended introduction of such legislation, the establishment of a children's ombudsman and the formulation of a national code to consolidate youth and children's rights.

Mr Chairman, your own committee is ideally placed to support the recommendation of the human rights sub-committee by encouraging the government to take concrete action on their implementation through legislative and administrative means. This will ensure informed public awareness of Australia's commitments to human rights. We thank you once again for inviting us to appear and we are happy to answer any question on our submission.

CHAIRMAN—Thank you very much. First of all, on the post Teoh situation: you have said—and actually I think you have said it in your written submission but let us get it on the record—that you oppose the legislative action that is about to be taken by the federal government in terms of the post Teoh situation.

Mr Frankovits—I am not familiar with exactly what the proposed amendments will be, but anything that would undermine the acceptance by Australia of the in-good-faith principle of treaties would be a problem. It is to us contradictory to be a party to a treaty and then to legislate, in whatever way is appropriate, to undermine the adherence to that treaty. That is what we were getting at in our submission.

On the other hand, we are very supportive of any clarification or any public debate on the implications of treaties for domestic law. That is why we are encouraging you to recommend that legislation be enacted to make the CROC part of Australian law.

CHAIRMAN—Yes. What we have seen so far is a joint statement by the federal Attorney-General and the Minister for Foreign Affairs in terms of what might in due course be introduced—whether it will be introduced in this session or the next session we are not quite sure—but it deals with the point that you made on the legitimate expectation and the impact of that on administrative law. Like you, we wait to see what the detail of the legislation is.

The second point is in relation to the so-called children's commissioner. We took evidence in Brisbane from the Queensland Children's Commissioner. He is the only one existent in the country at the moment. Would your concept of such a commissioner be similar to what you understand exists in Queensland; would it vary; and, if so, how would it vary?

Ms Gurr—I am not familiar enough with the precise remit of the Queensland Children's Commissioner. I was present at a recent conference in Queensland where he spoke together with the New Zealand commissioner. It is pretty early days for him but it would be a similar sort of idea in general concept. I am sorry that I cannot comment on the detail, except to say that there was some move to do something which the New Zealand commissioner with his experience was rather critical of, and that was to dilute the focus on children by making it broader and making it something like families and children.

It was not that he was saying someone did not need to look after the interests of families, but that it was very important to keep that focus because it made it easier to do the job. If you were going to do something about families, that is somebody else's area and between them they could look at the whole thing. The New Zealand commissioner thought it was not very workable to broaden the brief in that sort of way to include families and children, although he was very supportive of keeping the focus on youth and families because they have had quite a long experience with that role in New Zealand.

CHAIRMAN—We mentioned this in Brisbane that we are hopeful of having the New Zealand commissioner speak to this committee. We now have indications of late next month, so we will listen to his views as well.

Mr HARDGRAVE—Would it be your assessment that children in Australia are now better off than they were, say, a decade ago as a result of this convention?

Ms Gurr—I think that in some respects they very probably are. But the point we were really trying to make is it is very hard to quantify that precisely because there is no real monitoring of the effect of the convention or our compliance with the convention. There is an enormous amount of information available but there is no central focus or responsibility either for collecting that information, for formulating a national action plan or for doing any real analysis of the extent to which we really comply.

Australia's first report was very descriptive: this is the article and these are the sorts of things that relate to that article. But there is very little analysis, and that is because there simply is no mechanism for that analysis. Doing a report on a convention of this sort in a federal system such as Australia where the states have most of the responsibility for the practical implementation is not something that you can decide to do six months before you are due to report; it is something that you really need to do over a period of time. Clearly, compliance with the convention is something you aim towards over a period of time. It is not something about which we can say that we are going to do this next week; it is something to aspire to; and it requires steady progress towards that.

Mr HARDGRAVE—How hard and fast should our adherence be? Does the convention become a template by which we then legislate; is it a template by which we make an assessment; or is it just simply a moral guide to the way we should conduct

ourselves and we get it somewhere around that?

Ms Gurr—In our view, I think it is probably all three and I do not think they are mutually exclusive. But I would like to say more than what we have said already—perhaps spurred on by what the last speaker said although I do not want to comment in detail—on the relationship of the convention to existing law and the concept of the autonomy of the child as it appears within the convention. The concept of the autonomy of the child as it appears in the convention, in our view, appears to have been somewhat misunderstood by the last speaker.

It is a sort of movable concept, if you like. No doubt other speakers will speak to you about the Gillick case, which is a case that was ratified some years ago by the High Court—so it is very clearly good law in Australia—and which talks in a very sensible way about what child autonomy means. That is, it is something movable. The responsibility of parents and society is to move a child from being a child to being an adult, and you want to be able to move that child from a point where they are unable to make decisions for themselves to a point where they are able to make decisions for themselves.

You cannot just suddenly say at 18, 'You're an adult now and you can do all these things and that's that.' Clearly, it is a spectrum. What the Gillick case says is that the rights of parents to make decisions for children—and that does not relate to the question of teaching them or any of the other things that have been referred to—is a right which diminishes over time as the child's understanding and capacity to make decisions for themselves grows. That is simply common sense. That is what every responsible parent would aim at and, hopefully, would carefully watch the capacity, train the capacity and nurture the capacity of the child to become a responsible adult. So that the concept of child autonomy and the way it appears in the convention is, in my view, this movable thing, this spectrum which grows as it diminishes. That is clearly part of Australian law, quite apart from the convention.

The second thing is the concept of best interest. The concept of best interest appears in the convention as a primary consideration which, in fact, is not as strong as what we have in Australian law where it is a paramount consideration. Some would criticise the concept of best interest for not being child autonomy focused enough, saying that decisions should be made in accordance with wishes of children. But it does not say that at all, it says 'best interest of children'. Now 'best interests of children' is a decision that somebody else makes about the interests of the child and, as I say, I do not want to enter into that. But, clearly, it is an autonomy which is not an absolute autonomy in relation to children, you are talking about a whole range of things that need to be taken into account in determining best interest. That is part of Australian law quite apart from the convention. So to say that somehow the convention imposes something on Australian law that was not there already is, quite frankly, sheer nonsense in both of those instances.

Mr HARDGRAVE—And yet the urban myths, the folk law, continue about the

capacity of children to divorce their parents, the capacity of children to have their rights breached if their parents search their bedroom and probably any other number of interesting possibilities. How do you rate those particular myths or laws?

Ms Gurr—What do you mean, how do I rate that?

Mr HARDGRAVE—I mean, do you dismiss that? Is it possible that this is occurring? Is it possible that, under this convention, children are able to say to their parents, 'You can't search my bedroom. It is my bedroom and I am entitled to privacy under the UN Convention on the Rights of the Child'?

Ms Gurr—Article five talks about the guidance of parents consistent with the capacities of children. It is a matter of common sense. In relation to this business of divorcing your parents, New South Wales child welfare law contains what is called an irretrievable breakdown clause, which is superseding those sorts of clauses that we had in child welfare law about children being charged with being uncontrollable and with being neglected. I think charging children with being neglected is a very interesting concept. The New South Wales law put in this more neutral clause which allows parents or children to come to the court and say, 'This is not working, please do something,' which is all it is really doing. I mean, talking about it as child divorce in the Australian concept is a bit nonsensical because while the child lacks full capacity a guardian has to be appointed by the state in any case. So they are myths.

Mr HARDGRAVE—So it is a bit of a cute line that has developed, this child divorce business—

Ms Gurr—Absolutely—

Mr HARDGRAVE—because it is more a case of a child saying, 'I am not getting the best possible deal out of my current situation and I want you, the authorities, to know about it.' Is that what you are saying?

Ms Gurr—Yes, and the parent can do the same thing. These actions are often brought by parents who come in desperation with a 14- or 15-year-old and say, 'What are we going to do? This is not working for either of us, please do something.' So talking about that and saying it can happen under the convention simply does not make any sense.

Mr LAURIE FERGUSON—You urged earlier that the Australian government should have its diplomats lobby around the world against those nations that have got reservations. There has been some reference to theocratic Middle East states' reservations. Could you clarify other reservations internationally that Australia should be interested in?

Mr Frankovits—We are not in a position to go into the specifics of countries' reservations. What we were saying was the general point that Australia has been involved

in discussions with other states or parties to various international instruments recommending adherence to those instruments. If I may give an example regarding the ICCPR, Australia has been active in advocating against the death penalty. There are some countries, notably the USA, who are high on the list of executing countries.

Our general point was that the committee is ideally placed to look at those states that have got reservations, to look at the reservations and to make specific recommendations to the government about the diplomatic initiatives that are required. As far as the nature of the reservations, we are not the organisation to be able to help you with that. There are others who are much better qualified in the knowledge of international reservations.

Mr LAURIE FERGUSON—You are aware of none specifically at the moment?

Mr Frankovits—I am aware that there is some 90 countries that have got reservations.

Mr LAURIE FERGUSON—But those reservations might be quite rational—

Mr Frankovits—Sure.

Mr LAURIE FERGUSON—You are not aware of anything put to us earlier today that Australia should be doing this; you have not got any specific ones that you feel at this stage—

Mr Frankovits—No, but if the committee would like, we can certainly research that and provide you with a list of those reservations that we think are crucial in terms of diplomatic initiatives.

CHAIRMAN—If you would take that on notice.

Mr BARTLETT—Ms Gurr, in relation to the issue of acceptable degrees of autonomy, you said that these were simply commonsense, what every parent aims at and, clearly, already part of Australian law: if that is the case, what does the convention add that we do not already have?

Ms Gurr—In terms of principle, I think the convention does not add in the sense of taking some of our ideas of autonomy any further. What the convention adds is the opportunity to monitor and to assess our performance in compliance with the convention in relation to a whole range of services, and the question of the law as such is not the only question in relation to the implementation of the convention. The question of services which are offered to service the needs of children in education, health and all of those services is as important as the law itself.

Mr BARTLETT—But are those services not provided anyway? In a society which has a commitment, because of its principles, are those levels of education et cetera that are consistent with the best interests of the child not provided, and is the convention therefore not needed to tell us how to do that?

Ms Gurr—It would seem not, particularly if you look at some statistics on Aboriginal health, for instance. That is a most glaring one.

Mr BARTLETT—So how does the ratification of the convention assist us, or encourage us, or coerce us, to do something in that area and those areas where we would not have been anyway?

Ms Gurr—That depends on whether we choose to implement it, but we would believe that there is an obligation once we have ratified the convention. I think the convention is an important focus for our efforts in those areas which Australia may well make more than some other countries in any case, but it gives us the opportunity and it gives us the focus and it gives us the mechanism in a report to assess how we are going. In something as complex as this it would seem very important to have a clear focus on that. Particularly with our federal system where we are very dispersed in our responsibilities, the convention actually gives us that ideal opportunity to focus on and monitor how we are going. Otherwise, we simply do not know.

Mr BARTLETT—So the main benefit of the convention for Australia then, from what you are saying, is the monitoring aspect of it rather than the encouraging of us to adopt principles that we would not otherwise adopt?

Ms Gurr—Yes.

Mr Frankovits—Can I make a comment there? The Convention on the Rights of the Child is a particularly important instrument because it brings together the concept of economic, social and cultural rights with civil and political rights. Indeed, so does the Convention on the Elimination of all Forms of Discrimination against Women. The application, the realisation, of economic, social and cultural rights is a blueprint for government policies and is a commitment to addressing those who are either disadvantaged or whose rights are not realised.

The reason that the convention is so important in domestic law is that it is a commitment by the government to address the economic and social rights as well as the civil and political rights of those who may suffer disadvantage, marginalisation and an undermining of their rights.

Mr BARTLETT—But have governments in Australia not been doing that in any case by providing formal education, by applying minimum ages for children entering the work force, by providing a whole range of other services for children in any case,

regardless of the convention?

Mr Frankovits—That is true, but most of these things are implemented by state legislatures who can change their policies, and indeed the federal legislature can also of course. But it means that the priorities are not according to a rights priorities but rather can be influenced by all sorts of other priorities. Our concern is that the rights of children, for example, can be undermined if there is no commitment to choose their best interests as a priority for policy. That is not guaranteed by the political process unless it is legislated.

Mr BARTLETT—But have those best interests not been embodied in legislation in the areas that I have just mentioned already?

Ms Gurr—It is certainly true that they are embodied in legislation, but if I can just say something about two areas with which I am particularly familiar—and I do not have expertise in a number of other areas—and they are family law and child welfare law. It is certainly true that within New South Wales, for instance, in the Children Care and Protection Act, decisions are to be made and services provided which are in the best interests of children. And yet it would be true in relation to a lot of individual children that the services which are provided to them and the things that happen to them while they are in the care of the state are simply not in their best interest.

You can say that that is illegal, and it probably is, but it happens. That is the reason we need a convention: the fact that something is embodied, that that sort of principle is embodied, is a first step and a very important first step. What we then need is a monitoring to make sure that that legislation is being complied with, and the convention assists us with that and gives us a tool, if you like, for assisting us with that and giving us a focus on that.

It also has a very important public persuasive function, if you like, and provides a focus for debate on these sorts of issues.

CHAIRMAN—You have been particularly critical of Australia's report under the Convention on the Rights of the Child; you have been generally supportive of the so-called alternative report from the NGOs. Was your council involved with that alternative report, directly?

Ms Gurr—We had some fairly small involvement with it, but we had some discussion with Defence of Children International.

CHAIRMAN—Just quickly, what does DCI offer in that report that the official report does not?

Ms Gurr—I think there are a couple of things that need to be said about the alternative report, and one of those things is that it was done probably even more on a

shoestring than the Australian report was—and it was done pretty much on a shoestring as well. The DCI report offers some analysis, and the analysis, it would have to be said, is fairly patchy. That is not critical of the alternative report; that goes to a resources question. It highlights, I think, exactly what we are saying, which is that there is no consistent way of reporting either through non-government agencies at the national level—although there is now a coalition of those agencies—or through government. So it is also patchy but it offers some sort of analysis.

It is also making mainly the same sorts of points that we would be making about the need for a consistent monitoring process and a consistent advocacy process in relation to children. I guess they are the two key things.

Mr HARDGRAVE—I want to just take it from a slightly different tack as a final question. How do we reconcile a convention that has been operating for seven or eight years as some sort of template or moral guide for governments to follow with the fact that children are still being violated and defiled? You have still got those sorts of really bad examples of children's innocence being robbed from them—be it because of some sexual thing or, for that matter, anything to do with drugs or just simply societal standards: do you think governments have responded properly in adequate penalties for those sorts of crimes, particularly against children? The concept of allowing children to be children and not just be junior adults and protecting their innocence from certain things does not seem to be enforced very well in the law.

Ms Gurr—As far as penalties are concerned, I think that is not something which the Human Rights Council would have the sort of expertise to answer in terms of what the deterrent effect of penalties really is. We would simply say that the strongest possible measures ought to be taken, but we would not want to comment in particular on particular penalties for particular crimes, as I say, other than to support the strongest measures.

Mr Frankovits—I have reflected a little on the questions Kerry Bartlett asked. It seems to us that this government in appointing this committee, your committee, had in mind that there would be adequate public scrutiny and public discussion on Australia's treaty making processes. As far as we can see, the best forum, the most public forum is the parliament. So it seems to us that, in line with the effort to get an outcome from this committee, legislation is a way to have a proper public debate about the implication of the treaties. That is why we thought that it would be appropriate for you to make that recommendation, because it means that the public then is genuinely enabled to have an input into what we have signed, what we ratified, what we have committed ourselves to.

CHAIRMAN—With due respect, I suppose it is a question of umbrella legislation reflecting everything in the convention, as against the point that Mr Bartlett made, a series of pieces of legislation in specific areas. That is really where we are coming from. From the evidence that we have heard so far, I do not think anybody is yet clear in his or her own mind as to how you could have some sort of umbrella legislation. How do you react

to that?

Mr Frankovits—Very simply. The normal legislative process is that you put up a bill, it is debated and there is public scrutiny and public discussion. How you implement the entire convention is in the fine detail of the legislation, which is exactly how other legislation is introduced into the parliament. So that is why we are recommending to you that you look at the fine detail, draft the legislation, have public scrutiny, have public debate and then the citizens of Australia can see the implications of the commitment of Australia to human rights instruments. Which is the same as with the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights and so on: we know what we are committed to. At the moment, that is not the case.

CHAIRMAN—I see. We have run out of time, so we thank you for your evidence. As I have said to the previous witness, we are really just having a preliminary hearing at this stage and I have no doubt we will come back and talk to a lot of witnesses. Thank you very much.

[10.22 a.m.]

MOREY, Mr Mark, Executive Officer, Youth Action and Policy Association (NSW) Inc., 4th Floor, 8-24 Kippax Street, Surry Hills, New South Wales 2010

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

Mr Morey—Yes. The Youth Action and Policy Association of New South Wales believes that the Convention on the Rights of the Child is essential in ensuring that the needs of young people are addressed within their communities.

CROC provides an opportunity to include young people in the development of legislation, laws and policies which affect them. YAPA believes that there is a lack of a coordinated approach to meeting the needs of young people at all levels of government. YAPA continually receives examples of inconsistencies that occur between the laws and policies of federal, state and territory governments. YAPA believes that the federal, state and territory bureaucracies fail to take a whole of government approach in the provision of services to meet the needs of young people.

It is imperative that the principles of CROC are used as a yardstick to measure the development of a whole of government approach to the provision of services to young people. CROC simply documents the basic rights that children and young people need in order to ensure that they are able to actively participate in all aspects of community life.

At present, there are many young people in Australia who do not enjoy the basic rights outlined in CROC. Currently, there is no onus on federal, state and territory departments to ensure that the policies and practices within these departments provide positive and practical solutions to the issues affecting young people.

The policy formulation process is designed in a way that excludes young people and youth service providers from actively participating in the development of policy. All tiers of government lack substantial review mechanisms by which programs can be regularly monitored and evaluated. Essentially, there are no formal mechanisms to ensure governments and their respective departments are meeting the needs of young people.

YAPA believes that Australia has a responsibility to adhere to its commitments under CROC. CROC needs to be an active document that underpins the provision of services to young people in Australia. Young people have the right to expect that the society in which they are a part is able to provide them with adequate financial and social resources to enable them to become active citizens.

CHAIRMAN—Thank you very much. Is there an ultimate model that YAPA would see, and if so, can you just outline what that model might be? Is it legislative, is it

organisational, is it monitoring? What do you see as a part and parcel of this model?

Mr Morey—I think it is all three. One of the great problems that we have is that legislation and programs are developed in isolation from each other across different departments. Often, departments are competing with each other and services are often being duplicated. There seems to be no ongoing monitoring process and there is certainly very limited evaluation of programs that are provided.

Mr HARDGRAVE—Mr Morey, I was just wondering who exactly your association represents. What is a child as far as this convention is concerned?

Mr Morey—It was zero to 18. That is what we understood. Our organisation is the peak organisation for youth services and young people in New South Wales, so our target group is basically 12 to 25.

Mr HARDGRAVE—I guess what I am getting at is that, when I was at school, which is only a couple of years ago really, the family was the basic unit of society. Your opening comments were suggesting that young people be afforded the financial resources et cetera to take their place in society. I do not think anybody disputes that. I was just trying to focus in on what your perception of what a young person was and how that fitted in. I guess what I am driving at is: what about those who are under 12, and is it more a case that they should be taking their rightful place within a family unit, whatever form that takes, so they can then learn some of the skills necessary to survive in the broader society? Is that a fair comment?

Mr Morey—Yes. Often, a lot of the organisations we represent are working with young people who have not had positive experiences in families and are marginalised and disadvantaged for a variety of reasons—be they abuse situations, be it financial, be it the cultural background the young person comes from. There a whole range of issues.

We certainly see that the crucial years are the zero to 12 years. They are the formative years. They are years where, I think, the family and—however you want to define the family—it has a huge impact on that child, which then will become a young person. That is the crucial period for that child. Often, we spend time working with young people when some have moved to a point where there is probably not a lot of assistance you can give them because they have missed out in those early years.

Our organisation certainly supports and have been pushing in this state for increased family support services for families. I think there is often a need for a great deal more support for families and a need to see it not just as a young person and a parent versus each other but as a group which has inner dynamics. And every family does not necessarily have the skills to deal with the dynamics that are going on within it.

Mr HARDGRAVE—Would you agree that a child is better raised within that

family environment than being told by outside the family environment how to conduct themselves and how to be raised?

Mr Morey—Yes, but that is dependent on that family environment being a positive environment, I think. Yes, the family is basically the unit, I guess, however you want to define a family; I would define it in its broadest terms. It is the most important part for that young person, for that child. But so is the community in which they live. That also impacts greatly on the development of that child.

Mr HARDGRAVE—In your experience, how many children, in a percentage sense, would be in a distressed family environment where they are failing to get positive social skills so they can go on and become good contributors in the broader sense in the community?

Mr Morey—I think that is difficult to answer in that often—

Mr HARDGRAVE—Do you have a gut feeling on it?

Mr Morey—It is very hard to say. There is probably a group of children or young people who are constantly disadvantaged within any one community. Then there will be young people, as they grow up, who are in different states of tension with their parents and with their local communities. Often, certainly through the teenage years, it is a state of flux. It is a state of moving into conflict and out of conflict for a number of reasons as that young person develops. You have to take into it the way that young people's individual coping skills enable them to deal with those situations. So a situation that may not affect one young person or one child may have a dramatic effect on another young person or child.

Mr HARDGRAVE—What do you say to people who suggest that this convention threatens the traditional role of the family unit to prepare children for the broader community? Some say that, in fact, it undermines the role and the traditional responsibility of the parents and the relationship they have with the child—and I guess you have said it already—the formative years under 12.

Mr Morey—I would think, if anything, such a public commitment supports the family and supports young people within those families. I do not think it is about sending parents against children or children against parents. I think it is about saying that there is a basic level of resources that every child should have.

Sometimes in a family—and it is all sorts of families—those resources are not there for that young person. If we come at it thinking that it is going to tear people apart or, as you have talked before, kids are going to suddenly divorce their parents, then I think that is really ridiculous. That is not what it is about. It is about saying—especially in this state after we have had 12 months of a royal commission—that there are basic levels at

which every young child should be supported at. Every young child has a right to be brought up in a positive, constructive environment where they are not placed in violent situations where they cannot protect themselves.

Mr HARDGRAVE—So you are saying resources to families—that is, resources to social services—is a good preventive measure instead of a cure measure to fix up the mess that families might have incidentally created?

Mr Morey—I think it is a two-part approach. There needs to be resources to families. That is not necessarily making people dependent on welfare. That is about saying that you have to take a holistic approach. That is about ensuring that parents have a regular income that allows them to provide for their children.

There also needs to be a basic safety net of provision of services to provide young people and families with support. One of the greatest things that we have a problem with is family mediation, getting young people and families into mediation when conflicts arise. If at that point you can intervene—and that could be from someone who has the skills to work with the family and work with their dynamics at that critical point—that will often stop further schisms and splits within the family. Those resources are not there. We cannot get young people into counselling. We cannot get families and young people into support services. They are not there.

Mr BARTLETT—Isn't that the point, though, that the emphasis needs to be on counselling, on mediation, on relationships rather than on legislation and a legalistic approach to these things?

Mr Morey—Sure, but there is no yardstick that says, 'This is the basic level of support we are going to provide.'

Mr BARTLETT—So you are talking about financial support from governments to implement these policies?

Mr Morey—Yes and no. Yes, in that that is part of it. The other part of it is taking a holistic approach. There are much broader things that impact on the family other than just legislation around young people and the family. There is also employment, ensuring that families have access to employment so that there is income coming into their families—the whole financial and broad aspects.

Mr BARTLETT—So these are areas of government policy, which government's are tackling anyway and have been tackling, regardless of a ratification of CROC?

Mr Morey—Yes.

Mr BARTLETT—I have a question about one of the statements you made on

page 1. You said this in point No. 2:

The spirit of CROC is not evident in existing or proposed legislation at a Federal, State or Territory government level.

Could you elaborate on that and give some examples of where you do not think the spirit of the convention is being applied?

Mr Morey—I think the best example of that is what happened in my previous job. I was a social worker with the Department of Social Security, and I was working with young homeless people. Both the federal and state governments say they have a commitment to young people who are in conflict with their families, be that just starting to have conflict and running away for the first time or young people who have been on the streets for a number of years.

What we continually saw was that both the state and the federal governments refused to take responsibility for those young people. What was a great concern to us at that stage was that you could not provide support for young people below the age of 16, be that giving financial support or linking them into other services, because they are a state responsibility. The state would not take responsibility for those young people through the department of community services and they would say, 'Income support is a federal issue.' Both departments refuse to take any responsibility for providing the basic resources for the young person and their family.

I think it is about having some measure that is there so that the government and politicians can say to their departments, 'You are not adhering to what you are here to do.' It is also about being able to say that Australia is adhering to those principles and we are leading the way. Regardless of whether other countries sign it or not, I think Australia needs to be able to stand up internationally and say, 'We have a basic commitment.'

Sometimes maybe it is just a legislative framework that does not greatly impact on things, but that is often because there is no mechanism placed with that legislation to make it an active piece of legislation. So there needs to be some monitoring of how governments are implementing it. There needs to be some ability to say to departments, 'You are not providing the services you say you are providing.'

CHAIRMAN—There is strong anecdotal evidence in my electorate—and I suspect that all my colleagues here have had similar experiences—that if you take that specific situation of youth homelessness, in some cases it gets down to the fact that children or parents, under privacy arrangements, are not allowed to be consulted in the processes. I have had cases where parents have said to me, 'The social worker has told the kids, "It is nothing to do with your parents. It is something that you have. It is your right."' Therefore, there is a strong perception out there in some quarters that some parents—and you can understand the emotion that that generates—feel they have been left out. The

point that I am making—and I ask for some sort of reaction from you—is: how is some sort of umbrella legislation going to correct a situation simply with a piece of legislation?

Mr Morey—In that sense, it is probably going to be very difficult. I think the issue is that, for Australia to have a basic point at which it starts from—whether that is where you build the legislation from or you build it from existing structures—that is the debate that has to be had. I think there needs to be a basic point where we say, 'Young people and children are entitled to this from our society.'

In relation to that point about young people and parents not being included in those situations, the legislation under the Department of Social Security, when I was working there, was that parents did have to be contacted. The only reason that parents were not contacted was when an allegation of sexual abuse was made. Even in that scenario that you have just described, there are obviously elements of bad practice in the provision of that service. I think those cases do exist. I do not think they exist to the extent that people say they exist.

CHAIRMAN—As a group, do you generally support the children's commissioner concept?

Mr Morey—Certainly, yes.

CHAIRMAN—I do not know whether you are aware of the Queensland situation—albeit the Queensland commission has been there for only four or five months—but do you see that as the model which perhaps should be translated to the federal level?

Mr Morey—I think there has to be a body that is independent of the bureaucracy or put under a department. I think it needs to be outside that structure. I think it needs to have the ability to intervene in legislation that is not effective. But, to do that, it also needs to have a capacity to be able to conduct research around these issues. When these sorts of bodies are set up, they are set up to look over someone's shoulder, yet they are not set up or resourced appropriately to go out and find out what is happening. So it becomes a battle of anecdotal evidence of who said that or who said this.

If that commission is to be set up, I would suggest that it needs to be adequately resourced so that it can investigate these issues that are constantly brought up and to be able to research what is happening out there. That is what the problem is. There is not enough research in relation to this sort of stuff.

CHAIRMAN—Does anybody have any further questions? If not, thank you very much.

Mr Morey—Thank you.

[10.40 a.m.

GERMANOS-KOUTSOUNADIS, Ms Vivi, Executive Director, Ethnic Child Care, Family and Community Services Cooperative, 13/142 Addison Road, Marrickville, New South Wales 2204

GIGLIO, Ms Michelle, Project Officer, Ethnic Child Care Development Unit, Ethnic Child Care, Family and Community Services Cooperative, 13/144 Addison Road, Marrickville, New South Wales 2204

CHAIRMAN—We have received your submission. I thank you for what is a very comprehensive submission in relation to many articles in the convention. It is a good expose of many of the articles as you see them. Would you like to make a short opening statement before we go to questions, or do you just want us to go straight to questions?

Ms Germanos-Koutsounadis—Yes. Personally, I have been involved with children for the last 20 years in various capacities. At the moment, as the Executive Director, I feel that, because of the present climate—because of the Woods Royal Commission on paedophilia and other child protection issues and the alarming increase of child abuse in our community—it is really important for us to try to not only ratify but also implement the convention. I know Australia has ratified it, but it is important to implement it and put in practice some of the principles that it espouses.

In order for us to do that, it is very important for us to have some sort of national agenda on children's rights and to have some sort of a children's commissioner, similar to the Human Rights commissioner, so that someone really takes a specific interest in children. Our children really cannot express—or we do not allow them to express—what they really want. Quite often, they are disadvantaged. Although we take the UN charter of human rights for granted, we should not take children for granted. That is a really important instrument or a mechanism, and I think that your terms of reference specifically deal with children's rights.

The other thing is that there is no coordination between the states and the federal body in relation to various legislation policies in relation to children. Sometimes the states have something which is quite different to the federal government, and there are a lot of problems for a person like me, who is very practical, to try to get through the red tape when we want to do something. Something that looks very simple really becomes very complex when one is trying to negotiate the system. That is an important aspect.

In the area of child care, for example, this has been done with the accreditation of long day care centres where we have national standards that will go across the board for all states to have a certain level of quality of care for our children. I think this could be done in other areas as well, for example, legal aspects or other social aspects and so on.

The other concern we have is that Australia provided its report to the UN committee on children's rights in 1995. Because the non-government sector, which does a lot of work with children, was not really given the opportunity to express some of their work, we have participated in the alternative report entitled *Australia's promise to children—the alternative report*. This was presented this year to the committee. I think it is important that, when the government does exercises like that, it has consultation so that they can get broad views that we can present to the international sphere. I think, internationally, we look a little uncoordinated—

CHAIRMAN—Yes, a bit silly.

Ms Germanos-Koutsounadis—when the government presents something and then the non-government sector comes and presents something which is quite different. So that is another aspect.

My concern all these years is in relation to children with special needs, and these are children from non-English speaking backgrounds, Aboriginal and Torres Strait Islanders and children with disabilities. Disabilities are one area with children where they are lacking services, although we have very good policies like the Disability Services Act and the Disability Discrimination Act and the states disability agreements and so on. But they do not actually include or specifically deal with children with disabilities, whether they are children in the community or in care or state wards or whatever. So that is another important aspect. These acts give us the opportunity so we can look at a more coordinated and integrated approach in relation to children.

In relation to concerns about non-English speaking background children, article 30 says that, where there are indigenous and children from minority groups, they have the right to practise their language, culture and religion individually and as a community. I think this has not been happening to a large extent, although I must admit there have been multi-cultural policies that promote access and equity.

Children from backgrounds where English is not spoken really go into the system, whether it is child care or the school system, with a language other than English and they come out and they have lost that language. I think this is a waste for the country and also a waste for the children and for the community.

But there is a deeper aspect. Being able to communicate in the home language is very important psychologically because it helps towards the bonding of the child with the parents and also helps them converse at a deeper level. In my experience, from working with the ethnic communities, I have found that quite often children from non-English speaking backgrounds communicate on a very superficial level with their parents, and, when the time comes when they have to converse at a much deeper level, they cannot.

So young people are really very ambivalent about their identity because we are not trying to promote the different identities and cultures and other values of these children so they can integrate both—meaning from the society outside as well as the home—so they can become complete beings. I grew up here. I came here when I was eight. I found it very difficult to do that. I came here in 1954 when, unfortunately, the policies of assimilation were in place—when your language and your culture were not valuable at all. I suppose I have worked very hard in order to try to do something about that.

But still, in our school system, in our policies, in our departments and so on, it is not acknowledged, and we are having a lot of young people out there who really have the double disadvantage of growing up as well as having to try to form an identity and try to identify with their own background as well as here. So I feel that, since we have ratified the convention, it is really important that we put mechanisms in place for that to happen. And, for example, we are very worried with the high suicide rate in our communities, and when I say communities, in the Greek community where I work a lot and I suppose generally with the community, because Australia is the fifth highest country for young men's suicide from 15 to 25, and there must be something wrong in our community if our young people of that age are contemplating taking their lives.

The other aspect is that hopefully with the convention we will also look at the structures that we have and how these structures could be changed so that they can accommodate some of the new concepts and ideas that we have. I am a mother of an 11-year-old son and I am really terrified every day, when my child leaves home, and I think a lot of parents share that as well because our children are no longer safe in the schools, in the community, at home, anywhere. It is really important for parents not to feel the way that I feel. Also our children are growing up in fear and they lose their trust in the community and adults as a whole. So what I am saying is it is really important that we come down to the practical aspects so that we can implement some of these wonderful articles now that we do have the mechanism by which to do that.

CHAIRMAN—Thank you very much. In terms of those two reports you have got sitting on the desk, the official and the alternative, is there some major area of difference that you would like to highlight and criticism that you want to highlight? The second question is a very topical one. You may not want to answer it, but it is something that I do not think any of us can avoid, and that is, in the context of all of this, and in the context of assimilation, some of the points that you made are very important. Did you want to make a comment at this hearing in terms of what the Hanson phenomenon is doing at the moment?

Ms Germanos-Koutsounadis—I am a person who was a pioneer in trying to promote tolerance in acknowledgment and recognition of the diversity of cultures, languages and people that we have, and also putting into mechanism some very good policies: the national agenda on multiculturalism; access and equity; social justice, which was really a very important breakthrough, I think; and, in the child-care area where I

work, the fact that there was acknowledgment that children from different backgrounds need to maintain their language and there was funding made available for that to be made possible. Unfortunately, this was not presented in the report. It was a bit disappointing because the child-care area, I remember, was the first area where there were steps taken to really implement the access and equity policy. I can tell you with some of the programs that we had we have support workers who can speak other languages, Aboriginals, and the ability to work with those children and families so that they can understand the process and integrate them and include them.

We have a program which we call casual ethnic workers pool whereby bicultural, bilingual women go into services to try to help the staff and the children and the parents, and also in the welfare area—my first job was as a grant in aid worker back in 1972—the whole aspect of community development was so we can bring people together so that they can exchange views and work together. I must say we have SBS, we have 2EA, we have all these wonderful means by which we brought people together and we have unity in diversity. Also we do have a homogenous society and we are very fortunate in Australia not to have the racial conflicts that other countries experience. And internationally I think we had a very good standing on that and I know because I travelled overseas, and some countries wanted our method of how we successfully met the challenge of diversity in the different population.

It is really unfortunate that people like that are given the opportunity to come out and talk without facts and play on the emotions of people. I must say that the Prime Minister should have in the first place come out, not now, and said, 'Sorry, this is as far as you can go as a public person,' because if Pauline Hanson was a fish shop operator she would not have had any publicity, but she is representing the people at the parliament. I think a person who is in public office should have responsibility to see that what they do and say does not have a detrimental effect on society. So I think that it was very important.

I praise the Labor government because the Labor government, whenever there was any upsurge or any instances where there would be conflict, they openly came out, the Prime Minister openly came out and, with the help of other leaderships in the community, would try to cushion that and try to put it within a context. I had a meeting with Mr Ruddock yesterday about a matter and I congratulated him on the fact that they are at last coming out to say something, that it is not acceptable to be divisive, that you have to have your facts right before you stir up all this emotional conflict in the community.

Ms Giglio—I was just going to say a couple of other things in relation to that, especially if you look at young people and children, is the fact that what are young people going to say about what Pauline Hanson is doing. I think that children now more than ever are growing up with their ethnic friends, whereas, say, 20 years ago, there were not as many ethnic people going to school. I think young people are more accepting of multiculturalism and I think that there is a danger at the moment that we are ignoring the

positives that multiculturalism has brought to Australia and the other contribution that migrants have had to our country.

The other thing is that there is a danger that immigration would be seen as an evil of everything, whereas immigration has actually brought a lot of positives to Australia, and we ignore the fact that the Anglo society and all of us are migrants to Australia and it is really only the indigenous people that were the first people to live in this land. I think that is something that needs to be acknowledged.

The other thing is that there is a potential that what Pauline Hanson is doing is damaging some of our relationships with our Asian neighbours. We have seen that there is a decrease in the amount of international students who are applying for university education here in Australia, and that is one of our major sources of revenue in the tertiary system. I think it is a sad thing because international students bring a lot to university education and we cannot afford in this day and age, when tertiary education is going through a crisis, for these extra sources of income not to be coming through. As well as what these students bring to Australia, there is what they take back to Malaysia, to Singapore, to China, to Vietnam. It is word of mouth, it is what those students are going back and saying to their friends and to other people in their countries which is actually affecting, I think, some of the enrolments.

CHAIRMAN—We are dealing with children here, so on some of the general points I would personally agree with most of what you say, but in terms of young people it is my experience, anecdotal and otherwise, that young people reject what she is saying, simply on the basis of what you said, that she needs to understand the facts rather than the half-truths and the misrepresentation. We are getting slightly off the track, but I wanted to hear what you had to say on that one.

Mr LAURIE FERGUSON—A few points. If you scan this submission, one thing that seems to come through in quite a few points is the question of lack of information provision to ethnic communities.

Ms Germanos-Koutsounadis—Yes.

Mr LAURIE FERGUSON—Are you just saying that we should throw more dollars or have you got a particularly innovative idea on the provision?

Ms Germanos-Koutsounadis—Sometimes it is not providing more dollars, it is the method by which it is done. Quite often we spend thousands of dollars on pamphlets, whereas we could use that money to put the message across on radio, for example. But there is a lack of information in relation to other languages and it is really important if we are talking about rights. For example, parents who cannot speak English have to understand and know what the human rights convention is and what are the principles here.

What I am saying is that, although in the past we have kept talking about information provision, the rationale has been that there is no money. I do not accept that, because if a department is planning its budget and they know that a proportion of its people speak another language and they need to get the message across, they have to make provision in that budget so that they can allocate the money to translate information and to put on interpreters.

The other point about interpreters is that, both at a state level and a federal level, there have been cuts to the interpreting service and that is unfortunate. It is very difficult to get an interpreter. You have to book them ahead, and sometimes they ask the client to pay. Some people might be able to pay in a legal situation, but most of them cannot pay for interpreter services. So it is really vital that relevant information is provided. Quite often there are people who are illiterate and who do not understand the context of the pamphlet. If it is a complex matter, you need to cut it down into simple English and then translate it to be able to get the message across.

CHAIRMAN—I am sorry, I am not cutting you off but it is just that we have got one minute left on the tape. We might just pause for a moment for *Hansard* to change the tape.

Mr LAURIE FERGUSON—Under articles seven, eight and nine you make the contribution that Australian taxpayers should fund the welfare of illegal migrants' children and that we should give them full citizenship. I am just very doubtful that the Australian taxpayers would really owe benefits to a Tamil child in Sydney any more than they owe it to another Tamil in Colombo.

Ms Germanos-Koutsounadis—I think illegal immigrants are going to be one of our problems because of the fact that the refugee movements are all over the world. I think it is important that children of illegal immigrants who are born here should have the same rights as other children. We also have to consider when they go back to what situations they have come from because they are Australian citizens. It is important for them to have equal rights—

Mr LAURIE FERGUSON—You are saying it is going to be an increasing phenomenon, an increasing problem, with the transnational movement of people. You also have a document which says essentially that we are failing to provide so many facilities for NESB children. Despite this increase we are going to see, we are supposed to now facilitate illegal migrants' residence here by giving their children benefits.

Ms Giglio—I guess the question is: if Australia is not going to look after these children who, as an unfortunate result of their parents seeking citizenship or refugee status in Australia, have no citizenship, then who will look after those children? If they are born here, they do not have residency in any other country, as I understand it. What happens to these children, I guess, is the question. If we are to be humanitarian as Australians would

hope, if we are a country that is humanitarian—

Mr LAURIE FERGUSON—But that is a bit different definition from this. This could be seen by many people as just basically encouraging the process of illegal claims or illegal entry.

Ms Germanos-Koutsounadis—I do not think we are encouraging it but, if it does happen, it is our responsibility to look after those children.

Mr LAURIE FERGUSON—Similarly, you state under articles seven, eight and nine:

Australia's public arena, including Federal and State governments, the media, the education system, does not encourage self-identification of ethnic minority groups.

With the exception of the rather controversial decision of the government in regard to the Macedonians because of political pressure by ethnic groups in this country, what other examples are there where self-identification is not allowed? Essentially, Australia does do that. It is self-identification. If you say you are Kurd, you are a Kurd; if you say you are a Tamil, you are a Tamil. What are we talking about here?

Ms Germanos-Koutsounadis—I am sorry, where are you referring to?

Mr LAURIE FERGUSON—Page 7 of your submission states:

Australia's public arena, including Federal and State governments, the media, the education system—

and I will just centre on federal and state governments. I am saying that basically Australia does have a process of self-identification.

Ms Germanos-Koutsounadis—What we mean by that is that the assimilation process is still in practice in a subtle form. For example, I come from a Greek background. I am proud to be Australian but I am also proud to be Greek. It is important for me that my son maintain his Greek language, his Greek identity and heritage, because he has to know where his roots are. That is what I am saying. I am not saying it would create division by having people identify where they come from or whatever, I am saying it is important for our children to be proud of wherever they come from.

Mr LAURIE FERGUSON—That is all very well but that is not what it says because self-identification means something totally different. As I say, in this country it means—with the exception of the Macedonians—that we have allowed everyone else to self-identify.

Ms Germanos-Koutsounadis—Well, I am sorry. I do not want to be taken into

the political debate about Macedonians or Greeks.

Mr LAURIE FERGUSON—But that is what self-identification means, and the state and federal governments do allow it.

Ms Germanos-Koutsounadis—I think that should be resolved by the UN, because that is where the issue should be.

Mr LAURIE FERGUSON—Anyway, it means something different, but I understand what you are saying.

Ms Germanos-Koutsounadis—I think it is a bit sensitive, because I come from a Greek background. But I played no part in the debate, and our organisation has membership of everybody, no matter what they call them.

Mr LAURIE FERGUSON—The sentence means something different. All right, I understand what you are now saying it means. Finally, you have indicated here that there are surveys showing that there is a greater take-up of NESB children fostered by the government system and that they are basically placed in care, which I accept. I think that is true. You refer to suicide, are there any studies showing greater prevalence of suicide in NESB children?

Ms Germanos-Koutsounadis—The problem is that there are no statistics available, and the statistics are very limited. Also, in trying to determine where the children come from, most of the time they class them as Australians, they do not class them from the background because most of the application forms and other forms do not have whether the children come from another background or speak another language. So it is difficult.

But I know from the Greek community, because I am also president of the Greek Orthodox Community of New South Wales and the convenor of the welfare sub-committee where we have a welfare service, that it is a concern to our community because there seems to be an increase in the suicide of young people. Parents quite often hide it, because there is the stigma and they do not want to say that my son or daughter suicided. That is unfortunate because we then do not have a dialogue so that we can see what are the reasons and deal with the problem.

Mr LAURIE FERGUSON—But there are no statistics?

Ms Giglio—We will follow up with some written statistics, if we can find them, if that is okay with the committee.

Mr LAURIE FERGUSON—You do know about the children who are in the care of the state and I was just wondering whether there is a similar break-up with suicides.

Thank you.

Mr BARTLETT—You mentioned in your introductory comments some of the changes that have taken place over the past couple of decades: improved conditions for children and children from non-English speaking backgrounds, areas such as social justice, multiculturalism, grant in aid programs and child care, et cetera. Now those changes have occurred regardless of the Convention on the Rights of the Child and many of them were in fact before we became a signatory to that treaty. In what ways do you see the Convention on the Rights of the Child working to improve those areas that we could not do and have not done in any case?

Ms Germanos-Koutsounadis—When the government initiates policies like the policy of access and equity, the structures within the three levels of government do not change so that they can accommodate those policies and work effectively. So although we have improved, still the proportion of children from non-English speaking background using child-care services compared with their numbers in the population is low; the proportion of children with disabilities is low; and, of course, the Aboriginal and Torres Strait Islander children are the most disadvantaged. We have the policies but most of the time the policies are tied to funding and the funds are always short. Also, we now have the economic rationale that we have to save, so this cuts into different areas.

Mr BARTLETT—So if we spend a whole lot more of government funding to set up a commissioner for children and so on, doesn't that exacerbate or aggravate the problem of lack of funding for these essential services? One of the things that concerns me is that we keep spending more money on organisations and structures but it does not get through to improving the areas of service provision that really need to be improved.

Ms Germanos-Koutsounadis—I do not see the commission of children as an area that is going to be dealing more, or all the time, with service delivery and allocation of funding. I see it as a body that would be monitoring, watching, and being an advocate for children.

Mr BARTLETT—But the network that will go with that will cost money which will perhaps come out of direct service provision.

Ms Germanos-Koutsounadis—Not necessarily, because some of it could be to change legislation and to coordinate what we have. Quite often, a lot of resources are uncoordinated and there seems to be waste—although most of it is not. For example, if you look at the three tiers of government, the state government has a service which is similar to those of the federal and local governments. If there was some sort of coordinating body to try to rationalise working relationships between the three levels of government and the community sector, it is not going to cost money.

Mr BARTLETT—Isn't there a danger though that, rather than rationalisation, we

would end up with duplication and therefore even more money wasted on bureaucracy?

Ms Germanos-Koutsounadis—No, I do not think so, because already there are not enough resources so I do not think there is a lot of duplication in some areas, especially in service delivery. I know that in the community sector there is not much duplication; also, the resources that are provided for the community sector are so few, yet the outcomes are so great. Efficiency is one of the measures that needs to be used by the government itself, because quite often there is a lot of waste.

Mr BARTLETT—I agree with that principle, but I am not sure how the establishment of a commissioner for children would address that problem.

Ms Germanos-Koutsounadis—It would partly redress the problem; but if you do not have some sort of a mechanism which coordinates what is happening, we are going to be spending more money. If each state has a commissioner for children, and so on, you need a coordinating body.

Ms Giglio—Part of the role of that body could be to list all the available resources in the community. Therefore, if it is identified that there is a double-up, something can be done to address that issue.

Mr BARTLETT—How would you suggest that would happen? If it was suggested that there was duplication between state and federal governments and it was therefore suggested that one of those organisations should remove itself from involvement in a particular area, would you suggest that it ought to have some sort of legislative right to do that, or would you see it purely as a recommendation process?

Ms Germanos-Koutsounadis—I think the COAG process is endeavouring to do that, but we do not know what is going to happen with COAG. The community has not been consulted at all. But, in my experience in the last 25 years, most of the time the government is looking at how to cut resources. We are now at a point where we are losing valuable programs and valuable work that has been done because we are trying to save $10 which will cost us millions, about five or 10 years later, to undue to harm that will have been done in relation to the welfare of people. I have had the experience, because I have been in the field for 30 years, and I have seen that.

We are saving today $10 million, but we are going to pay $1,000 million in 10 years time in order to undo all that we have done to try to save money. It is unfortunate that that is happening, because we are destroying some very effective programs. Look at child care. We had one of the best child-care systems in the world. With what is happening now we are going to lose a lot of it because of privatisation, commercialisation and user pays. We are looking at our children as commodities, rather than human beings and the citizens of tomorrow. I have always said that whatever dollars we spend for our

children are a high investment for the future because we are going to get it back. I am very sorry, but this is the situation.

Mr BARTLETT—I do not think anybody has any argument about that principle; I think the argument is about how that principle can be attained. That is where the question is.

Ms Germanos-Koutsounadis—I think it can be achieved. We have to look at ways of not putting a money value on things, but of looking at other ways of how we can work together with other organisations and the community. For example, one of the best partnerships has been the community and the government working together. In that way, you save more money and the work is done more effectively.

Ms Giglio—I guess in many instances the state is better equipped to deal with local issues than the federal government sometimes, because the federal government is so far away from what is happening. It does not have the necessary knowledge of a specific issue to get involved. That is also a case in point for national and state organisations. Sometimes the national organisation will be doing a coordinating job and the state organisation does the local work. We should never forget the importance of those local organisations in providing those services and say that a peak body can ever replace what they do. It is a difficult one. I can understand the difficulty the committee might have in dealing with it, but there has to be consultation with the community at all levels to ask them what the best is because workers and users often know how things run and how they work best.

CHAIRMAN—Unfortunately, as always, we have run out of time. I thank you for your evidence and I thank you for coming this morning.

Ms Germanos-Koutsounadis—Thank you.

Ms Giglio—Thank you very much.

[11.17 a.m.]

FALK, Dr Rachel, Member, National Association of Practising Psychiatrists, PO Box 12, Arncliffe, New South Wales 2205

HALASZ, Dr George, Member, National Association of Practising Psychiatrists, PO Box 12, Arncliffe, New South Wales 2205

MILGATE, Mr Stephen, National Coordinator, National Association of Practising Psychiatrists, PO Box 12, Arncliffe, New South Wales 2205

CHAIRMAN—Thank you very much for both submissions. Did you have a short opening statement you wanted to make, or do you just want us to go straight to questions?

Dr Falk—I would like to make a statement. We believe that the rights of the child—I refer you to article 24—does include the high standard of health care and access to necessary health care for the psychological wellbeing of children. We believe that since the budget of last year, those rights have been removed. There is no provision now in the health care system to treat children—except very infrequently, and quite often at an inadequate level—for their needs. I have detailed in the submission that we have put to you that there is a necessity for children having their emotional problems treated at the very earliest time and in the correct way. This is not now possible, since the budget of last year.

CHAIRMAN—We might come back to that point about Medicare coverage in a moment. On page 1 of your submission you talk about the environmental disasters which are traumatic for children. What exactly do you mean by that? Can you be more specific?

Dr Falk—Children are developing and they are very responsive to both failures and good management. Failures are environmental disasters. Things that I have included such as divorce are environmental disasters. All stresses in children's lives are quite significant. There can be things like bushfires or stress or separations. For a child—

CHAIRMAN—So you are talking about the social environment rather than the ecology and the environment physically.

Dr Falk—Yes, I am talking about the social environment of a child.

CHAIRMAN—That is where I might have had a misconception. In terms of some of the services you provide and access to those services, are they dependent on parents? Perhaps this comes back to your Medicare statement. Are children able to access without other assistance?

Dr Halasz—To put that into context, child psychiatry is a relatively new specialty

of about 70 or 80 years standing only and the concept of the rights of the child is much more recent than that. I do not have to go into the details. The legal status of the child is one of a minor and so all children are dependent on their parents or guardians giving permission for treatment. We have no way to deliver a service unless permission is given, and with informed consent. It is within that context that the rights of the child have been prejudiced with the budget cut as there is no longer access for parents to access the child services.

Mr HARDGRAVE—What is the cut? I have an understanding and I want to see whether I am right or wrong. What is the service provision that has been cut? There is a restriction on it now, is there?

Dr Halasz—Yes. Prior to last year's budget there had been free, open-ended access for the needs of children as well as adolescents and adults. The budget cut reduced that to a 50 session per year maximum. There was an exemption clause, item 319, that for certain people with very strict and arbitrary criteria there are exemptions to allow them to go above the 50 sessions. We feel that children do not have access to those exemptions.

Mr HARDGRAVE—You are saying that there are children who will need more than 50 visits a year to a psychiatrist.

Dr Falk—Yes.

Dr Halasz—Yes.

Mr HARDGRAVE—Really. I have no way of knowing whether you are right or wrong. I remember writing a representation to Dr Wooldridge about a constituent of mine who was in a three or four visits a week to a psychiatrist situation. I suspect she is covered under item 319 because we were able to fix up her situation. For children having 50 visits a year, is there that much stress involved?

Dr Falk—There is. Let me give you an example of a child I am currently seeing now.

Mr HARDGRAVE—That would be helpful.

Dr Falk—That will illustrate the point, otherwise it is all a bit academic. A child was referred to me when he was seven. He had been in two foster placements before then. He had been a very neglected child. Both of those foster placements had broken down. He had been in an institution as well. He was then in the third foster placement when he was referred to me. He was a very disturbed child—he would not let anyone touch him, he was attacking children in the playground and he was very disruptive.

He was in a very good foster placement. These were people who had brought up

their own children very successfully. The foster arrangement could not have been better but it was going to break down. I do not have to tell you what that breakdown would do for his future. It would have been chronic institutional care. He would not have been able to get an education and he would not have been able to work.

As I said, he was a very disturbed child and there was no way that once a week could contain him. If you like, there are all sorts of issues from his past which influence his behaviour—his unconscious as well as his conscious past. With once a week you could not contain or work with what was going on.

Mr HARDGRAVE—You could literally have 50 days straight as well.

Dr Falk—That is just not enough. You have a lifetime of very significant disturbance. I started him at three times a week and when it was possible to work less often it was twice a week. I have tried it once a week and it does not work because the parents come a long way. He has now been coming for several years. He is no longer aggressive and he has now been in this foster placement for six years and he will stay there until he grows up. They are going to adopt him. He is learning well. He is getting an education. He is, for all intents and purposes, a normal child. There is no other treatment available for a child like this.

It is not just children like this that benefit. Another child I see soils herself. She comes from a middle class family that have undergone enormous traumas. The father ran over his own infant when he was backing out of the driveway. The mother became profoundly depressed before this very disturbed child was born. Imagine—I do not know if you have children—what it would be like for a child aged eight to soil herself and wet herself. Imagine the impact on her schooling. That is now under control. She is learning properly; she is not anxious. But it needs a certain frequency that comes both from a theoretical background and also from clinical experience. There is no other way and we do not have the funding now for these children to be treated. There is no provision at all.

Mr HARDGRAVE—Under this 319, that adult constituent I was talking about—as I understand it—is now able to access a greater number of psychiatric services than 50 a year. Are you saying that children cannot?

Dr Falk—They cannot. This provision just does not apply to children. You need to have a diagnosis of borderline personality disorder or have sustained sexual or physical abuse. That does not apply to most of the children we see. It makes no provision for emotional neglect or emotional abuse at all. It also specifies that to get item 319, you have to have had failed previous treatment—that is absolutely contrary indicated in children. You do not put them through a course of treatment you know will fail. You have to treat them as early as possible to intervene. You are looking at a developmental process. You want to treat them as early as possible. There is also a scale. Patients qualifying for 319 have to be disabled to a certain extent on this GAF scale, and that is inappropriate. You

would have a child that would not be able to get up out of bed if you applied those criteria.

Mr HARDGRAVE—I come from Queensland, and so does the Chairman, but I can only speak for myself. I understand that mental health funding is very poor in that state and has been for too many years. You and other associates in your profession would be able to put together a submission to put to Dr Wooldridge to justify that there are going to be some children—not all children—who are going to need more than 50 treatments a year. Do you feel satisfied that you could address that criteria?

Dr Falk—Look, we have done that. We do not feel that politicians particularly are interested. Everything seems to be about budget cuts. I am sorry, but that is our experience. We would like to put the case, because according to article 24, the rights of children are not being actually acknowledged, nor those of their parents. If you look at article 24, it says to ensure appropriate prenatal and postnatal health care for mothers. We are not able now to treat depressed mothers. The College of Psychiatrists conference has just been on. There have been two symposiums on postnatal depression. There is no provision now to treat mothers adequately in the postnatal period and that also affects children.

Mr HARDGRAVE—What we have here is obviously very important and aimed at some very important matters. I think the point has been got across. I want to ask questions off the agenda of this committee, just to say: hasn't there been some overservicing in the psychiatric services and that is why those sorts of cuts were brought in?

Mr Milgate—To be frank, we are told this. There was the famous so-called Dr 747, but we cannot find out who that Dr 747 is. If people are overservicing and abusing the system, let them be dragged before the courts; let them be disciplined.

We have a situation here where a very minute number of Australians, thank God, in this wonderful country are very very disturbed and very sick. So we go and have a look at the entire Medicare budget and say, 'Right, we will target a particular branch of psychotherapy or psychiatric care that affects a small number of Australians receiving intensive psychiatry.' This is from a group of practitioners who are the smallest gap chargers in the whole of the specialist area, because of the people they deal with, particularly people like our colleagues here who work with children, which is a very difficult area few people would work with. We create this blanket cut. Then it is a massive stuff-up. Then enormous pressure is mounted, which you have been a recipient of—

Mr HARDGRAVE—I have been part of it.

Mr Milgate—You have been part of the process of unstuffing the stuff-up and we have unstuffed it up to item 319. The problem is now—and I do not think anybody on any

political side of the spectrum would want this to be intentional—that the cracks are in the test that wants to sort of target, if you want a better word, this form of therapy. Children are falling through the cracks. This is a monstrous crack. Now you say to us, 'Write a submission et cetera et cetera.' I am sorry, we have done much submission writing here. Here is our submission. We have written it and we are delivering it to this esteemed group of politicians for them to take back to their colleagues on all sides of the fence.

Mr HARDGRAVE—I welcome this evidence.

Dr Falk—I have spoken to my local MP at length. He came with pie charts, health dollars and all of that and I must say after my time with him he understood what I was talking about. He went to Dr Wooldridge. But it is going in a cycle. He said we are negotiating with the College of Psychiatrists. The bureaucrats have not taken the advice of the College of Psychiatrists nor of our individual submissions. It is a totally inadequate situation for children and their parents. It is tragic and the consequences are so serious for our society. When these children grow up they become parents. I think we have to look beyond the next election. We really do have to look at what it means.

Mr Milgate—There is no money in it.

Dr Falk—There is not. It is not cost effective. It really is not.

CHAIRMAN—Let me just make this point: we accept your submission into evidence as we have indicated. I think all of us accept the validity in part or in total of what you are saying about the lack of funding in that specific area. But I am not sure in dealing with the convention on the rights of the child that you can draw such a long bow as to say that this is in contravention of the convention. Maybe you can and I would like to hear about that.

Dr Falk—We do.

CHAIRMAN—But your peak body will have gone through the process hopefully—albeit inadequately, you say—at ministerial level and at the bureaucratic level. I do not think this committee is the appropriate one. You can make your point. That is fine and I accept that but I think it is more appropriately made in other areas. What we are about is wanting to know specifically in what way that lack of delivery contravenes the convention.

Dr Halasz—The concept guiding the treatment of children has been termed the best interest of the child which was a term coined in the 1980s and it is detailed in my paper which was separately submitted. Australian health is tending to follow the pattern of American health. What has happened there—and we have very good evidence from journals, scientific professionals and, as Rachel said, at our conference from speakers from America—is that there has been a drop from the best interest of the child to the minimum

interest of the child. We feel that this drop of care from best to minimal is what is contravening the rights of the child where article 24 I think says that the child is entitled to the full implementation of his rights and the highest attainable standards of health. The term 'best interest' we equate as the highest and the minimum we do not see as the highest and that is the natural consequence of this 319. That is one point.

The second point is that child psychotherapy, child psychiatry or child intervention occurs at a given point in time. At the very same time this treatment is also prevention for later. Sick children have a tendency to have a higher risk to become sick adolescents and sick adolescents have a tendency to have a higher risk to become sick adults. Therefore, going back to the beginning of the chain, intervening with a sick child actually saves dollars further down the road. It is penny wise pound foolish to make these cuts in child services because the tab will be collected manyfold down the road. That is the second point. One point is that, on the actual children's rights as the highest attainable, we feel it falls far short. Secondly, it just does not even make sense.

CHAIRMAN—Let me quote from your personal submission as distinct from that of the association. It seems to me, and I am just reading specifically the wording of your personal submission, you said 'may contravene'—

Dr Halasz—Yes.

CHAIRMAN—Whereas now we seem to have moved to 'has contravened'.

Dr Halasz—I made that as a solo practitioner. I did not wish to state a case that I could not defend, so I said it 'may'. Having talked with my colleagues and others since then, I am now of the opinion that it does on this issue of the highest attainable standards equated to the best interests of the child, the minimum standards not being the highest. So I have actually moved since that April submission.

CHAIRMAN—We needed to get that on record.

Dr Falk—But I think on that point, too, it is very important. Some children cannot be treated infrequently. It is not a question of choice. It is like cutting off a heart transplant half the way through. There is a certain frequency that is needed for certain children. Not all children but certain—as it is for adults. It is not a question of choice; it just will not work less often. It is like half a course of antibiotics or half a transplant. It is necessary for certain children and, unless parents are wealthy now, they will not be able to afford it.

Mr BARTLETT—I would like to bring this back to the Convention on the Rights of the Child a little bit more. I certainly take your point and your argument about the need to address these issues in health care for children. You have presented a very convincing argument. However, in terms of the convention itself and article 24, how would you

suggest that we ought to apply it? Would you suggest that there should be legislation to require governments to accord with article 24 and, if so, how do you define 'highest attainable'? That is an endless sort of concept; we could spend endless amounts of money and increase the level of care. Now where do you define attainable within a reasonable budget restraint?

Dr Halasz—Thank you for the question because that has been troubling us as well. Firstly, the point about the endless bottomless pit, that may not actually be valid. One of the distinguished American professors, Goodwin, said that actually in America, in New York State where there is this potential, in fact only 10 per cent of the budget gets used for mental health. So their experience is that it caps itself. People do not actually like to go to psychiatrists unless there is a real need. It is not as if that is a fun place to be. So that is just on that issue.

But thank you for the wider question, which I would like to address. This was addressed at our national child and adolescent conference in November last year when the idea was raised that, if a government is genuinely serious about protecting the rights of the child—not just article 24, the whole package—what about a minister for children's rights who will be in a position to receive the information on all aspects of rights of which this is just one small, from our point of view, essential part? But that would give a message that children are in fact a 'commodity' which is beyond any other 'commodity'. It is being invested by government in the embodiment of a minister who is actually an advocate, and we currently do not have an advocate for children's rights.

Mr BARTLETT—Do we not have a minister for family services?

Dr Halasz—We do, yes.

Mr BARTLETT—And should not the rights of a child be part of the context of the family?

Dr Halasz—If it would work. I do not know the politics that goes into it but, if that was workable, it would work. Ours is one example that it has fallen through the crack. This is despite our representation as individuals, as college, as NAPP, and here we are where it still has not happened in our view that the highest standards have been maintained.

CHAIRMAN—Yours is a point of emphasis rather than real change in direction. Within family services, if children—and I personally have a little difficulty with you using the term 'the minister for children's rights'. Why not just the minister for children? Why just rights? It does not necessarily mean sick children either. It means children and their good and their bad. Is that what you are saying?

Dr Halasz—Yes, health promotion for children.

CHAIRMAN—That is what you are saying?

Dr Falk—Can I just add one point to that? The point that children are part of a family is important. Coming back to what happened with the budget cuts, we are also not able to treat parents adequately. That must be remembered, that children are part of the family. We really are advocating for freedom to make clinical decisions which are based on the best interests of children, their families and their parents. I do think that point must not be lost.

Mr BARTLETT—My question on this is how effective adding another ministry, another portfolio and another bureaucracy behind it really will be in addressing the problem, and whether we would not be better off having the resources concentrated a bit more effectively within the health portfolio, within the family services portfolio.

Dr Halasz—That is a point obviously that the political world will need to decide. From our point of view, children run the risk of getting lost in any sub-group. They do not have voting rights, and the parents of the children who are sick are emotionally drained and cannot actually advocate and lobby. So part of our professional function is advocacy for the families who have these children.

CHAIRMAN—I wanted to ask a much more general question in a specific area—that is, in relation to youth suicide. The UN committee has been very critical of the New Zealanders, for example, and hopefully in the context of this inquiry we will be listening to the Children's Commissioner from New Zealand if we can get him across here. They have been particularly critical about the high rate of youth suicide in New Zealand. Would you like to tell us, if you are aware, what is the relationship in statistical terms or general terms; what is the latest research, and what do you see as being the solution? Is it part and parcel of this so-called ministry for children?

Dr Halasz—In the 1980s I was very much involved in research in adolescent suicide. Australia has the distinction of being very high up in the league of 15- to 24-year-old suicides, and I am not sure that currently we may not beat New Zealand. Certainly we are competing with them for that notorious priority. One of the trends that has happened in Western countries is the programmatic approach to suicide—bringing in modules and programs in schools, in the health services, in community health services, at the expense of face-to-face clinical work. That is the one-to-one work.

I can well understand, from treating many suicidal adolescents, that it is at times devastating work to relate to someone whose decision making is about whether or not to kill themselves. I think what happens is that, with less and less training in these skills and techniques that we are proposing are essential for treating children—psychological understanding—the young person feels less and less understood. Actually, what they are saying is, 'I want to kill myself.' One has to empathically hear that for clinical change to occur. In the absence of empathic understanding the young person is alienated and then

goes and commits suicide. Programs at a social level, with all of their goodwill and good intention, do not meet this deep individual need for empathic contact. That is what has been happening in the world of psychiatry.

Internationally there has been a move away from individual clinical work. There are good economic reasons with managed care and so on because they do not fund long-term individual work—which brings us back to 319, that we are not being funded to deliver that sort of one-to-one caring work. It is not woolly, soft, mother earth, apple-pie type work; this is jungle territory.

A child who is seven or eight talking about suicide is not easy to empathise with when our myth is that childhood is the great time of your life. So it is not easy to just plug in to, say, a seven-year-old who is actually talking about hanging themselves. The most common feature is to run out on the road and they are misdiagnosed as a road accident. Road accidents are the commonest form of under-10 suicide.

CHAIRMAN—For example, I have just come back from Japan. The thing that surprised me—I was not aware of it and I do not have any statistics—is that I was told very strongly that in Japan the rate of youth suicide in a disciplined, pro-family society is very high indeed. There is an enormous amount of suicide which we do not hear about but maybe you do on your net. What I am asking is whether there is some sort of underlying theme and, as a result of that, is some sort of commissioner, ministerial arrangement or whatever going to correct that?

Dr Halasz—Unless the constitution of that ministerial committee invites a clinician onto its board, that whole dimension of the one-to-one relationship will remain absent. In Japan, for various cultural and assimilation reasons and tensions in identity, there is a national problem. Youth suicide is actually a barometer of national health, as is peri-natal mortality and so on. So a society that has a very high adolescent suicide rate is not really all that healthy.

Dr Falk—If I could just add to what Dr Halasz is saying. There are very good statistics that show us that most adolescents who suicide have in fact asked for help first. They have nearly always conveyed their distress to someone before they have suicided. As a clinician who sees a lot of adolescents, most of them come suicidal—knock on wood, none have suicided—and it requires work with them. It requires that individual understanding which is not always obvious. The problems do not always lie on the level of 'I can't get a job' or 'I've got the HSC next week,' which are often the sort of things we hear. It requires specialised training and it requires that individual work, and that in fact is what is missing.

Again, looking at the research that is coming out, people are asking for help. There are very few adolescents who suicide have not communicated their distress first, it is just that no-one is there to listen. To take up the challenge of sitting down and working with

them is possible—I know because I do that work—it is possible to prevent adolescent suicide. Not everyone of course because there will be people who do not come for help. People do not always come to psychiatrists and ask for help but most do communicate their distress first.

CHAIRMAN—I think we have run out of time, but thank you very much for coming along this morning. Your evidence has been very helpful indeed.

[11.47 a.m.]

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CHAIRMAN—Thank you very much. We have received your submission. I understand that you also want to introduce some further documentation into the evidence. I will just formally get that introduced. There is a document on the formal presentation this morning, which covers six areas, and the review and recommendations of your association's role in the New South Wales Branch in vision screening. Would you like to make a short opening statement?

Mrs Silveira—Certainly. I might just add to the information that you have just provided on the documents that we have given you. The big thick document just outlines what the orthoptist's role is. That is for you to have a look at later on. We have also included some promotional brochures on orthoptics and children's vision and, again, a summary of our presentation today.

CHAIRMAN—I do not want to cut you off at all in giving your evidence but, for those six areas that are spelt out, perhaps we could keep it brief, because I think it is more important that we exchange in terms of questions.

Mrs Silveira—Thank you. On behalf of the New South Wales Branch of the Orthoptic Association of Australia, I would like to extend our thanks to the Joint Standing Committee on Treaties for providing us with an opportunity to comment on the implications and Australia's progress on implementing the Convention on the Rights of the Child. We wish particularly to address the terms of reference of the adequacy of the

programs and services of special importance to children.

I will begin by presenting you with a brief definition of the role of the orthoptist. Orthoptists are eye health care professionals who specialise in disorders of eye movements and diagnostic procedures related to disorders of the eye and visual system. One of the major roles of an orthoptist is to detect and treat vision problems in children. Orthoptists work in the areas of neonatal, paediatrics, multi-handicapped, rehabilitation, geriatrics, low vision, ophthalmic assisting and community health, which includes early childhood and vision screening in the school health system.

The aim of vision screening is to detect ocular problems that may cause permanent visual loss or interfere with classroom learning. Vision screening is carried out during the critical period of visual and ocular development. So time is of the essence when detecting and treating problems. In addition, ocular diseases can be indicators of the presence of a more serious systemic disease.

Vision screening aims to identify amblyopia, which is poor vision; strabismus, which is turned eye; and eye movement abnormalities. Approximately 10 per cent of the school age population have these defects. Amblyopia is the most severe defect and is present in two to five per cent of the population. It is the leading course of blindness in the paediatric age group and represents the third highest cause of blindness in the adult population. Amblyopia can only be detected by testing vision.

The current situation in New South Wales regarding vision screening is as follows: in some area health services, children entering kindergarten are screened for vision, hearing and developmental conditions by school nurses. Any children who are detected with vision defects are referred for further investigation. If an orthoptist is employed in that area health service, these children are given a secondary screening test by the orthoptist and, if necessary, are referred for treatment.

A limited number of area health services also offer vision screening of year 5 or year 6 children. Unfortunately, a trend has developed in New South Wales to reduce or cease vision screening of school aged children. We believe this trend directly contravenes articles 3, 6 and 24 outlined in the United Nations Convention on the Rights of the Child. Currently there is a lack of standard policy for the area health services to follow. The last directive from the New South Wales department of health in relation to school health policies was in 1986. Since then there has been no further directive.

Area health services are permitted to formulate their own policies and standards, including those relating to vision screening. Area health services have the freedom to make their own decisions regarding funding. This has had an adverse effect on vision screening in New South Wales, with decisions being made on financial grounds rather than in the best interest of the children.

Proposals have been made that parents and teachers should be responsible for detecting vision problems in children. A major flaw to this argument is that vision problems in children may show no outward symptoms or signs and thus will not be detected. A survey of teachers confirmed that they are ill prepared for such a role in the health care of school children. In addition, little standardised information or training is provided for parents to assist them to detect vision problems.

There are numerous implications of the reduction of vision screening in New South Wales for the standing committee to be aware of. Firstly, New South Wales is not meeting the best interests of children. Vision and ocular defects which can have disastrous effects on a child's normal visual development are not being detected and thus treated. By ceasing vision screening, New South Wales is not maximising the possible development of children. New South Wales is not ensuring that children are able to achieve the highest attainable standard of health. New South Wales is not providing all necessary medical assistance and health care to all children.

Finally, we would like to submit some recommendations for the standing committee to consider on issues we have raised today. Firstly, that vision screening be recognised as a mandatory procedure to be performed on all children entering the school health system in New South Wales. Secondly, that all area health services collaborate to reach agreement on standards regarding vision screening protocol and referral systems to be implemented within the New South Wales school health system. These recommendations should aid Australia's implementation of the United Nations Convention on the Rights of the Child.

CHAIRMAN—Thank you very much. I will specifically take up article 24. I think it is an important point just on the basis of your arguments but also it is a common theme with the previous witnesses from the psychiatrists. Let me read into the record what article 24 says:

States parties recognise the rights of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health. State parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

In your opening comments just then you kept on referring to New South Wales, New South Wales. If in fact there was to be some sort of umbrella federal legislation, how do you see that legislation overcoming what exists in New South Wales at the moment? What statutory coverage is there in the state of New South Wales at the moment?

Mrs Silveira—As I pointed out in the opening statement, the only type of directive people receive is the one that comes down from their own area health service regarding what money will be allocated to screening and what screening will actually be performed. As to what the other states are doing at the moment, I am not particularly familiar with their systems. I know it is different in Victoria. I do not know what happens throughout

the rest of Australia. We could find out that information. New South Wales has had a pretty good track record where vision screening is concerned. I say that just from talking to colleagues from other states. I do not know if anyone else can add any more about what goes on in Australia.

CHAIRMAN—A lot of evidence we have already taken, both in Canberra and in Brisbane last week, indicates fairly strong support for some sort of federal commissioner for children. Do you see that sort of concept and/or some umbrella legislation as being the solution?

Mrs Silveira—Certainly it would provide solutions. At the moment there is a vast lack of direction for people working in the school health system. There is certainly a lot of ill-feeling from the grassroots people, the people actually out there doing the screening. They do not know where they are headed. The area health services do not know where they are headed. So I think there certainly should be something that says, 'This is the system we are going to run it on.' At the moment we are fighting to keep vision screening going. As an association, we have no right to force that opinion on any area health service. They are basically autonomous in the decision that they make and we do not believe that that decision is always appropriate.

CHAIRMAN—Do you have any statistical or other evidence to indicate what sort of deleterious medical or health effect that is having, or is it too early to get that sort of trend?

Ms Wozniak—I think it is really too early to get exact statistics. However, there are statistics. Recently studies have been done in the Blue Mountains, for instance. They studied the elderly population and they found that amblyopia, a problem of childhood, is the third most common cause of blindness in one eye. It is going to take a very long time before things that happen now will actually show up in the long term. But the cost to the community of having someone with blindness is quite great. When we have such a simple, easy to treat problem that is relatively prevalent and it satisfies all the criteria for screening programs and which is being considered to be cut then we think that is a very unfortunate way for this country to be going.

Mr LAURIE FERGUSON—Are you saying, essentially, that it has always been better than a lot of the states but is still not sufficient? What has been the material change?

Mrs Silveira—I am not exactly sure of the period of time but there used to be a blanket statement passed down from the Department of Health to all the area health services, 'This is the screening that you will perform.' Then they became autonomous—

Mr LAURIE FERGUSON—And that stated what?

Mrs Silveira—As far as vision screening is concerned, they would be conducting vision screening programs of kindergarten children or any new children entering the school and they would be doing vision screening on fifth class children. That is what everybody did. We all used to do that. Since the area health services have become autonomous, they have been allowed to make decisions on whether they really need to be doing vision screening. Statistical evidence points to the fact, as Helen has commented, that it is a valid screening procedure to be performed. Unfortunately, it depends on the person who is making decisions in that area of health service where the funding goes and what procedures will actually be performed.

CHAIRMAN—Were kindergarten and fifth class the two benchmarks?

Mrs Silveira—Yes.

CHAIRMAN—That is age five and 10.

Mrs Wilcox—Yes. I think they are picking up different things. Fifth class screening is picking up short-sightedness—I am looking at the committee members on the other side of the table and most people are short-sighted over there—whereas kindergarten screening is picking up problems that can be treated to stop a child being blind. I think that is why the area health services have kept with kindergarten screening as an early intervention procedure, whereas fifth class screening is just picking up kids who are short-sighted, which they tend to think will be picked up anyway.

CHAIRMAN—Yes. It is a bit like literacy and numeracy. A lot of work is being done in that area politically and educationally, but what you are saying is that, unless we pick up the comparable health aspects, in this case vision screening, we will exacerbate what is already a difficult situation. Is that what you are saying?

Mrs Wilcox—Yes, that is right. We do not have exact figures to state the kindergarten screening is being stopped at the moment but on the agenda of all the area health board meetings is, 'Where are we going to save money?'

Ms Topham—Kindergarten screening has been stopped in the Manly-Warringah area of Sydney. It is parent and teacher referrals only. In central Sydney, where I work, I have just spent last year battling to keep it in kindergarten now. I do not know how long we are going to keep that up. It will be teacher and parent referrals and, as Sue said, teachers cannot take that on. Children do not tell their parents and often it does not show.

Mrs Silveira—The major issue about vision screening is that often you will find that children have reduced vision in one eye only so they can compensate and function quite normally with their other eye. As a parent, you look at your child's eyes and the eyes look normal. You have no way of telling that that child is not seeing out of that eye. There are statistics that show that later on in life someone who has one good eye and one

poor eye is twice as likely to lose the vision of their good eye through injury, accident or whatever, so you are looking at a much higher risk of that person becoming a visually impaired person, which again is an enormous drain on society.

Mr LAURIE FERGUSON—I do not think you are making this point but, just in case it is an oversight, you use the expression 'nurse' at kindergarten level.

Mrs Wilcox—Yes.

Mr LAURIE FERGUSON—Is that person usually a member of your organisation, or should it be done by you at both levels? Is that part of the argument as well?

Ms Topham—No.

Mrs Silveira—We are not advocating that we become primary vision screeners. We do not see that as our role at all. We would agree with the role as a secondary screener. The nurses as such are what we call school nurses but they have a nursing background and they will have some training in the area of this blanket screening that is one within the school system.

Mr LAURIE FERGUSON—At both levels they are sufficient?

Mrs Silveira—Yes.

Mr HARDGRAVE—I am wondering about the cost side of things for the parents. Does that detract from their commonsense approach of repairing a child's vision problems with optical lenses or whatever? Are parents reluctant to get their children's eyes tested, so you need a system like this operating to enforce it?

Mrs Wilcox—Certainly, we do because of the reduction of eye clinics presently in public hospital systems. So the only way most parents can get their children's eyes tested is through an ophthalmologist, and that means paying privately.

Mr HARDGRAVE—But at school level in picking up the problem, a note goes home to the parents. Do parents respond to that note? Do they actually then go on and do something about it?

Mrs Silveira—The sad fact is that a lot of parents are very complacent about their children anyway. It is not just the issue of can they pay for the glasses; it is an issue of will they even take their child for an assessment? We battle all the time. We pick up defects and we are sending letters home to parents saying, 'Please go off for an assessment. You need further assessment.' There are always people who will not follow your advice. I do not think that it is just the issue of whether they can afford to pay for the glasses. Rather, it is a matter of getting the people in the door to actually have a

proper assessment done.

That, of course, impacts on the situation when you are relying on parent and teacher referrals. A lot of teachers will comment, 'How do I know what a child's eyes are doing?' If I were a teacher, I would have to have my whole class screened. I would not like to be the one to say, 'This one can see; this one cannot see.'

Mr HARDGRAVE—So the sort of service you provide is, again, another example of society stepping in when the family has really failed the child inadvertently.

Mrs Wilcox—Yes.

Mrs Silveira—In some situations. That is not directly what we are presenting here today. We certainly will have a role there. What we are trying to put to you today is that vision screening is a valid screening procedure and it is an essential part of ensuring that children reach their maximum capacity in every way, and we have grave concern that this is actually being cut.

The other point which you may not have picked up on is about the vision problems we are talking about treating. We can only treat these children until the age of eight years of age. After that, we cannot improve their vision. The visual system has finished developing and growing; they have basically got adult eyes by the time they are eight. If we do not catch a child upon entry to school, and you have a six, seven or eight-year-old child you are trying to help, you just cannot do it, and that child is left as a visually impaired person in one eye, if not both.

Mr BARTLETT—Your comments about the Blue Mountains were interesting. I understand that the problem here then is a lack of funding for these services within the state government. The question in terms of this hearing is how, by changing the structure of Australia's response to the convention of the rights of the child, we improve the situation? Do you see there being an advantage in setting up a children's commissioner? Or do you think that the fundamental problem is just putting more resources into funding for primary health services such as this?

Mrs Silveira—We would always say yes to that. I am not convinced that it is purely a funding issue. I think that there is a lack of direction towards the area health services so they can put their money where their interests lie, unfortunately.

Mr BARTLETT—Should that direction be coming from the state health ministry, or should it be coming from a commissioner for children? Where is it most appropriate to come from?

Mrs Silveira—I would have thought at a state level at least—

Mr BARTLETT—Is it that we are not doing things correctly, that it could be done better at an individual portfolio level, or do we need to go through a fairly complicated procedure in terms of setting up a children's commission, or legislating for the convention of the rights of the child? Which way is going to be more effective in terms of delivering quality health care for children?

Mrs Wilcox—That would be very effective if there were a commissioner of children's right, certainly, because that would mean that local government area health boards would be overseen by somebody. At the moment they feel that nobody realises that they are stopping screening.

Mr BARTLETT—But if they are not being overseen by the department or ministry of health, what are the chances that they will be able to be seen by another level of government bureaucracy even further removed?

Mrs Wilcox—I cannot answer you on that one.

CHAIRMAN—You are talking about commissioners at the state level, are you?

Mrs Wilcox—Yes.

Mrs Silveira—I do not think that we can comment any higher than that because we are not really sure what is happening in the other states.

Mr BARTLETT—I have another problem with the definition again and if we did try to apply it in the legislation—this is similar to the questions we had of the previous group—that is, article 24 in terms of the highest attainable standard of health. How do we actually apply that in legislation and where do we draw the line? You could argue that there needs to be more money spent on a whole range of children's services, such as more playground equipment for better physical development, et cetera; and it is almost an infinite ask in terms of budgetary requirements. How do we actually apply that in legislation so that we could say finally that we have attained the level that CROC is asking?

Mrs Silveira—I do not know that you could ever achieve that, could you? The other issue which I spoke about earlier is that we are not looking for more money. We are looking for the preservation of a screening program. We are looking for direction to Area Health Service to say, 'Part of your screening program will include vision screening of kindergarten children'—at least; and that is not in place at the moment. As I say, they are autonomous and make their own decisions.

Mr BARTLETT—What response have you had in presenting your concerns to the health department and the health minister?

Mrs Silveira—We have not presented them as such. This is our first—

Mr BARTLETT—You have not?

Ms Wosniak—That is not exactly true. We have sent information. Something that the committee should also bear in mind is that the NHMRC did a rather large report on child health surveillance—not just on vision but all other areas of child health surveillance. I will quote one of their statements, which says:

> There is thus a distinct possibility that unless a mechanism for providing national leadership, coordination and standard setting for child health surveillance is introduced, even greater fragmentation of child health care could result with undesirable consequences for the continuity of child health care and the efficiency of service access for families.

That quote comes from a nationwide study that the NHMRC did on all areas of child health surveillance, and some of their recommendations do need some consideration.

CHAIRMAN—We have run out of time. Thank you very much for coming along this morning.

[12.14 p.m.]

EVATT, Ms Elizabeth Andreas, 67 Brown Street, Paddington, New South Wales 2021

CHAIRMAN—Welcome. You are appearing today in a personal capacity. We have received a short letter in which you indicated you were going overseas. Would you like to supplement your letter with an opening statement this morning?

Ms Evatt—Thank you very much. My concern in regard to this convention is similar to that with other conventions: how to ensure that the standards are incorporated and become an effective part of Australian law and practice. It is an extremely important issue, particularly for this convention. This convention, unlike the two covenants, covers a very broad range of not only civil and political rights and freedom but also economic, social and cultural rights. Therefore, it does present real problems about incorporation. It requires not only laws but also a great many programs delivering economic, social and cultural rights. Article 4 of the convention differentiates between those two categories of rights in regard to implementation.

My concern is to see whether we have within Australia an appropriate legal and administrative structure to ensure that we will comply with the obligations that we have undertaken under the convention. In another context—and with this committee—I have suggested, and I think others have too, that there be a treaty committee or council which would be perhaps a rather high level body of state and federal representatives with an overseeing role for all our human rights treaty obligations and perhaps other obligations.

But with this kind of convention, because it is very extensive, you could not expect a treaty council to go into the individual detail of the articles, so beneath that overall treaty committee or council you would probably need an agency which has the specific responsibility for analysing this convention, its implementation at federal and state level, receiving submissions on that on a regular basis and reporting on it to ensure that we are monitoring it. I am looking at something like an office for children or a commission for children, or some body like that, which has the definite role of overseeing implementation. That is one aspect of what I wanted to say.

The treaty itself has a number of significant features, but there are three that I would like to mention in particular: it focuses on the best interests of the child, and that was a factor that came to light in the Teoh case which you are probably well aware of; it provides a clear role for the family in supporting children in the enjoyment of rights—that is article 5; and under article 12 it ensures that the child, himself or herself, has an opportunity to express a personal viewpoint about matters that affect him or her personally, before decisions are made. Those are key factors that run through this convention.

So I would say, yes, we do need a permanent body to monitor our compliance, something going beyond what has happened in assigning it to the Human Rights and

Equal Opportunity Commission. We do need to ensure that children are educated about their rights and we do need an agency independent of parents and states to whom children can turn. Whether it is federally based or state based perhaps does not matter, as long as it exists everywhere where children can gain access, because we know that children of all ages here are subject to abuse from those who, at least in law, appear to have the primary responsibility for their care. So children do need someone to whom they can turn.

That is what I would like to say generally about our reception of the convention. But I always look outside, because I spend half of my life looking at countries who are trying to implement human rights from an external viewpoint and seeing what we can bring to bear as outside treaty bodies in helping states to fulfil obligations. You need to remember that most of the rights set out in this convention—not all, but most of them—overlap rights which are contained in other instruments to which Australia is party: the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and the women's convention, particularly in relation to the girl child. So a lot of the standards in this convention which are defined for children also exist as standards with which we should be complying for the whole community.

You may also be aware that there is current work going on to draft an optional protocol for the convention about the minimum age for participation in hostilities. What you may not know, and I could address this, is that there is also a major plan at the Centre for Human Rights in Geneva to provide extra resources for the Committee on the Rights of the Child. It has now been given a kind of premier role in the Centre for Human Rights to develop efficient procedures for the reporting and follow-up process. Perhaps I could pause there and say that I would be very happy to speak on any matters relating to the preparation and submission of reports, to the reporting process, the dialogue with the committee and the follow-up process. But maybe you have had that covered already by other speakers—I am not sure.

CHAIRMAN—At this stage, is that all?

Ms Evatt—Yes.

CHAIRMAN—We thank you for that and for sparing us your valuable time this morning. We will not keep you too long. You have confused me a little bit with those opening comments in relation to the treaty making process and how Australia handles it. You talked about a treaties council and I was not sure whether that treaties council would pick up things like the monitoring of the CROC or other things or whether you meant something broader. You are aware, of course, of what we, as a government, have decided. Are you saying that what has been decided is not the appropriate way to deal with these things?

Ms Evatt—I might not be fully aware of that because I am often overseas.

CHAIRMAN—Let me just tell you what has been decided in May last year. At

the top level would be the treaties council which is an adjunct to COAG.

Ms Evatt—Yes, I fully support that.

CHAIRMAN—The second level is this committee, and this committee at the parliamentary level operates between the signature and the ratification. At the time a treaty is tabled in the parliament, we then have 15 sitting days in which we have to report back to the parliament making recommendations as to ratification.

Ms Evatt—That is for a new instrument?

CHAIRMAN—For new ones, yes. For those that are extant—and as you would know there are about 1,000 of those at the moment, both bilateral and multilateral, and this is where CROC comes in—we, under the joint declaration of both the House of Representatives and Senate, are entitled to have a look without reference to anybody, ministers or otherwise, at the implementation process. That is the background, as I said before you come into the room.

Ms Evatt—Yes, I understand that much. I am looking at something else. The treaties council is an excellent idea but I am not sure—

CHAIRMAN—They have not met yet, I might add.

Ms Evatt—I would like to see the mandate of such a council extend to ensuring that for each relevant human rights treaty there is a proper agency in Australia that has responsibility just for that instrument to delve into the details. I can see that you in this committee are being given submissions that go into a great deal of detail about the implementation of specific articles, and that is very interesting, but you could not take that on for this and all other treaties.

CHAIRMAN—Particularly after it has been ratified.

Ms Evatt—No, you just would not have the time to do that.

CHAIRMAN—No.

Ms Evatt—Obviously it is interesting to look at some aspects, and no doubt that will be done, but there is a need for some agency to have the role of receiving that kind of submission and reporting to government where there appears to be some deficiencies in implementation.

CHAIRMAN—In this case, you would then support some sort of commissioner for children?

Ms Evatt—A commissioner for children, yes, or an office for children.

CHAIRMAN—Whether it be at the state of federal level, you do not really mind as long as it is done?

Ms Evatt—Whatever name it has got, it would have to be one set up with the ability—with every treaty too, but with this one—to have contact with someone in each state that is the proper counterpart. If you do not have the framework right for implementation and overseeing implementation, then too many things will get lost along the way.

A report to the international body at four- or five-year intervals will not pick up all that detail. It cannot. The committee sitting in Geneva cannot go right into the details so they will focus very much on framework issues of this kind to see if you have got a structure that makes sure everything goes well in Australia. I say they will certainly expect that Australia should present a good report and have a good system. We are a country that is expected to be up at the higher level of compliance.

Mr HARDGRAVE—Justice Evatt, thank you for your time. The opportunity to question you perhaps makes it one of the highlights of my time in the parliament thus far.

CHAIRMAN—Flattery will get you everywhere!

Mr HARDGRAVE—Justice Evatt is a very eminent Australian and I am just delighted to be in her presence. I have a concern about another agency. This morning we have heard about three tiers of government providing services for children and/or attempting to assist children. I suspect a fourth tier is probably the United Nations. A fifth tier could become an overseer-coordinating role and a sixth tier could be an accountability role to assess how each of those five are going. Do you think there are perhaps too many groups which are somewhat fractured? There are a few vested interests and a lot of competing interests, and along the way perhaps the best interests of the child are not quite being served. The outcomes are not there.

Ms Evatt—I would be very sorry if I thought that. It is certainly true that at the international level itself there are a number of instruments. There are the covenants—the race convention, the women's convention, the children's and the torture convention. These all overlap each other. A lot of work is going on now in the international arena to see what can be done to assist states which are parties to each of those six instruments to somehow consolidate and coordinate their effort in reporting to Geneva because it is a very big burden. Even for Australia it is a burden, but for countries with few resources it is an enormous burden.We should perhaps leave that to one side. There is work going on there.

The international treaty bodies, of which I am a member, see their role very much

not as an extra tier, but it is kind of an outside look. Each of them is a group which is very committed to their own instrument and very experienced in looking at how it is applied in different countries. Therefore, they can pick out good ideas from one country and suggest them to another country, and so on. They are trying to look from an outside perspective at whether we, in Australia, or any other country, are set up in the best way to realise the rights in this instrument—in this book, in my case—for the benefit of children. That would be their only goal.

Mr HARDGRAVE—But do you think along the way, in the Australian context, perhaps not the international context, that the system can become more important than the outcomes from the system? Children are still having a lot of the problems that this convention should have addressed.

Ms Evatt—It is true that systems can fail and systems can become inward looking and over-bureaucratic. I agree with that. But experience, for example in New Zealand, seems to suggest that the right kind of agency, a small agency with very much an advocacy role, can do a lot. It can goad governments at all levels to do the right thing and it can do it not from any sectional interest viewpoint. It is not representing this particular NGO or that one, or any other. It is representing children as a whole and trying to push governments—in our case federal or state—to get their laws and their programs in order, and in Australia very much to perhaps coordinate programs between states and federal. Of course, here it would probably be pushing the relevant ministerial council—I do not know what it is called here, welfare or community welfare. but the ministerial body.

When you are talking about children, children cannot speak for themselves. Somebody else has to take it up for younger children and we need to have a single agency with that brief to do it. Don't let it become over-bureaucratic though. That might be different from an agency to whom complaints are made because that sort of a body has to have a large number of resources, but an advocacy one would not. It would be a research and an advocacy role.

I think it would be very valuable here. I feel that the committee may well make suggestions along those lines. Of course we have our own unique feature, being a federal country, and there are not so many of those around the world, not of our kind. So we need to develop our own structures.

CHAIRMAN—I bring you back to Teoh and legitimate expectation in administrative law. How do you react to what has been announced by the federal government in terms of a legislative solution to the question marks which persist as a result of Teoh?

Ms Evatt—I may say that I am not particularly well disposed towards legislation which in effect says that when we ratify a treaty there should be no reasonable expectation in peoples' minds that the government will abide by its obligations under the treaty. I feel

that this is a statement that we as a country ought not make. If it were to be made, if there were to be any drawing back from implementation, it should be done by means of reservation at the time of ratification, not ex post facto when the High Court has said—whether you agree or whether you do not agree, they are the High Court and they have said, 'This is our law'—that ratification of a treaty does create this expectation that the government, the administration will have regard to its provisions.

I would have preferred, if the government wanted to act on it, that a lesser solution be found, that is to say, to expressly exclude that provision from areas that the government felt were so sensitive, that it should not apply the rule there. I take it that the government considers that the immigration area is one of those areas. I do not actually agree with this answer, but that would have been a preferable alternative to a blanket exclusion.

CHAIRMAN—Take party politics out of it, this is a criticism, if that is the right word, of what Teoh may or may not have meant on both sides of the political fence. If you take the Gareth Evans approach, you take the Daryl Williams approach. At the political level, they are seemingly somewhat different, in terms of those separation of powers, from what the High Court is saying.

Ms Evatt—Yes, I suppose so. Daryl Williams, the Attorney-General, expressed one viewpoint, but then he had to change that later. That was rather unfortunate. He did indicate last year that he would not proceed with the legislation, but I understand cabinet decided it should proceed. That is rather regrettable. The other thing that I felt was that, before proceeding with any legislation at all, one should have a look at the treaties to see what kind of situations might arise from this reasonable expectation. I myself felt that perhaps the problems were not as extensive as the government might have thought. There would probably be very few treaties where there are provisions similar to article 3 of the children's convention. There may be some others, but I would have felt that that would be the first thing to do and then see whether there are situations where it was felt appropriate to exclude that expectation in regard to those treaties in particular areas of government responsibility. Of course, as an internationalist, I regret very much our withdrawal.

Mr BARTLETT—Justice Evatt, as with some of the submissions we have had so far, the view was presented this morning by Professor Hafen that this convention has gone a lot further than others in that it has gone from the rights of the child to protection to the rights of the child to autonomy and freedom of expression and so on. This echoes comments by other organisations that have made submissions, that there is emphasis on the rights of the child but not enough emphasis on a balancing right of the parent. How do you respond to that? Do you think those concerns are justified?

Ms Evatt—No, I do not agree altogether with that comment. I referred earlier to article 5 of the convention, which certainly recognises and respects the role of the parents or family to provide direction and guidance in the exercise of rights. That is important. Yes, it does recognise a growing autonomy of the child, shall we say, but then so does

common law.

Common law, over the years, has evolved the concept of recognising the independent right of the child to make decisions for itself when it is of sufficiently mature years to do so. It would be impossible for a convention on the rights of the child not to recognise that children under 18, at some stage, must be seen as capable and independent to make their own decisions. The convention does not exactly specify where that happens, and it can be a different age for different purposes, or even for the same child if you have to decide if it is sufficiently mature.

I do not feel that it excludes the family. Indeed, I think in regard to religion and in some other areas that, again, it recognises parental guidance in that matter. Article 14(2) respects the right and duty of the parents to provide direction here.

Mr BARTLETT—Yet, in spite of that, there is a number of groups which have expressed concern that the rights of the parents are still grossly understated in that convention. Do you think there is an argument perhaps for removing some of the ambiguities in the wording of the convention to overcome that problem?

Ms Evatt—I do not know what they are. You will not be able to do that anyway, because to amend a convention that has now been ratified by, I think, 190 or 195 states would prove rather difficult. No, I do not think that it does swing the balance away from parents.

Bear in mind, too, that, in regard to the rights and freedoms which are often in contention here—that is, privacy, expression, assembly, association and any of those rights—children, as human beings, already are entitled to those rights under the Covenant on Civil and Political Rights, which only allows such restrictions on rights as are provided by law and are necessary for purposes of national security, public order, health or morals. In a sense, the Convention on the Rights of the Child is, in those respects, only repeating rights already recognised. So it should not be seen as anything outrageous. To say a human being has the right to privacy means that a child has a right to privacy.

CHAIRMAN—I just want to take from the professor's paper which undoubtedly you have seen and/or read.

Ms Evatt—I may have.

CHAIRMAN—In the *Harvard International Law Journal* of the spring of last year, he concluded by saying this, and I would be interested in your response. He said: Current legal literature contains increasing autonomy rhetoric, and modern culture reflects an emerging but misguided tendency among some adults to defer increasingly to children's preferences. But the United States legal system still limits children's autonomy in the short run in order to maximise their development of actual autonomy in the long run. When responsibly embraced by parents and others involved in child care and education, this approach also encourages development

of the personal competence needed to produce an ongoing democratic society comprised of persons capable of autonomous and responsible action. To short-circuit this process—

and I suppose this is the punch line—

by legally granting—rather than actually teaching—autonomous capacity to children ignores the realities of education and child development to the point of abandoning children to a mere illusion of real autonomy.

Ms Evatt—Yes. I think there is a lot to be said of that viewpoint, but I do not take it as meaning it is wrong to have legal rights for children or for anyone else. His emphasis there is that, if people or children are given legal rights, that must be done in a context in which children and adults, I hope, are taught in their upbringing that rights have responsibilities and that, as citizens, we are not just here as the recipient of rights; we must also contribute and fulfil our obligations as part of the community.

I very much favour that. I am not in favour of teaching children that you have the right to do this but you do not have any obligations. I think that is wrong. In my lifetime, society has swung a little bit from rigidity to liberalism with regard to children. Now it has swung a little bit back the other way. Fashions change. Does he say that children should not have rights?

CHAIRMAN—His thesis is a broad acceptance of the convention. What his thesis also says is that where it is wrong is one of emphasis. That is the point he is making. He gets into autonomy and he questions autonomous rights of children. That is basically what he is saying.

Ms Evatt—I do not have the universal declaration on human rights with me today, but you will see in that a specific reference to the obligations which individuals have as members of communities. In that, I would take myself for granted in my approach to the convention. In the covenant on economic, social and cultural rights, if you look at the section on education—which I do not think I have in front of me today—you will see that the right to education includes very much that right to education with regard to rights. It is in this children's convention too, is it not, under education?

CHAIRMAN—Yes, it is.

Ms Evatt—It has the same provision that is in the covenant on economic, social and cultural rights.

CHAIRMAN—We know you are a very busy woman and a learned Justice. In relation to that specific submission by the professor, who of course is also a very learned international legal person, we really need to have a balanced view. Maybe your view might give some balance. So, if you do have the time and you do have the inclination, we would be interested in your reaction.

Ms Evatt—I would love to have a copy of the article.

CHAIRMAN—We will give you a copy.

Ms Evatt—It is only because I do not have very easy access to libraries, unless it is on the Internet. If I have the time, I will. I cannot absolutely guarantee it, but I will try.

Mr LAURIE FERGUSON—You said earlier that any difficulties should have been tackled at the point of ratification. It really does open it up to unforeseen, and some people might feel zany, court interpretations—particularly if the court is very interventionist.

It seems to me that, in signing these, we are really in a situation where these things to some degree are not foreseen. You might think they are and other people might think they are, but there are many who do not. Isn't there a danger, with this kind of view fairly widely held, that the electorate becomes increasingly unable to accept the need for these conventions because of the possibility that they are going to extend long beyond the original ratification announces them?

Ms Evatt—The obligations?

Mr LAURIE FERGUSON—Yes.

Ms Evatt—Of course with these conventions, the obligations are going on into infinity, which is a problem, isn't it?

Mr LAURIE FERGUSON—The point I am making is that you were saying earlier that the government should not legislate—these points should be understood at ratification.

Ms Evatt—Yes.

Mr LAURIE FERGUSON—Why isn't there an argument that many people would feel that the court has made a rather left field interpretation beyond the view that most people thought it was actually ratifying at the time? Isn't there a danger with this kind of occurrence in the electorate that the electorate will become increasingly unwilling to basically ratify and be part of international conventions?

Ms Evatt—Yes. There is something in what you say, because it is true that the approach of courts in common law countries, to the effect of ratifying international instruments, has been developing quite rapidly over the last 10 or 20 years, mainly because of the human rights treaties. It did not arise in other kinds of treaties.

Judges have realised what Blackstone said 200 years ago, or whenever he was around, that international law is part of the common law, and where there is something in a treaty which is already an international law standard—for example, the right not to be

tortured is an international standard anyway—the common law judges will try to interpret the legal system compatibly with that standard. That idea has been extended a little.

Our High Court now seems to have gone one step further with Teoh and said, 'Yes, ratification doesn't affect the law. An individual can't enforce these rights.' But because the government ratified it, the government should itself respect it. It is not a very startling proposition when you come down to it, and it is one that is probably accepted in other countries. But you are saying people will not want conventions to be ratified on that basis—I do not see why they would not.

Mr LAURIE FERGUSON—I put it to you that it is probably an extremely widely held view and it is the kind of pressure in the political system which has leaned at both sides—

Ms Evatt—I rather think people would expect that a government ratifying a convention would intend to comply with it. Otherwise, why did it ratify it?

Mr LAURIE FERGUSON—I think there might be an argument that they do not have the same interpretation of what they ratify as what the courts do.

Ms Evatt—That means that you can, of course, interpret provisions of a convention in different ways. But, in particular, article 3 says that, when administrative agencies make decisions, the best interests of the child should be a primary consideration. It is pretty straightforward. It does not allow too many different interpretations.

CHAIRMAN—That is the problem, unfortunately, with this convention—there is such a wide interpretation of some particular clauses. Clauses 13 to 16 are the ones that excite a lot of emotion.

Ms Evatt—Is that 13 to 16?

CHAIRMAN—I think it is 13 to 16. They seem to be the ones that are more generally criticised.

Ms Evatt—Yes, but they are the ones that I mentioned before.

CHAIRMAN—Yes, I know.

Ms Evatt—Those provisions are almost word for word exactly the same—I think they are precisely the same—as the International Covenant on Civil and Political Rights. Article 13 matches 19; article 14 matches 18, it is a little different because it has a parental role; 15 and 16 match provisions of the covenant; and 17 is specific to children.

CHAIRMAN—Okay. We do not want to take up too much of your time. We are

most appreciative of your coming along today and talking to us. If you do get a chance, we would very much welcome some comment on the Hafen article.

Ms Evatt—Was there a page number reference?

CHAIRMAN—It is the whole thing.

Ms Evatt—Okay. Thank you for having me here.

Luncheon adjournment

[1.31 p.m.]

FINDLAY-BARNES, Ms Teresa, Honorary Secretary, Family Support Services Association of New South Wales, and Chairperson, Association of Services Supporting Australia's Families, PO Box 45, Concord West, New South Wales 2138

GLEDHILL, Ms Marion Judith, Executive Officer, Family Support Services Association of New South Wales, PO Box 45, Concord West, New South Wales 2138

TOLLEY, Ms Sue, Committee Member, Family Support Services Association of New South Wales, PO Box 45, Concord West, New South Wales 2138

CHAIRMAN—Welcome. Do you have any comments to make on the capacity in which you appear?

Ms Findlay-Barnes—My real job is managing a family and youth support service of Wyong Shire on the central coast of New South Wales.

Ms Tolley—I am also the director of a family support program in Auburn under the auspices of Barnardos.

CHAIRMAN—Thank you very much. Firstly, let me apologise for a paucity of numbers on this side of the table. We did start this morning with about half a dozen but, politicians being politicians, they tend to come and go. Mr Ferguson will be back shortly. But this afternoon you are going to have to stick with the strength—quality rather than quantity. Would you like to make a general introductory statement?

Ms Gledhill—Yes. Our association believes that children are of central importance to society and that families are the best environment for children to grow in. In our presentation to your inquiry, our particular concerns with the convention—which we support very strongly—would be around article 18 which deals with governments' role in supporting parents to fulfil their responsibilities. We believe that, in this respect, Australia still has a long way to go.

Under the umbrella of our association, Family Support Services in New South Wales, which we represent specifically in our submission, there are around 150 families support services. More generally, across Australia, there is the national body for family support services. As Teresa has mentioned, she is the president and I am the executive secretary of the Association of Services Supporting Australia's Families. We are very aware that families are not receiving the support in terms of programs and services to assist them in their parenting role that we believe is absolutely necessary.

There are many gaps in service provision, particularly since the Commonwealth government, which had originally initiated the family support services program, handed

that program back to the states and territories in 1988. There has been quite a dramatic shift in supportive programs for parents away from the preventive role to crisis intervention.

We note that article 19 of the convention, which deals with child protection, states the role of governments in providing preventive programs in the child protection area. We believe that in this area of prevention of child abuse and neglect Australia is not doing nearly as much as it could.

So we have two particular recommendations. One is that the Australian government should take a leadership role to develop a national policy framework and a national agenda for action for children and families. Secondly, that the Commonwealth government should commit itself to a national broad based program to support families and children.

CHAIRMAN—It is articles 18 and 19 specifically that you criticise as not being complied with in terms of what we are doing in Australia in practice?

Ms Gledhill—They are the ones of particular concern to our association.

CHAIRMAN—In terms of the framework for solution, you are very supportive of the alternative report and you contributed to that alternative report. You are very supportive of the need for a commissioner at the federal and state level. Do you not think that perhaps that might be duplicating bureaucracy, or do you feel that now that it has been basically handed over to the states you need both and you need a Commonwealth overseer of these things? I guess my final question in this area is: are you aware of the Queensland model and what happens in Queensland, and how do you see that in terms of what you might get in New South Wales and what you might get at the federal level under the model?

Ms Gledhill—In terms of your first question, I guess what we are conscious of is that the alternative report calls for a commissioner for children and for the establishment of an office for children. We believe that that concept is very important; that the voice of children needs to be heard strongly because children are a very vulnerable group.

But we are also conscious that there is a need at the national level for a broad policy framework and an agenda for families, focusing around families in their child rearing role. So what we would see as a possibility is a national policy framework for children and families and an office for children and families, because we do not believe that the rights of children and families are in opposition; they are complementary. But within that, we would see it very appropriate to have a particular advocate for children, such as a commissioner for children. We believe that there is a special need, because of the vulnerability of children and because their voice is so often left out, for them to have a very strong advocate. In terms of your second question, I am unaware of the Queensland model.

Ms Findlay-Barnes—I am not sure, no.

CHAIRMAN—The present situation at ministerial level at the Commonwealth level of government is that we have a minister for family services. My understanding of what you are saying is that you are strongly supportive of this family approach, of which children are an important subset. Is that what you are saying?

Ms Gledhill—Yes, and that special measures need to be taken for children.

CHAIRMAN—So what you are saying, just simply, is that having a minister responsible for broad family services is not sufficient and that you would see somebody sitting out there independent of ministers as an independent arbiter?

Ms Gledhill—No, we would not see it as independent. We feel it should be all brought together. Our concern is the lack of coordination, particularly at the national level, around programs and services for families and for children.

CHAIRMAN—Would your concept of the commissioner report to the Minister for Family Services?

Ms Gledhill—Yes.

Ms Findlay-Barnes—I think it would be important, whilst the commissioner was part of, shall we say, a family and children policy unit or something that reported directly to the minister, that that commissioner had that opportunity not to have to go through some sort of bureaucracy that had that direct link with perhaps both the minister and the Prime Minister, I think. That would give that position paramount importance. Because I think children do not have a voice in any other way and often, I think, we as adults make decisions about what we think are the rights of children and often I do not think we are really hearing the voices of children.

CHAIRMAN—We have had some evidence already which suggested that we have a minister for children's rights. From what I understand you to say, that is too specific. What you are saying is that, if anything, you should have a minister for the family. Is that what you are saying?

Ms Gledhill—We do have a minister for family services.

CHAIRMAN—You want to make it very clear that children are part of the family envelope. Is that what you are trying to say?

Ms Gledhill—Yes.

Ms Findlay-Barnes—Perhaps even a mention of children in that title if you

wanted to have a minister for children and families. There probably are sections of the community who consider themselves families but do not have children. We would not want to be putting them over there in a separate box. I think it is important that even just being represented in the title keeps that focus on children.

CHAIRMAN—In terms of the legislative umbrella, do you feel there should be some all-embracing federal legislation which picks up this convention, or do you think it should be—as is the case at the moment, albeit criticised in some areas—that you have individual sections of legislation to do with children, the disabled or whatever it might be, or do you see some sort of umbrella legislation which embellishes on the Convention on the Rights of the Child?

Ms Gledhill—We feel that the whole convention should have a legislative base. Again, without that, I think the commissioner for children does not have a lot of teeth. That person needs something to refer back to. The idea of having principles enshrined in legislation—and in a sense this convention is about principles—seems to be something that is getting increasing acceptance.

CHAIRMAN—Sure. You make the point about principles and that has been made by a lot of people. Isn't it difficult, therefore, to convert a lot of these principles into very specific legislation? Do you think that would be difficult? There is a lot of interpretation, varying interpretation, of what the articles in this particularly convention really mean.

Ms Gledhill—We are not lawyers or legislators and we would not claim to have an expertise on it. What we would say is: 'Here are some very important principles.' The way a country actually puts them into practice will change from time to time. That is why we believe there needs to be a legislative base to give it some teeth. We feel that things need to happen at a policy and practice level in government to see that the things actually happen.

As I said, what we represent is family support services. There is this article that says that governments should provide assistance to parents in their parenting role. We are only too aware that that is not happening; that our services are under enormous pressure; people cannot get in because the services have been pushed to the crisis end. There are many parts of Australia where the services are not available, so that is one of the things that we think needs to be addressed at the present time.

At the moment we have a minister for family services but we have no policy framework for family services in Australia. We have no national agenda for children or for families, and we see that they could be brought together—children families together, providing that the provision is made for very good representation of children's interests. What legislative bit comes in between I do not think we feel we have the expertise to comment on.

Mr TONY SMITH—Historically, the Supreme Court was responsible for children's interests before legislatures got involved and started enacting legislation. I see what you are saying in your submission is almost a total legislative package—is that right? You think everything should be codified as far as children are concerned—as well as the children's commissioner?

Ms Gledhill—In terms of the convention—what is in the convention?

Mr TONY SMITH—Yes. You say you are not lawyers and yet you are actually calling for the implementation of the convention. That scares me a little bit because there are so many meanings that can be attributed to various elements of the convention. Let me just pose a question to you: can you envisage any circumstances where, if there were a children's commissioner, the child could approach the commissioner independently of its parents and request to be permitted to do or refrain from doing something? That is the first question. The second question is: if that permission to approach the children's commissioner were denied by the parent, would you support the child having a legal right to overrule the parent?

Ms Gledhill—It is not my understanding of the children's commissioner that he or she would have that right of approach by individual children. That is something that happens through the courts. I guess we would see the children's commissioner as having the kind of responsibilities that are mentioned here in the alternative report: be charged with public education; hear complaints of breaches; be a public voice for children; report to the parliament on the state of the nation's children. I guess I would see the commissioner as having that much broader role but not being like a court.

Ms Findlay-Barnes—Or even an individual advocate. I think there are other ways that that is available for people if they need to do that. I mean, there are protective services and children's advocates at other levels within the state system whom, if children have a need to, they can approach for some sort of negotiation with their family. But I certainly would not see it at the federal level.

Ms Gledhill—It would be appropriate for the commission to know about that situation but not to be the person who makes the decision as to whether this or that happens. That is a different role.

Ms Tolley—I think it is a bit of a red herring as well because if, as we are suggesting, there were better preventative services in situ and families had access to security to support when they needed it, fewer of those situations would come to light and, in addition, if they did, there would be some mediation, some family mediation service, that they should be able to access to deal with this dysfunctional family. You are describing a family that has got some sort of fairly fundamental problems if you have a child wanting to go to the commissioner to report what is going on.

Mr TONY SMITH—Not necessarily to report. We have had some evidence, for example, that a child ought to have its say, using puberty as a base—and remembering there was a report the other day of puberty starting at eight in some children but 12 was picked—because puberty was about the age used for when a child ought to have a say and as the age of consent. When I read the convention, it is pretty clear that if the convention were implemented holus-bolus that right to have that say could be enforceable at law and could countermand a parent's wishes. Would you want that to happen?

Ms Tolley—No.

Ms Gledhill—Having a say does not mean that the child has to get what they express surely?

Mr TONY SMITH—No, no, but are you saying that you would not like that to happen?

Ms Tolley—We are saying that the conclusion that you are coming to about what could possibly happen as a result of that is incorrect. I think it is unlikely that, because the child has had a hearing, he is going to be given the okay to do whatever he wanted to do.

Mr TONY SMITH—No. I do not think I am drawing conclusions. I am saying that I would imagine that a lot of parents out there—certainly those that I know—would object most strongly if their 10- or 12-year-old child decided that it wanted to consult with a children's commissioner about matters pertaining to its own sexuality, in breach of what the parent thought. If the parents thought, 'Look, I do not want you to do that,' theoretically under the convention—

Ms Tolley—But what law comes first? There is another law that will get in the way there, surely, because the child cannot—

Mr TONY SMITH—But if you have read the convention, that is an interpretation that is open on the convention the way it is, holus-bolus, and I really want to know whether you would support that. There is no doubt, in my view as a lawyer, that that is an interpretation that is arguable.

Ms Findlay-Barnes—And I cannot possibly argue with you about that in terms of your ability to argue points of law. I think it is important that, as a federal government, you take a stand—a leadership stand—by saying, 'What are the principles that we believe children in this country should be reared around?' and 'This is the set of principles that we believe in.' Then I imagine that the legislative process is just that—a process—where there are discussions and those sorts of issues are, as far as possible, worked out before something becomes part of legislation. I do not know; that is just my view of how things should work. Perhaps it is far more complicated than that.

Ms Gledhill—We have said that we are not lawyers; obviously, lawyers might look at the exceptions that might occur that may be of concern. I guess our concern is more with the mainstream. We are not lawyers, but we are people who are very closely involved with working with parents with children. We are only too aware that, for every one child who might want to take that kind of action, there would be literally thousands who are missing out in other ways. Our concern is more for those children; we believe their rights need to be strengthened and their families need to be strengthened so that those children will have a better environment in which to grow up.

Mr TONY SMITH—So in the case of, say, parental discipline, would you say that, where there was a dispute between the parent and the child, the child should be able to access the children's commissioner and then engage in mediation?

Ms Gledhill—As I said before, we would not see the children's commissioner as having a court role. It is more a public role to see to what degree in the broad span of things Australia is complying with the convention. Other people may have put to you a commissioner in that kind of role. That is not what we are putting.

CHAIRMAN—Just read back into the record, if you would, from the alternative report your concept of the parameters for that commissioner.

Ms Gledhill—The commissioner would: be charged with public education; hear complaints of breaches of the articles of the convention; be a public voice for children; and, report annually to the parliament on the state of the nation's children and on Australia's progress in attaining and maintaining the standards set out in the convention.

Mr TONY SMITH—How could a commissioner be a public voice for children unless it assessed the views of children?

Ms Findlay-Barnes—I think there are ways of doing that. That is not impossible. I think there are processes in place now where young people are given a voice in how services that they access are managed. I think there is a network of other ways of doing that. Doesn't this empower parents? That is not what we are on about. But it gives children a voice in the world that they live in.

Mr TONY SMITH—But you would say that under your model the extraordinary case—you said that it would be one or two in thousands—ought never to arise because that is not the role you envisage for the commissioner?

Ms Gledhill—That is correct.

Mr TONY SMITH—That is really all I wanted to know.

CHAIRMAN—At the governmental level—the executive government level in the

cabinet—in making decisions in terms of social policy, would you see, for example, that it would be mandatory for some sort of impact statement to be included in submissions to the cabinet in terms of the family and/or children? Would you like to see family impact statements, children's impact statements?

Ms Gledhill—Yes.

Ms Findlay-Barnes—Yes.

CHAIRMAN—You would like to see the broader family impact statement?

Ms Gledhill—Yes.

CHAIRMAN—There being no further questions, I think you got away lightly after the team this morning. Thank you very much for coming along, it was very helpful.

[1.55 p.m.]

BENDALL, Mr Anthony John Gerard, Policy Officer, Social Justice and Research Program, Burnside, PO Box 6866, Parramatta, New South Wales 2150

CHAIRMAN—We have already received into the evidence Burnside's submission. Would you like to make a short opening statement in relation to that submission?

Mr Bendall—Yes, I really want to make three points, which are basically already in the submission, and reiterate Burnside's commitment to the convention and the principles enunciated in it. We believe that it should be implemented into Australian law, preferably legislatively in the form of some sort of children's act or children's rights act.

The second point we would like to make is that the convention is not anti-family or anti-parents. Certainly, we would be in agreement with the drafters of the convention that families are the basic unit of society and the best place for children to grow up in and develop. Our interpretation of the convention is that it would actually strengthen that rather than in any way denigrate it.

The convention affirms families' primary responsibility to provide for children and to protect their rights. It does that in an even stronger way by affirming the responsibility of the community and the state to support parents and families in that role. So, in a sense, we would see it as some sort of buttress of the rights and responsibilities of parents rather than an attack on them.

We do not see the convention as affirming the rights of children versus the rights of parents. Parents' rights, as we see them, are derivative rights. We would argue that the new amendments to the Family Law Act and a number of decisions here and in the United Kingdom basically have ruled that parents' rights arise from their responsibilities to their children and their responsibilities to nurture and support their children and that they have the rights necessary in order to do that. Gillick and Marion's case, and a number of other cases, would say that once you are no longer needed in that role then the rights basically begin to drop off. In that sense, we would still say that they are very important rights and that the convention basically supports and buttresses those rights and the rights of families to access services and those types of rights in particular.

The third point that is made several times in our submission is that there is a need for a national agenda for children. We think that should be drawn up in consultation with the Commonwealth, the states, the corporate sector, community organisations and, in particular, children. There should be some mechanism by which children are consulted more than currently happens. This agenda should be driven by a federal commissioner for children.

Basically, we see that we need a commissioner to fulfil our promises to the world

under the convention and largely because, under the present system, children and young people are left out of the political process and decision making because they are by definition not constituents and do not vote and because very often they are not consulted on major policy decisions that affect them. In a sense, we see that they do not have a voice in government or even in broader administrative policy. One way of addressing that would be to have a federal commissioner.

Another reason for a commissioner is to coordinate the large number of agencies and departments that have responsibility for services and frameworks to do with children. There are a large number of federal departments that do that. If you multiply that by the state governments that do that that is a huge number of departments and offices. At present there is no one person or body that actually sees how that impacts on children in general. We would see that as an important role of a commissioner. The vulnerability of children I think has been demonstrated too clearly, at least, to people who live in New South Wales by the recent royal commission. Again, we would see that the commissioner would have a role in highlighting the vulnerability of children and ensuring that they were protected.

The last argument we would make in support of a commissioner is that we believe that the rights of children and young people should be protected by virtue of their humanity. We do not see the argument just being, because they are the future, they therefore deserve to have rights. They deserve to have their rights now. Having said that, it is also a way of investing in the future. There is even an economic argument which says that, if you have some mechanism to ensure that children are nurtured and supported and have their rights protected, they will grow up to be more productive, more efficient and more contributive adults to society.

The model for a commissioner that we would support is the one that was proposed in the draft *Australian Children's Charter*, which was published in 1995 by the Australian Youth Foundation and the National Children's and Youth Law Centre. That says the commissioner would:

> review legislation, policies and practices affecting children;
>
> report to the Government any areas of doubtful or non-compliance with acceptable standards of fair treatment of children by government authorities and non-government agencies;
>
> report to Parliament on any children's issues;
>
> be responsible for developing mechanisms to consult with children;
>
> be a voice for children to government and non-government agencies—

and in some circumstances—

initiate proceedings on behalf of children; and

intervene in proceedings which involve children.

Largely, we see it as being fairly crucial that it be an independent body so that it would be free to act as it sees fit in the cause of children and young people without having to comply with external pressures. It is also important that it has a wide-ranging brief so that it will be able to cover any area of policy or practice affecting children or young people and take an overall perspective.

It is important that it be backed up by legislation because as a statutory body it would have the following features. It is likely to have a high public profile. It would have clout in government circles and with other organisations like local councils and non-government organisations provided there are effective compliance mechanisms of some form. It could have specific legal powers which could be granted only to a statutory body.

We have looked internally at the agency, at some overseas models, including the ones in New Zealand, Sweden and Norway, and at the existing Australian models, in particular the South Australian Children's Interest Bureau and the new Commission for Children in Queensland. It seems fairly clear from those models that it is absolutely crucial that it be an independent body rather than a body that is answerable to a particular minister and funded by a particular department.

In those examples some of the bodies are funded by the very department they are meant to monitor. For instance, the equivalent of the Department of Community Services will be the department that funds those bodies, yet that is the particular department the government really wanted it to monitor when it set it up. So, in a sense, that is a fairly disastrous recipe.

The other important point about any sort of commissioner or independent body is that there must be some mechanism for it to consult with children. In some way it has to comply with article 12 of the convention. I am not sure how that would come about—whether that is through some form of consultative committee of children, whether it would be elected or whether it would be some other way of consulting with children. We would see that as fairly important. They are basically the only three points that I wanted to stress out of the submission.

CHAIRMAN—Thank you for that. There are various models and we have heard a number of models even today. My understanding of what you have said is that there should also be an office of children within the Department of the Prime Minister and Cabinet. If that were the case—and you have said the proposed commissioner model should be independent—how do you see the interrelationship between that independent body and the Prime Minister's office? Why an office of children rather than an office of the family?

Mr Bendall—The relationship basically would be that the office within the Prime Minister's department would be the office that would, in a sense, drive the agenda within the government of looking after the interests of children and those sorts of things. It would perhaps prepare the impact statements that were mentioned a little earlier. Whereas the commissioner would basically be a body that would monitor and would consult with the government but would not be involved in the actual heart of government business in a sense. We see that it is important that, while the commissioner has access to that, it not actually be a part of the executive process in the sense that it should be independent of that.

We would not be as concerned about its not being an office of children within the Prime Minister's department. We certainly would not see that there should be a commissioner for families, because we see that as quite different to being a commissioner for children. The governmental body could have a broader view as well, but we would certainly still want to see it having the rights and interests of children as one of its primary concerns.

CHAIRMAN—Can we just go back to your youth model. Can you spell out the responsibilities of the commissioner under that model?

Mr Bendall—The first one is to review legislation policies and practices affecting children. So that is a review monitoring role across the board, though.

CHAIRMAN—With that first point, I find it difficult to accept that he or she could not have some consultative process with the Prime Minister's office then.

Mr Bendall—We propose that the commissioner and the office of children within the Prime Minister's department not as alternatives but in a sense as saying that one would not preclude the other. If you had a really effective commissioner, you probably would not need the office within the Prime Minister's department. They are different ways of addressing the same concerns. You could in effect have both. It is not absolutely crucial that there be both, I guess, would be the way that we put it.

CHAIRMAN—What are the next responsibilities?

Mr Bendall—To report to the government any areas of doubtful or non-compliance with acceptable standards of fair treatment for children.

CHAIRMAN—That could be done on an independent basis.

Mr Bendall—To report to parliament on any children's issues. So in a sense it would have—

CHAIRMAN—The independence again.

Mr Bendall—Yes, the independence to hold inquiries or whatever and give reports to parliament. The next one is be responsible for developing mechanisms to consult with children. That was one of the points I made, so there would have to be some mechanism whereby there would be either focus groups or some wider survey mechanism.

The next one is be a voice for children to government and non-government agencies. That is just largely having an advocacy sort of role. The last two are I guess the most problematic. In some circumstances the commissioner would initiate proceedings on behalf of children and intervene in proceedings which involve children.

CHAIRMAN—That is from the Queensland model basically, is it?

Mr Bendall—It was suggested before that. It was in 1995. I think the charter that it comes from would basically make the argument that that should only occur when and if there was no-one else to do that. If there are existing advocacy centres or whatever which could do that just as well, then the commission would not be the body to do that. It would really only be where there was some large public interest concern that was involved with a particular matter and no-one else was going to be able to deal with it then the commission would do it.

CHAIRMAN—You are right. That is what has happened in Queensland with paedophilia. He is specifically looking at that area.

Mr Bendall—It is certainly not proposing that the commission be set up as a legal centre in a sense to just run matters for children.

Mr LAURIE FERGUSON—We had a witness this morning who put forward the proposition that essentially these conventions have got a bit out of control so far as groups of lobbyists run an agenda separate from government. I am not necessarily agreeing with that fully. You are saying that we should abandon our current reservation. To me, some of these reservations are quite sensible in so far as you cannot get a convention that really does suit conditions in each country. Our reservation concerns children and adults in detention, but only restricts it in the context of our demography and those kinds of aspects. Could you elaborate on what I see as a fairly minor reservation?

Mr Bendall—Our concern was more that we did not adopt any more reservations. Maybe it was not put as well as it could have been in the submission. We were really concerned that we did not reduce our commitment to the convention rather than being as particularly concerned about that particular reservation. In a sense, that is not one of our major concerns. The one to do with young people in detention, we probably would not necessarily argue it should be abandoned.

CHAIRMAN—I make the same observation that Mr Ferguson made. In hindsight it just seems to me—and I suspect to a lot of other people—that a 37(c) reservation is a

pretty minor reservation in the light of some of the more fundamental reservations that there were within our community, albeit we did not get a chance at the parliamentary level in terms of the pre-ratification of the convention. I agree with him. It just seems to me to be window-dressing in terms of some sort of reservation, so that Australia could at least be seen to be making some sort of reservation. Would you agree?

Mr LAURIE FERGUSON—I do not think that was the purpose of it, but I—

CHAIRMAN—Even though we are on opposite sides of the House.

Mr Bendall—We certainly would not want to get preoccupied with debating that reservation. We think there are more important things to do with the convention than that.

Mr TONY SMITH—In your submission you say that the rights of parents and children are not in competition, that they are complementary and interdependent. In a practical sense, what do you mean there?

Mr Bendall—We were concerned that the rights that are always focused on when there is debate about the convention are the autonomy rights—the rights of the children simply to be left alone and to do what they like. We do not think that those rights are necessarily even in the convention. Yes, it says that children should have a say in decisions that affect them, but nowhere does it say that they should simply be allowed to decide for themselves and be left without guidance and without protection. In fact, it actually reiterates that parents have that role. That is what we meant: it is an abuse of the convention to argue that children should necessarily be left to make their own decisions. The very reason that you need a convention on the rights of children is that they are vulnerable and not able to do that.

It has been used as an argument in some places—I think sometimes cynically by various state government departments it has been used in that way—to abandon children to their own defences and to departments of community services when other people did not want to pick up their responsibilities. It is certainly not an interpretation of the convention that we would be supporting. We largely see that in affirming the rights of children, you are actually affirming the rights of their parents and their families to support them and to access services and those types of frameworks in order to do that.

Mr TONY SMITH—I do not know about the common law situation here in New South Wales, although there is a Crimes Act which I am sure might have some provisions. In Queensland, there are quite strong provisions in the criminal code about duties of parents. I am not sure whether there has been a very recent prosecution under whatever the section is of the criminal code, but there are some very strong provisions about the duties of parents to children. How does the convention's implementation improve on that?

Mr Bendall—It strengthens the fact that the state and the community have some

responsibility in supporting parents in their duties towards their children and that, in fact, the duty is not just to not do certain things but that it is a duty to provide some sort of safe and nurturing environment. We would argue that there should be some enunciation of the responsibility on the part of the community and the state in supporting parents to do that. While we recognise that it is the parents' primary responsibility, there is some responsibility on the state and the community to ensure that parents receive the resources and the support in order to do that.

Mr TONY SMITH—That is really a funding thing, isn't it?

Mr Bendall—Yes; and to some level a symbolic gesture as well: to say that there is some responsibility inherent on the state and that it is not just individual families which should have to meet those needs and protect their children.

Mr TONY SMITH—Having regard to article 12, you do not take the view—it is not your submission—that article 12 should permit a child to seek legal redress in the courts if its wishes were not being acceded to by its parents?

Mr Bendall—No. We would argue that it should provide a right to have a say—to have your views heard—but certainly it should not provide—

Mr TONY SMITH—Where should that say be given and to whom should it be given?

Mr Bendall—We would not see that most of the time it would be in the family context. It would be more likely to be in the context of decisions made by bodies such as schools and in the types of forums like care applications and those sorts of things. There should be some sort of positive right for children to have their voices heard in those sorts of proceedings. If they were not to be heard—if there was no mechanism at all for their views to be heard—then, perhaps, there should be some form of redress. But, having put their view, their view does not have to be gone along with. It seems to me that, with respect to the overriding principle of the best interests of the child, quite often it will not be in the best interests of the child to do what they say simply because what they say will not be feasible or in their best interests.

Mr TONY SMITH—But you are saying that the child has a right to have a say and that that right should be protected by law and enforceable in a tribunal or court. Is that right?

Mr Bendall—Yes. I think we would go that far and say that there certainly should be some mechanism in place.

Mr TONY SMITH—If a parent said that they didn't want that to occur, what is the way out of that dilemma?

Mr Bendall—If they simply do not want the child to have a say?

Mr TONY SMITH—Yes.

Mr Bendall—We would basically argue that there should still be a right inherent in the children. There should be a right for them to have their views heard in some form.

Mr TONY SMITH—In effect, you would support a child getting an injunction to be permitted to have a say in opposition to the views of their parents. If you are supporting a legal right, then it would have to be enforceable by a mandatory injunction. If you go down this track, you cannot say, 'Yes, but up to a point.' You are in effect saying that if they have a right it can be enforceable by law, and if the parent came to the judicial proceeding or administrative proceeding and said no and argued against that you would ultimately support an order which would permit the child to do what the parents would not want them to do?

Mr Bendall—Except I would say that the best interests of the child should be paramount.

Mr TONY SMITH—There is no question about that. But, ultimately, that is an issue that is determined by whomever is sitting at the time or what tribunal is there. Those interests may not necessarily be the interests that the parent thinks are the best interests. Do you agree?

Mr Bendall—Yes.

CHAIRMAN—Can I just come back to the possibility of umbrella legislation at the federal level reflecting the convention. In your submission you have made particular points about inconsistencies between jurisdictions and the need for national standards. You have talked about a national agenda. You have also talked about the inadequacy of administrative, legislative and legal infrastructure in addressing the needs of children. Perhaps I have missed it, but I do not see, unlike some of the other submissions, where you have actually said, 'Let's convert the principles of this convention into some sort of national legislation.' Have I missed something?

Mr Bendall—On page 3 I actually talk about domestic legislation to be enacted to implement the convention.

CHAIRMAN—Under which item?

Mr Bendall—Under item two. It is just above where we talk about the commissioner. We argue that even if there was not a full implementation into legislation, there should still be legislation setting up a commissioner who would then be guided by the principles—

CHAIRMAN—I have no difficulty with the commission. But the point I am getting at—as Mr Tony Smith has already indicated—is that it is very difficult, and we have had a lot of evidence on this already, to convert a lot of those principles, albeit with some differing interpreter views of some of that, into an umbrella piece of legislation that would satisfy everybody's needs.

Mr Bendall—I guess we would see that as part of the process of the legislative debate and exploring ways in which you could find some mechanism to at least enunciate the gist of the convention. Obviously, we are not suggesting that the wording of the convention is adequate in order to simply legislate. That is clearly not the case.

CHAIRMAN—One other practical problem in this is that we have had written submissions—we have not gone into it in detail yet because this is only our fourth hearing—and there is some evidence that has been presented to the committee that indicates that there would be strong opposition from within states and territories for some sort of federal legislation like this. Do you have a solution for how the Commonwealth could counter such parochial attitudes?

Mr Bendall—I am not sure that they do. We are certainly not proposing that the Commonwealth should—and I am sure the Commonwealth would not want to—take over the service provision of the states. I guess the states would probably agree with your doing that.

CHAIRMAN—Without wanting to put words into your mouth, the legislation that you would propose would relate to broad-brush matters of principle which rarely reflect the sorts of principles that are enunciated in the convention rather than it getting down to saying the Commonwealth has the responsibility for this, that and everything else?

Mr Bendall—Yes. It would simply enunciate that children and young people have these rights and that, in making administrative decisions, those sorts of things are to be taken into account rather than saying the Commonwealth will do this and the states will do that, and those sorts of things.

Mr TONY SMITH—What, practically speaking, do you see as the consequences for non-implementation? What is the downside of not going through with this and leaving the status quo basically as it is with the odd amendment to various bits of legislation from time to time?

Mr Bendall—Generally, we would simply say there is no real central way of gauging. We do not take a check on children's interests and how things are impacting on them until they impact to such an extent that they manifest themselves and become obvious. So in a sense we would see it almost as a preventative type role of assessing and gauging the impact on children of various administrative decisions and legislative proposals. In a sense it is also a means of children becoming more engaged with the

system and with the process, and feeling a little more like they are part of the community and part of the system. A rather large concern to us at Burnside at least is that they do not at the moment feel very much a part of it at all.

Mr TONY SMITH—Is that your experience with children that you deal with?

Mr Bendall—Certainly the children we deal with, we would argue, feel quite disenfranchised and, as a consequence of that, very many of them feel disinterested in the political system and in the whole society. We are not arguing that is necessarily entirely due to the political and legal process. Obviously, the children we deal with have had other fairly horrendous traumatic experiences as well which tend to add to that, but we certainly see that as part of it.

Mr TONY SMITH—I guess you are seeing children who are in crisis pretty well all the time, aren't you?

Mr Bendall—Yes. We also see children who are just generally disadvantaged. We run education centres and those sorts of things for children in disadvantaged areas. So, even if they are not facing particular crises, they are children who just simply are on the margins, if you like, very often.

Mr TONY SMITH—You have probably heard of the saying 'hard cases make bad law'. I sometimes wonder whether—and I used to practise law amongst disadvantaged Aboriginal children a lot—our view is coloured by that fairly heavily. If you were to make laws for every hard case you had, then there would be a lot of lawyers very well off.

Mr Bendall—Yes, I guess that is true. My only reaction to that is that we are most concerned about the hard cases really and there being some sorts of checks and balances on the system so it is not abused by, as I said, children who simply want to be left alone and do what they like. In a situation where there was no real disadvantage or real abuse or whatever, I guess there should be some way—I do not know whether there would be standing requirements or whatever—of making sure that the legislation was used and the convention implemented in the way intended and that it did not become a play thing.

CHAIRMAN—On page 8 you made the following comment:

Another area in which Australia is in breach of its CROC obligations is that of legal measures against the physical punishment of children. In no State or Territory is it an offence to hit children, provided the action is 'reasonable' and for disciplinary reasons. This is in breach of CROC.

Would you like to elaborate on that? Don't you believe that parents should have a right to discipline their children?

Mr Bendall—We did not go on to say what we thought should happen about that,

for that particular reason, I think. We have just completed a submission to the review of the care and protection act in New South Wales as well, which also raised that point about whether or not disciplining of children should be made illegal. We certainly have a view that there are better ways to discipline children than to hit them. But we made a comment in that submission that we did not want the whole of the review of the act to be bogged down with a discussion of whether smacking should be legal or not.

I guess our approach to this matter would be the same: in effect, we would not want to make every single act of disciplining children illegal. But we highlighted the fact that that is not allowed under the convention, without going on to say that we necessarily wanted a huge debate about discipline. In our education of families and parents, we do tell them that there are better ways to actually get their children to behave in the way they want rather than by hitting them, but we certainly would not want to see huge court cases and a large amount of time spent prosecuting parents for smacking their children.

Mr TONY SMITH—I would like to take up the chairman's comment. I have trouble with the part he quoted which said:

In no State or Territory is it an offence to hit children, provided the action is 'reasonable' and for disciplinary reasons.

What are you saying? I understand the first part: there is no offence in hitting children. But the offence is only provided if disproportionate force is used. Is that basically what you mean?

Mr Bendall—Yes, that is basically what we mean.

Mr TONY SMITH—What would you say about the situation with cultural things? I had an extraordinary case once about a Chinese couple who had a lot of trouble with their 13- or 14-year-old child. Culturally, there was a tradition of punishment that involved the cane. Also, he was tied up for the night in the downstairs room. The kid had done some pretty terrible things, such as throwing bricks out of windows onto school children and all sorts of things like that. The parents actually got convicted for tying their kid up but not for using the cane. I later found out that it was a bit of a compromise verdict, but that is another story. The cultural thing really came through strongly there.

We do have a situation in this country where we have a substantial population of Aboriginal and Torres Strait Islander people with strong cultural views about those sorts of matters. For example, it is customary in Aboriginal communities for children to be punished by outsiders if they are misbehaving, and that is culturally acceptable. How do we accommodate that in the context of what you are saying? Do we or don't we? Or do we tell them, 'No; that's no good?'

Mr Bendall—That is part of the reason we did not go on to say what should

happen.

CHAIRMAN—I suspected that might have been the case, because it is a Pandora's box.

Mr Bendall—We would argue, I guess, that there comes a point with certain behaviour—the female genital mutilation argument is one we would raise—where we do not think cultural factors are enough of an excuse to allow the behaviour to occur. But we certainly also would argue that there should be some leeway in other sorts of cases where that can be taken into account. We are certainly not saying that it is an easy area to deal with.

Mr TONY SMITH—Would you be inclined to the view of a cultural defence in some circumstances?

Mr Bendall—Yes.

CHAIRMAN—Thank you. On page 6 you say you are currently preparing a detailed proposal for a commissioner for children. I do not know how far away you are from completing that, but this committee would anticipate tabling this report in October or November. So my request is that, as soon as you have prepared that proposal, you give it to the committee secretary. We would be very pleased to receive it. Thank you.

[2.31 p.m.]

PHILLIPS, Ms Gaye, Chief Executive, the Australian Committee for UNICEF Limited (UNICEF Australia), Level 3, 303 Pitt Street, Sydney, New South Wales

CHAIRMAN—Welcome.

Resolved (on motion by Mr Tony Smith):

That this committee authorises publication of submission No. 156 given before it at public hearing this day.

CHAIRMAN—Would you like to make an opening statement?

Ms Phillips—Yes, thank you very much. I have brought a couple of documents with me today—I have brought sufficient for the entire committee—as supplementary material to our submission. One of them is from a research centre which is funded by the Italian government, which UNICEF staffs, called the Innocenti Centre. It is called *Ombudswork for children*. I have made sufficient copies. It contains a variety and quite good detail of all the models of commissioners for children and ombudsmen for children and the various statutory and otherwise framework in which they operate to give a good broadcast feel of that.

The other document I brought along is an annual publication that UNICEF produces. Just by way of example, the next edition comes out in July. It is called *The Progress of Nations*. It is a document which basically, by a series of league tables, ranks the way both industrialised nations compare in terms of their benefits for children and welfare for children against developing countries. The emphasis is frequently, certainly with UNICEF in terms of developing work, on the developing world and their misgivings and their failures. We often neglect the fact that the richer countries also have problems with their children and they are not always well catered for. It also talks about the positive things that both countries are doing.

CHAIRMAN—We just need to formalise that by introducing as exhibits both of those documents.

Mr TONY SMITH—I move that those documents be made exhibits to this inquiry.

Ms Phillips—The United Nations Children's Fund has an interest in this because for the first time in international treaties a specific UN agency is actually named in article 45 as one of the agencies that monitors the implementation of the convention. It is nominated several times in that article. That is, of course, a distinctive thing within the usual international treaty format. I think this is because the convention was regarded as a

landmark treaty in human rights for children. So the key UN agency specifically thought 'children' was nominated as a monitoring agent, which of course then gave rise to the committee on the rights of the child under the auspices of UNICEF and the United Nations.

Our interest is certainly acute but because UNICEF does not work in Australia in terms of delivery of programs, we do not have a service delivery function in Australia. We can only act as commentators rather than experiential service deliverers of some of these comments around children. Our role here is to provide information and act as advocating, in the public sense of advocacy, for children and on their behalf.

My submission basically is in two sections. It is a very straightforward—certainly not weighty—submission. It talks about the UN Convention on the Rights of the Child and its work within Australia. Secondly, it spends most of its time advocating for a children's commissioner and a commission.

CHAIRMAN—Thank you for that. I will take up the latter point first. What you are recommending is the establishment of a permanent statutory authority—ombudsman, commissioner for children or commission for children. You go on to talk about the principle role—do you mean principal or principle? You have principle; it should be principal, should it not?

Ms Phillips—It should indeed be. Sorry.

CHAIRMAN—You say:

The principle role would be to verify laws and their implementation in respect to their compliance with Australia's obligations under the Convention on the Rights of the Child. The Commissioner have legal powers to intervene on behalf of children with specific complaints of abuse of their rights.

Then you talk about it being not in the hands of an individual minister—

Ms Phillips—Right.

CHAIRMAN—and that the appointment should be made in formal consultation with independent children's organisations. You state:

It is essential for the Commissioner for Children to:
.be independent;
.provide a vehicle for children's voices;
.have an exclusive focus on children;
.have certain statutory powers and authority.

It is the latter point I refer to. Could you elaborate on what those certain statutory powers

and authority are?

Ms Phillips—Rather than going into the letter of the law, I do not have all of those exact statutory powers and so on to reel off to you. The way I see it is to establish, as I have said on page 5, a working group immediately. That is a recommendation. We would like to be part of that, of course. Also, that group would draw up a candidate list. By way of recommendation, I see that the members on that group would be those organisations which already have a very clear view of the statutory roles, responsibilities and precedents for what we have already in existence—rather than reinvent.

I would suggest the Attorney-General and some of the current HREOC commissioners—race and sex discrimination commissioners and so on, as well as the head of the commission, of course, Chris Sidoti. The basic domestic welfare organisations in Australia could be represented by their umbrella group. ACOSS and UNICEF Australia could represent in terms of monitoring the convention. There are also the members of the standing committee today. Also, in the premier's department of each state there would be a representative to form that working group so that you are looking at the context, from the very beginning, of state and federal issues.

CHAIRMAN—There seems to be a common, very strong, theme in many of the submissions about the need for a commissioner or commission, or whatever you want to call it, but very few—in fact, you may be the only one so far—have actually suggested how we might get from where we are at the moment to where we might be in the future.

I think we would take on board particularly the need for such a working group. I think it is important. I apologise; I had quite a few of my colleagues here this morning, but not now. All I would say—without being too self-centred—is that you have the quality rather than the quantity this afternoon. I agree with you that, if that is the decision, that working group would need to be representative of the appropriate bodies. Certainly, UNICEF would be to the fore in being represented.

Mr TONY SMITH—I do not want to sound cynical, but there is a desperate need to provide for children in the Third and Fourth Worlds. Yet it seems to me that a lot of the submissions we are getting really advocate a significant bureaucracy being set up in a country that arguably has one of the best records on children you could hope to imagine. Leaving aside the fact that the United States has not ratified this treaty, I really wonder at times whether, in a time of so-called scarce resources, we are abrogating our duty to those who really need bread and butter for those who are looking at cheese and biscuits, if I could put it that way.

Ms Phillips—That is a very valid point to make. As UNICEF, we deal with that comment very frequently. There are two levels at issue here. One is that there is a minimum standard of living, of child health, of clean water and of sanitation and so on. We regard them as basic attributes. We do not even think about them. We take them for

granted in places like Australia, but they are severely lacking in the Third World and those governments do not have the capacity to generate them for their own citizens. So they seek foreign investment or foreign aid, and Australia is a very good donor in that sense, as indeed are our general public. That is only to bring children to a very minimum standard. That is certainly a need that needs to be met, and UNICEF and others work very hard to do that.

However, the convention provides for something a little more civilised, I guess, beyond basic needs. It really talks about the fabric of the society that continues to regard children as their first priority—not just an important priority that can get shuffled down the list if something more urgent comes up, but a first call is the kind of phraseology UNICEF uses. So children are regarded as the fundamental fabric of a society and they demand, therefore, the first call on resources.

The convention also says in article 4 that, to the maximum ability of that country's resources, children's needs must be catered to. Where that maximum ability is still very much below the benchmark standard of minimum standard, then it asks for, where necessary, the assistance of the international cooperation. So that provides that balance.

What we are talking about in Australia is certainly that, for the broad population in Australia, our children's needs are very good, and UNICEF acknowledges that in *The progress of nations* report. Our education standards are good, our health care standards are good. There are pockets of our population that do not meet minimum standards. Our immunisation rates across Australia are some of the lowest in the Third World—lower than India, lower than Bangladesh—so some pockets of our lifestyle are not correct.

It is those issues that a dedicated office would be drawing attention to and would be looking at—in particular, if there are needs where we are falling below the benchmark. Also it does provide not just a symbol but an act of commitment to the principles of a convention which protects children. So it reinforces our commitment. It says, 'We're not afraid to establish institutional structures that enshrine our priority for children.' If, as in the best of all hopes, that commissioner has absolutely nothing to do—except report to parliament annually that we are doing the best we can to the maximum of our available resources—then that, I think, is a fine aspect of a civilised society and one which we would be proud to show the people, and we would continue to fund that office.

CHAIRMAN—That is in the future, that is hypothetical, I guess. Let us take the situation of what we have at the moment. We have a report to the UN committee which has been criticised by the NGOs in itself. Collectively, both of those reports will go to that committee later this year. Do you have a judgment at this point in time as to what might be the broad or net effect of that committee receiving those two reports? It is a judgmental thing I know, maybe subjective. But what do you see as the broad thrust of a reaction from the UN committee in relation to both of those reports?

Ms Phillips—It will be a subjective response. In the last seven years since 1990, countries had to report within the first two years and there are now quite a lot of countries which have put in their first report. There are some now coming up for their five-year report. Australia in fact is coming up for that date, too, but we will be a little late because we put our report in late.

I would say that the Committee on the Rights of the Child will act in a very diplomatic fashion. It is in fact a bureaucratic commission because it is deliberately so. It is designed again as an element to monitor and to see about compliance. It is not about ratification; it is about compliance issues. It is the next step.

I think it will begin with very positive affirmations about the things Australia has done. It will begin with a very congratulatory stand on Australia's record for children. It will then highlight all of those activities in which we are doing very well and it will probably benchmark them against other countries with a similar economic basis. We will still be coming off very well, I should think, on most of those criteria. However, it will then very gently and very diplomatically pose some aspects which will require some attention, and they will probably use words like that.

CHAIRMAN—Possible strategies.

Ms Phillips—Possible strategies. I think those issues will be on the nature of enshrining some of the principles of the convention into domestic law. There certainly will be some comment about the way our state laws and national laws interact and integrate on some of these things. I think there will be some comment on those pockets of poverty within our community that need to be addressed. I think, because this is an issue that is very large now in the world, there will be an issue on the protection of children in terms of their commercial and sexual exploitation. There may be something about the military protocol—of the age of children entering the armed forces. I would think there will also be something about the need to be focusing on fundamental parts of the way we manage our juvenile justice system.

CHAIRMAN—I will just ask you to stop there for a moment to clarify something. The age in the defence force—and I am putting on my old defence force hat here, I suppose—is not going to be a critical comment in terms of Australia.

Ms Phillips—No.

CHAIRMAN—It is one of those protocols still to come forward, which I would hope Australia would be fully supporting.

Ms Phillips—An early signatory. It will raise that because it is an optional protocol coming up.

CHAIRMAN—I see.

Ms Phillips—And it will say that Australia has a very good record. This is all subjective, but my own other subjective view is that I think the committee will very diplomatically and gently talk about Australia's role in the Asia-Pacific region—a long history of democracy, institutional great capacity, good human rights record, a stable economy and that kind of thing. It may not go into that kind of detail, but my feeling is that there will be some reference to Australia being a very important part of how I think the United Nations sees, post-Cold War, the change and the rise of the Asia-Pacific region.

CHAIRMAN—Let us take a very topical and very recent phenomenon, and I am reluctant to even use the words: the Hanson phenomenon. What people see most recently they sometimes comment on more forcefully than in other areas. Do you see that as being an element of criticism?

Ms Phillips—No, I do not. My view of reading all the terms of reference and certainly going through the list of the current members on that committee is that they are not an interventionist group who comment on current political ideology within a country. They are very strong on sovereignty of countries and their own determination of these things, which is why they give only recommendations and positive strategies to assist and so on. I think it may well be that, if the media chose to read that into it, they could read that into pretty well anything.

CHAIRMAN—In Canberra at the initial hearing we asked on notice for the latest list of that committee. It is just changing.

Ms Phillips—Yes, it is.

CHAIRMAN—Are you aware of what the specific composition of that committee is?

Ms Phillips—I do not have it with me, but I can certainly get it for you.

CHAIRMAN—That is all right. We have asked the Department of Foreign Affairs and Trade to provide that.

Mr TONY SMITH—I am interested in article 4. It is very important to me, in the context of the point I raised with you, as to how the obligations really ought to be met in that wider sense, that international sense. It is almost a duty provision, I suppose. I think there is another provision, too—I seemed to find last time that I was thinking about this, but it does not matter at the moment—this duty provision in relation to ensuring that you assist where possible other states in various areas. For example, most topically, child labour—those sorts of areas which are just absolutely awful.

How do you see the role of a children's commissioner? Do you see a role for someone and, if so, who? Is it a governmental thing to make sure that that agenda is pushed along to eliminate, for example, child labour? I know we have conventions on them and so forth, but I see that as a very real comment on issues like that.

Ms Phillips—Yes, I do. I have to speak, of course, from the international perspective. Domestic agencies may not include that kind of perspective in it, but I do see that as one of the added dimensions for the commission for children because I agree with you. We have just had the Simons aid review; we have had joint standing committees on aid. We have had a variety of reports. We do not want those reports to fade into the ether. To bureaucratise them across a variety of agencies and so on often loses their main thrust. I would think that, because the commission should be guided by—as a mandate—the convention, apart from its statutory authority, that would be a strong part. It would make comments on Australia's foreign aid and its focus and how it meets these provisions. I would see that as part of its role.

Within that working party and then as an ongoing monitoring of that commission, not only through its annual reporting, perhaps—as I suggested in the document as well—some kind of group that is almost a reference body for the commission is appointed, as well as a panel of experts. That would be drawn from a wide enough cross-section to cover all of those parts of the convention—our international party obligations to state obligations to poorer countries as well as their domestic charter. I think that is a very appropriate role for the commission to take. It could be one of those roles where a commissioner could harness public debate like the one we are having at the moment over the Pauline Hanson thing and attempt to crystallise the principle issues quite independently from people who are also seen to be carrying other platforms and other agendas.

No matter who, anyone on any side of those kinds of public debates will be seen to have an interest at heart, whereas a commissioner for children could make comment on the public record that would be seen as very independent and would help to get debate, not just about the Hanson thing, but where that kind of very murky, difficult, complex issue comes up on the Australian agenda. He or she could help to bring it into focus. That is often lacking in Australian debate because there is a cynicism in the community that says everyone has got their own barrow to push.

Mr TONY SMITH—Yes. I will throw in just another thing. Why couldn't, for example, the various state departments, such as the director-general of children's services—family services I think it is called now, in Queensland—have a set of principles modelled on the convention, if you have a set of principles that he or she follows, just as the police commissioner has a set of principles in relation to interviewing children? There are sets of guidelines and they call them the commissioner's rules, I think. They have very interesting consequences in courts if they are not followed.

This is being a devil's advocate: why couldn't we have a set of principles that

could be based on the convention, without the political downside of implementing this holus-bolus, which has been urged on us? We get a set of principles implemented by individual departments that are concerned with children, such as the judicial criminal justice system, the judicial system and children's services. Do you see that as an alternative way of looking at this?

Ms Phillips—No, I do not see it as an alternative that is really very effective. I think it is an alternative. I do not think it is an effective one because most departments I am familiar with would say they have a set of guiding principles in any case and they would see it as being redundant to introduce a new set. You would not get very far with that.

Mr TONY SMITH—Haven't you just got to give them a nudge, though?

Ms Phillips—Yes, that is my next point. A set of principles basically sometimes involves doing things which the convention is often criticised for—that it is just basically a set of gums with no teeth. The reality is that if you have a convention, that is a starting point. The implementation of it is where the teeth come in. The reason why I think a commission is a better alternative is because the principles are already there. What you now need is not to repeat the principles but to create a body, a person, that actually checks against the benchmark on performance and on outcome, and has some statutory authority to measure that outcome so that people are compelled to implement principle.

If you just provide people with principles, there is not a single person who will not agree with you that these are lovely words. Motherhood statements are what principles always come down to, and who is going to disagree? But you just cannot gum people to death. You have to get some teeth into it. I think that is where the commission is a good alternative. If it is set up well in the beginning, if it is set up with good intent and if it is set up with sufficient structured authority to bring about change where change is needed, to praise where praise is due, and to bring about really effective implementation of the convention's responsibilities internationally and within domestic law, that will be a measure by which Australia can be, in the future, regarded as very civilised.

I do not think it is pie in the sky; I do think we are moving towards an era where children are more and more valued, finally, where violence against them is now seen not just as something that repels but something that really appals. I think we will one day move away from measuring countries by market economy or by democratisation and we will move to a stage where civilisations are measured by their treatment of and behaviour towards their children, because they are the fundamental building stone of any country. I think that will be acknowledged. I think it will take time but I do not think it will be 100 generations away. I think within the next 10 to 20 years we will be seeing movement towards that.

CHAIRMAN—As you say, we are running out of time, although we are doing pretty well this afternoon compared to this morning. Can I thank you on behalf of the committee for appearing before us today. We value your comments this afternoon and, of course, we value the written submission.

Ms Phillips—Thank you so much for your time.

[2.58 p.m.]

ORR, Ms Elizabeth, General Manager, The Smith Family, 16 Larkin Street, Camperdown, New South Wales 2050

CHAIRMAN—Welcome. We have already received a very extensive written submission. Would you like to supplement that written submission with a short opening statement today?

Ms Orr—Basically, our concern would be that education is not free. That is a very big issue for children in Australia and something that should be seriously looked at, because it is actually becoming a more severe problem. It is not something that is just static and ongoing; it is actually increasing. The costs are going further down to the younger children and they are increasing laterally. They are finding more and more ways to charge families for costs. We would see this as a serious impediment for children.

The reason we are so concerned about that is that it increases dropout rates at school. There are also problems with equity and choice of subjects. Some subjects cost up to $2,000, if you want to do special things like photography or hospitality. Even physics and chemistry type subjects in state schools can be quite expensive. So a lot of these children cannot choose to do these courses. Article 28 encourages education to be free. We would encourage that this be seriously addressed. So a lot of these children cannot choose to actually do these courses. Article 28 actually encourages free education, so we would encourage that this is seriously addressed.

CHAIRMAN—We accept that the emphasis from the submission is on the education side of it—and we thank you for that. But the committee would like, if you could, for you to give us a broader view of what the Smith Family is doing in other areas of children's welfare. Could you say something about the broader aims and achievements of the Smith Family in the welfare of children?

Ms Orr—Basically, when families have been coming to us, a lot of the costs have been in providing education and putting food on the table, because we deal with families at a real critical level. They have nowhere else to go and so they come for emergency relief. This is a very large area. Then we give family support and try to unravel some of those problems in the budgeting area. When families came to us and we discovered that there was such a big educational component we provided scholarships for that. So, at the moment, we give 3,500 families a scholarship. That will build up to 10,000 in the next two years, but we expect that to go to 20,000 in the future.

CHAIRMAN—At what levels of education?

Ms Orr—It is going to go right across the board. At the moment it is years 7 to 10 because we noticed that that was where they were dropping out of school, so we tried

to pick up—

CHAIRMAN—So it is secondary?

Ms Orr—It is secondary, currently. At the end of this year it is going into primary. We already have tertiary. We only have about 50 students who receive a $2,000 scholarship to go to university—and for exactly the same things. It is not to do with HECS, of course. It is to do with just turning up at the gate with the books and paying the photocopying charges and all that sort of thing. It costs $2,000 to do that. These students would not be able to attend without it. It is the very brightest children at the moment who get that opportunity. But we would like to see those students who have matriculated and got into a university for any kind of purpose able to have that opportunity. As yet, we do not have enough sponsors to do that, but we are increasing that as well.

CHAIRMAN—I know you are a facility of last resort—perhaps that is being a bit broad. What are you doing in the educative area? You are dealing with a crisis situation. Is the Smith Family doing anything at all for the pre-crisis situation or are you just reactive to that crisis?

Ms Orr—We see the education scholarship work as a pro-active move because we actually provide a case worker to the family. So we say that we give cash in the pocket and an arm around the shoulder. Those things must go together because the families do not have role models for the children to know how to get through a crisis in a school setting—if somebody is causing trouble at school a punch in the head is not a bad reaction. Our case worker actually helps them to move through other ideas about how to handle stress, how to make choices in subjects and things like that—particularly in the conflict resolution area.

That would be the very smartest part of the work. The money is significant and we do see that it is has an impact. Even though it might only be a $350 scholarship just to cover some uniforms—we do not try to cover school fees; we see those as still not compulsory, but we will cover things like uniforms and going on excursions and things like that—families do not come back for emergency relief as much. Somehow the support and helping them make decisions through other needs while you are in the case management role helps them not to keep falling out of the cracks all the time.

CHAIRMAN—So there is a direct correlation between—

Ms Orr—Yes. It is that role model idea that we see as significant. We have actually approached the government at the moment about another role model—work we might do by supporting in a tutoring way bright children across Australia and children who are struggling who phone for homework support three days a week. We are probably going to set that up and pilot it as the same sort of idea that if you have support and someone to help you think through a problem you can actually cope. It is not always

money related, although it often is. There is a basic money relationship, but there is another layer that says you need to support that person with skills they do not have. We are trying to build that component in. Then we feel that if you overcome that you do not get the cycle going. In that way it is pro-active.

Mr TONY SMITH—What is the situation as far as corporal punishment is concerned in state schools? Is corporal punishment allowed?

Ms Orr—As far as I know, corporal punishment, as in getting the cane, is not allowed anymore. In the truancy inquiry, we brought a lot of principles and rules that each school had across the various states to let that particular inquiry have a look at the vast ways that schools handle children who are difficult. Rules and regulations now do not allow schools to actually cane children but they can suspend them. We feel a lot of those areas are not positive either because a lot of the children we deal with like to stay away. Therefore, if you suspend them, you legitimise it.

Mr TONY SMITH—Like the people who live on the street who just love going to gaol for a holiday.

Ms Orr—That is right. It is not a positive approach. There are lot of schools doing a lot of good creative things to try to help students, but again some of them are very middle-class oriented in that they go through a thinking process for long-term management. Our students come from families who are very short term in their thinking and see absolutely no point in this long-term approach to things, so they do not comply with that either.

There has to be a lot more training. We are heavily into training teachers now. Unfortunately, they do not have a higher status and they probably do not have a higher pay to require them to have all this incredible training, but that should be looked at. To understand disadvantage, they need to understand behavioural difficulties and remedial reading difficulties. They have to know many more things than I had to know when I came out 30 years ago.

Mr TONY SMITH—That area is one that I receive a lot of complaint about. In some of the state schools in my electorate, discipline is a terrible problem for the teachers and the headmasters and so forth.

Ms Orr—We have disempowered the schools in that way because we do not want them doing inappropriate things with children to bring discipline, but we have not replaced it with anything else. So they have large groups with a lot of problems and have absolutely nothing to handle that. It is a very difficult situation to throw someone into. Again, class sizes and all sorts of issues come up. If you are going to require teachers to be very positive and have good interactive skills to meet individual needs, you cannot do that en masse. There are so many problems that it is just not possible.

CHAIRMAN—You talk about helping disadvantaged children. Do you have a rough breakdown of ethnicity or indigenous as against non-indigenous people within that group?

Ms Orr—It still falls like it does in the community. The ethnic group is about 27 per cent. It is not that different, but they often are more severe.

CHAIRMAN—So about one-quarter of your problems are from ethnic minority groups?

Ms Orr—That is right.

CHAIRMAN—Does that include indigenous people?

Ms Orr—It does include them, but if we were to be in the Northern Territory or some of those areas that would swing the pendulum a lot more. That is where a lot of the serious problems are with the indigenous people.

CHAIRMAN—Are you talking about the whole of greater Sydney?

Ms Orr—Across five states, but not in the Northern Territory. We have not got work up there.

CHAIRMAN—What about disabled children as distinct from disadvantaged children and the work of the Smith Family, or do you leave that to the spastic societies?

Ms Orr—Only as it impinges on financial disadvantage, which it often does. We can have up to 10 per cent of people come to us who have disabilities because of the costs involved in being disabled. They do not necessarily have a learning problem, because it is a different type of financial disadvantage. It may be that they do not have wheelchairs and things like that that are expensive. They do not necessarily set up the same poverty cycle as someone that is unemployed. Again, you are talking about the profile of poverty as being different from an emotional point of view.

The reason for becoming poor matters. Someone who has had a marriage breakdown or been forced out of work has a lot of problems coping if they also have a disability. Sometimes those people can be extremely emotionally strong through that poverty and bring great resilience to it. So sometimes the profiles are different in the way that they handle the problem. That is what we often address.

CHAIRMAN—How long have you been involved in this whole area of disadvantage?

Ms Orr—With the Smith Family, for four years.

CHAIRMAN—Over those four years, have you seen a change in the pattern of disadvantage?

Ms Orr—Yes, we have. That period included the recession, and we saw a huge change with unemployment coming in. But single parent work has really increased; we are noticing a huge change in that. We do not really see a high percentage of two-parent families.

CHAIRMAN—You have said that about a quarter of those who come to you in a crisis situation are ethnically or otherwise involved.

Ms Orr—Yes.

CHAIRMAN—Do you have some sort of rough percentage figure of the single parent family situation?

Ms Orr—Yes. I did a poverty challenge, as well as a literacy challenge, because we were interested in that. I did a profile. The people who were most disadvantaged were those in the 18- to 35-year-old group. We are noticing that that age group is a problem. But single parent families were moving to 50 per cent. When I first started, it was around 35 per cent. But then we were basing that on who was getting a single parent pension benefit. When we went out to do the survey of 'Do you have a partner?'—because you can get other benefits—it went up to 50 per cent. That gave us more information that, yes, we have a very big problem here.

CHAIRMAN—Do you have some more data on that 18- to 35-year-old group?

Ms Orr—Yes.

CHAIRMAN—That 18- to 35-year-old group might indicate that there is a problem with people generally getting a start.

Ms Orr—That is right.

CHAIRMAN—Unemployment, I suppose, is the root cause of many of the problems.

Ms Orr—That is right.

CHAIRMAN—Is that an unfair generalisation?

Ms Orr—No, it is not. But even more significant to us was noticing that 80 per cent of them have year 10 or less in schooling, and most of them do not even have year 10. So there is a big correlation in just not having the skills to get the job.

CHAIRMAN—Yet the statistics, if you can take them as being acceptable, show that, even in the last 10 years, there has been a very marked change in the pattern of those who are going on to grade 12.

Ms Orr—Yes.

CHAIRMAN—Irrespective of that, if some of them are—and I am somewhat reluctant to use the term—'dropouts' even from the education system, perhaps we are not putting across the importance of education to young people or they are just taking the short-term solution.

Ms Orr—That is right. I noticed those changes. But have you seen those regional profiles? I put one in there. I probably should enter this particular one. I do not think we sent the poverty challenge.

CHAIRMAN—If that is a spare copy and you would like to introduce that as an exhibit to this inquiry, please do so.

Ms Orr—Yes. Because we concentrated on education, I did not. But, yes, those general profiles on that should be good.

CHAIRMAN—Let us formally take that as an exhibit. If Mr Tony Smith agrees and if you could leave that with us, we will inject that into the evidence.

Mr TONY SMITH—There are some figures that I always thought were pretty indicative of problems in the Aboriginal and Torres Strait Islander communities, and they are that around 30 per cent did not finish grade 9—

Ms Orr—That is right.

Mr TONY SMITH—and that there is a 30 per cent unemployment rate.

Ms Orr—Yes.

Mr TONY SMITH—It is an interesting sort of correlation. Do you see that in the figures you have?

Ms Orr—Yes. We noticed that it was, I think, 35 per cent when I did that random research. Just from the people who walked through our doors, we checked when their children were leaving school. We have the same sorts of figures—that by year 8, 35 per cent had gone, and then it goes up to about 40 per cent by the end of year 9. It is a very high percentage and, yes, it does correlate with unemployment.

Mr TONY SMITH—One of the things that I notice, too, is this—and I was talking about the state school system with discipline. It seems that generally speaking the

private schools have a far more rigid discipline structure. One strike and you are out, so to speak, even as far as corporal punishment is concerned. It seems to be that in education now there are almost two streams: elitist and non-elitist. Is this the thrust of what you are saying?

Ms Orr—Yes.

Mr TONY SMITH—It is certainly much more acute than when I went through school, and I did not go to a private school myself. Do you think that is a continuing concern?

Ms Orr—Yes, it is. There are a lot of subcultural changes happening, and I think Professor Gregory brought this out in a lot of his studies. As you get more of the poor living in the same area—whereas, once they may have been sprinkled through the suburbs—you are actually get a sub-culture of certain patterns of behaviour developing that are so far removed from the way our schools are run that when the students go to school there is actually very little in common between the culture of the school and the culture of where they are developing their values, morals and ideals, so there is a big clash.

Whereas the people who are attending private schools are coming mostly from a middle class environment. They are linked very easily into the culture and so they accept discipline, for starters. The whole thing is meshed much more easily, but when you have a lot of poverty, you still have a middle class type value school with these students who actually do not have the morals and values to meet those it. Even if the families would like that to happen and hope it might happen for their children when they hit the playground, it is not so. There is much more of a gap developing between the value systems there and we have to do something about that. We cannot keep having them meet head-on all the time.

Mr TONY SMITH—Is that occurring though because a lot of parents just do not believe that the state schools are providing discipline? Is that not an argument? Basically, it is a discipline problem which the state schools are not seeming to be able to grapple with?

Ms Orr—It is both. It depends how you would ask a school to treat that sort of problem. If a student is to shout out obscenities to a teacher now, what actions can that school actually take? Teachers have their hands tied. This is the problem.

For starters, it is less likely that students attending a private school will shout out those obscenities, or even normally use them. If they did, there are rules already cast that will ensure that they leave and not attend. Private schools can dispense with those children. They move back into the public system. It is easy enough to keep that tidy.

But in the state system, what do you do with behaviour that is not classed as middle of the road and acceptable? We are not allowed to not let them come to school for any length of time because it is compulsory to go to school. We have to accept this level of bad behaviour, but we do not really want to. What skills can we give teachers to actually handle that where you do not touch the children or verbally abuse them? You can ask them nicely to stop.

In that truancy report you will notice that we have found that students, of course, get around these issues. They know that they do not have to stay in the playground, and things like that. They can just go to the headmaster and say that they do not want to stay there anymore and there is no way that that person can physically make them stay in the grounds. There are no controls really that schools have got that have got any teeth. A lot of careful thinking needs to be done, I would imagine, and this is what we are coming to.

We have to change the way we do education because you do not want to reintroduce punitive measures that actually bring in occasions for teachers to abuse children, but you do have to bring in something that actually encourages the communication. That obviously means smaller groups, a different way altogether of educating. We have finally got to.

Mr TONY SMITH—Thank you.

CHAIRMAN—I think we have exhausted our questions. This afternoon has been much better than this morning, I can assure you. We ran into problems this morning. Thank you very much for coming along. We are very appreciative of your evidence.

Ms Orr—That is perfectly okay.

[3.20 p.m.]

KINGWILL, Miss Suzanne Dorothy, Coordinator, Contact Inc., 1st floor, 30 Wilson Street, Newtown, New South Wales 2042

CHAIRMAN—We have already received your written submission. Is there anything that you want to add to that or would you like to make a short introductory statement?

Miss Kingwill—Yes, I would. Contact is a state-wide program federally funded by the Department of Health and Family Services and we are the program for isolated children and those that care for them. We were established in 1979 as the follow-on from the International Year of the Child. We have had 18 years of experience in providing information, support, advice, training, resources, consultations and referrals for those caring for young children living in isolated circumstances.

The aims of the project are: to relieve, within the limits of the resources available to the project, poverty, disadvantage and isolation suffered by young children on the basis of need irrespective of race, creed or religion; to provide assistance, information, referrals and support to people caring for young children in isolated circumstances; and to stimulate the interests and wellbeing of the young child by improving community awareness of the needs of the child. Under the terms of reference we chose only to respond to points 7 and 8. That is the basis of our submission.

CHAIRMAN—Thank you very much. In your submission you talk about Aboriginal children and children with a disability.

Miss Kingwill—That is correct.

CHAIRMAN—Do you have some figures available from your area of involvement as to what the rough percentage breakdown is between indigenous and non-indigenous, a percentage of perhaps an ethnic grouping, if that is possible, and the percentage of disabled?

Miss Kingwill—I apologise that I cannot provide that direct information. I would be happy to supply that in writing to the committee. I would like to put on record that, from our research, we believe that in terms of rurally isolated children 32 per cent of Australia's population live outside urban areas. We believe in an area covering 7,000,632 square kilometres that they are one of the most isolated population pockets worldwide. I would also like to table a report which is a detailed study that we completed where 260 Aboriginal families were interviewed in New South Wales about their particular needs and where they looked to for assistance and where they felt they needed ongoing support. I hope that will be useful.

CHAIRMAN—For the purpose of the *Hansard* record and so we can formally table the report as an exhibit, could you read the title?

Miss Kingwill—The report is entitled *Identified needs of remote and isolated Aboriginal children, families and communities in New South Wales: an overview* by Contact Inc. 1995.

Mr TONY SMITH—You mentioned the figure of 32 per cent.

Miss Kingwill—Yes.

Mr TONY SMITH—That is extraordinarily high. I did not realise it was that high. Do you think that the structures that are presently in place are inadequate to address those needs?

Miss Kingwill—In our experience, I believe that there needs to be far more work on that. I would not say that in present times it does meet their total needs. In the first instance, we have long argued that it costs more to deliver services in isolated communities. In present times, the funding formula for children's services is based on the same formula as in an urban base. We have conducted initial studies based on the CPI shopping food index. We found that there was an 18 per cent difference in cost between the food items in a rural isolated community and food items in an urban setting.

Mr TONY SMITH—You want to try Thursday Island; you pay 150 per cent more for a kilogram of grapes there than you do in Brisbane.

Miss Kingwill—It is frightening. Based on that exact experience that you have had, Mr Smith, we would argue that there is a need to incorporate, first and foremost within existing services, a funding formula—we have called it an isolation factor or a rurality factor—that takes into account the extra charges. For example, every call will be an STD call, everything will have to be freighted out to that location.

We also recognise that there may be instances where the population base may never support the establishment of some services. However, there have been some creative solutions developed in Australia, such as the mobile resource units. Besides there being a direct children's service delivery, perhaps you can imagine a troop carrier vehicle taking everything out with them to do play sessions for the children and supports for the parents. They also have the capacity to take health workers with them and visiting specialist people as the community needs them. They are a referral agency for early intervention and so forth and may be the only contact point in that community. We believe that it is a strong model that needs to be supported.

We have had an experience where expressions have been made to us that those models may not be funded in the same way in future times; they may have to charge fees

for establishing those services in communities. In our mind, fees mean providing a service. If people do not have a service to start with, if they only see this visiting program—in some instances, every six months of the year—I have great difficulty with that.

We are continually being told that the only moneys made available are for innovation in terms of service delivery in rural and remote Australia. We strongly believe that if a community can come up with what they need within their community and it fits in—at present it is being funded only if it fits into an existing formula—the community is best placed to define what they need.

CHAIRMAN—Just switching to the commissioner for children concept, you have said that you support that.

Miss Kingwill—Yes.

CHAIRMAN—We have received oral and written evidence on a number of models for that commissioner. Could you say a bit more on what the broad remit is for such a commissioner and on whether you see such a commissioner being state centred or state and/or Commonwealth? There are a lot of models, rather than just the bland statement of a commissioner for children.

Miss Kingwill—In our ideal, we would like to see perhaps a three-tiered system where there could be an actual minister for children established. Then, in each state, there would be the appointment of a commissioner for children to research the issues, investigate fully any legislative requirements within that state as well as the UN convention and to lobby the government in each state. We would also like to see a separate ombudsman. We have concerns about the possibility that once somebody is within government, maybe they would be restricted by the processes of that to be able to respond on all the issues that occur. So we were suggesting the possibility of an ombudsman that could have that independence but still have the capacity to respond as is.

We are aware of some models. For example, I believe it is in Norway and Sweden where there are actually people based within each of the local governments to respond to what is happening with the children. They can actually respond to the issues of the communities but also identify any planning issues that are going forth for the development of any new housing developments. They take into account the play environments that need to be considered and the transport needs, for example. However, we recognise that it would be a completely different scenario in Australia compared with the Norway-Sweden model.

CHAIRMAN—We have had some evidence already, written and otherwise, in terms of a similar sort of situation but with a broader responsibility for the family. Why do you see it necessary to have a specific thing for children? Would you see it as being part of a broader thing, or do you specifically want all of that organisation solely for

children?

Miss Kingwill—First and foremost, in no way am I suggesting that the establishment of such a body is to preclude the individual family's responsibility or rights to question or take up issues with whomever they wish to take that up, being a state government or a federal government body. Given that we believe children are the most vulnerable members of our society, we would like to see something that recognises them first and foremost. So we would argue for it focusing on children. Equally, in focusing on children, it would need to have somehow within its parameters, similar to Contact, a definition of isolated children and those who care for them. That would mean that families or the care givers have a right to express their needs to the Ombudsman or the commissioner for whatever occurs.

I guess I would also like to highlight that. I would see more an Ombudsman or a commissioner taking up a responsibility of looking at the legislative requirements rather than specifically taking up the day-to-day issues that occur in families and children.

CHAIRMAN—Are you aware of the situation in Queensland with the Commissioner for Children?

Miss Kingwill—No, I am not.

CHAIRMAN—You have no knowledge of that. This is our fourth hearing of a number of models, but it varies a bit, I suppose, as to what extent they monitor as distinct from getting directly involved. Are you suggesting there is more emphasis on the monitoring rather than direct involvement? In other words, if such and such a child had a specific problem, does that come through the commissioner, or should it come through the state department, family services, the equivalent or what?

Miss Kingwill—I guess in the model I am suggesting it would come through the state Ombudsman to feed through to the commissioner, which would be in the next level.

CHAIRMAN—I see. Is there any other documentation? Obviously you have quite a bit of day-to-day research data as a result of, as you say, 18 years of experience. Is there anything else that you feel—even if you take this question on notice—you may not have brought along today that maybe would be of assistance in terms of this convention? The one on indigenous children is very important. Is there anything else?

Miss Kingwill—I will certainly follow through with my response. I will endeavour to find that information and feed it back to the committee.

CHAIRMAN—You said you would take that earlier question on notice.

Miss Kingwill—Yes. I brought with me to leave with the secretariat the response

of Contact Inc. to the Australian Law Reform Commission's issues paper, where we discuss the Ombudsman but also our beliefs about isolated children and their rights and where there was inadequacy in service provision.

CHAIRMAN—Again, we need to table that or at least make it an exhibit. Will you outline that so we can get on the record what that is.

Miss Kingwill—I have a couple of other things. Do you want me to go through each one?

CHAIRMAN—You could just specify the lot and then you can read them into the record.

Miss Kingwill—I would like to table Contact Incorporated's response to *Speaking for ourselves, children and the legal process*, issues paper No. 18 to the Australian Law Reform Commission.

CHAIRMAN—That is fine.

Miss Kingwill—I would like to table Contact Incorporated's report of 1993, *Identified needs of remote and isolated Aboriginal children, families and communities in New South Wales: an overview*, a report to the Department of Health, Housing and Community Services.

CHAIRMAN—That is at the state level?

Miss Kingwill—Yes, at a state level. I would also like to table an overview prepared by Contact Incorporated which details some information about mobile children's services and their role in the community. That is all that I would like to table.

CHAIRMAN—Please feel free to take on notice anything else and the secretariat would accept it. We will go through the formalities in due course of anything else that you think may in hindsight be relevant to this inquiry.

Miss Kingwill—Thank you for the opportunity.

CHAIRMAN—Thank you very much indeed.

[3.56 p.m.]

BITEL, Mr David, President, Refugee Council of Australia, Locked Bag 15, Camperdown Post Office, New South Wales 2050

PIPER, Ms Margaret Claire, Executive Director, Refugee Council of Australia, Locked Bag 15, Camperdown Post Office, New South Wales 2050

CHAIRMAN—I thank you for coming and for your written submission. Do you have anything to amend in terms of that submission or are you happy that that submission be accepted as is? Would you like to make a short opening statement in relation to the submission?

Mr Bitel—Yes. I would like to make a very brief statement and I think the executive director, Margaret Piper, will make a slightly more lengthy statement. We actually have just come from a working session today for refugee week, which members would be aware is an annual event on Australia's refugee calendar.

CHAIRMAN—This year it is going to be held in October, is it not?

Mr Bitel—Yes, that is correct. I am pleased to be able to say that the theme for this year's refugee week is that more than half the world's refugees are children. I think that highlights the unfortunate statistic that so many refugees are children and the importance which the community in Australia attaches to the issue that children as refugees face.

Our submission attempts to look at that within the context of Australia's treatment of refugee children as asylum seekers in the two situations, firstly, those who are lawfully here and then make claims and, secondly, those who come either by themselves as unaccompanied minors or with their families unlawfully and then are detained. It then briefly looks at the settlement issues relating to children who are granted refugee status and all who come to Australia as refugees.

If I can make a statement to the effect that the Refugee Council fully endorsed Australia's ratification of the convention and does believe that it is important as an international instrument and that Australia's continued adherence to its obligations under the convention be seen. We believe that we must be responding to the needs of children who are refugees or who are in a refugee like situation in Australia.

I draw the attention of the committee—in case it has not already been done by UNHCR which I believe has already addressed you—to the two recommendations of the executive committee of UNHCR no. 47 1987 which deals with refugee children and no. 59 1989 which deals with refugee children. I do not know whether they are part of the record. If not, I have copies and can tender them.

The first of those two especially do place obligations to the extent that executive committee recommendations are obligations. They are not legally binding, but they are morally binding given that Australia actively participated in the development of those recommendations. They place obligations on states party to the refugee convention to have the interests of refugee children and bear them in mind in the manner in which they are dealt with.

Ms Piper—The submission that we presented to you is not a comprehensive overview of the situation of refugees and asylum seekers in Australia. It does endeavour to highlight some of those areas which the council and other constituency groups of the councils consider are of particular concern in relation to refugees and asylum seekers. Our greatest concern at present relates to asylum seekers and the current situation vis-a-vis access to income support and medical care for children who are in the asylum seeking process. Also, the implications of proposed policy changes which we consider will make it far more difficult for adults to adequately support their children during the period of determination.

We also mention concerns relating to detention. This of course has been a hotly debated issue over the years. The government has introduced options for children to be released from detention, but the provision does not allow for the release of a parent or care-giver with a child. We consider that this presents to the family group something of a Hobson's choice; you either keep the family unit intact or you send the child out of a very difficult environment or untenable environment for the child into the care of somebody who is not necessarily known to the family in a country that is unfamiliar. There are a number of examples of children in detention. We are also concerned as well in some instances where children have been released from detention about the adequacy of the provisions that have been made for the children upon release.

We highlight issues relating to unaccompanied minors. We recognise that Australia does not have the same number of unaccompanied minors coming in as we did during the mid and late 1980s where there were large numbers of Indo-Chinese minors coming in. We now have a major problem with detachment and the inadequacy of some of the supports that have been provided by the state departments of community service to pick up and respond to these particular vulnerable clients is of concern to us.

There is also the issue of refugee children in the refugee status determination system. The importance of recognising that children can be in themselves refugees and may in fact be the one person or the people in the family group who actually have got the substantive claim. Yet there is very little recognition of this within the determination system at present. The moves towards strengthening this recognition we contend are moving far too slowly. I have brought in, if the committee is interested, some recent papers from Canada that look at Canada's attempts to grapple with this particular issue. If it is of interest, I have copies.

CHAIRMAN—Let us formally introduce those. If you would like to read those into the record, we will formally accept them as exhibits.

Ms Piper—They are lengthy papers.

CHAIRMAN—Just the titles will be sufficient and we will formally take those into evidence.

Ms Piper—The first paper is *Refugee Children before the Immigration and Refugee Board*, which is from *Refuge*, volume 15, no. 5 1996. The Immigration and Refugee Board is Canada's refugee determination board. The second paper is *Child, refugee claimants: Procedural and evidentiary issues* from the same journal.

CHAIRMAN—Do you have any other documents that you would like to incorporate as exhibits in the evidence at this point?

Ms Piper—The only other thing that I have which may be of interest to the committee, but I am quite prepared to not table it if you consider it superfluous, is a submission that the Refugee Council made to the Joint Standing Committee on Migration's inquiry into detention in 1993, which does look at alternative detention.

CHAIRMAN—So that picks up the 37(c) reservation, does it?

Ms Piper—It was prior to.

CHAIRMAN—What was the date of that?

Ms Piper—That came about as a result of this inquiry, the provision for release of children.

CHAIRMAN—What you are suggesting to us is before that?

Ms Piper—That is before that.

CHAIRMAN—Obviously we want to talk a little bit more about 37(c) anyhow. We will formally incorporate those as exhibits into the evidence. If you would leave both of those pieces of paper with the secretariat, we would welcome them.

Ms Piper—There is also a brief reference in the submission to children who are in Australia as refugees. There are a number of broader settlement related issues which we felt would be somewhat peripheral to comment on, but I am quite happy to talk about them if you are interested in following through—in particular, issues such as access to torture and trauma services for children as well as for adults. Then in the conclusions we set out what we would consider to be minimum changes to procedures and guidelines that

would redress some of the deficiencies that we feel exist in the current procedures.

CHAIRMAN—This is pages 13 and 14?

Ms Piper—That is correct, thank you very much.

CHAIRMAN—Let me just start by referring you to a couple of comments that were made by UNHCR in the evidence that we have already taken. I think you have covered some of this in part, but let us go back and make specific reference to their mention. First of all, they said:

There are, however, limited formal procedural safeguards provided for the determination of refugee status of unaccompanied minors. The adequacy of this procedure has been of some interest and concern to agencies involved in the interests of refugee children.

Could you make some broader comments on that? Secondly, they said:

As with all asylum-seekers, unaccompanied children seeking asylum should not be refused access to the territory.

Could you just make some further comments on both of those?

Mr Bitel—With regard to the first, the determination process is one which in recent months has undergone some change. This is at primary stage. In the past, the department would customarily invite applicants to interviews, at which they would be asked questions and be given an opportunity to present at some length their claims. Changes have recently been initiated, with which the council does not necessarily disagree in the vast majority of cases, whereby applicants are merely assessed on the basis, at primary stage, of the documentation produced.

CHAIRMAN—Just to interrupt you, and perhaps you will cover this in replying to both of those anyhow, what about the representation of those minors by an adult? Are you happy?

Mr Bitel—That is the problem.

Ms Piper—What David has said requires an applicant to be adequately represented. There is no provision for systematic representation of unaccompanied minors in Australia, as there is in the United Kingdom. I make reference in the submission to the panel of advisers that exists there. So to each unaccompanied minor is attached a specially trained adult who is responsible for ensuring that the child has adequate legal representation through the determinative process and also adequate welfare care provided to the child in terms of not only their accommodation but their emotional support and so forth.

At the moment, there is no clear understanding of a level of responsibility for unaccompanied children. Given that they are not Australian citizens, they fall outside the mandate of state government departments, and the state government departments, if they choose to take up the welfare of the child, see themselves as having no responsibility for their assistance through the refugee status determination process.

So we feel that the lack of access to that level of particularly legal support, or technical support—which is more appropriate—makes it very difficult to be confident that a child is able to adequately articulate a claim which the child itself may not understand. This is one of the key things with children. They know that they come from a situation that is difficult. They might have been sent out of their country because their parents are afraid for them but they do not understand the reasons for this or the context within which the violence that is happening around them is occurring and their own relationship to it. For instance, if they are the child of somebody who is a political dissident within a country they may not understand the nature of their father's, mother's or family's political activities and therefore the risk to themselves.

CHAIRMAN—I guess the point I am about to make is an observation more than a question but I would be interested in your reaction to what I am about to say. People can always be wise in hindsight but it just seems to me that Australia's reservation, which was in relation to that 37(c) and the detention of children with adults and based on a demographic argument, seems to me to be a somewhat minor reservation compared with some of the more fundamental reservations that maybe should have been incorporated. Do you agree with that? I suppose what I am saying is I do not understand the rationale for that particular reservation just by itself. You don't, either?

Mr Bitel—We were not a party to it obviously.

CHAIRMAN—From what you said in your opening remarks you have some problems with that anyhow with 37(c)?

Ms Piper—Yes.

Mr Bitel—Can I, Mr Chairman, make one other point in relation to this issue of the determination process. You have the problem of unaccompanied minors and having their claims properly presented. You also have the situation of children who may be accompanied but who may have different claims to the claims being represented by the family head who is usually a male. It is a very difficult problem to address. I do not know whether they have even grappled with how they can address the situation properly but I think it is certainly something which we should draw to the attention of the committee as an area of very serious concern. There may well be a conflict of claims there and the child often is not represented or adequately represented in presentation of his or her claims.

CHAIRMAN—Give us a practical example without getting into individuals. What

do you mean by that? What sorts of counter claims or other claims might the child have?

Ms Piper—There are some examples that are given in the submission where it is in fact a child within a community that is most likely to be subject to acts that are considered persecutory. For instance, if you were to return a family to a country where under-age conscription is a matter of course it would not necessarily be the parents who would be subject to the persecutory acts but the child and similarly returning a child to a country where female genital mutilation occurs.

CHAIRMAN—I was just about to say that is the sort of thing.

Ms Piper—We have seen the situation in parts of Latin America and are still seeing it in southern Sudan where children are targeted by bandit groups and taken away from the family or community as a message to the adults to stay in line. There are many instances around the world where children are in particular danger because they are children.

CHAIRMAN—Yes, I understand. I suppose the final point I should make before handing over to Tony Smith is this. I should have made this point right from the word go. I apologise for having just the two of us here. It is not that your evidence is any less important than anybody else's we have heard earlier in the day when we had quite a big roll-up of committee members. I do not want to be too flippant about it but I guess you have got the quality rather than the quantity.

Mr TONY SMITH—Please tell us a little bit about the Refugee Council. Where do you get your funding from? How does it work?

Ms Piper—I have also brought—not necessarily for tabling but for the committee's information—a copy of our most recent annual report and copies of brochures. The Refugee Council is Australia's peak non-government refugee agency and our members cover a broad cross-section of the refugee constituency. There are some who are working principally with refugees in countries of first asylum, others who are working with refugees in the Australian community in relation to resettlement and others who are working on legal and protection issues. The fourth major group is of members who represent the refugee communities themselves, and they are a very important group of members.

Funding comes from a variety of sources. Core funding for the secretariat of the council comes from the members themselves. In the past, we have also received project funding and a small amount of core funding from the department of immigration. We have received funding for projects from the Office of the Status of Women, and we seek project funding and consultancies wherever we can, recognising that, in order to do that which we are being asked to do by our members, we have to diversify our funding base as much as possible.

CHAIRMAN—We will take those as exhibits.

Mr Bitel—What I was going to do was show you the annual report because it does list at the back the members. You will see, Mr Smith, that it contains over 50 of Australia's major religious community organisations—ethnic organisations, legal organisations—and perhaps you would be surprised at the smallness of our annual budget.

CHAIRMAN—What about the brochures?

Mr Bitel—These are just some brochures.

CHAIRMAN—And those two other articles are there too.

Ms Piper—Yes.

CHAIRMAN—Thank you.

Mr TONY SMITH—Do you have any liaising with the law societies and bar associations around the country?

Mr Bitel—For my sins, I am a lawyer. I represent the Australian section of the International Commission of Jurists on the council. We do not have any representation, per se, from the law societies but we have a close working relationship with them. I am on the Australian Law Council's migration subcommittee and the New South Wales Law Society's migration subcommittee. So, to that extent, I communicate directly with those organisations.

Mr TONY SMITH—We hear some pretty horrendous stories from our constituents sometimes about orders for costs and damages being made in relation to refugees, and, politically, that is sometimes hard to deal with. I am not trying to draw you out on that; I am more interested in what can be done by way of representation for people who need it. Are there people willing to put their hand up, as it were, on a pro bono basis?

Mr Bitel—In New South Wales, we have had a sad situation with the Refugee Advice and Casework Service, RACS, which was established in the late 1980s with the assistance of funding from the UNHCR and was formerly a service provision arm of the council. For funding reasons, RACS had to close its door in New South Wales, after Amnesty International, which provided that service previously, bowed out.

Ms Piper—It had to reduce its service.

Mr Bitel—It had to close its door, to the extent that they were providing a service, representing asylum seekers before the department in the refugee tribunal. In Victoria, it

continues. The Law Society in New South Wales operates a pro bono scheme. To some extent, that has taken up the cudgel where RACS bowed out, and some of the cases have been referred out to private practitioners on a pro bono basis in New South Wales. Whether that will continue in a permanent sense, I cannot say. There is a tendering process which the government has introduced to provide assistance for those who are in detention.

Ms Piper—And for those in the community as well. To add to that, quite a lot of the high profile refugee cases are those that go to the court. You mentioned the issue of costs or damages earlier, and I suspect that you were referring to the compensation claim for illegal detention. I think it is important to emphasise that these are very much the minority and that you have, at the grassroots level, the need for application assistance to be made available to vulnerable clients, in the first instance, during the administrative determination phases, before matters go to the courts. The provision of adequate application assistance at that time is very important to ensure that the best possible decisions are made during the process. It is quite common in comparable legal jurisdictions in North America and in Europe for application assistance to be provided for applicants in the refugee status system. We would not necessarily say that it was necessarily to provide it for all, but we definitely believe that there is scope for the provision of assistance for those on a means and merits test—that is, people who are considered to have a claim of substance and who are unable to provide assistance on their own.

Mr TONY SMITH—I have probably two questions—maybe between both of you. Firstly, probably to you, Margaret, is there a chance that people can slip through the net, as it were, that they just cannot get representation or they have to wait for long periods of time or what?

Ms Piper—Our greatest concern at present is that, with the changes to refugee status determination, procedures and policy, it is very easy for people to slip through the net. We have—and this is mentioned in the submission—new policies that will come into force, we believe, in July, that require an applicant to lodge an application within 14 days of arriving in the country if they are to gain access to a work permit and flowing on from that will be access to Medicare. At the same time as that, we have introduced, particularly in New South Wales where the greatest number of cases are considered, a system whereby they are processing claims with minimal information attached to them, very quickly.

I am familiar with a case not relating to a child but to a Sri Lankan human rights lawyer who lodged an application very quickly after arriving in the country and offered additional information in the form of statutory declarations about his involvement in Sri Lanka. His case was determined within 10 days and the additional information that was promised in the original application crossed the decision in the mail and he was refused at that time, without interview. So we have a system at the moment that many people working in this area fear is not giving careful consideration to claims juxtaposed with a

necessity to get the claim in very fast.

We fear that the two working together will create a system where it is very easy to fall through the net, because the most traumatised refugees—and I am thinking, in particular, of women and children who have arrived in a strange country, do not speak the language and do not know who to trust—will find it extremely difficult within the space of two weeks to work out which end is up, let alone to find out what the system is, to find somebody that can assist them to present their story, to trust that person sufficiently to present the most sensitive details of the story because, in many instances, refugees do not understand what is the most relevant, and sometimes that which is most relevant is the most sensitive. For instance, if a woman or a child has been raped, actually admitting that to somebody who you do not know can be very frightening. Admitting it within the family context, while the husband or father is there, is something that they may not be prepared to do. These are very sensitive matters that have to be dealt with without haste. We are arguing that, at the moment, the system is such that too many people are potentially falling through the cracks.

If I can just go on to mention something that we moved away from earlier. I do think it does have to be acknowledged that the Department of Immigration has recognised the issue of children in the determination process. I did some work with them during the course of last year and will continue to be pushing them to introduce guidelines for the determination of refugee children in the way that they introduced guidelines in July last year on refugee women. I fear that so many other things are happening at present, and particularly the imperative to process cases very quickly, to minimise costs et cetera, that the attention that is needed to get to the bottom of stories where you are looking at people where the claims can be complex and the past experiences so terrifying, that acknowledging them very quickly and boldly in the first instance is very difficult.

CHAIRMAN—You have talked about the Sri Lankan lawyer, at the other end of the spectrum, and taking specifically children, World Vision has provided to us a case of an 11-year-old Cambodian child who has been in detention for three years. Is this the problem that you are trying to address in terms of special provisions for children or does it come back to this 37(c) again, our reservation, within the convention?

Ms Piper—The fast processing is something that we have only seen this year, in the last couple of months, and with the most recently lodged cases. There are a number of cases where children have been held in detention for up to—

CHAIRMAN—Is that just an isolated case for young children? Are you aware of that particular case?

Mr Bitel—I have heard certainly of children who have been detained for extended periods of time. Presumably that is a child who is being detained at the Port Hedland Detention Centre. But there are also children who are detained, as we talk, in the

Villawood Detention Centre, and this is a classic case. If children are to be detained, it is a question of—

CHAIRMAN—But not for three years, for example?

Mr Bitel—Certainly not for three years. I said before that the council endorses the expeditious processing of applications. We would certainly not want it in anyway to be seen on the record that we encourage people to have prolonged the processing procedure. It is in everyone's interests, not least the applicants, for the claim to be processed as quickly and as expeditiously and, of course, as cheaply as possible. Bearing in mind at all times that, in that haste, the ability to access the correct claims of the applicant are not forgotten. That is the concern of course and it is something which has to be married and has to be married nicely and finally. Presumably with time, there will be fine tuning by the department which will enable that to happen. Our obligation, of course, is to draw to your attention to our concerns that, given that the most recent changes in processing procedures, we are hearing stories of people who are falling through the net.

Ms Piper—Just on the detention, as of last week there was still an unaccompanied minor detained in stage one of Villawood Detention Centre. Stage one is the high security section of the centre which most closely approximates a penal institution. Stage two, at least, has grass and trees and lawn and so forth.

CHAIRMAN—What nationality is he?

Ms Piper—Sri Lankan.

CHAIRMAN—A more general question and that relates to both the official report, the blue one over there by Australia and the alternative report by DCI NGOs. To what extent was your council involved in either or both of those reports?

Mr Bitel—We participated in a discussion session which took place in Parliament House last year, in the preparation of the response. I think—

Ms Piper—If I may just correct you there. We provided some feedback to the first draft of the official response and the session that David is talking about relates to the planning session for the alternative response. We were disappointed when the alternative response made no mention of refugee children and have subsequently presented material to the Committee on the Rights of the Child outlining some of our concerns.

CHAIRMAN—So there is a third document, a very specific document, from your council?

Ms Piper—A document that closely approximates that which you have.

CHAIRMAN—I see.

Ms Piper—It raises similar issues.

Mr TONY SMITH—I find it almost unbelievable that a child can be detained for three years. Is there no warrant for a writ of habeas corpus in that situation, or is that all excluded under the act?

Ms Piper—There was an attempt to do this.

Mr Bitel—The act contains a provision for mandatory detention.

Ms Piper—And it was not just a child; there were quite a number of Cambodian children who were detained for multiple years. Similarly, there are children from the Sino-Vietnamese and Chinese groups who have been denied access to the determination system, per virtue of amendments to the Migration Act, and who have been detained for lengthy periods while their return is being arranged.

Mr Bitel—Importantly, in relation to many of these children who have been detained for lengthy periods—that is, during the determination process—the RRT has an overturn rate or set-aside rate of some 18 per cent, according to department statistics which were recently given. So many of these children who have been detained for long periods are found after some considerable period of time to have bona fide claims and are granted refugee status. As they have fled refugee situations which themselves have caused massive scars, can you imagine the psychological damage that a further two years detention, or whatever it is, has on those children who are to become Australians?

Ms Piper—And that detention does not provide adequate services for the children. As I mentioned in the report, there was a period of some six months during which there were no education facilities in Villawood at all for children and minimal recreational activities were provided to compensate.

CHAIRMAN—But, administratively and legislatively, are we moving progressively or are we just in a stalemate situation?

Mr Bitel—My personal view is that the concerns of financial restraints and budgetary control have lead—if you will excuse the pun—to the baby being thrown out with the bath water.

CHAIRMAN—Do you share that view?

Ms Piper—Yes. I think the financial imperative, particularly with the processing of asylum and the support given to asylum seekers, will see a situation where those people with bona fide claims are likely to be suffering very greatly as a result. To have asylum

seekers here who are unable to put a roof over their heads and food in their children's mouths will create a situation where we are violating our treaty obligations, both under the Convention on the Rights of the Child and also the refugee convention, where such people are determined to be refugees.

Mr Bitel—Can I make it very clear that the council at no point advocates on behalf of people who make manifestly unfounded claims. We are not their advocate. We are the advocate of refugees and of asylum seekers who have claims which have merit to be then properly determined. Unfortunately, the legal process in Australia has developed where many people have abused the system.

We recognise the dilemma that government and bureaucracy is faced with, but you have to go back and look at the legal regime which was created following the 1989 changes to the act: the abolition of the humanitarian and compassionate grounds, and the channelling of all people who wished to access a ministerial discretion through the refugee process. That tends to lead to a lot of people applying for refugee status when they are not refugees; they do not really make claims to be refugees. Yet the law essentially, through practical purposes, requires them to follow that channel. It is something which has been a very serious concern to the council over many years.

Mr TONY SMITH—Couldn't there be a review process by way of a superior court? Surely, that is what has to be introduced into the act, whereby after a certain time there has to be a show cause situation.

Ms Piper—Is this in relation to detention?

Mr TONY SMITH—Yes.

Ms Piper—A number of bodies, including the Refugee Council and academics such as Fedor Medianski from the University of New South Wales, have been working on an alternative detention model, a model which has been given to the Department of Immigration and Multicultural Affairs for comment prior to consideration by the minister. In this, we argue that detention is quite appropriate for unauthorised arrivals, in order to determine who they are, where they have come from and why they are here. But, beyond a minimum period, there needs to be good cause shown as to why there is a continued need to detain. If cause is shown, for instance if it is considered that that person is a security risk or a risk to the community in any way, there should be a review of that detention. At present, there is no opportunity for any external body to review the continued detention of—

Mr TONY SMITH—And, apart from you, they have got no voice, not even a member of parliament to speak through. Really, in my view, the court is the only body that can give the people a touch-up on these sorts of things.

Ms Piper—But the act removes from the court the power to order release from detention.

CHAIRMAN—Regrettably, we have run out of time—after a long day. We thank you for being here with us this afternoon. Today's hearing has been one of a series. This is the fourth one we have had in the last two weeks and, undoubtedly, there will be more. I hope that if there is anything as a result of the evidence you have given today that you want to add to your evidence in writing, things that you want to take on notice, or things that we may not have even raised, you will provide us with that. We would welcome further evidence. We may even in due course have to come back to you, either orally or at a further hearing.

Mr Bitel—Mr Chairman, thank you and can I just say that, remember, refugees are amongst the most underprivileged, if not the most underprivileged, and the ones with the least voice in the community because they do not have any established groups to run their case. Of course, refugee children are at the very bottom at that pecking order.

CHAIRMAN—Thank you very much, indeed.

[4.37 p.m.]

KEATS, Mr Michael, National Executive Officer, The Scout Association of Australia, PO Box 325, Fivedock, New South Wales 2046

CHAIRMAN—First of all, we thank you for the very extensive submission both on the role of the association and the movement nationally, and also for some comments in relation to the specific terms of reference. Are there any amendments that you wanted to make to that written submission?

Mr Keats—I do not think so. I think we have covered it very adequately.

CHAIRMAN—Would you like to make a short opening statement in relation to that or would you prefer we just went straight to questions?

Mr Keats—I think we can go straight to questions. I think the document speaks for itself.

CHAIRMAN—Thank you very much. I suppose the basic question is: what is the extent of child abuse in Australia that you as a movement see and what is the role that your movement plays in trying to alleviate—I suggest that you will never obviate it—what is, seemingly, a growing problem in our society?

Mr Keats—Yes, I think that is probably getting right to the nub of the issue. The first step we have taken there is to ensure that the leaders of youth in our movement are the most appropriate people for the job and our screening process now involves a police check on any record that these people may have. We also reserve the right to at any time swoop on them to make sure that they are still performing as model citizens, because we want them to be role models for the young children that they are looking after, instructing and transferring value systems to all the time, either overtly through conversation and action or even indirectly by how they perform with their own peers when they are not in scout uniform. We discovered to our horror about 15 years ago that the scout movement did have a problem with paedophilia. I think we were the first organisation to take very positive pro-active steps to ensure that we rid the organisation of paedophiles.

CHAIRMAN—That is chicken and egg. To what extent has it been a problem? Is it still a problem? Are you confident that the measures that you are taking are correcting what is reported to have been a fairly difficult situation?

Mr Keats—There is a series of things that we have done. The first thing was to introduce a code of conduct for every leader and we require every leader to sign that code of conduct. Bear in mind we have got some 20,000 leaders across Australia and we have a turnover of leaders every year in some areas. There was a need to get every leader to sign the code of conduct.

We found that in every state there was a group of people who for various reasons were not prepared to sign the code of conduct. We said that you have the choice of signing the code of conduct or we remove your warrant and discharge you from the Scout Association, we cannot afford to have you. Some people who had been involved for literally decades were very offended at that. They said, 'We are model citizens and we are not prepared to sign the code of conduct. We have done no wrong. We have no police record. We do not feel we should sign'. We then said, 'We're sorry, but we have to be able to guarantee, as far as possible, to parents that when they leave their children with the scout movement they are in safe hands'.

CHAIRMAN—Was that code of conduct in the submission?

Mr Keats—The code of conduct is documented in the submission. That code of conduct has stood us in very good stead. It has been endorsed by state governors who are Chief Scouts around the country and it has got a lot of media coverage. It has also acted as a deterrent for would-be transgressors to even think about entering the scout movement. Indeed, a number of other uniformed organisations have followed our lead and some of the churches have contacted us for a copy of our code of conduct because they feel it is something that they can modify for their own needs.

CHAIRMAN—Codes of conduct are fine and they are very laudable but what mechanism do you have in place to continue the ongoing—

Mr Keats—We have encouraged a reporting process by both parents and youth. If they are concerned about any action or words that are said or implied, they immediately must go and report this. As soon as we discover a situation where a leader is acting improperly, be it male or female, they are immediately removed from the movement and suspended until such time as their situation is clarified. If they are found wanting in any way we remove them from the movement and ask questions afterwards, basically.

CHAIRMAN—Many of the submissions we have received have made specific comment on a model or a concept for some sort of children's commissioner in our country. Do you see there is a need? If so, do you have a view as to how that would work?

Mr Keats—The second part of the question is what worries me, that is, how would it work. Young people have to have the capacity to articulate their concerns if they do have them. They also have to be confident that the people they are talking to are responsive and that they are not someone else who they may not be able to trust. I do not have a problem with the concept, I just have some difficulties with how it might work.

The situation with scouting starting as young as it does these days, at six years of age, and leaders who are male and female, tends to be in large measure like an extended family for these young children. They have a lot of confidence in being able to talk to

these leaders about issues that are concerning to them. I can go back to my schooldays and think of many occasions when it would have been good to have had someone to talk to other than mum and dad, other than the teacher, and even other than my peers, about issues but there was nothing there to access and I do not think there is still.

Today kids have a further option and that is the Internet. The Internet is a source of good and evil, as we all know. Increasingly, young children are computer literate and they are accessing the Internet for all sorts of information. We are there in a big way now because we know young people access it. We are getting 19,000-plus strikes a month to our site. We put there information about all sorts of things, including the information that is in that report because we feel that kids need an anonymous source of information. We portray ourselves factually and responsibly, we hope. It is not like a commissioner but it is certainly another source of information. Increasingly, kids today are highly intelligent and they sieve information all the time to determine what is true and what is untrue. They have a lot more intelligence than a lot of people give them credit for.

CHAIRMAN—Are you also aware—I assume you are—of Australia's first initial report to the UN committee on the rights of the child and the so-called alternative report from the non-government organisations? To what extent was the movement involved, consulted or in any way approached in relation to either or both of those reports?

Mr Keats—I do not think we were directly involved in the consultation but I would have to check our records. Our involvement really has come through the World Scout Organisation who are signatories to the UN convention.

CHAIRMAN—We would be interested, if you would take that on notice—

Mr Keats—Yes, I will.

CHAIRMAN—I think it is important that, where we have a body the paramount goal of which is to involve our young people in leadership, fellowship and all the rest of it, you were not consulted both in terms of the official blue report which is alongside Mr Smith and also the so-called alternative report from Defence of Children International, the DCI report.

Mr Keats—I should point out that I have only been in the role just on two years but I will certainly check our records and see whether we were involved.

CHAIRMAN—If you could just give us some sort of official response as to whether you were or were not consulted; and if you were to what extent; and maybe a judgment as to whether you should or should not have.

Mr Keats—In the event that we were not consulted, you just want that for the record, do you?

CHAIRMAN—Yes. We would like a comment from you—critical or whatever—as to if you were not why should you have been, if indeed that is what you feel you should have.

Mr Keats—Right.

Mr TONY SMITH—Does your association support the appointment of a children's commissioner at a federal level?

Mr Keats—We just had a discussion about that when you were out of the room.

CHAIRMAN—We have just done that one.

Mr TONY SMITH—I beg your pardon. There are arguments that we have a pretty sophisticated level of monitoring of the welfare of children and so forth within our structures, both state and federal—particularly state—and that one way of improving that would be to provide codes of conduct consistent with the convention to various state arms such as the police and children's services. Do you see anything particularly wrong with that as an alternative to the arguments that this convention is just too far-reaching?

Mr Keats—We did have a discussion about our code of conduct.

Mr TONY SMITH—I am sorry.

CHAIRMAN—You were still talking to refugee people outside. I apologise for that but we had to keep on moving. Have a third go.

Mr TONY SMITH—I think scouting a big like motherhood—isn't it?—criticise it at your peril. Our committee notes you have included a publication on youth suicide prevention. What do you think are the most important and urgent steps that the government can take to ameliorate this problem?

Mr Keats—At a practical level we were extremely disappointed that the submission we made to the Commonwealth government for joint funding with Youth Insearch on this very issue was denied. The government said it had a program which was already set and the specifications of the proposal that we put forward were not acceptable.

You may have seen on the media last week about some of the success stories of Youth Insearch. We wanted to be able to partner with Youth Insearch and to do a lot more research into the processes that they use, because we feel that youth suicide is a matter that can be prevented. It requires opportunities for young people to talk through so many issues that concern them.

One of the issues that has become very focused in society today is that young people try to determine their own sexuality, and I think an awful lot of youth suicide is

driven by young people who find themselves not as top sportsmen, not as top academics and also find themselves ambivalent in terms of what their sexual preference is. Society treats you pretty unjustly if you are a young person and you do not fit the traditional role model of being a physical athlete or a brilliant academic. If you have nowhere that fits you as a niche as a young person and if you do not have the support of family, then I think this is an area where people turn to the darkest options that they have got. This is a great shame and we need to do a lot more work in this area.

I commend the Commonwealth government for the work it is doing in youth suicide prevention in its counselling centres and so on. But it was a shame that the proposition we put forward did not get more consideration.

CHAIRMAN—Just before we adjourn, is there any other documentation, studies, or data that perhaps you may have that you would like to table or incorporate today, or would you like to take that on notice? We are very happy to receive whatever you have particularly in the suicide area and in some of those things which are very pertinent to youth where we see a very undesirable and a very tragic trend.

Mr Keats—The suicides are an end point. The work that we have done in the areas of drug abuse prevention, child abuse prevention and being able to find jobs—all of these things are related. You have to treat a person and their concerns as a holistic situation. I think the school system fails young people in terms of providing all of this, and some of the traditional organisations—ours included—do not always provide the opportunities for young people to discuss in an appropriate environment and atmosphere the issues that concern them.

CHAIRMAN—As well as providing that information on notice, please feel free to give us some supplementary information and supplementary data particularly in some of those areas, if you feel so inclined. We would welcome that.

Mr Keats—Yes.

Resolved (on motion by **Mr Tony Smith**):

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

Committee adjourned at 4.52 p.m.