



COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

MELBOURNE

Thursday, 10 July 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

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

For inquiry 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

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JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

MELBOURNE

Thursday, 10 July 1997

Present

Mr Taylor (Chairman)

Senator Bourne

Mr McClelland

Senator Cooney

Mr Tony Smith

Mr Truss

The committee met at 8.59 a.m.

Mr Taylor took the chair

CRIGHTON, Mr Donald Scott, Research Coordinator, Plan International Australia, 4/533 Little Lonsdale Street, Melbourne, Victoria 3000

CHAIRMAN—Welcome, Mr Crighton. This morning's hearing, of course, reopens the hearing from yesterday. Just to re-emphasise one or two points: we have had over 400 written submissions thus far on the Convention on the Rights of the Child; we have had over 1,200 expressions of interest in giving evidence, written or oral. Hopefully, we expect to finalise this inquiry in the next three months. My aim, of course, is to have the report to the parliament before we get up for the Christmas-New Year break. We will continue probably to receive submissions for the next couple of months, as I have said, maybe into October, perhaps the end of September.

Resolved (on motion by Mr Tony Smith):

That this committee authorises publication of submissions Nos. 150, 183, 188, 208 and 220.

CHAIRMAN—Thank you very much for coming along this morning. We have received the Plan International Australia submission of 28 April. Just as a matter of housekeeping again, are there any amendments, omissions or errors in that written submission that you want to highlight before we invite you to make an opening statement?

Mr Crighton—Not that I know of.

CHAIRMAN—Would you like to make an opening statement?

Mr Crighton—Firstly, I would like to apologise that the author of the submission, Mr Faruk Avdi, is away due to circumstances beyond our control. Also the national director of Plan International is overseas and was not able to attend today. I apologise to everyone here if I have to take some questions on notice.

Briefly, I would like to reiterate some of the main points from the submission. One is that we think the Child Sex Tourism Act 1994 was a step in the right direction for Australia. But we at Plan International think there is a need to legislate and educate in areas of Australian companies and businesses overseas and the sorts of environmental impacts they may have on children. Also I would like to say that the submission points out, as probably the second main point, that there has to be legislation and education in regard to child labour overseas and products that may be imported into Australia which are produced through the use of child labour.

CHAIRMAN—That is all you want to say at this time?

Mr Crighton—Yes.

Mr TONY SMITH—In relation to the Child Sex Tourism Act 1994, we have

heard some brief evidence and we have had, I think, one fairly notorious attempt to prosecute an alleged offender in relation to offences against that act. One of the problems that seems to have emerged has been the process in terms of evidence and so forth. It is no good having these acts unless you have a process, particularly where there are cultural differences and language difficulties and so forth, that will facilitate a process where convictions can be obtained, both having regard to the interests of the alleged offender and also the interests of justice generally. I do not know whether you know anything about that at all, but would you like to comment on whether or not you think Plan International would support a more streamlined process to facilitate evidentiary matters?

Mr Crighton—I do not mind commenting on it, but I would have to know, firstly, what sort of streamlined processes you are referring to. I cannot actually say I would agree with them or disagree with them until I know exactly what you mean.

Mr TONY SMITH—In Australia, for example, evidence in cases involving offences against children, certainly in Queensland, is taken on video by way of a record of interview between police and the complainant and experienced police officers. That has had a big effect in at least getting the cases through to the jury. Are you aware of this particular case I am talking of, in general terms?

Mr Crighton—No, I am afraid I am not.

Mr TONY SMITH—This case did not get past the magistrates court and one of the reasons for that is that there was no facility for taking the evidence on video, or the interview on video, which then would form evidence for the actual committal and possibly the trial. Would you support something that brought us into line with our national jurisdictions there?

Mr Crighton—I would probably have to take that on notice and refer that to our national director. But, tentatively, I would say, probably yes.

Mr TONY SMITH—I am very interested in your submissions involving child labour and also the inappropriate standards affecting living conditions of children overseas. That is one of the strongest sort of comments we have had, that I have been involved in, about the operation of article 24 and its effect on obligations on the Commonwealth to assist there. I am particularly interested in the child labour aspect. Do you know of any monitoring process that is being done in relation to goods that are being produced by children and then exported to Australia?

Mr Crighton—As far as I know, there are many organisations that do try to keep a tab on that sort of thing: ourselves, for example; Community Aid Abroad; and various other NGOs. I am not personally aware of any larger body that does that sort of monitoring, but I do know it is monitored by many different organisations.

Mr TONY SMITH—Do you feel, as part of this process and our obligations under the treaty, that there is a role for greater monitoring of that? It seems, from what I have read about the effects of child labour, particularly on the subcontinent, that even the government itself tacitly condones that sort of operation.

Mr Crighton—We accept that it is a very difficult issue in the countries where it occurs, that it often is an issue of poverty and that governments do end up condoning it, partly for that reason and partly for other reasons, often due to—dare I say it—corruption or whatever. And because of that I do believe that there should be a larger body monitoring that sort of process.

Mr TONY SMITH—You would probably agree with the proposition that, while it might be to do with poverty, inevitably it perpetuates it because these children are deprived of a childhood. They do not ever get to school and they do not ever get educated.

Mr Crighton—Yes, that is certainly the way we feel.

Senator BOURNE—Can I say that you have got some really interesting attachments too from the Anti-Slavery Society and that sort of thing which are very useful. You have something about how businesses should work by a plan that should be set up in Australia—a code of conduct. Can you just outline that a bit until I think of my brilliant question?

Mr Crighton—The sort of code of conduct that should be pursued by Australia in terms of businesses?

Senator BOURNE—Yes.

Mr Crighton—I am not sure that we have actually formulated many details in that regard but we do think it should be an educative process. That does not really exist at the moment. Beyond that, there should be some degree of legislation on Australian businesses overseas.

Senator BOURNE—What form do you think the legislation should take? Should it be a code of conduct that they would be required to agree to, or would it be really strict legislation, similar to the anti-child sex legislation where they could in fact be prosecuted in Australia?

Mr Crighton—I will have to take that on notice.

Senator BOURNE—If you could, that would be really good. Thanks.

CHAIRMAN—Yesterday we had some evidence that indicated that—off the top of

my head—in 1993 about 10 per cent of Australian ODA was for child based programs. Are you able to make a comment about that and the degree to which that percentage may or may not have varied since 1993? I know it is very difficult. According to the witnesses yesterday, it is very difficult to get any specific statistical evidence.

Mr Crighton—It is, I think. Even if there is a certain percentage directed specifically to children and child based projects, a lot of other projects will still have an influence on children, either directly or indirectly, so I think it is a difficult statistic. I have not heard that one, personally, so it is difficult for me to comment either on the accuracy of that or on how it has varied over time.

Senator BOURNE—The other ones that really impact on children are the mother and child projects. There is a saying, ‘if you teach a father to read, you have taught the father; if you teach a mother to read, you have taught the village’. What sort of projects does Plan carry out that are child based or mother and child based?

Mr Crighton—As you may know, Plan really is a child focused organisation. The basis of our funding is child sponsorship, but we have gone well beyond the initial cash handouts or assistance directly to children and children’s families, to include community development—particularly community development that has a positive impact on children.

Senator BOURNE—You do wells and things, don’t you? You do clean water and sanitation and so on.

Mr Crighton—We do wells, yes, we do very much broad based development work. All of our work is not necessarily exactly child focused; a lot of it is in fact more developmental and on so on, with the expectation that development will help bring about a reduction in poverty and an increase in the welfare of children.

Senator BOURNE—You can say that, too, about the really basic water and sanitation projects: that they have to be an improvement in the child’s health and welfare.

Mr Crighton—Health projects are extremely important because things like impurities in water and pollution and so on will affect children more than they will adults, generally, as they are building up their immunities. In particular, very young children—infants and so on—are the most likely to die from such things.

Senator BOURNE—It is a good point, and it is the same with things like immunisation and with health in general. The ones usually most affected by any epidemic will be the very young and the very old.

Mr Crighton—Exactly.

CHAIRMAN—I want to come back to that statistical thing on ODA. I wonder,

bearing in mind your organisation's emphasis, whether you might like to have a look at that for us. Perhaps you could take it on notice and get back to us. If you cannot get any firm statistical evidence one way or the other, then tell us, but at least give us some sort of comment as to the trends and percentages involving child based programs.

Mr Crighton—I would be glad to do that.

Mr TONY SMITH—I was trying to track down the source of the *Anti Slavery Bulletin* document. Do you know if it is from a magazine?

Senator BOURNE—It is from the Anti-Slavery Coalition, isn't it? It is here in Melbourne.

Mr Crighton—The Anti-Slavery Society, yes. In terms of the bibliographic reference, perhaps I could get back to you on that. I am not exactly sure, but we will track that down.

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

Mr Crighton—Only that I am very happy, and Plan is very happy, that this process is occurring, and we hope that you will take our suggestions seriously.

CHAIRMAN—Just before you go, in the wider area, does Plan have a view as to the administrative and legislative climate in which Australia should be working in the future? In other words, what should we be doing? Do we need a commissioner for children, or do we need legislation at the federal and/or state level? Does Plan have a view on any of that?

Mr Crighton—As you know, Plan is an overseas aid organisation, so our main concern would be with how Australians or Australian businesses and companies behave overseas. I think that would involve mainly federal legislation.

CHAIRMAN—You might add to your list of questions on notice some comment as to whether Plan has a view on administrative and legislative initiatives that might be taken to optimise the impact, domestic and international, of CROC.

Mr Crighton—Okay.

CHAIRMAN—Thank you.

[9.15 a.m.]

BEDDOE, Ms Christine, Project Manager, ECPAT Australia, GPO Box 2593W, Melbourne 3001

CHAIRMAN—We have received a short, written submission from ECPAT of 24 March. Are there any errors of fact, additions or editorial changes to that written submission?

Ms Beddoe—No.

CHAIRMAN—Would you like to make an opening statement?

Ms Beddoe—Yes, I would like to make a very brief opening statement to give some background to ECPAT Australia in relation to the context of the submissions. ECPAT Australia was launched in 1992 following a conference that looked at the involvement of Australians in child sexual abuse in Asia, particularly in relation to child sex tourism.

Following that conference, ECPAT, representing a number of various Australian aid and development organisations and other non-government bodies, developed a strategy in line with campaigning towards ending child sex tourism. The first and most significant of the initial actions was to lobby successfully for the child sex tourism legislation. Our mandate is based on articles 34 and 35 of the Convention on the Rights of the Child. We specifically work with those articles as the basis of our campaigning.

Mr TONY SMITH—I was interested in some of the points you make about this, particularly the child sex tourism legislation. You probably heard my questions about the process. It is all very well to have legislation, but, if the process is not right, then guilty people get away. That is not a comment on what happened in that case; it is just a general comment. What I am saying to you is that I have put a view forward and I think it is hardly incompatible with domestic law that we should have a similar process to what we have here, even more so if we are dealing with overseas children with cultural and language problems. Do you agree with that?

Ms Beddoe—Yes, I do, specifically with regard to the information you were presenting earlier on about giving evidence. One of the things we have found great difficulties with in Australia is when children being brought to Australia to give evidence are having extreme difficulty coping with not only the cultural and social differences but also a completely different judicial system. We need to re-visit the whole notion of children giving evidence, even though it was giving evidence on video link. Bringing children to Australia to do that for requirements of due process was an extremely difficult process for those children to undertake.

Mr TONY SMITH—One of the things that occurred to me that ought to be considered is half a step further than the domestic legislation. It could be argued that the evidence which would be the record of interview between an appropriate and experienced police officer and the complainant, which could be taken on video, should stand as evidence of the fact for the purposes of a magistrate determining whether there was a prima facie case. That way, you would not have two visits by the kids. In other words, they would not have to go through it once at committal and once on trial.

Once the amendment to section 93A of the Evidence Act was introduced in Queensland, without fail, I cannot remember one case, and I defended many, where a defendant was not committed for trial simply because the video evidence formed evidence of a prima facie nature. Unless it was particularly dubious video evidence, the magistrate inevitably and without exception, in my own experience, committed the person for trial. It gets to that higher court where the jury is to consider the case, which is always very important in the process of criminal law.

Should not a slight step forward be that evidence be taken for the purposes of committal in the forum country and then be admissible as evidence in going to the existence of a prima facie case? It is a bit of a legal question. Do you see what I am saying basically?

Ms Beddoe—I do. I agree in principle. However, I think where the fault with that lies is that quite often the Australian law enforcement agencies who are responsible for pursuing the evidence or investigation in the case—by that I am referring to, for the better part, the Australian Federal Police—often do not receive specific training on taking evidence from children. That is not their key duty.

I would have to say that, whilst in principle I agree, on the notion of having someone specific to take evidence within the country where the case is occurring or that is the home of that child, they would have to be fully trained personnel who are also trained in the cultural and social morays of that country, so as to know exactly from the child's perspective what is going on.

Mr TONY SMITH—That might be particularly hard to do, having regard to the number of countries. Appropriately trained people, such as field officers for World Vision, who are very sensitive to cultural issues, could be present. What you are saying is a very good point because the federal police, as far as I am aware, do not have a specific unit. The Queensland police have a specific unit where the officers are specifically trained for interviewing children. It is a very good point and I thank you for raising it.

Ms Beddoe—It has come to our very recent notice—meaning this week—that Operation Mandrake through the Australian Federal Police, which was specifically designed to investigate paedophile activities, has now been restructured out of existence. We currently do not have an Australian Federal Police unit specifically looking at

paedophile activity outside Australia.

Senator BOURNE—In your letter, you recommend that DFAT officers provide information on all current child sex cases happening overseas. Do you know if that happens very often?

Ms Beddoe—That is what we would like to know. I do have information that suggests it is happening. The current procedure is that consular services through DFAT are notified whenever an Australian is serving a sentence or has been arrested. The current process through DFAT, that I am aware of through consular services, is that they have no responsibility or protocol to pass that information on to law enforcement agencies. It remains within consular services.

I think we are all familiar with the fact that particularly paedophilia related child sex abuse has a high evidence of recidivism. If that information is not brought forward to local law enforcement agencies that that person can return to Australia, there is no ongoing record in Australia of the case against that person outside Australia. This is particularly the case in New Zealand where there are, I believe, a number of Australians in prisons on child sex abuse cases.

Senator BOURNE—I was totally unaware of this. Whenever an Australian has been convicted of a crime overseas, no matter what it is, the law enforcement agencies in Australia do not necessarily know that that is the case.

Ms Beddoe—It very much depends on the involvement of Australian law enforcement agencies in the investigation of that case. If there was no Interpol involvement in the case overseas or Australian agencies concerned, then that is so.

Senator BOURNE—That is really interesting. Thank you.

Mr TRUSS—I am sorry; I am late. You may have covered the issue of the commissioner for children.

CHAIRMAN—No.

Mr TRUSS—I note that it is your suggestion that there be a commissioner for children but that the post be within the Human Rights and Equal Opportunity Commission. Is it your view then that the commissioner would operate in a similar way to the commissioners in the human rights commission?

Ms Beddoe—Yes, that is the way we saw it occurring.

Mr TRUSS—And you would prefer that model to a stand-alone commissioner that looked at general issues affecting children rather than trying particular cases?

Ms Beddoe—It was the case of what we thought would have the most likely chance of occurring. Both models have very strong stand-alone benefits.

Mr TRUSS—If you follow the human rights commissioner model, you are going to be looking at individual cases, at children who, perhaps, get a spanking at home and rush off to the human rights commission for a trial. Do you think that is going to promote the welfare of children?

Ms Beddoe—The way you have just described it makes it sound trite. I do not wish to offend you regarding what you have said. If the model were developed correctly, we would not necessarily have individual cases of spanking taking up most of the time of the commissioner. I think that we need to have correct protocols in place if we are going to develop along that model.

Mr TRUSS—But individual cases take up most of the time with the commission now, don't they?

Ms Beddoe—I believe so, yes.

Mr TRUSS—It has been suggested to us by other witnesses that it would be better to have a stand-alone office that looks at the effects of legislation on children, at children's issues, and makes reports on those sorts of issues in a generic sense. That is not a model that you would prefer?

Ms Beddoe—No.

Mr TRUSS—What is wrong with that model?

Ms Beddoe—Nothing.

Mr TRUSS—Are you aware of the Queensland Commissioner for Children?

Ms Beddoe—Yes, I am.

Mr TRUSS—I appreciate that it has not been going long enough to make too many judgments, but what do you feel about it as a model?

Ms Beddoe—As a model, so far it appears to be less effective than it could have been.

Mr TRUSS—Had what happened?

Ms Beddoe—I think it is too early to make firm judgments about the particular model, but I think we do have to look at what is happening and what is not happening in

the Queensland situation and draw upon our experiences from that if we are to develop a model at the national level.

Mr TRUSS—But you said that the model has not been as effective as it would have been had other things happened. What other things and why has it not been effective?

Ms Beddoe—Not so much if things had happened. From my understanding of the Queensland situation, I believe that there is a fair amount of bureaucracy and lack of funding associated with untying all those problems. Perhaps we need to look at those administrative issues as to why it is possibly not working as effectively as its structure.

Mr TRUSS—If you are talking about lack of funding being an issue, why would you then suggest that the Commonwealth commissioner for children be attached to the human rights commission?

Ms Beddoe—One would hope that sufficient funding would be given to it to make it more effective.

Mr TRUSS—But would it not be more likely to get sufficient funding if it were a stand-alone organisation rather than being tied up with one with a declining funding base?

Ms Beddoe—That makes the assumption that there is still going to be a declining funding base to the human rights commission.

Mr TRUSS—And you do not make that assumption?

Ms Beddoe—That is not what I was asked to do.

CHAIRMAN—If I can just take that a little further. If you are pushing the Human Rights and Equal Opportunity Commission model, then implicit in that is that it has to have a statutory base.

Ms Beddoe—Yes.

CHAIRMAN—Then, bearing in mind the various interpretations of what CROC really means to Australians, how feasible is it for the federal authorities to produce umbrella legislation at the federal level to cover adequately the principles and requirements involved in CROC?

Ms Beddoe—In asking that question, I think what you have also uncovered is one of the other areas in our submission, if not in many others—the need for much greater education. We talk about grey areas of CROC. Part of that is because the wider community does not understand what CROC is all about because there has been a failure

to disseminate correct information. When you talk about CROC to taxidivers they say, 'That is bad because that means we cannot smack our kids.'

CHAIRMAN—How are we going to do that? What is involved in the educative programs? How is Australia going to educate Australians about what the CROC really entails for Australians?

Ms Beddoe—Using our own example of how we have had to educate Australians about what child sex tourism or child sex abuse is all about, we have to start right at the beginning to make sure there are no grey areas and to make sure people understand their responsibilities as parents, as carers, as teachers and as individuals in a community which respects and upholds so many democratic principles.

When it comes to children, people still feel that it is a very individual responsibility. I think we have to start, as we have done, very much from the basic principle that we all have a responsibility to protect all children, not just our own children. As such, that lays the groundwork for educational programs right through the community.

CHAIRMAN—That begs the same question as the development of appropriate legislation. If you are going to educate Australians, what are you going to educate them on, bearing in mind the interpretive question marks about this convention? I suggest that it means different things to you than it means to Senator Cooney or Mr Truss. How do you bring it together to have some sort of definitive view before you start the education program, bearing in mind those question marks, and before you develop some sort of legislation which substantiates it and backs it up?

Ms Beddoe—There are many interpretations of individual points or definitional issues, but that does not mean to say that you should throw the baby out with the bathwater, as it were. I think the majority of the convention is very clear and there are certain principles within it that are very clear. If we do not accept those principles by the mere fact that there are certain interpretive problems, then I think we are doing ourselves a great injustice.

I think the majority of people sitting in this room would understand at least the majority of the full context in which it was written. Therefore, we should be working on that as a very basic principle from which we go forward with education.

CHAIRMAN—I will give you a couple of examples that have been given very widely in evidence to this committee and were around in 1988-89 prior to ratification. They relate to articles 12 to 16 in particular and the rights of children as distinct from the rights and responsibilities of parents, and that sort of thing. On top of that, you hear: what is the child? Is the child a physical child? Is the child the unborn child? Surely some of these things, I would suggest to you, make it very difficult for some sort of umbrella legislation.

Ms Beddoe—Difficult, but I dare say not impossible. If you reflect upon the so-called difficulties of implementing the child sex tourism legislation, there were all sorts of debates and questions surrounding a number of issues, but that did not prevent it from being passed. I think that we are still having difficulties in parts of that legislation. That does not necessarily mean that it has not been effective.

CHAIRMAN—So what you are basically saying is that you think the interpretative problems can be got around. You would, of course, want some sort of legislative base for such a concept within the Human Rights and Equal Opportunity Commission.

Ms Beddoe—Yes.

Senator COONEY—You have referred to articles 19, 34 and 35. Article 34 confines itself to the sort of sexual violence against children, but the other articles do not. They refer to a wider situation of violence or even its wrong use in the workplace. Is there any reason why you confined the effort you are making to the sexual area only? It sounds like a good idea. Why don't you widen it out?

Ms Beddoe—As I mentioned earlier in my opening statement, ECPAT was set up as a campaign to end child prostitution, child pornography and the trafficking of children for sexual purposes. We draw upon articles 34 and 35 as our platform for action. We have a very specific and very limited mandate. Therefore, in giving evidence or our expert opinion, we did not want to reach into areas where we do not actually work. That is why we have been very specific about those articles as mentioned in the submission.

Senator COONEY—There has never been a temptation for ECPAT to get wider? I was just wondering why.

Ms Beddoe—Wider than?

Senator COONEY—What has led you to concentrate only on the sexual side of the abuse of children? Has there been any discussion to go wider? Has it never occurred to you?

CHAIRMAN—Basically it was an historical thing, wasn't it?

Ms Beddoe—It is an historical aspect of why we were to go—

Senator COONEY—I can follow that, but has there ever been any temptation to go wider? I am not trying to trick you. It sounds a very good idea that you should take up this cause. But, if you have a remedy or an instrument that may help in this area, has it ever occurred to anybody in ECPAT to widen it?

Ms Beddoe—ECPAT operates on an extremely limited budget and very limited resources. We have at the moment two part-time personnel. That is all. We have an extremely limited capacity to take on anything more. We think it would actually detract from our expert knowledge of these areas if we were to broaden into other areas where there are other agencies already working on it. We would not like to take funds away from existing Australian agencies which are currently working on broader issues of child abuse, of which there are very effective agencies working in that area. It would seem counterproductive to do so. We have connected to the wider ECPAT international operations, which are groups in over 30 countries around the world. As such, we have developed a very specialised base of information, and it would not appear wise to go away from that.

CHAIRMAN—Before I ask Mr Truss to ask further questions, yesterday we had evidence from World Vision. We got into the specifics of paedophilia, and the department of foreign affairs, and there is that case about which you know quite a lot. As it turned out, with a little bit of discussion in the committee, we decided that, rather than go in camera, we would ask World Vision to take a series of questions on notice. We made the point that, if they did not want to answer some of those questions, that was their prerogative, bearing in mind that in some of these areas there is potential defamation if people do not watch it. We were just trying to protect the witness in terms of that.

After listening to your first reaction to Mr Smith's questions, I think ECPAT could probably make a contribution on those questions as well. So what I think we will do is send you a copy of the *Hansard* record, which will hopefully be available in 10 days or so. We will send you a copy of that particular evidence in relation to a long list of questions that Mr Smith specifically put to World Vision. If you see fit, we would welcome your response as a specialist in this area. In many ways, they are the sorts of questions we should be asking you. You may not want to answer some of them for a number of reasons; others you may not be able to answer. Would you be happy to do that?

Ms Beddoe—Yes, that is fine.

CHAIRMAN—The other point that I made to World Vision yesterday is that if, in responding to any of those questions, you want them to be categorised as confidential—which has implications in terms of the evidence—please do that as well.

Ms Beddoe—Are these specific questions relating to the one case?

CHAIRMAN—Yes, there were two children involved. We made the point yesterday that, if it is classified as confidential, there is still a right of reply if people are mentioned. Perhaps I do not have to warn you, but please just be careful in responding to some of these questions. I am just trying to protect you regarding some of those responses.

Mr TRUSS—Following on from your answers to Senator Cooney's questions in relation to your own organisation, could you tell us a little bit about what ECPAT is?

Ms Beddoe—Certainly. I would be more than pleased to. ECPAT acts as an advocacy lobbying an education and public awareness campaign. We work with both government and non-government agencies, as well as the general public, to raise awareness and action against the commercial sexual exploitation of children, as laid down in the convention. So that is working on child prostitution, child pornography and the trafficking of children for sexual purposes.

Our range of activities is quite varied. We have a number of different programs in place at the moment. We are working with school groups at one end, right through to working with different government departments. We look at ways in which policies can be strengthened to protect children, both in Australia and outside Australia, against sexual exploitation.

We work globally in one sense, although we look very much at the role of Australia and Australians in the offences against children. So, whilst we may be looking at Australia's involvement in South-East Asia, that does not necessarily limit us to South-East Asia. I am currently working on a program looking at the Pacific Islands. We also work with our partners around the world to look at the involvement of Australians in other parts of the world.

So whilst we, on one hand, look at the prevention and the programs and the strategies and the policies that can be put into place on prevention, we are also very much working at the other level, which is looking at ways in which law enforcement agencies can work more effectively on this issue, particularly in regard to the child sex tourism legislation. We are very disappointed to hear that in one state in particular, Western Australia, resources are being withdrawn from their local child sexual exploitation unit. We are also very disappointed, as mentioned earlier, that the Australian Federal Police in Canberra are restructuring and withdrawing priority to their paedophile task force. So these are some of the things that we have been working on currently.

Mr TRUSS—Who funds your organisation?

Ms Beddoe—Fifty per cent of the funding for ECPAT comes through AusAID, and 50 per cent is to be raised through other private sources and non-government agencies. So, for that 50 per cent covering the past year, we have raised money through sponsorship by World Vision, Community Aid Abroad, Save the Children Fund Australia, National Council of Churches Australia and various other individuals and agencies.

Mr TRUSS—What sort of people are your directors?

Ms Beddoe—We operate with a board of committee that is made up of

representatives from most of those organisations I have mentioned, as well as representatives from other sectors. We have a representative of the Victorian Police Child Exploitation Unit, the media. We have—

Mr TRUSS—And who appoints them? Do certain nominated organisations appoint a representative to your committee?

Ms Beddoe—From a historic perspective, ECPAT, as described earlier, was developed following a conference on child sex tourism in Asia. It was then that a number of different organisations got together and developed the ECPAT umbrella to cover individual agencies. From that sort of historic perspective, it has now grown to encompass other disciplines, such as the media, tourism and certainly the police.

CHAIRMAN—Can I just ask one question on that: what is the annual budget, roughly? What sort of money are we looking at?

Ms Beddoe—Currently it stands at \$180,000.

CHAIRMAN—So a very small budget really.

Ms Beddoe—Very small.

CHAIRMAN—You would like to see it a lot bigger, obviously.

Mr TRUSS—On a different subject again, going back more to my previous line of questioning, you also put in your recommendations that there should be a public reporting mechanism for reporting breaches of the convention. Who is going to decide what are breaches of the convention and who is going to do the reporting?

Ms Beddoe—Given that our earlier recommendation was for a commissioner of children post, then I would imagine the responsibility for determining that would come out of that post.

Mr TRUSS—So that recommendation is dependent upon there being a commissioner for children established?

Ms Beddoe—If not a commissioner, then certainly an independent mechanism.

Mr TRUSS—All that person or mechanism could actually do would be to identify breaches that were brought to their attention, obviously.

Ms Beddoe—I would like to think that the post would also encompass a much more proactive stance as well.

Mr TRUSS—As alluded to by the chairman earlier, his first difficult task would be to interpret what is a breach of the convention and what is not, because we have heard extraordinary variations as to what the thing means in the first place. So how valuable is it to report that somebody thinks something is a breach of the convention when maybe somebody else thinks it is not?

Ms Beddoe—With all due respect, I think every UN convention has these same problems. I think that, if we get a person in the post who is particularly specialised in their understanding of children's issues, some of the problems will be alleviated because of that. They already would have a very strong understanding of the principles involved.

Mr TRUSS—For instance, we have had a number of groups argue to us that the convention outlaws abortion, yet others say pretty well the opposite. You are really dealing with a fundamental problem with understanding what the convention means. If in fact there is that scope for imagination in what it says, breaching the convention, in somebody's mind, might not be all that serious.

Ms Beddoe—I am sorry, there is no question to answer there.

Senator COONEY—If it did become a dispute on the law and the meaning, if this was made domestic law, would you have any problems with the High Court making an interpretation?

Ms Beddoe—I think I would need to think about that a lot more and look at the implications of that further.

CHAIRMAN—Any final points, incisive comments you would like to make?

Ms Beddoe—No, just to thank you for the opportunity.

CRIGHTON, Mr Donald Scott, Research Coordinator, Plan International Australia, 4/533 Little Lonsdale Street, Melbourne, Victoria 3000

CHAIRMAN—Mr Truss was not present when the witness from Plan International Australia gave evidence, and he wants to ask some questions. We have some flexibility, and Mr Crighton is still here, so he is recalled.

Mr TRUSS—There were some very interesting things in the submission, I thought. I was interested especially in your comments about child labour overseas. We hear a lot of interpretations about the convention, but I think most people would agree that it does not approve of child labour. You suggest that Australia has an obligation under CROC to ensure that Australian agencies and industries—presumably companies—apply the same environmental standards and procedures abroad as they do at home. How, in practice, could a government fulfil that obligation?

Mr Crighton—We admit that it is difficult to do that, just as it is difficult to monitor many of these things, including child labour. That was brought up before you arrived. Although it is difficult, we think it is still imperative to look at that and to try to set up monitoring services.

Mr TRUSS—Are you suggesting that we have some kind of agency that looks at the performance of our companies overseas, for instance?

Mr Crighton—Something to that degree, yes.

Mr TRUSS—What do we do if we discover an Australian company that is—let us take the worst example—employing four-year-olds in India?

Mr Crighton—Regarding the actual penalty for that, I think I will have to take that on notice. As I explained before, I am not the author of this submission. There are a few technicalities that I will have to take on notice, including that.

Mr TRUSS—You have also been bold enough to attach to your submission a list of goods that you consider to be produced by child labour. The risk with that list, assuming everything on it is correct, is that it is probably not comprehensive.

Mr Crighton—That is correct, yes. A question was put to me before in regard to how we monitor goods that are produced overseas, and I think I neglected to say, as I said in terms of environmental abuses and so on, that perhaps there has to be a monitoring service of some sort.

Mr TRUSS—An Australian company, like any other company operating in another part of the world, is subject to the law of that country. Have you examined what the impact would be on our relations with other countries if we chose to second guess their

decisions in relation to what labour policies should apply in that land?

Mr Crighton—I personally do not think that would be such a diplomatic problem, in that it would simply be about hiring practices and who Australian companies chose to hire; it would not be forcing other companies of that country to do the same, although it would be setting a good example for those companies.

Mr TRUSS—It may well be setting a good example, but I can assure you it is sensitive. I recall being at a conference a few years ago where Australia was proposing not terribly radical things in relation to the export of products coming from endangered species. We ran into enormous opposition from countries where those sorts of activities occur.

Senator BOURNE—I want to follow on from what you were saying before. When I was in Indonesia on a delegation one of the things that the government there was asking us to do was to ensure that Australian companies working in Indonesia—big ones—actually abided by Indonesia's health and safety standards. In fact, they were not doing so in some cases. The Indonesians were very upset about that because they were carrying out practices which were below Indonesia's health and safety standards. The implication we got from the Indonesian government was that when they said, 'We will take you to court and make you do it,' the companies said, 'We have got more money than you have,' which they probably did. They told them to try to go ahead and do it. They said that they had all these lawyers. They were very upset about that. Is that something that you have come across or that you would include in that section that you had in there on business practices?

Mr Crighton—I do not have personal knowledge of that particular example or similar examples. Certainly, from the point you have made and that example you have used, the first step is to abide at least by the standards of the countries we work in, if not higher standards, and Australian standards in that regard.

Senator BOURNE—One of the people we were talking to thought it would be—he was being very polite—an excellent idea if we had an Australian parliamentary inquiry into the standards which our own companies abide by when they are working overseas. The implication was that they are certainly lower than Australian standards, and, in many cases, lower than the standards even of the countries they are working in when they are lower than Australian. I know it is sensitive, but I think they would quite like it if we did that.

Mr Crighton—Yes. The example that you have used in terms of endangered species and those sorts of things is different from the employing of child labour by Australian companies.

Mr TRUSS—Do you have a view on the idea that has been put, particularly in

America, but I suspect it has also been suggested here, that companies importing goods should be required to certify that the products do not contain endangered species or were not produced with child labour?

Mr Crighton—I imagine Plan International as a whole supports some sort of certification process for consumers being able to know whether or not something is produced from child labour.

Mr TRUSS—Another option would be for an organisation like your own, since you have identified all these particular products that are made with child labour, to stand on the street corner with a sign outside the shop saying, ‘If you go in here, you’re going to buy something made by child labour,’ or put ads in the newspapers or something like that. Are you that brave?

Mr Crighton—I do not think we are about to protest outside of shopfronts, no. In relation to public awareness campaigns as to products that have been produced through child labour that are being sold in Australia, we think that educative campaigns and perhaps even advertising campaigns against those products are certainly a good idea.

Mr TRUSS—There are certain stores—without wanting to mention any names—that sell very cheap products, almost all of which are imported, that would seem to be potentially likely retailers of many of the goods that you are talking about, but there has never been any campaign to highlight those sorts of things to my knowledge.

Mr Crighton—There have been against larger companies, for example, Nike, and so on.

Senator BOURNE—Yes, there have.

Mr Crighton—It is a very difficult issue. There are many products, some of which have been produced by child labour and some of which have not been. It is important to try to monitor that to the largest degree possible. Some are always going to slip through the cracks. The best we can do is try to prevent as many as possible slipping through the cracks.

Mr TRUSS—What is your response to the alternative argument that, if you deny an opportunity for these products to be sold in comparatively wealthy countries like Australia and the United States, the children will starve to death instead?

Mr Crighton—This issue was raised before. Poverty is certainly a major contributor to the employing of child labour. The point was also made that the use of child labour reinforces this poverty—that children are not educated, do not get to lead a normal childhood and so on and do not have the same opportunities that children who are educated get. So it reinforces poverty. But certainly it is also important to address issues

of poverty in the developing world, as we try to do and as many other organisations try to do. It is important to have that two-pronged approach—to try to eliminate poverty among children and also look for legislative solutions against child labour.

CHAIRMAN—Thank you very much.

Senator COONEY—Just one quick question: I notice you have a very eminent executive director at Plan Australia in Tricia Caswell.

Mr Crighton—She apologises for not being here today.

Senator COONEY—I know she is very busy. Has Plan International Australia given any thought to the implications of the Ok Tedi case and, if you have not, I wonder whether Tricia Caswell could make arrangements to have some thought put into the issue of—

Mr Crighton—We have not so much on that particular case simply because that is not an area we work in. We have had a lot of input with similar cases, the most recent that comes to mind is a mine spillage in Marindukue in the Philippines.

Senator COONEY—But the idea of the Australian company being dealt with in Australia is pretty significant and I would like your thoughts on that.

Mr Crighton—Yes, that certainly ties very much into—

Senator COONEY—Could you give us some thoughts about that on paper? Not now.

Mr Crighton—Yes, that would be fine.

CHAIRMAN—If you cannot, then say so—

Senator COONEY—It is a big question but it is one I am interested in.

Mr Crighton—Yes, I will take that on notice.

CHAIRMAN—Thank you very much for the second time. We will not recall you a third time.

[10.02 a.m.]

McDONALD, Mr Paul, Acting Chief Executive Officer, Council to Homeless Persons, 5th Floor, 140 Queen Street, Melbourne, Victoria

CHAIRMAN—The committee has received your council's written submission. Just as a matter of procedure, do you have any amendments, additions or errors to report for the record?

Mr McDonald—Just a simple and basic one: the definition of 'homelessness' was left out, which was remiss of us. I have the definition here which I am happy to re-table.

CHAIRMAN—Perhaps you might cover that in your opening statement.

Mr McDonald—Sure.

CHAIRMAN—I assume you want to make an opening statement.

Mr McDonald—Yes. I welcome the opportunity on behalf of the Council to Homeless Persons to make a presentation to the committee. The Council to Homeless Persons is a peak organisation for homeless agencies and covers around 450 agencies across Victoria. It is also the coordinating body for the National Council for Homeless Persons Australia. The council has a range of programs which include a policy unit, Victoria's largest food bank and a rights service for young people and adults in regard to emergency accommodation and supported accommodation and looking after their rights.

What I would like to present in my opening statement is a bit of a snapshot of homelessness as it relates to rights against the background of what we would observe as, I suppose, a backward falling situation for young people and children, and some suggestions about some ways forward in regard to this convention. The rates of youth homelessness are between 25,000 to 30,000 from research. Our research also indicates—and we tabled an article from our national magazine—that, between 1991 and 1994, there is significant evidence that for the 12 to 18 age group youth homeless rates actually doubled.

Further in relation to rates for children, the national data from the supported accommodation assistance program is now recording that one-third of people residing in supported accommodation are in fact children. We would consider children and young people within a homeless condition as being probably the poorest of our homeless population and with the least rights.

Although it is not in the capacity that I appear today, I am also a member of the premier's task force on youth suicide. We are releasing our report next week. I may make some comments in regard to some of the indications around that, especially in regard to the 15 to 19 age group. You have probably received evidence in the past. But our research

has found that there were around 3.7 suicides per 100,000 in the late 1950s, whereas there are listed around 17.8 suicides per 100,000 in 1993 figures. I note that the Commonwealth Here for Life program and also the suicide task force in this state are currently looking at ways forward in stemming the rise of suicide. But the reason we are seeing these rates existing is possibly coupled with other factors affecting the child.

We would like also to make an observation in regard to child protection. In this state we have had three reports over the last four years in regard to child protection and also over the last couple of years we have introduced mandatory reporting. One of the findings of those child protection reports was that 26 per cent of children under state care for more than three years were not living in a permanent care arrangement, that about 20 per cent of those under guardianship between 1993 and 1996 were missing, and that 56 per cent of a survey of homeless population—which involved interviewing 200 of the homeless youth population within Melbourne—had statutory histories.

The recent benefits cut for the 16- to 18-year-olds hits hardest at those within statutory care because they do not live at home, are unlikely to be at school and now they are unable to receive income.

The council has another observation about children's rights taking a backwards step. I note that, in the 45 questions that the committee is to respond to, question 31 queries the Commonwealth on its contribution to education for the most vulnerable children. The council has observed that the STAR program, the students at risk program for the most disadvantaged and vulnerable children, was cut in the previous budget despite the Chamberlain and McKenzie landmark research that reports 17 per cent of 12- to 18-year-old students are at risk of homelessness. Further, it is touted that the national equity program for disadvantaged schools is likely to be cut for the next budget. Therefore, we draw the committee's attention to the rights of the child under question 31 in regard to these budgetary considerations.

Coupled with this, we are finding that, in regard to VCE education especially within this state, in the school charter there is nothing about the wellbeing and connectedness of the child within the school. The charter requires outcomes and the school can pick outcomes, but mainly they are picking, quite rightly, literacy and numeracy. There is no encouragement about social belonging or connectedness to the school. Often with disadvantaged young people, they consider the school their sense of belonging when the family is dysfunctional. It would be our observation that with the concentration on the completion of the VCE in this state, children are leaving school knowing what they are not good at rather than what they are good at if they do not actually make VCE.

What would the council recommend in our opening observations aside from the submission we have tabled to the committee? It is our observation that the Commonwealth should take a leadership role in regard to children's rights. The fact is that the pertinent practices around children are mostly state based—education, child protection and juvenile

justice. However, we are seeing a distinct need for a watchdog on the varying standards that children have succumbed to across the states, in particular in child protection.

We have asked for national child protection legislation to ensure minimum standards are met across Australia. I would suggest the committee might want to look at the same system that was adopted for the national mental health strategy in regard to meeting standards. There may be a similar system that could be considered as far as child protection across the states is concerned. Between 1992 and 1997, all states have compiled a strategy. In fact, they are evaluating it at the moment. That would be quite an effective strategy of lifting the standards of the varying observations that we would say about child protection across Australia.

We would also support the notion of a children's commissioner in the sense that a commissioner needs to play a monitoring role in regard to scrutinising laws, policies, and programs affecting young people. It would be our view that some of them, especially around the law and order legislation, are slowly shifting to the right when you look at the boot-camp legislation and the parental responsibility act in New South Wales and also at some of the suggestions that came in law and order legislation within Queensland before the state election. Those sorts of shifts were shifting slightly to the extent that they may be breaching some of the rights of the young person. We would suggest a monitoring role to bring states up to standards in regard to proper laws and policies for the young person. We also note a lack of the ability to speak on issues of concern for the child and young person, consult and ascertain views of the young person and the child and develop codes of practice covering standards of care and treatment for the child.

Finally, we also observe—and this is mainly because we run Australia's only complaint and grievance mechanism for the young person within supported accommodation projects—that the complaint and grievance area in regard to rights for the youth is unexplored, underdone and possibly could be expanded into a more formal role in other areas. We have experienced this over the last three years through the grievance mechanisms that we have implemented across supported accommodation here in this state. Those are my opening remarks.

CHAIRMAN—Firstly, your reference to the youth suicide report, does it go to the Premier's office?

Mr McDonald—Yes, that is right.

CHAIRMAN—Is it then a public document or is that dependent on the Premier saying that it is a public document?

Mr McDonald—It is planned to be a public document. The steps are that it goes to the Premier's office. He is indicating that he is wanting to debate it in parliament for a day. Of course, it will be public in those terms. It will also be a publicly released report

when the Victorian government decides to release it.

CHAIRMAN—Could you take on notice that this committee would very much like a copy if and when we are able to obtain one?

Mr McDonald—Yes.

CHAIRMAN—The second point is in relation to your concept of the children's commissioner or whatever you want to call it. You probably heard my questions to the previous witnesses. Is your concept advisory, investigative or legislatively based? Will it have ministerial or independent responsibilities? Can you outline it a bit more? Mr Truss raised this issue as well.

Mr McDonald—Yes. Our position on it is that there is a large gap in the monitoring role in the bringing in and setting of standards. The difficulty that I have in just, say, an advisory capacity is: where is the capacity to lift some of the standards that we would say are less than adequate in the area of child protection? Any sort of watchdog monitoring role is important. I do not necessarily see this role as picking up individual complaints, because I think they are state matters, and they are run by states. But I do think—

CHAIRMAN—Just let me interrupt. I should have asked you, as I have asked the others in previous days, whether you see that mechanism being duplicated at a state level and to what extent—the relationship administratively and legislatively between federal and state as well? Some submissions have suggested that we need a commissioner at the state level—all states, territories, federal government, legislation and all the rest of it. Some people would argue against that quite strongly. We are just interested—

Mr McDonald—I think a national commissioner would suffice. If you have a look, in this state, at the way youth affairs have been adopted, it has sort of moved around. It has moved in to and out of small business, and now it is not a department any more. Our concern is that the programs and responses to some of the things around young people and the child have moved from different department to different department.

I would advocate only a national watchdog possibly at this stage, because our comments relate to the discrepancies between the states in regard to the legislation and the care of the child. I would certainly not argue against the conscience of individual state commissioners but, if you are asking me as priority stepping, I would say the national would be the monitoring one in which we would be able to lift all standards within individual states and cost the lot.

I am also motivated to make some comment about the ability of the states to review their care for the child. While an Auditor-General system is in place, as it is here, then you are able to make some quite significant observations about what is happening

with child rights. The difficulty is what then happens in regard to the move up. You asked if it is an advisory or legislative capacity in this state, we would like to see indicators on what standards are not being met. What is the accountability to an advisory structure in regard to standards not being met if this commissioner was going to point out standards?

Mr TRUSS—I am interested in this issue of the interpretation of the convention and particularly in your suggestion that, if for instance the government alters the education budget, it may well be breaching the rights of the child. Also in another part of your submission, you suggest that people who claim asylum in Australia and then have children should have some automatic right to wander around the country at liberty until their case is chosen. What sections of the rights of the child convention lead you to believe that the government is breaching the convention by altering its education budget?

Mr McDonald—I am not suggesting that they are breaching the convention; I am making the observation that the education programs for vulnerable children which were in place are now not in place. I am not saying against the letter of the convention whether that is or is or not a breach; I am making the observation that, if we are going to adhere to education programs around vulnerable children, that programs for vulnerable children in education have in fact been reduced at a Commonwealth level. That is my observation.

Mr TRUSS—But the amount of money spent on education has increased?

Mr McDonald—Maybe I had better point out where I am coming from. Representing the Council to Homeless Persons, I am advocating the rights of disadvantaged children. I cannot actually talk about the general population but I can talk about the disadvantaged end of the market in regard to both children and young people going to school. Now, within that area of the population, although education may have increased in the mainstream level, the services for the students who are disadvantaged or at risk have in fact reduced at a Commonwealth level.

Mr TRUSS—I think that is open to disputation but I do not particularly want to follow that one through as much as the relevance of the rights of the child convention in this matter. You could argue that, if \$1 billion was spent on homeless youth for instance, then you are breaching the rights of the child convention by not spending \$2 billion; and if you got to \$2 billion, then it should be \$4 billion.

Mr McDonald—But I am not introducing a financial factor here. What I am introducing is that programs that are specifically attributed to vulnerable or at risk young people or children, we believe that those programs should be maintained because they need more opportunity—

Mr TRUSS—Even if they are not working well or the government of the day believes that another program might work better?

Mr McDonald—In regard to the students at risk program—the STAR program that you are probably familiar with—no evaluation was undertaken in regard to that program, and a report had just come out prior to that explaining its success. What I am saying is that, whatever the budget—it does not matter whether it is \$1 billion or \$100,000—we need to maintain specialist programs for vulnerable children or disadvantaged children because there needs to be an emphasis on that to maintain those children at school. You cannot take a mainstreaming policy about all in, everyone is in, without taking some discerning programs to the most disadvantaged.

My observation is not about the financial. My observation is not about the convention in the sense of breaches. My observation is that for vulnerable children in Victoria and in other states a Commonwealth program keeping those vulnerable, disadvantaged children at school was removed at a Commonwealth level—not at state level, at a Commonwealth level. That is my observation.

Mr TRUSS—You have also indicated that the rights of the child convention gives children a right to accommodation.

Mr McDonald—I would say that the homeless young person and the homeless child are possibly the individuals in the community with the fewest rights. They have certainly got the least ability to access in either mobility or financial terms.

We have seen this observation about the lack of accommodation in regard to young people going up on bail applications at court. What has been found, and it is evidence that we are looking into at the moment, is that bail applications are actually young people being remanded rather than accommodated out in the community because there is no available accommodation out in the community.

It moves to a point then when you start saying, ‘We need to guarantee on a bail application that accommodation can be found,’ rather than the discerning choice if no alternative accommodation is found then they must be remanded. In that sense, and that is one example of what I would be arguing, guarantees of emergency accommodation are needed because the results are custodial outcomes.

Mr TRUSS—Again related to the convention, how do you compare the obligations of the state to provide accommodation for children and the responsibility of parents to also care for their children?

Mr McDonald—In the cases of the young people I am talking about, either the parents do not want them home or they cannot go home or there is no home to go back to, and so someone needs to put their hand up. In regard to state statutory care, statutory care for young people has actually dropped by half over the last four years, so there are fewer young people in statutory care. Here in this state there is the Children and Young Persons Act, which got tabled in 1989. That resulted from a range of young people dropping in

statutory care, but an increase of a voluntary group of young people who could not get into statutory care but then still could not go back home because their circumstances did not meet statutory care applications.

The unfortunate fact is that you do have those young people who do not have an ability for parents to absorb them or take them back. That is an unfortunate reality we have to face.

Mr TRUSS—Do you think the convention places an obligation on signatory countries to support parents to assist them to provide housing for their children and to keep their family together?

Mr McDonald—In my reading of the convention, I think so, but I would also say that when that does not happen we have to have some sort of alternative net to absorb those young people.

Senator BOURNE—I want to ask about something completely different. I notice that you have got a lot of statistics in here—Australia wide as well as from Victoria—from Homeless and Family Violence Services Internet information, which is abbreviated to HFVS. They look to me as if there is probably more in there that would be useful to us. We could pick that up on the Internet, I take it?

Mr McDonald—Yes. I would suggest also the committee would like to have a look at the first six months of the National Data Coordinating Agency data on all individuals, including children and young people, that are residing in the supported accommodation program under the supported accommodation assistance program, which is the national Commonwealth-state funding arrangement for any homeless service. They have just released their first six-month report of state by state data as well as national data. You might want to pick that up.

Senator BOURNE—That would be useful. Where could we get that from?

Mr McDonald—I will furnish you with the address.

Senator BOURNE—That would be terrific. If you could also give us the Internet address of HFVS, that would be terrific.

Mr McDonald—Yes, we will do that.

Senator COONEY—Thank you very much for the submission.

Mr TRUSS—I want to mention briefly the issue of asylum seekers and your comments that in instances where there are minors both the minors and the applicants for asylum should basically be allowed to live in the community while the decision is being

made. Bearing in mind that only a very small percentage of those who claim to be refugees in fact actually have their cases proven, is that a fair and reasonable thing to suggest?

Mr McDonald—Is that from my submission?

Mr TRUSS—Sorry, I am wrong. I have skipped over a page. I take it back.

Mr McDonald—I was wondering how that one slipped in.

Senator COONEY—I notice Mr McDonald stayed well within his brief—very smart.

Mr TRUSS—You do say that access to emergency housing provision be made a legal right.

Mr McDonald—Yes, that is right.

Mr TRUSS—It concerns me that somebody might be able to rush off to the court and say, ‘The government has a legal obligation to provide someone in my circumstances with a house.’

Mr McDonald—I think there is a layer of assessment of circumstances that needs to take place. I gave you an example before where there is none and what the choices are as custodial residing. I think we need something a lot stronger than, ‘If we cannot find any accommodation it looks like this person has to be remanded.’ I think we need to mobilise and motivate ourselves in cases where it asks the community, through the courts, actually to create accommodation where the court sees fit that a person could actually reside in the community on a bail application. That would be one example that I would cite to you.

Senator COONEY—The other thing that should be said is that no state court can impact upon government as much as the High Court can on the Commonwealth parliament.

Mr McDonald—Yes, that is right. I agree with that.

CHAIRMAN—Thank you very much. If you would take those one or two things on notice and get back to us, that would be good.

Mr McDonald—Yes, no problem.

[10.28 a.m.]

HERRING, Ms Sigrid, Manager, Blacktown Family Support Service (NSW), Save the Children Australia, c/- PO Box 1281, Collingwood, Victoria 3066

ROSE, Mrs Wendy, National Director, Save the Children Australia, 66 Sackville Street, Collingwood, Victoria 3066

CHAIRMAN—We have received your written submission of March 1997. Do you have any amendments, additions, omissions, errors that you want to reflect in the *Hansard* record?

Mrs Rose—In the document that we have just handed out to you there are a few things strengthening what we said in our submission.

CHAIRMAN—We will come to that shortly. Are there any alterations to the first document?

Mrs Rose—No.

CHAIRMAN—This is a supplementary submission, is it?

Mrs Rose—Yes, it forms the basis of a supplementary submission.

Resolved (on motion by Mr Truss):

That the supplementary submission No. 80A date 10 July 1997 from Save the Children Australia be received as evidence.

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

Mrs Rose—Yes. It is important to say that Save the Children is an international organisation that has been in existence for a long time and has had the basis of rights as its foundation. I think it is important that, although Save the Children is very small in Australia, it is a large international organisation that has adopted the Convention on the Rights of the Child as a basis for all the work it does in advocating on behalf of children.

Another important point to make is that Save the Children has a mandate for children everywhere and so most Save the Childrens internationally and in Australia work with their own children as well as children overseas. The work that Sigrid Herring is doing in family support services in Blacktown is an example that although we are probably more well known for our international dimension and our work overseas, we are doing work for children in Australia.

In relation to the issue of the rights of the child, some of the information that has caused concern for people in Australia has been related to parental rights. Often organisations are accused, particularly welfare organisations, of being quite left and radical. Save the Children is a very conservative organisation. We have in the past been headed up by such people as Sir Rupert Hamer and Kathryn Greiner—a very strong conservative element. I say that because in my dealings as an aid agency I tend to find that people dismiss comments that we make because somehow it is perceived that we are coming from the radical left.

Senator COONEY—Would Sir Rupert Hamer be happy to be described as right wing?

Mrs Rose—Probably not, but I am not even trying to describe right wing, but I think—

Senator COONEY—Would he prefer to be described as a very decent human being?

Mrs Rose—That is probably right. CROC is not a back door to trying to deny parents their rights. We believe what the convention does is make it crystal clear that parental care is the best sort of care for children. We are concerned that some of the elements related to the Teoh case have brought a rather reactionary view that somehow the international community is trying to dictate to Australia. I do not think it can dictate. I think the convention is really about moral pressure. I would have thought the events in Australia recently with so many issues relating to children and their care, be it within the family or within the state, means that we do need some uniformity and some clear direction. I would like to pass over to Sigrid to talk about support for parents.

Ms Herring—We have some concerns that in the care and protection of children, families are not supported to the degree that they need to be in order to do their job in rearing healthy children. We have concerns that family support services in New South Wales see two categories of families. Those two categories are families that are court ordered to attend the family support service and families who are motivated to make changes in their child rearing, but who have some support structured. There is a missing element of families: those who have no support structures and who are yet to have community service or government intervention in their child rearing. An example of that is the children of methadone users who are rapidly learning not to hear and are put at risk of abuse and neglect by their parents' drug use and criminal activity, poverty and social isolation.

I want to make the point that a commissioner of children, a national agenda for children and an office for children is an important thing to have. Many people working in welfare agencies for the care and protection of children and in supporting families were working with bits and pieces and there was no central office or a place to take that work

to. We were working in isolation and often fighting for resources. This tends to enhance the powerlessness of those working for children in the child protection industry. This lends power to abusers and it lends power to people who do not value children or have little value for them, but there is a cost to that lack of networking and connection. It is poor business sense for each of us to research and promote parts of an overall solution.

Mr TRUSS—You might like to indicate to the committee whether you have a preference for a children’s commissioner, an office for children, a branch of the human rights commission dealing with children, a branch of the office of the family dealing with children or whether you have thought through what is the best way of raising the profile of children’s issues at the national level.

Mrs Rose—Our board has a resolution about the commissioner of children being an entity that is separate. In other words, that it has—just like the Auditor-General; I do not quite know how to explain it—independence so that it is able to look fearlessly at issues and not be bound by being linked to a bureaucratic institution.

CHAIRMAN—Is that at a federal level or state and federal level?

Mrs Rose—From Save the Children Australia’s point of view, we are looking at a national commission for children.

Mr TRUSS—Do you think the states should also have children’s commissioners?

Ms Herring—Yes, I think that that is helpful in terms of building a network from a national level and then bringing it out to the states.

Mr TRUSS—Except the only one we have got anywhere at the present time is in a state. So I guess it has not really worked as a network-type thing, has it?

Ms Herring—No.

Mrs Rose—I think the problem was raised at the recent conference in Brisbane on the convention and Australia’s response. There is a commissioner for children in Queensland, which is part of the government—

CHAIRMAN—He reports to a minister.

Mrs Rose—He reports to the minister. I must say that people felt that fearless promotion of children’s rights in the context of independence could be seen to be missing.

CHAIRMAN—What about the New Zealand model? He spoke at that conference.

Mrs Rose—Yes, he did speak at that conference. I gather that the New Zealand

model has worked, but it has also had limitations. There is no doubt about that. Again, I am sort of bound by my board's recommendation, but I also have to say that it has crossed our minds that a children's commissioner in the human rights area could be one way of doing it which would maintain its independence from government.

We believe it has to be independent from government. I think that issues of children are too valuable to be used as a political tool or to have people or a commissioner bound and not feeling free to speak out on things because it might embarrass the government. I think it is really important for that principle to be adhered to.

Mr TRUSS—But if the commissioner is not reporting to a minister—that is, seen to be separate—he is also not of the government and, therefore, not very influential with the government. He has to rely on the mounting of public opinion to achieve anything.

Mrs Rose—I still think that in a democracy there is value in doing that. It also sets the scene for others to be able to bring pressure to bear. My worry is that there are instances where one would have hoped that there would have been a strong push but that has been constrained by government opinion of the day.

Mr TRUSS—Do you believe that the commissioner or the network of commissioners, whichever it may be, should deal with individual cases or deal with generic issues?

Ms Herring—Both.

Mrs Rose—I think they would have to do both.

Mr TRUSS—So do you envisage the commissioner investigating a case, calling witnesses, having hearings and coming to a conclusion that someone's rights have been infringed in a particular incident?

Mrs Rose—Yes, I would think so. You would have to come to that conclusion at some point. There is no point in having a situation where a gross violation or something that has obviously affected a child deeply is not able to be investigated.

Mr TRUSS—Do you think there is a risk that there might be hundreds and thousands of complaints to such a commissioner and, if they are all to be dealt with, he would end up with a cast of thousands?

Mrs Rose—One would hope that, if one puts a framework in place of consistency of laws within Australia—I do not think of a commissioner in isolation—then this would not be the case. I am not suggesting that a commissioner should be stuck on the top of something. I guess what we are also trying to call for is some consistency. I think Sigrid is saying that, in the work that we do with children, there are such broader inconsistencies

about responses. One is hoping that you would have a stronger framework so that you are not talking about hundreds and thousands of people complaining.

Mr TRUSS—Do you envisage children taking their parents to the children's commissioner because of a grievance about something trivial like not being able to go to the movies until they are 15 years old or about their being denied a proper education because their parents have devoted resources to something else?

Mrs Rose—I would expect in a situation like that that the judgments will be made of course not on trivial issues. I think those who are against the convention use such trivia. I remember one person at the time the convention was being put to the UN saying, 'I won't be able to go into my child's room.' I think the convention has been reduced to trivia and one has to see the convention in a global context.

I am sitting here understanding that this is about Australia, but also saying we have to put in context that our children do not live in isolation in the world, that a lot of what we do in Australia and with our children is also connected to other children of the world, and that this convention is primarily for those children who are abused, who have no voice. You do see an Australian context, where even within the family, a parent is not always right. There are cases where children do have rights regarding parents if they are being very badly abused.

I would hope that there would be some ability to screen and that we are not talking about a child coming up and saying, 'I did not get my pocket money this week.' This is about serious abuse. A child should not be denied education, a child should not be denied health. If this convention is going to mean anything morally or legally, it also has to look at the bigger picture because everything we do in society—whether it be women's affirmative action or anything—can be reduced to trivia. I really feel that in our society we have put lots of effort into anti-discrimination, but if you try to look for something where children are really focused upon, it is very hard to find, as Sigrid has said.

Mr TRUSS—Do you believe that children appearing before such a commission or making complaints should have legal representation?

Ms Herring—Yes.

Mr TRUSS—Should a lawyer, as the third party, be able to take action on behalf of the child to protect their rights?

Ms Herring—I think that children are entitled to legal representation and that society and the adults in our society have responsibility to take action on their behalf that will protect them.

Mr TRUSS—I must ask a further question though. How you are going to keep the

trivial cases out? Who is going to make a judgement about what is important and what is not? Are we going to have cases about what should be in the school curriculum on the basis of the child's rights? Are we going to have cases about what standard of care should be provided for each child in Australia? How are we going to decide? I do not know of anybody who thinks their own case is trivial. It is third parties that think it is trivial usually.

Mrs Rose—When cases get to affirmative action or racial discrimination, people investigate how truthful they are and whether they occurred. I do not know if I am misunderstanding your question. I cannot see that a serious Office of Children or Commissioner for Children would pick up a child talking on issues like that. It is quite evident, because representations have been made from children's organisations, that there is something lacking in the service to children. I can quite see that an office may make research and investigation into that. But, taking it down to the personal and the individual, I just would not have thought that that would be the case.

Ms Herring—There are already models, in terms of people taking complaints to a commission or a body, where there is an intake system and those things are categorised. Those things that are easy to access and follow and might be trivial to people could be off-loaded or maybe dealt with by a part of that office or commission for children, where individual children's complaints could be looked at. There is a hotline for kids operating in Sydney. Perhaps a model like that can be incorporated where people and children can take their complaints and they can be assessed in order of priority and need.

Senator COONEY—Can I just clarify this issue of how you envisage the commission. To be fair to governments right across the board, over the years they have set up different structures, and I just want to see where you would fit the commission. You have the Auditor-General, whose only power really is to investigate and to make public what is going on. He or she cannot do any more than that. The Auditor-General simply says, 'Here is my report. This is what has gone on in that particular section.' That is it. It is up to the government, the courts or the community to do something. It is simply a reporting mechanism.

Then you have somebody like the ombudsmen to whom you can go. They can take particular actions but they do not have any sort of legal authority. The ombudsmen can simply say to a bureaucrat, 'You should act differently.' Then you have structures like the AAT, where you have a hearing and it can direct people what to do. Then of course you have the courts that bring down the full force of the law.

Looking across that range of instruments whereby rights can be protected or helped, where would you put the commission in that range? Would you like to think about that and come back to us?

Mrs Rose—Yes, I would rather take that on notice.

Senator COONEY—That would help me a lot, I must confess. I could then see the sort of function that you would want this commission to perform. Each has got its merits and each has got its problems but it is simply making things patent. So the commissioner might say, ‘This is a bad sort of situation that children are being exploited in the work force, et cetera,’ and that is it. That is a very important function, whereas the ombudsman might take it a bit further and say to the government, ‘You should do something about this.’ The AAT might then direct something to be done. The courts can take it a bit further.

CHAIRMAN—If you could examine all the options and give your reasons why you come down with one preferred model, that would be very helpful.

Mrs Rose—Sure.

Senator BOURNE—Can I ask about article 18, the support for parents. You were mentioning earlier that there is no authority for families at risk to use the services if they do not choose to. What would you envisage as being a good model to use to get people into the net when they need it, even though they had not chosen to go in there?

Ms Herring—I think the statutory authority that community services or the government has over people who have abused their children needs to be extended so there is more power over people who have the potential to abuse their children. Instead of waiting for an abusive situation to happen, we can look at families who have more potential to abuse. We can then call them a family support service or a family support policeman, if you like. There is someone you can take an individual family situation to and say, ‘These people need some help in understanding that, if they proceed on this course of action, this will happen and these will be the consequences.’ But there needs to be some statutory authority to perform that.

Senator BOURNE—How would you identify those families? You have mentioned that methadone users were in a high risk category.

Ms Herring—There is a lot of research. The greatest categories that the research points to at the moment are people who were abused as children or who live in domestic violence situations. They have the highest potential to abuse. Sole parents are the third highest group of people, and the second highest group were people who were over-anxious about their parenting role and whether or not they would be able to succeed in that.

Senator BOURNE—Over-anxious parents would be difficult to identify though, wouldn’t they? You would identify almost every parent I know.

Ms Herring—I guess so. Perhaps if we spend a bit more time with people during pregnancy and at hospital just after birth, we might be able to ascertain which parents and which families might be more at risk than others. What happens at the moment is that

women giving birth are coming in and then being taken back home much quicker than they used to be. There is less support in the hospital situation, and there is more ability for people to fall through the net.

Senator BOURNE—Yes. We had some evidence yesterday from one woman who thought that people should be encouraged to use parenting programs and that there should be some sort of support mechanism in hospital. She thought that the two to three days was a bit inadequate for actually finding out whether somebody would be a useful parent or not.

Ms Herring—Women and men are in no state at that time to look at those issues. They are the issues that will come up in six weeks time or when they take their baby home out of the safety of that hospital arena. That is when problems will occur. As people move away from the support of the hospital, they become less able to call for help when they go into their home, so they become even more isolated when they reach home.

Senator BOURNE—In evidence you mentioned where you were taking those statistics from.

Ms Herring—I took those statistics from the last Australasian conference on child abuse and neglect that I went to.

Senator BOURNE—Could we get a copy of that?

Ms Herring—Yes.

Senator COONEY—Could we get a statistical breakdown of how many children cry at night after being brought home from hospital?

Senator BOURNE—All of them—100 per cent.

CHAIRMAN—It would be helpful if you could give us whatever statistical details you think are appropriate under the circumstances. I want to come back to the supplementary submission in which you have indicated that, like all conventions, CROC is a framework. By that, do you mean that CROC is a statement of principles?

Mrs Rose—Yes, I do.

CHAIRMAN—Would you also acknowledge that those principles, the articles, are open to a lot of interpretation?

Mrs Rose—They evidently have been, yes.

CHAIRMAN—You may have a particular interpretation, but do you acknowledge

that others have other interpretations?

Mrs Rose—Sure.

CHAIRMAN—Are you aware that, whilst many countries have ratified this convention, many of the countries from the Holy See down through lots of other countries have either declared and/or reserved in certain areas? The bottom line for a lot of them—irrespective of the fact that, yes, they have ratified—is subject to the constitution of country X, subject to Islamic law and subject to the laws of country Y. Are you aware of that?

Mrs Rose—Yes.

CHAIRMAN—That brings me onto your comment with which I do not agree—and I would like you to make some more comments on it—in that you have said we must say that the current climate here is reactionary. You were referring particularly to the Teoh case and the post-Teoh international instruments legislation in terms of overcoming the perceptions that you referred to. A lot of people in this country take the view that, rightly or wrongly, simply because New York or Geneva dictate, Australia follows. All that legislation is attempting to do is to overcome some of those perceptions and to make the point that we need to engender a lot of this, ingrain it in domestic law, not to fly in the face of what the convention is all about. I think, with due respect, you have misread it.

Mrs Rose—I guess what I am saying there is that with any international treaty or obligation there is education. I am not sure that, as an organisation, we are trying through our own resources to educate people about the convention. You may well say that it is an interpretation, but there are very important elements in the convention that are enshrined there in terms of the care and protection of children.

While I do respect that other people do have those views, I think in the context in Australia the convention has been focused on, and particularly drawn out in, the situation of international treaties and the debate that has gone on about, ‘We are not having the UN tell us what to do.’ All I am saying is that this should not be lost because of the very important and central role children play in our lives. We have a responsibility. I suppose every day, as a society, we are seeing that we are failing in this rather badly.

On the one hand, yes, there is a debate about UN treaties and about Australia’s responsibility and whether we are being dictated to by outside views. But, on the other hand, here is a very strong moral obligation to consider this convention, to consider also in Australia—because this affects me as a national director, and I am sure it does in federal-state relations—that we do have many inconsistencies in our law. It costs us money because they are not consistent.

I now find all of those things on my board. We have businessmen who keep saying

to me, 'We have to be cost effective. How much does it cost to save a child?' It is really important not to lose some of the essential moral pressure. So I would be saying that the government should be educating people about it. While I understand that other countries have reservations about things, they should not be thrown out with the bath water.

CHAIRMAN—I do not think anybody in this committee would disagree that there needs to be a lot more education on it, but the basic question is: educative in relation to what? This is where the interpretation still rears its head and has in the context of this inquiry. It did in 1988 and 1989, prior to ratification, and it would appear to still be doing that.

You can educate people. Whether it is articles 12 to 16, which keep on coming up, or article 5—some of these areas which are fundamental to this convention—and it comes really to the development of a commissioner, particularly if you are going to have a legislative base to that, how do you develop a piece of legislation where there are still major question marks about what it really means?

Do you think that an umbrella piece of federal legislation is possible on that, bearing in mind all of these uncertainties? Do you think there should be a combination of some sort of umbrella legislation—whether it is a matter of principle or whether it is something that deals with those principles—together with state legislation for all the various areas affecting children, whether it is welfare or whatever?

Senator COONEY—Can I just ask a question in relation to that?

CHAIRMAN—Yes.

Senator COONEY—I do not want you to answer it now unless you can but, following on from what the chairman said, one of the difficulties the government faces is that the Australian government is part of the United Nations, which is a collection of governments. It makes decisions, which I have no doubt it agrees with, and the person on the spot signs it. It is ratified later on by the government. I think what the government is really saying at times is, 'Yes, we agree with this, but we might not necessarily have a constituency that agrees with it. We need time.'

What we would like to do is to say to the international community, 'Yes, we agree with these principles, but we really need time to make sure that it is properly understood in the country, not only through education but just the general process of talkbacks and what-have-you.' The government signs it, and it is then ratified. Then they say, 'You have ratified it. Therefore, you should follow it because that is what you have said you would obey.' Then the government says, 'We are not in a position to do this. We will introduce legislation to indicate that, even though we have signed it and ratified it, we are not yet ready to implement it.'

CHAIRMAN—If you want to make a comment now, that is fine, but you can take it on notice. It affects your optimum model in terms of the commissioner.

Mrs Rose—Yes.

Senator COONEY—What does the Save the Children Fund say about that? Does it say, ‘Yes, this is hardline stuff. As soon as you ratify it, in effect that should be law.’ Or, as the High Court said, should it have the effect of guiding the government’s decision? What does the Save the Children Fund say about that and can they think of any alternative? It makes it terribly hard politically for governments when they are told to follow the line that they have signed on. That is an issue that has to be raised and answered.

Mrs Rose—I will certainly take that on board. We are a very practical organisation and we tend to not necessarily have policy that is stuck out there. We tend to say that we are involved in our work overseas, or even here, on issues like child labour and sexual exploitation. In a sense, our policy arises out of that.

One thing I will say in answer to you, Mr Taylor, is that there is no focus in Australia. When you have something like the convention it is within the department of foreign affairs. When you try to write something about children, they are scattered right across. It is really important that we have some focus, something that takes responsibility in terms of where you go. You can go to the Office of the Status of Women, but where are children seen even visibly within our national psyche in terms of care?

CHAIRMAN—As I indicated yesterday to a number of people on a number of occasions—and perhaps I could take 60 seconds to repeat it today—if this convention were not ratified, prior to the ratification this committee would be heavily involved in taking the sort of evidence that you are giving. Our function is between the signature and the ratification and having to report back to government as to whether or not it should ratify.

The committee is only about 12 months old, but we have done a lot of work in that time on 70 or 80 conventions. However, in this inquiry we are endeavouring to look at the treaties that are extant and this is one of about 1,000 treaties that are extant. We are entitled to look at whatever we want to as being notionally tabled.

This is a different inquiry in that we are trying to look at our track record, explore the issues as to whether, when we did ratify, we ratified with justification and what we can recommend for the future to optimise what is in the spirit and intent of that convention in domestic and international terms. As long as you understand that that is where we are coming from.

I should particularly say to you—and to any people who are here today—that we

do not have an agenda. We are not a voice of government. We are a joint standing committee of both houses and of all parties, and we will make recommendations to the government on the basis of the facts. There is no agenda, which is the idea that some of the non-government organisations have been attempting to push over recent months after this inquiry was announced. That is why it is so important that we get views from specialist organisations like yours and that you make some objective comment about the very real problems and issues associated with children.

Mr TRUSS—I have two more lines of questioning. Firstly, being an international organisation, what advice can you give the committee about the value and achievements of the UN Convention on the Rights of the Child? We have heard today of cases where there are still children working at the age of four and that there are still all sorts of atrocities going on around the world. What actual achievements can you attribute to the UN Convention on the Rights of the Child?

Mrs Rose—I think in any situation you have to have benchmarks and, if we are talking about the developing world, it is extremely important that there is a convention. We work in Bangladesh, Cambodia, Vietnam and the Pacific. It is very important to have benchmarks, even if you feel that governments do not have the will to implement them. The issue of the age of child soldiers has been a really important international discussion. It may not as yet have been able to change much, but I think things are moving in Pakistan and even in Bangladesh on working children. The debate about child labour versus working children and those sorts of things are starting to affect our own development work.

I do not have all the statistics here to be able to say that there has been an absolutely incredible change, but there is debate in those countries. There is debate in Bangladesh and Vietnam and you cannot say that governments may be being hypocritical. There are a lot of debates taking place about levels and benchmarks for children. That is why I think we have got to have standards. When I look at it from Australia's point of view, I might say that the society in Australia is a totally different one, but I am beginning to change that view. I think that anyone who works in the developing world and who works in Australia as well is beginning to see that the gaps are closing.

People talk about street children always being on the streets of the developing world. Well, they are not; they are in our world, too. Drug abuse, working children and the sexual exploitation of children—everyone thought that that was on the streets of Cambodia or Laos. It may be degrees, but it is very important to reflect on that. When you have something like an international benchmark, that at least is some sort of signal that workers, even like ourselves, can start to say to governments, institutions or whatever, 'You have a responsibility. Here are some benchmarks that the international community have said are some standards.' I guess that is not a very adequate answer, but that is how I see it.

Mr TRUSS—I have asked the question a number of times, and I generally get that sort of an answer, that there may be some perceptions around that things might be better, but there is still a long way to go. If in fact there have been improvements, how much of that is attributed to the decency of mankind and how much of it is attributed to a document signed in a faraway country? Would the world be a different place if we had never had a Convention on the Rights of the Child?

Mrs Rose—I think it would be a sadder place. Why was our founder, Eglantyne Jebb, gaoled after the Balkan war of 1919? She was gaoled, because she said we had to look after all children and children were the enemy. If citizens and people had not seen that in our society life needed to get better and that there were people in our society who needed that support, there would not be organisations like the Save the Children Fund or many others. I think they are very important reflections of community concern. They are people who give of their time and energy voluntarily. They try—however airy-fairy it is—to make a better world. If then you can have governments and international communities saying, ‘We agree that there are some benchmarks that are important signposts’, then I cannot see that they are doing any harm and I can only see that they can do good.

Mr TRUSS—I may conclude by asking a question which I accidentally asked of the wrong witnesses last time. In fact it came out of your submission in relation to refugee children and your view that, if somebody claims asylum in this country, their parents and all the unaccompanied minors should be allowed to wander around the country while we make up our minds about whether or not we are going to accept them. Bearing in mind that we do not accept very many of them when it comes to the crunch, do you think that is an obligation under the Convention on the Rights of the Child?

Mrs Rose—I think it is very important that Australia, in its dealings with refugees, reflects on the process that it has been engaged in. In the past, there have been many years before decisions have been made by the government and, because of that, children have been in detention and some have been born in detention and have continued in that over a long period of time. All the Save the Children Fund is saying is that that is not a good environment. There are European countries that release children in a sort of bailed condition so that they can lead pretty normal lives while they are in this long process. As for children who are locked up for a long time, we have seen that where children are put into gaol with their parents in overseas countries they do suffer mental stress and difficulties.

We have looked with great concern at the length of time Australia has taken to process refugee applications. In that case, those children have been caught with their parents through no result of their own actions. They have been caught in that situation. We would hope that there was a better way of doing this.

Mr TRUSS—Surely the better way would be to process the applications faster rather than, say, have them live in a community for four or five years and then send them

home to where they came from.

Mrs Rose—Yes. I have not taken up that one. I guess the refugee council and perhaps the Australian Council for Overseas Aid would have a lot more to say on that. Our board has tended to focus, particularly in Western Australia, on this because of the Port Hedland situation. We were extremely concerned about this. We are not raising it in that context, but there should be other solutions. If the solution is that we have to look at our obligations under the refugee laws and try to speed up the processes that is an area of action we should take.

CHAIRMAN—Thank you very much.

[11.14 a.m.]

PURCELL, Mr Marc, Human Rights Policy Officer, Australian Council for Overseas Aid, Human Rights Office, 124 Napier Street, Fitzroy, Victoria 3065

CHAIRMAN—The committee has received a submission from ACFOA dated June 1997. Are there any matters of detail, amendments and submissions that you want to make for the record?

Mr Purcell—I have taken the liberty of giving you some photocopies of the discussions last year between the Joint Standing Committee on Foreign Affairs, Defence and Trade, the Human Rights Commissioner, Chris Sidoti, and also the president of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, because they cover some of the material on problems protecting children in Australia that this committee is looking at. The Joint Standing Committee on Foreign Affairs, Defence and Trade recommends that the Australian government introduce legislation to incorporate the Convention on the Rights of the Child into domestic law and that the Attorney-General's Department investigate the feasibility of establishing the position of a children's commissioner within the Human Rights and Equal Opportunities Commission.

CHAIRMAN—You have no amendments to your initial submission?

Mr Purcell—No.

CHAIRMAN—But you would like this summary of the Joint Standing Committee on Foreign Affairs, Defence and Trade of March 1997, reflecting the report of public seminars on 20 and 25 September, to be an exhibit?

Mr Purcell—Yes. I would also like to commend this book *The International Law on the Rights of the Child* to you. Unfortunately I have only one copy but I commend it to the secretariat.

CHAIRMAN—We will use that as an exhibit. For the benefit of the record, would you read out the title, the publisher and the editor?

Mr Purcell—Yes. The title is *The International Law on the Rights of the Child* and it was prepared and edited by Geraldine van Buren. Martin Nijhoff is the publisher, and it came out in 1995 in The Netherlands. It covers many of the issues, particularly those of parents' rights versus children's rights, that this committee will be concerned with.

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

Mr Purcell—Yes. The Australian Council for Overseas Aid, ACFOA, is a

membership body. It is made up of some 95 different community organisations concerned with overseas development aid. Some of them are Save the Children, World Vision, the National Council of Churches in Australia, CARE and Caritas. Many of these agencies are concerned with the rights of the child and protecting children. ACFOA is not a specialised agency dealing with children as such, but we are hoping that we can share with you some of our understanding of the UN processes, of human rights and about how the Convention on the Rights of the Child is implemented in Australia, which might allay some fears that have been expressed in the community.

We welcome the treaties committee's scrutiny of legislation. As you must know, it improves what was previously quite an untenable situation where treaties were approved by the executive and presented in parliament very rapidly without time for anyone really to go through all of their implications. So we welcome also this inquiry on the Convention on the Rights of the Child.

I would like to talk very briefly about why we bother with treaties at all. The Convention on the Rights of the Child is actually one of the most popular human rights treaties. It has been ratified by 188 countries. There are only six countries in the world that have not ratified it.

CHAIRMAN—The figure is 191 now.

Mr Purcell—There you go. Really these human rights treaties are the world coming together to try to get together basic minimum standards for the protection of different rights. Why does Australia involve itself in this? I will quote briefly from a statement made by the Minister for Foreign Affairs, Alexander Downer, approximately a year ago, on 30 July 1996:

. . . the Australian Government's policies on human rights are based on the Universal Declaration of Human Rights and subsequent international human rights instruments which enshrine the principles of universality and indivisibility . . . Australian policy, therefore, does not presume to hold other nations to standards that we do not apply to ourselves. . . the Government believes that attention and consideration should be given to the promotion, protection and implementation of all human rights.

.
The Government seeks to make a difference on human rights, rather than merely to posture. Australia will employ a variety of approaches to human rights issues so that it achieves the best possible result for its efforts.

I will leave it at that and perhaps I can answer any questions.

CHAIRMAN—Let me just cover the first point about the ratification by 191 countries and make the observation that, yes, it is almost a record number in terms of ratification but, as was discussed yesterday, what you have got to look at are the countries which have ratified and, in so ratifying, the reservations that some of them have made or indeed that some of them have signed without reservation and without declaration. If you

take, for example, some of the Islamic countries that have ratified, it raises a few question marks if they have ratified without reservation. There is the fact that they indulge in female genital mutilation, for example. It does raise some serious issues in terms of their moral, ethical and overall commitment to the implementation of treaties. Whilst 191 is a great measure, you have got to look a little bit beyond that to see that, in so doing, there are still some question marks about the intent of some of those countries to actually put it into practice.

You heard what I had to say to Save the Children, et cetera about Teoh and about the international instruments legislation. I do not agree that what is being done in any way reduces Australia's commitment to implement the framework of the Convention on the Rights of the Child. That gives you an opportunity to come back on that point.

Mr Purcell—The difference between ratification and implementation is in the consciousness that is encouraged in the community, the society and the government agencies. So the importance of the Teoh legislation in particular was that there was a legitimate expectation that government administrators should consider the convention and take it into their body of thinking when they are making a decision.

I think this is very important, because it is one thing to say, 'Yes, we have ratified a treaty and that is in the UN', but it is another thing to bring that into the consciousness of Australian decision making. It does not mean that the convention is absolutely binding, that we have to follow exactly what it says, because there will be other factors taken into any decision, but it means that it has to be considered and this was an important principle established by the High Court.

CHAIRMAN—But in the second reading speech and in introducing the legislation in the House of Representatives and in the debate in the House of Representatives—bearing in mind it has not yet gone into the Senate where I suspect a very similar debate will take place—it was made very clear by the Attorney-General and by others that in no way does the implementation of that legislation reduce our commitment to be part of the full spirit of the conventions which we ratify.

Mr Purcell—As we have heard in some of the testimony, the problem comes in the coherence of implementation across the whole range of states. While Australia agrees with the spirit of the convention, if there is nothing requiring administrators to look at the convention when they are making a decision—at a state or federal level—then it does give rise to discrepancies and problems in the way we relate to and deal with our children. That is where the problem lies, I think.

I understand the concerns that the Attorney-General's office must have in seeing that the Teoh decision impinges upon Australian sovereignty and gives weight to international treaties in a way that did not happen before, but—

CHAIRMAN—It was never intended.

Mr Purcell—But the important thing is that the principle of a legitimate expectation of considering the treaties is very valuable when you consider the rights of the child and how we deal with children in our society.

Senator COONEY—The treaty itself says that if the local country where the issue arises has laws in operation which are as good as or give effect to what the treaty effects, then that would be satisfactory.

Mr Purcell—Yes.

Senator COONEY—What is your comment about that in Australia in terms of the legislation that is going to blunt the effect of Teoh—not only blunt but I think it is going to negate the effect of Teoh? Could we not then say there are laws already in Australia which effect all the things that the treaty was going to effect? Have you got any comments on that?

Mr Purcell—Yes. The Attorney-General's report to the Committee on the Convention of the Rights of the Child indicate that we do have many excellent welfare services and protection mechanisms to protect children. However, as many NGOs and the NGO alternative report indicate, there are also many problems in areas where children are not protected.

If we do not have legislation, one piece of legislation that actually looks directly at children and sets up a commissioner, then we have to rely on the goodwill of administrators to perhaps consider the Convention of the Rights of the Child in protecting the interests of the children. The Teoh decision of the High Court makes it a legal requirement that they should do that, and I think that is important because there are discrepancies between state and federal laws; there are many areas where children are not protected despite the good services that we do try to give them.

Senator COONEY—It was article 41 that I was referring to. I only have one other question. Clearly, a lot of people are uncomfortable with the thoughts of the Convention on the Rights of the Child being introduced into Australia by legislation or even it having an effect on the culture. Given that unhappiness by lots of people, would it be best not to press it at this stage? Do you have any comments on that?

Mr Purcell—There are two things there. One is that we have an extremely long process extending some 15 years now since the Convention on the Rights of the Child first impinged upon Australian consciousness. It began when the Fraser government attached it to the HREOC Act in 1981. We have had 10 years of Australian input on a state and federal level into the drafting of the convention. So there has been lots of community consultation in that period. However, I take your point that there is still a lot

of community concern.

The important thing about legislation bringing the convention into domestic legislation is that once again there is an opportunity for the community to have input to you, our legislators, and it brings it much more under the community's control in a sense, because we have input to you as our representatives about our concerns and how the legislation should be interpreted. I would say that it is very beneficial to bring it under legislation in terms of community concerns.

Senator COONEY—Am I correct in interpreting you as saying that there has been a lot of work put into this already over a decade? Is that what you are saying? And it would be a pity to see that squandered, as it were, by not pressing on with at least some legislation in terms of the convention?

Mr Purcell—I think if there was not a need in the community as has been expressed by some of the community groups that you have heard, perhaps the ratification of the convention would be fine as it stands. But there are clearly many concerns out there in the community about where we are failing our children. That is where it would be useful to bring the convention into legislation and to have some body dealing with children specifically.

Senator COONEY—Could you, in short form, set out areas—I do not mean now, but in a further written submission to the committee—where you think it would be useful to have legislation, or other remedies, for problems in Australia that could be based on the Convention on the Rights of the Child? Could you do that?

Mr Purcell—Yes. I will take that on notice. A commission to deal specifically with children's issues, using CROC as the basis for their work, would be most useful.

Senator COONEY—Thank you for that. But I was thinking more of evidence we have had already, say, on homelessness of children and things like that—just specific vices that now exist.

Mr Purcell—Sure.

Mr TRUSS—You have indicated that you regard the rights of the child convention as being very important and that countries should live up to their obligations. Do you think that Australia should withdraw foreign aid from those countries that breach the rights of the child convention?

Mr Purcell—The conditionality of aid is an important ethical issue for Australia but, in general, we should view human rights as being indivisible. That means that civil and political rights, economic and social cultural rights, are all equal. Often there is a call for withdrawal of aid when civil and political human rights are abused. But that withdrawal in itself would affect economic and social human rights. So you have to take

each case on its merits, but in general you would have to say that we should not be withdrawing aid from countries that violate human rights in the case of rights of the child. Perhaps there are other diplomatic means of making our concern known.

Mr TRUSS—Have you noticed improvements in human rights for children in other countries of the world upon their signature of the rights of the child convention?

Mr Purcell—Yes, it is very interesting. I think that in 1991 Burma—or Myanmar as the government there calls itself—ratified the convention. And, the same as Australia, they had to produce a report to the Committee on the Rights of the Child, showing what they were doing for children in Burma. Of course, there are many, many areas in Burma where the rights of children are violated—for example, they use child soldiers.

The committee came back with many, many detailed questions to the government of Burma asking were children's rights not being violated in certain cases, such as child soldiers. It is important in this sense then that the process of raising awareness of the military in control of Burma, and also the public servants that have to work under them, has been lifted regarding international standards and norms towards children, particularly in a country like Burma where it has been very closed off for many, many decades.

CHAIRMAN—The Burma situation exemplifies that the convention means different things to different people and different states, irrespective of their ratification. You make the very point that I did before that simply because they ratify it, in many ways, does not really mean a lot to that particular country; they have ratified it and yet they are not committed to some of the basic ingredients of the convention. It does raise an issue, in terms of which you would have heard me question before, that if it means different things to different people, so that, in Australia, how practical would it be to develop some sort of umbrella legislation when it does mean different things to different people?

Mr Purcell—I think it is clear that the convention means certain things to all of the nations of the world. These are minimum standards and while the implementation may or may not be taken up in states, and abuses may or may not continue, there are benchmarks—guidelines—set out there by the community of nations about how we should treat our children. In terms of umbrella legislation it is important, if we are going to legislate at a federal level, say, to have a commissioner on children, and that the states must be included in this process because many of the issues of protecting children's rights fall under the purview of the states. Therefore they must be included in the process and encouraged to develop their own mechanisms, perhaps similar to the Queensland commissioner on children's rights. I do not think it can be just a federal exercise—I think the states have to be on board on this. In terms of wanting to protect the children, certainly they would be.

CHAIRMAN—Do you have any final question?

Mr TRUSS—No.

CHAIRMAN—I am trying to think who it was—we asked them to take it on notice and came back to us—that made the point that our record in terms of children was quite poor. But if you relate it to the international scene, I suspect that Australia is right up near the top. We asked them to go away and come back and give us some more substantive evidence to back up their assertions. Although my gut feeling is that irrespective of conventions, and of a number of factors, that yes, we can do much better—of course we can—and that we would be pretty well near the top of the pile in many respects, even in relation to this convention.

Mr Purcell—I would like to hope so. With your permission I would just like to take up one of the questions that a member asked Save the Children about refugee children.

CHAIRMAN—Sure.

Mr Purcell—As indicated in our submission, there is actually this dual process of how we administer asylum seekers in Australia. Some asylum seekers end up in detention and some are in the community; it really depends on the amount of time that they have in the community before they notify the authorities or before the authorities find out that they are here and they put in their application for refugee asylum. Some parents and their children are at liberty in the community, and others, it seems arbitrarily, are kept in detention. Could the committee look at this and take up, perhaps with the immigration department, how this process works?

CHAIRMAN—I think some of those issues will be explored as a result of the evidence that we took yesterday.

Mr TRUSS—I did not take the matter up with you because I thought your proposal was somewhat more reasonable than those who spoke earlier. You spoke about the need for them to enjoy access to emergency medical care and to provide care givers to the child. I think that is reasonable and frankly could happen within a custodial situation as well as a non-custodial situation. The difference that you refer to though, of course, is dependent upon the way in which apply for asylum. If they were discovered and arrested as illegal immigrants their treatment would be different than if they volunteered the fact that they are here illegally and then sought asylum. I think the real concern about turning boat people loose in the community is that you would never find them again when you had to make a decision about their future.

Mr Purcell—The reality is that they have very little means of support, including the ones that are in the community. It is a technicality; some people overstay their tourism visas and then technically are illegal in Australia.

Mr TRUSS—In every instance when you are administering the law you have got to take into account the circumstances of the case.

CHAIRMAN—We had some evidence yesterday about Villawood and other places and, as a result of that, I think that we will take up some of the issues you are suggesting. Thank you very much.

[10.39 a.m.]

FRANCIS, Mrs Babette Avita, National and Overseas Coordinator, Endeavour Forum, 12 Denham Place, Toorak, Victoria 3142

CHAIRMAN—The committee has received Endeavour Forum's three page submission. Are there any errors of fact or are there any amendments that you want to make to that submission before we go any further? Did you want to make an opening statement?

Mrs Francis—There is some additional material that I wanted to draw to the attention of the committee. One is that, if the treaty on the rights of the child is going to mean anything, it should take into account—and I have raised this point in my main submission—the rights of the unborn child, the right to live, because all other rights are dependent on that. This has an immediate practical application in the activities of Dr Grundmann, who is attempting to set up late-term abortion clinics in Victoria.

I have copies for each member of the panel of a notice about a meeting that was held to protest his activities. In the left-hand column it shows the precise method of termination of pregnancy which is performed on viable infants capable of existence outside the mother's body. There has been a lot of debate, both internationally and domestically, as to whether the statement in the preamble, that the child requires protection before and after birth, has to be implemented in domestic law. But there is a clear precedent, because in the International Covenant on Civil and Political Rights there is a requirement that in countries where there is capital punishment no-one under the age of 18 should be executed and also that no pregnant woman should be executed.

That is a clear recognition that the foetus that the pregnant woman is carrying deserves protection. That is binding on Australia because we have ratified that convention. Mr Taylor, you are from Queensland. I think you would know more about the activities of Dr Grundmann than many of us here in Victoria. I understand that the Queensland parliament is also investigating his activities. So I would urge you to do something about that.

In regard to the convention, our position is that we would like Australia to withdraw from this convention. I think the process is called denunciation. You do not have to denounce the convention because not all of it is bad. There are some aspects we support, but we have to withdraw in the sense of our being bound by the requirement to implement it in domestic legislation. I will give the general reason why. First of all I believe that the United Nations is a corrupt organisation. I refer to that in the general sense. A lot of money has disappeared. *Time* magazine ran a whole issue on 4 October 1995 on corruption in the UN. The United States has refused to pay its dues for a long time because of the corruption. Recent money that has disappeared has been in the United Nations Development Fund; some millions have disappeared. That is the general

framework. So I would not allow a UN committee to supervise our activities.

The second matter of corruption—and I spoke about this to the General Assembly at the Istanbul conference when I was given an opportunity at the microphone—is that the United Nations is very selective about which NGOs it allows to influence its determinations. It called NGOs ‘partners’, which means that some NGOs are given the same rights as elected governments. No-one has voted for these NGOs. These are people who maybe have the time to be activists. They are professionally employed, they have the time to run around producing documents, calling themselves for children’s rights or whatever. Ordinary families, ordinary fathers and mothers do not have the time to do this because they have to earn a living, they have to look after their children and they do not have the opportunity to be recognised as an NGO by the United Nations. So the whole system is corrupt.

I have a document here by Richard Wilkins called *Bias Error and Duplicity: The UN and Domestic Law* which is about bias, duplicity and corruption in the UN. I have not been able to make copies for everyone, but I will give it to your secretary and I hope copies can be made for all of you.

CHAIRMAN—We will formally introduce that into the evidence as an exhibit.

Mrs Francis—Richard Wilkins is a professor of international law. Thirdly, we support the principle of subsidiarity that whatever is being done for children should be done at the place nearest to them by the family, by the community, by the church or by the school and not by some central bureaucracy even in Canberra, Geneva or New York. For this reason, we are against the UN trying to dictate or supervise Australia’s implementation of this treaty.

Some of the witnesses speaking prior to me have suggested that those who are opposed to this treaty are dealing with trivialities. They may seem trivialities to someone working with the international Save the Children Fund in Geneva. They are not trivialities to parents, local school committees or whatever. For example, in the convention on discrimination against women, one of the stupid things that happened was that Canberra was dictating to some swimming committee in a pool in Wodonga that they should not have separate swimming races for girls and boys for children under the age of 12. Now I think this is perfectly ridiculous. I do not care whether girls and boys under 12 swim in the same race, but I think it should be left to the local swimming association to decide that, not Canberra, Geneva or New York. This is the kind of thing that happens with these treaties and our very conscientious implementation and legislation on them.

One of the things that is happening in relation to children is the issue of gender. You may have read the controversy about the guidelines for child care centres. Child care centres have apparently been forced to apply for accreditation by observing certain guidelines. These guidelines mean that they have to treat all the children in the centres as

unisex persons—some sort of androgynous beings. They are not allowed to tell a little girl that she has a pretty dress or to tell a boy that he is brave and strong. They have to interfere when the girls are playing in the dolls' house and the boys are playing with footballs. They have to interfere and change them around after 15 minutes. That kind of thing which is mandated by the treaty on woman and presumably the treaty on the rights of the child.

One of the good things about this document on the child is that it says that the advantages of breastfeeding should be promoted. Now Australia is in breach of that because child care subsidies are given to strangers who care for children. There is no breastfeeding allowance given to mothers who breastfeed and breastfeeding should not be just for three, six or nine months. Article 24 is the one on breastfeeding, paragraph E. We give subsidies to strangers who care for children and infants in creches. We are trying to build more and more child care centres for infants and we give no subsidies to mothers who want to care for their own children and breastfeed them.

With many parents on low incomes, the mothers feel coerced to go into the paid work force because the family income is insufficient. If they were given the child care subsidy, they might be able to opt out of the work force. We are not against working mothers and mothers being in paid employment. We think they should have a choice, but many mothers of preschool children feel they do not have a choice.

I also want to refer to the criticisms the UN supervisory committee has made of the Holy See, Canada and Britain. Some of the other speakers before me said that those of us objecting to this convention were objecting on trivial grounds. The Catholic Church has done more for the education of girls in developing countries. I come from a developing country. I come from India. So please do not equate me with Pauline Hanson like you did to one of my colleagues yesterday. I come from a developing country. I have lived and worked in all five continents of the world.

CHAIRMAN—No. Mrs Boyd misunderstood.

Mrs Francis—She said you raised Pauline Hanson three times.

CHAIRMAN—Not in relation to her. We were raising it for other reasons.

Mrs Francis—Do not raise the League of Rights, either. Some of my best friends are Jews. We have also had Jewish speakers and we have very good relations with the Jewish community. The UN supervisory committee made very stringent criticisms of the Holy See, saying that the schools were discriminatory. I owe my education to Catholic education in India which the church provided when the government was unable to do so. The Vatican has provided education for girls in countries where girls are neglected and where there is no education. It has done more than national governments and yet the UN committee has the gall to criticise the Holy See for education.

It has also criticised the Holy See for not implementing family planning guidelines in education. What the UN means by family planning is abortion, contraception and sterilisation. I have here a video. It is a documentary produced by the BBC called *The Human Laboratory* and I would like to get it back eventually.

CHAIRMAN—We will formally admit it as an exhibit.

Mrs Francis—It is a BBC documentary about family planning in developing countries. I would like you to view it and return it to me eventually. It shows exactly how damaging these activities can be to women in developing countries, because there are no back up medical facilities to cope with the health hazards of contraception, abortion and everything else. I will not go into it, because you have got the documentary there. The UN committee has criticised the Holy See for not implementing family planning education in schools which many parents are opposed to anyway, even those who are not Catholics. This is an example how a corrupt organisation like the UN has the gall to criticise one of the organisations in the world that has done most for the health, welfare and wellbeing of women and children.

The UN committee has also criticised Canada for its implementation. It has the criticised the federal system in Canberra. As I have said, the UN wants a central bureaucracy located in Ottawa. It wants the states or local communities to have no rights. This is precisely one of the reasons we object to these treaties and we object to the idea of a children's commission or a commissioner for children. We think our laws are very wholesome in Australia. If there are particular deficiencies, as I have pointed out in my submission, where there is a sexual exploitation of children by Australian tourists overseas, we need specific legislation on that. We do not need a UN committee to supervise us.

The UN committee has also criticised Britain for corporal punishment. The Vatican, Canada and Britain are not countries noted for their ill treatment of children, and yet these have been targeted by the UN committee. It gives you some idea of what is in store for Australia. I think I have talked enough; I am happy to answer questions.

CHAIRMAN—Mrs Francis, firstly, in relation to your comment about the UN, we all understand that it is an inefficient organisation. It has lots of faults. That does not mean that there is some sort of international conspiracy, but that is the rationale behind the international instruments legislation currently before the federal parliament. As I indicated yesterday on a number of occasions, including to Mrs Boyd, simply because Geneva or New York coughs, to use an analogy, Australia and other countries do not get a treaty cold.

There are perceptions out there, and you have those perceptions, and I think they are very understandable. That is why the legislation is there. It is to make it quite clear that, until such time as some of these things become part of our domestic statutory

legislative framework, that is exactly as they are: pieces of paper and frameworks and general statements of principle.

What I do not understand in your submission is how you can suggest that ratification of treaties like this tends to give the Commonwealth increased powers when, in fact, in terms of the CROC, most of the areas of legislative need rest with the states. I do not understand how you could make that assertion.

Mrs Francis—It comes under section 51 of the constitution—the external affairs power. If Australia ratifies a treaty, it gives the federal government the power to override the states on any matter covered by the treaty. It also comes under section 75(i) where the High Court presumably gets that sort of power to determine something covered by a treaty. It is quite ridiculous. That section should be removed from the constitution if it is going to be interpreted this way. For example, in the treaty on women, relationships between men and women cover every aspect of life. Virtually everything has a statistical relevance. For instance, in regard to the number of engineers—if you have got more men than women—that is covered by the treaty. Presumably, the federal government has the power to override the states, churches, families and matters which were never intended to be powers of this federal government.

CHAIRMAN—That is something for constitutional argument. With due respect, it is a power that is very sparingly used, but it should be there as a backup. It should be very sparingly used. I would suggest to you that the external affairs power under 51(xxix) is not going to be used for domestic reasons.

Mrs Francis—It was used in the Franklin Dam case.

CHAIRMAN—That is what has happened in the past. What I am saying to you is what we have indicated as a government. I do not want to get into party politics other than to say that would only be used very sparingly, as the Prime Minister and other ministers have indicated.

Bearing in mind you are a pro-life organisation—understandably; I am not criticising that—you seem to indicate that it is black and white in terms of CROC that, in dealing with children, you are dealing with children in the foetus and that sort of thing. That is a matter of your interpretation and it is a big question mark. That is why, as you heard me questioning before, this convention should perhaps only be seen as a framework of principles and, until such time as the general thrust of those principles is implemented into domestic law and come back to the international instruments legislation, it should be regarded as just that.

I accept your views this morning and I accept what was said back in 1988-89. I was party to a lot of that criticism as an individual member of the opposition prior to the ratification. But I think we have moved on a bit since then, even though those perceptions

continue and persist. We have had them today, we had them yesterday, we had them in Perth and Adelaide last week and we have had them in Sydney, Brisbane, et cetera.

I would agree with you that is very difficult to develop some sort of legislative framework which would get around all these question marks. I think there are too many question marks to do that. Do you agree with me?

Mrs Francis—Yes, I agree with you. Our position is that it is fine to have the convention up there as a sort of declaration that inspires us, if you like, or some bits of it. There are articles 12 to 16 which we have a lot of queries about. In fact, I do not see why we do not go back to the UN Declaration on the Rights of the Child of 1959. I worked on a booklet on that and that was wonderful. We would be quite happy to have that up as an inspiring document—like the Declaration of Independence or something—because that was a much better one.

With the qualification of some articles, I do not mind having this as a framework, but the point is that we have signed it, we have ratified it and we have come under the requirement of the United Nations to put in reports every so often, and we come under the supervision of this UN committee which then criticises us. I think we should get out of that because it gives those who are opposed to a pro-family and pro-life point of view the opportunity to clobber the government and say, ‘You are in breach of this requirement,’ and they make a lot of noise about that. It leaves us left out in the cold.

When Pauline Hanson says that Australia is going to be ruled by a lesbian cyborg in the year 2040, she is wacko but you can see a faint thread of logic running through the woman’s mind—

CHAIR—It is pretty faint.

Mrs Francis—It is there. Another decision where the UN was used to override Tasmania’s domestic law was in the case of homosexuals. These two homosexual activists—they are not even living together any more—took us to the UN to say that Tasmania’s law was invalid. It is not just a minor thing. The Franklin Dam was a big issue and so was the sex discrimination act that overruled Tasmania’s sodomy laws. These are not minor trivial issues.

The perception of the ordinary Australian is that we are being ruled by the UN. You want to get rid of the British monarchy—the English Queen—but then you are handing yourselves over to a tin-pot committee, half of which do not even have democracies in their own countries. I really object to a representative from a country which does not even have a democracy—it has a tin-pot dictator, like Rwanda or Burundi or somewhere like that—telling Australia what to do.

CHAIR—We do not want to digress too much but I understand your perceptions and I tend to personally agree, if they were representative of those countries. But to be pedantic about it, in terms of this particular committee, they are not representing those countries; they are representing themselves. They have been selected. You cannot get round the perception that some of the countries from which a lot of these people come are less than democratic, to put it very tactfully.

Mrs Francis—To put it mildly.

CHAIR—They are less than democratic.

Mr TRUSS—Could you tell us what the Endeavour Forum is?

Mrs Francis—It is a pro-life, pro-family lobby which is basically opposed to contemporary feminism as understood in this country. The dictionary meaning of feminism is ‘a belief in equal rights for women’. We believe in equal rights for women but we are opposed to the demands made by present feminists as a method of achieving equal rights. Abortion on demand, government-funded child care but no money to mothers, and affirmative action which discriminates against men are three policies we are opposed to.

Mr TRUSS—How do you become a member of the Endeavour Forum?

Mrs Francis—You pay a \$10 subscription fee and you get our newsletter.

Mr TRUSS—Do you have many members in Australia?

Mrs Francis—Yes. We have approximately 2,000 members and we have a mailing list of about 3,000. We send our newsletter to politicians, bishops and others.

Mr TRUSS—All around Australia?

Mrs Francis—Yes, all around Australia.

Mr TRUSS—In your submission, you suggested that we should immediately enter reservations to articles 12 to 16. In your study of the convention, have you determined how we can do that?

Mrs Francis—I think at this stage you cannot withdraw; you have to denounce the convention. The process is called denunciation. It is at the end of the convention.

Mr TRUSS—Would you acknowledge that we cannot do what you are recommending in your submission?

CHAIRMAN—Within a time scale.

Senator COONEY—I think you can not only denounce it. You can make recommendations.

Mr TRUSS—You can denounce. That is for sure. I do not think you can add retrospective reservations.

Senator COONEY—I think they can.

CHAIRMAN—Australia cannot express any further reservations other than those it has already expressed.

Senator COONEY—I think Mrs Francis is referring to article 50 which says:

Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to State Parties, with a request that they indicate whether they favour a conference of State Parties for the purpose. . .

CHAIRMAN—That is right. You have to go back through the process.

Mrs Francis—Let me say, you are right about the reservations. There is no point in the reservations because the UN committee has criticised the Vatican for its reservations and said that a reservation that is contradictory to the article will not be considered. The report of the UN committee of 1995, which you probably have, denounced the Vatican for its reservations and refused to accept them. In answer to your question about members, there are some here if you want to have a look at a couple of our members.

Mr TRUSS—No. I was asking those questions just to get some comprehension of the level of community participation.

Mrs Francis—We have actually produced a child here as well. I think we are one of the few who have produced a child. You can see what we are discussing.

Mr TRUSS—The only other question I would like to ask of you is on point 9 of your submission regarding the disadvantage for boys, which is a subject for which I have a great degree of sympathy. Do you believe Australia is breaching the convention?

Mrs Francis—Absolutely.

Mr TRUSS—In what way are we breaching the convention?

Mrs Francis—Gender is simply interpreted in our Sex Discrimination Act as giving preference to women and girls. There are all sorts of special educational programs for girls. There is no attention paid to boys. Boys are already disadvantaged by the fact

that most primary teachers in the area where they have to learn to read and write are female.

Mr TRUSS—How does that breach the Convention on the Rights of the Child?

Mrs Francis—If you are going to treat children equally, you are not treating your boys equally.

Mr TRUSS—So are you against all affirmative action programs at any time?

Mrs Francis—Absolutely; we should be neutral. There is another thread of logic that Pauline Hanson has when she says we should treat everyone equally.

Mr TRUSS—Since boys are obviously now underachievers in the education system, do you believe there should be affirmative action programs for boys?

Mrs Francis—No, I do not. If you start treating children equally, the balance will re-assert itself. Boys are doing extremely badly. The latest report on the VCE throughout Australia says boys are really falling behind. This has grave consequences for our future economic development.

I want to draw your attention to an item in the *Herald-Sun* today headlined Father's court bid fails. Here is another thing where the Human Rights Commission has raised the UN treaty on the rights of the child as an argument against giving the father access to his children.

CHAIRMAN—Is this B and B?

Mrs Francis—Today's paper.

Senator COONEY—That is the one in Queensland.

Mrs Francis—Yes. The decision was reported today. Because we are anti-feminist, our organisation is inundated by men's groups who want us to help them. They feel tremendously disadvantaged in the whole Family Law Court area, which we consider very biased and very pro-feminist. They come to us and say the court will enforce maintenance orders but it will not enforce access orders. They have lost their children. These fathers are heartbroken and grief-stricken. Nobody is doing anything about them.

What about the child's right to be with his father? We think this has very bad consequences for boys because father absence is the single most important factor in future involvement in drugs, crime, vandalism and in the general destruction of manhood. You see this in the ghettos of America where you have women supported by the government for several generations and no fathers. The boys just go into gangs.

The Save the Children Fund were talking before about the risk factors for the children. One of the greatest risk factors for an infant is to be in a household where the adult male is not its biological parent. Child after child is abused. There are the two Daniels in Victoria.

If you have a de facto father, or what we call serial boyfriends, the children are at risk. When the government supports de facto relationships, or equates them to marriage, this is tremendously damaging to the children of the previous relationship because they are living with an adult male and they are at risk. They are at risk of being abused and being killed. A lot of the child murders in Australia are where there is a de facto in the home.

CHAIRMAN—We are digressing a little. Can I just bring you back to the bottom line as far as your organisation is concerned? You are suggesting denunciation and article 52 says:

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

You are really saying that is what we should do.

Mrs Francis—We could do it nicely and say that we accept the declaration of 1959 as a framework. We are committed to children. We rank highest in the world after New Zealand for human rights observance and we are committed to the wellbeing of children, but we do not think this treaty is appropriate for us and we adopt—

CHAIRMAN—Don't you agree that in practical terms, whilst denunciation is technically feasible, it would bring with it some international embarrassment for sovereign Australia?

Mrs Francis—No. I think it would be tremendous publicity for what we really believe in. It would be a wonderful educational thing to say we are not going to be pushed around by a number of centralised bureaucracies whether in Canberra, New York or Geneva, that we are committed to the wellbeing of the child, but we will implement it in a wholesome, sensible and practical way.

Senator BOURNE—You have mentioned articles 12 to 16.

Mrs Francis—Yes.

Senator BOURNE—You also are worried about article 17. Yesterday we had evidence from a few people including the Reverend Norman Ford, from the Caroline Chisholm Centre for Health Ethics, who thought that article 17 could be very useful in Australia because it could give the federal government the power to legislate to make sure

that what was on television and available in the mass media to children was more appropriate. They had several examples where they thought what children were seeing was inappropriate. I am interested in why you are so worried about article 17.

Mrs Francis—When you say the child has rights to access to information, we see that as eroding the parents' rights to have some supervision over what the child sees. It has a right to information and material about what? There is a lot of sex education material, for example, that parents would object to. There is material promoting homosexuality, which the homosexual activists are very keen to promote to children. It cuts both ways. All these articles are worded in vague, ambiguous language. They are not tightly drafted legal statements, so the article can be interpreted in a number of ways. I can see that it could be useful. I can see that it can be dangerous.

Senator BOURNE—That is true. But, of course, to have any effect in Australia even now, and before the Teoh case, it would have to be enacted into Australian law. Would you be in favour of Australian legislation such as Reverend Dr Ford mentioned?

Mrs Francis—I do not know precisely what he had in mind. If we are going to have domestic legislation, it should be in regard to Australian children and separate from this treaty. We should not base our protection of children on this treaty. We should base it on the conditions in Australia. First of all, we have a free press. We should recognise that you have lobby groups who are very active and have a lot more money than family people who want to promote their agenda in schools. We should take that into account when framing legislation. It should be based on domestic issues, not on the treaty.

Senator BOURNE—I think it would be though. Reverend Ford mentioned 17(e) which he thought would be a useful hook to base domestic legislation on. I must say I tend to agree with him.

Senator COONEY—I think you want to denounce the treaty. You do not want to take any opportunity provided by article 50 to amend the treaty. Is the position of Endeavour Forum to get rid of the treaty?

Mrs Francis—Yes, because after reading the UN report on the Holy See, Canada and Britain, I cannot see how leaving us under the supervision of the UN is really going to be beneficial. It will just give fuel to anti-life, anti-family opponents within Australia. Like they did in the Tasmania case, they will say, 'The UN has said we are in breach, so we have to correct this.' It gives far more power to radical activists than to pro-family people.

The whole idea of setting up a children's commission means one more bureaucracy in Canberra. Ordinary family people are already overburdened with taxation to provide all these government departments. They are finding it impossible to manage their finances to buy groceries and shoes and things for their children. We do not want another

bureaucracy. We want to be left alone. The federal government should just deal with foreign affairs—that is, defence, customs, quarantine, those sorts of things, and nothing else. Leave families to the churches and the local community so that their tax money can be spent on them instead of on a children's commissioner. Our laws are very wholesome. The criminal laws cover ill-treatment of children and so on. We can strengthen them if necessary. But not this international stuff.

Senator COONEY—Let me make a suggestion. It is apropos the comment you made before. With the greatest respect, you are wrong when you say that the Chairman accused Mrs Boyd of being a Pauline Hanson.

CHAIRMAN—I would never do that.

Senator COONEY—I can assure you that he did not say that. It was mentioned in a context and he certainly was not saying that about any witnesses here yesterday. I think there can be misinterpretations of what is done, and that is what I am coming to now with this suggestion. If Endeavour Forum is left on the record as saying that it simply wants to denounce the treaty, it could be misinterpreted that there is nothing in the treaty with which it agrees. I think you have said—I would expect it of you—that there are lots of good things that, properly interpreted, the Endeavour Forum would stand for. I wonder whether it would be worthwhile—I have also suggested this to other people too—for the Endeavour Forum to go through it and say, 'We want Australia to denounce the treaty as a whole because we think as a whole it is found wanting but that, nevertheless, there are parts of it that we agree with.' If you leave it as it is, it could be misinterpreted that Endeavour Forum is against anything that is put in this treaty, which I do not think it would be.

CHAIRMAN—Let me suggest a bit more to that. It would be helpful to us if your forum could make some comments, as Senator Cooney has suggested, in relation to article 52, which is the denunciation process. If that is what you want, please say that is what you want. If it is article 50, which is amendment process that Senator Cooney is referring to, say why that is not acceptable. I know that the article 50 approach with amendment is subject to the Secretary-General's circulating it and then seeking argument and all of that sort of stuff. I think it would be helpful for us, as Senator Cooney has indicated, for you to clarify your situation, whether it is the article 52 approach and why that is so. If it is article 50, say why that is not appropriate and give the rationale for that. It is so that we can get it quite clear that that is what you really mean.

Mrs Francis—Can I take that on notice and go through the articles?

CHAIRMAN—Yes, please. That is what I am suggesting.

Mrs Francis—There are some articles that are well worthwhile.

CHAIRMAN—You can give us any other supplementary comments as a result of today.

Mrs Francis—We feel helpless, even in a democratic country such as Australia and even though there are good aspects to all these treaties, because the agenda of government, whether it is Liberal or Labor, always seems to be of the left. They will not implement the good articles. I will give you a very simple example. Article 6 in the treaty on women says that states parties shall take all appropriate steps to eliminate the exploitation of the prostitution of women. What has been done? The minute that treaty was signed and ratified, Victoria legalised brothels. We have refugees and illegal immigrants working in brothels. We have children working in brothels. We have brothels everywhere. It has absolutely exploded.

If you are not going to implement a simple two-line, very clear article in the treaty on women—article 6—we just feel that no wholesome part of this will be implemented. If you are not going to stop Grundmann and protect the child before birth, none of the wholesome things in the treaty are going to be implemented. It is only the bits that the radical left have the energy to push for that you will look at. That is why we feel disheartened. I do not like the word ‘denunciation’. I would like a milder word like—

Senator COONEY—The trouble is that is what they use.

CHAIRMAN—That is the specifics of the convention.

Mrs Francis—I know, but I would like the word to be withdrawn or whatever. I will look at the process of amendment and see. But we feel that you will not implement the wholesome parts of it. You will not tackle the Family Law Act which deprives children of their fathers. You will not tackle the abortion situation in Australia—a hundred thousand babies are being aborted in this country.

CHAIRMAN—My final request to you—you can take this on notice—relates to that point. You refer to ‘abortion on demand’. Your submission appears to infer, as a result of that, that the legally accepted situation in Australia puts us in breach of CROC. Can you indicate more formally where ‘abortion on demand’ is enshrined in legislation or regulation, at whatever level of government you can give us? How does that impact on the ratification?

Mrs Francis—I can answer that very quickly. It is de facto in Australia. It is not in legislation but it is not enforced by the state governments. In fact, there is a High Court decision where a father—another Queensland case—tried to stop his baby being aborted.

CHAIRMAN—Yes.

Mrs Francis—I will look at the legislation.

CHAIRMAN—You are quite welcome to make other supplementary comments as well.

Senator COONEY—These Queenslanders are a worry.

Mrs Francis—I will give you a few supplementary things. There is the comment that ten UN bureaucrats will control all the children of the world and their parents.

CHAIRMAN—That is an exhibit so can you spell it out for the record so that we know exactly what we have.

Mrs Francis—It is an extract from *Catholic Family News*, dated April 1997. I also want to leave you with some things from the *World Congress of Families* which was held in Prague in March. I was a speaker there and there were speakers from all over the world—all five continents were represented by various parliamentarians. We came up with this declaration for the world's families. My final exhibits are an article from the *Herald-Sun* of 5 July entitled 'Family link to crimes of violence.' This applies to what I was saying about the father absence situation, particularly as it is affecting boys. The other one is headed 'Partial-Birth abortion.' It is an advertisement that appeared in the *New York Times*. It is what the nurse saw. It is a repetition of that Grundmann thing but from a medical point of view.

[12.19 p.m.]

TRIGGS, Professor Gillian, Faculty of Law, University of Melbourne, Parkville, Victoria 3059

CHAIRMAN—We have received the submission from the International Law Teachers. Are there any amendments, additions or errors which we need to read into the record before we start?

Prof. Triggs—I had the time this morning to look at the Internet and found that there are now 191 parties to the treaty, which will doubtless be incorrect by tomorrow or the day after but I thought it was very interesting to observe that this is a treaty which has attracted that number of ratifications.

CHAIRMAN—That is an understandable error because it is a moving picture. I now invite you to make an opening statement.

Prof. Triggs—As law teachers, we are very grateful for the opportunity to be able to make a submission to you. We speak only in our individual capacity as law teachers and we do not represent anybody other than ourselves. We saw our role in making a submission to you as that of lawyers. Perhaps much of what we have said is already well known to you but we did feel that we should at least make the points.

Our fundamental point as lawyers is that Australia has ratified this convention along with, by far, the majority of the international community. However, we have ratified without implementing legislation. In some respects, that has exposed us to at least the potential to be in breach of obligations under the convention. The two areas that we have specifically outlined are those concerning the mandatory sentences in Western Australia and the fingerprinting procedures in Victoria.

CHAIRMAN—That is the three strikes and you are in legislation?

Prof. Triggs—Exactly—and the exclusion of a child from procedural process in relation to the fingerprinting provisions under the Victorian legislation.

We really drew those to your attention as examples. We imagine that, were there time to do further research, there would be others. I am sure you have been presented with other information. The thrust of what we wanted to say is that we feel that it is inappropriate for Australia to be a ratified party to a convention of this nature and fail properly to implement the legislation. We recommend that a way to cure that, obviously, is to implement the legislation.

We are very conscious of the point that I made a moment ago—that is, we do not represent any particular interests; we can speak as lawyers. However, as lawyers, I think it

is fair to say that this is a treaty which represents a very widely based international view in relation to the rights of the child. It has incorporated and articulated in legal terms much wider aspirations from earlier years, as you are well aware. We feel that legislation ought to be implemented to give proper effect to these rights at a Commonwealth level.

We do, therefore, support the convention as individuals. We would support efforts to give effect to that legislation through the models. We do not have a particular model that we suggest following, but we think we should look more closely at the New Zealand approach through a charter. Notions of commissions for children should be examined thoroughly with a view to implementing effectively whatever legislation might ultimately be introduced.

CHAIRMAN—Thank you very much. Before I hand over, I point out that we have got two lawyers on this side of the table as well, and I am not one of them.

While you have been sitting here, you have obviously gleaned that there is a difference of interpretation in relation to this convention. In practical terms, how difficult would it be for parliamentary counsel to convert the convention at the federal level, if that is what you are suggesting, into a piece of legislation that is clear?

Prof. Triggs—It must be conceded that it is extremely difficult because this treaty effectively gives language to aspirations which apply universally. It is extremely difficult to do that in ways which do not expose the Commonwealth and states to interpretive decisions of courts, which can go in different directions. There is always the danger that there will be a developing jurisprudence in a particular state or territory anywhere in the world that perhaps goes off at tangents from those originally intended. Those are definitely risks.

It is extremely difficult to translate these aspirations into legal standards which meet the common objections. However, Australia has done this in the past in relation to the racial discrimination convention and we are doing it really quite frequently. I think we have the parliamentary drafting skills in Canberra. I have no doubt whatsoever that we can produce a piece of legislation clearly written that meets the aspirations and general intent of this convention.

However, inevitably we are exposed to differing interpretations of that language. That is a fact, as you well know, of any legislative process. There is always a danger that it can be misinterpreted and spin off in different directions, but that is what we have a High Court for.

So I would fully recognise the difficulties, but I believe we have met those difficulties in other implementing procedures. There are different ways of going about these implementing techniques. Maybe we need to look more thoroughly at the way in which we do that.

CHAIRMAN—But you would recommend broad umbrella legislation at the federal level rather than some specific legislation at the federal level and a mixture of state legislation covering specific areas of the convention?

Prof. Triggs—I would not want to reject the second possibility out of hand. What we are saying is that these strategies need to be looked at very carefully. I do not think there is a necessary advantage in umbrella legislation, particularly as it does require the use of quite broad language so that you are inevitably thrown back to the situation where the states' administrative, legislative and judicial arms will interpret terms in different ways. So I personally believe that having cooperative efforts to achieve language which can ensure that at local levels and state levels you can have perhaps varieties in the ways in which you interpret the provisions really is acceptable within a federal system. But maybe it is possible to have some sort of broad umbrella charter concept which is then given more precise articulation at the state level.

CHAIRMAN—That is what I was trying to get at, because I think we are on rather dangerous constitutional grounds, are we not, if we start to get into areas which are not really the preserve of the federal or the Commonwealth government.

Prof. Triggs—I was interested in your comment that the present government policy is not to resort to the external affairs power in—

CHAIRMAN—The Prime Minister made that very clear.

Prof. Triggs—Artificial ways, perhaps one might say, to deal with issues that ought to have been done within our constitutional structure at the state level. I think that is a very important assurance. With that in mind, I think we do have to be very alert to the political consequences of introducing umbrella legislation which clearly impinges in areas which have been seen as within state legislative—

CHAIRMAN—What the Prime Minister has actually said is we would not, as a government, use the external affairs, 51(xxix), where in fact there were other domestic avenues available. It is there, as you would know better than anyone, but it would not be used as an end to itself.

Prof. Triggs—I think that is very important and, with that in mind, what needs to be created is a strategy whereby the states can be encouraged, through concepts of cooperative federalism, to meet these obligations that Australia has committed itself to. You are fully aware, I know, of the differences between assuming an obligation as a sovereign entity in the international environment and failure to meet those obligations within the domestic system. Failure to meet those obligations does not address the international aspect of the problem. I do not, frankly, know how vulnerable Australia is to allegations by other countries, but it is certainly not something that we should, either at a moral or legal level, allow to occur.

Mr McCLELLAND—In the evidence that we have received, most witnesses, I think it is fair to say, have agreed that there are some very worthwhile provisions in the treaty, for instance on the protection from inappropriate material on the media, health aspects, sport and development aspects. Most fair-minded people would agree there are a number of very beneficial things. At the same time, the repeat criticism which we have received is that articles 12 to 16 in particular could be construed as in some way impinging on parental rights. That is the first criticism. The second criticism is a general fear that treaties are going to be used to override states' rights.

Just taking up the chairman's point, in developing a federal framework—whether it is by way of an umbrella legislation or whether it is by way of a children's commissioner that scrutinises various aspects of state legislation—it would be possible, don't you think, in developing such a framework, however it goes, to clarify that the principles of the convention are not intended to override parental rights, are not intended to and will not be allowed to override parental rights; and, secondly, that nothing in the federal framework is intended to usurp, diminish or negate states' laws. And that would seem, on an objective basis, to negate the criticisms of the treaty but still allow the implementation of the beneficial principles. Is that possible, do you think?

Prof. Triggs—I think it is not only possible but also actually desirable, and it is a way of avoiding the problem that you have been discussing this morning. The way in which the denunciation provisions apply in this treaty is quite unusual. Normally it is possible to bring in a reservation at a later stage; or what Australia has done in the past is to introduce declarations of understanding in a sense so we do not necessarily have the full legal reservation—

CHAIRMAN—Yes, declaration is not a reservation—

Prof. Triggs—That has been a technique we have used, particularly in relation to the International Covenant on Civil and Political Rights. Given the sort of legal problem that we have with this, I think your suggestion is one which may very well mean that we can resolve these difficulties because, in effect, by some sort of charter which explained Australia's interpretation and understanding of the convention we are—while not placing a declaration in relation to the convention—making it very plain what our understanding is. What I believe this convention was attempting to achieve is a balance between the best interests of the child and the appropriate interests of the parents.

If that is clearly stated as being Australia's understanding of what this convention means, then it sets the tone and spirit of the way in which it will be applied at the state and territory levels. I think it is a rather nice technique of avoiding the legal problem that you have discussed—that we have put our reservation in and we cannot do anything else. We presumably—I perhaps should not say presumably—were not seriously considering denouncing or withdrawing. I think this is a very appropriate way of explaining what the government means by this convention.

Senator COONEY—Can I just ask about the people who prepared this submission. Based on my knowledge, they are very eminent people indeed. I must confess that I have heard of them in this area. But other people might not know and what you have not done is give a description of what particular area they lecture in. They have just modestly signed themselves as lecturers in law. Could you tell us what Penelope Mathews and Tim McCormack lecture in? They do not lecture in torts, I take it—

Prof. Triggs—That is a very good point. Each of us is an international lawyer; in other words, each of us has come at this issue from the perspective of international law. Tim McCormack is the inaugural Professor of Humanitarian Law in Australia, which was established by the Red Cross literally in the last few months. I am Professor of Public International Law at the University of Melbourne. Each of the other people mentioned is a lecturer within the faculty of law but they lecture in public international law, so that we are a team of international lawyers on the staff of the faculty. We came together because, for different reasons, each of us was interested in one way or another in the difficulties in Australia in implementing international conventions.

Senator COONEY—So all of you are very much on your topic in producing this submission?

Prof. Triggs—It would be fair to say that we are all international lawyers and we, I think, have sufficient professional credibility at least to make a submission on the point.

Senator COONEY—The only other point I want to raise with you is the issue of Teoh. I have understood what you have said there that, legally if you look at the document, it is a bit of a problem that the government does not go down the path that the High Court has said it ought to. You may not have but have you thought of the political problem the government may face where you have a significant number of people in the population saying, ‘This is the United Nations ruling. I think there is a difficulty there for government to implement what the treaty might say?’ You might not want to comment on that.

Prof. Triggs—I am very happy to comment on it, partly because I think the problem is now being met through the new treaty process. The legal profession as a whole—but that represented a public view—had a deep concern that the number of treaties which create action for Australia in one way or another was simply becoming too complex, was happening in a way which was not seen as transparent and was happening too quickly. Very often, treaties were ratified with virtually no public discussion at all. As you know from the *Trick or treaty* report that was conducted, we now have a different procedure.

The new procedure requires a tabling of the treaty and a national interest statement policy. I myself am involved with a couple of exercises in which representatives of the treaty committee will be coming down to Victoria to talk to the relevant interest groups to

explain what the treaties purport to do, why they are important, and what the advantages and disadvantages might be. I think this is now going to be a much more realistic way of meeting that political problem.

In one way perhaps, one is never going to get to the kind of person who sees the United Nations as a sort of conspiracy. That sort of analysis is rather hard to re-educate, and that sort of person is highly unlikely to come along to a treaty discussion and listen to the arguments. So one can never really meet all of these criticisms; but I think this new procedure, particularly with the tabling for two weeks in parliament and the consultations at a state and territory level, is an enormous step forward.

Senator COONEY—Is Melbourne Law School going to keep supporting this committee by coming down here and giving evidence?

Prof. Triggs—Absolutely. We hope that one of our future roles will be that we will be very pleased to provide research and other backup to that committee and to any other committee that would benefit from some academic research and writing in the area. We see that as one of our roles within the law faculty and would like to encourage it.

CHAIRMAN—In terms of the international instruments legislation currently before the parliament, if and when that gets through—and I think there is every indication that it will go through the Senate as it is but we will wait and see—in its present form, do you still see the possibility, probability or whatever of further High Court judgments that might call for a reappraisal of the whole thing?

Prof. Triggs—For a reappraisal of the treaty-making process?

CHAIRMAN—Well, for a reappraisal of what that legislation means; in other words, we are getting into legitimate expectation.

Prof. Triggs—I think the High Court has got an idea here: this notion of legitimate expectation is something that actually had an immediate impact on the public, on the legal profession, and it made a degree of rational sense.

Senator COONEY—It is a great phrase.

Prof. Triggs—It is a wonderful phrase and it hit home. We understood it. If Australia has decided to ratify a treaty, it is quite a legitimate expectation that our administrative, judicial and legislative branches of government will give credence to that treaty. However, we all know the end of the story and that is not an avenue—the present government has confirmed that position as you know—so a court will have to accept that governmental statement that there is no expectation in this area. However, you have asked the question: what about the High Court? The High Court will, of course, be bound by that statement of both governments. However, I have a suspicion that they are not going to

let this very interesting idea go.

CHAIRMAN—We are going to get into legal activism now.

Prof. Triggs—It depends totally on the composition of the court. As you know, there are three appointments to be made. We do not know what is going to happen with the court. But I think one will keep—

Senator COONEY—We ought to appoint Gillian Triggs!

Prof. Triggs—Absolutely. We will all keep an interested eye on this concept. I think it was a very attractive concept, but it is one that explodes the creative possibilities of the High Court and, at the moment, we are in a situation in which we are deeply sceptical about that. So it is something to keep an eye on.

Senator COONEY—I have just one other question. Can I ask about a matter of interpretation: one of the problems we have had is that people have scanned the treaty and said, ‘Look, here is a phrase which could mean that we are going to abolish the Melbourne Cup and we are not going to have the Bledisloe Cup in the MCG.’ They have said that all these sorts of dreadful things could happen. Is that a fair way to interpret treaties; or what do you do in international law, do you read the document as a whole or how do you go about it?

Prof. Triggs—The general principle of interpretation of a treaty—and this is a principle of domestic common law throughout the common law system—is that there is greater leeway with an international treaty. When a court is interpreting domestic legislation, there are very precise rules about language. Language is used; terms are used as terms of art. There are very precise rules as to how that legislation is to be interpreted. However, when a court comes to interpreting the language of a treaty, it tends to take a much wider view. There are dicta to that effect within British jurisprudence and also our Australian judges have taken the same point of view. What they do is they try much more broadly to understand the spirit and gist of the treaty; they are not going to do a line-by-line, narrow, strict approach.

There are various theories of interpretation, which I will not go into, but the general approach is one of effectiveness. What was the intention and what was the effectiveness? Coming to Mr McClelland’s point, if it were possible to have a statement of understanding from Australia as to what we believe this treaty means, then I think that would have an important impact on the way a court would interpret any subsequent state legislation that gave detailed implementation to the provisions. So there are different approaches to interpreting international treaties and that is as a matter of common law.

Mr TRUSS—In relation to the issue of Commonwealth legislation, if you say that the Commonwealth will not use the external affairs power as a basis for the legislation, is

there any other constitutional avenue under which the Commonwealth could introduce legislation on children's issues?

Prof. Triggs—I did not actually say that the Commonwealth could not use the external affairs power—

Mr TRUSS—No, you did not say that, but the government has said it will not.

Prof. Triggs—I am not a constitutional lawyer. I believe there would be other grounds, such as the general welfare of the community, on which to base it. It would not be difficult to find a basis.

Mr TRUSS—So you think it is possible to base legislation in this area on other elements of the constitution?

Prof. Triggs—I think I have to say that I do not know with clarity the answer to that question.

Mr TRUSS—You mentioned that you felt that the three strikes and you are in legislation and certain fingerprinting laws in Victoria may be examples of breaches of the convention. If that is the case—

Senator COONEY—I do not think it is Victoria that has got that sort of legislation.

Prof. Triggs—No.

CHAIRMAN—Three strikes and you are in is in WA.

Mr TRUSS—I knew it to be the case that three strikes is in WA. If I gave the wrong impression, I am sorry. Has the legal profession given thought to mounting a challenge to that legislation on the basis of the convention?

Prof. Triggs—Certainly, there have been discussions in interest groups, using legal advice, that these issues might be challengeable. The grounds, however, have, to a degree, been taken away by a very clear statement by both governments about this notion of legitimate expectations and the role of unimplemented treaties in domestic law. These very clear statements by the courts and by government in the last couple of years have really taken away the vigour and fervour with which challenges might be made. However, where there is a procedure which is seen as clearly contrary to the spirit and intent of the convention, I would be very surprised indeed if there were not lawyers groups who were prepared to go forward with a challenge, if only because you achieve the political result even if you do not achieve the legal one. So challenges are always possible.

As you are aware, the members of the High Court have been talking about the role of international law and of international customary norms represented and articulated in treaties. That can have an informing role in the development of our own customary law. Judges are more free or willing to make these remarks. They know more and more about international law. As these perceptions of the role of international law are taken up by judges, more and more interest groups will be willing to test the waters to see how far the development of international norms can be relevant to the interpretation of Australian customary law or common law.

Mr TRUSS—Finally, from your experience in international law, I would like you to comment on statements made by the previous witness—and we have heard them in a number of other places as well—expressing concern about United Nations committees making judgments on what we do in this country. The previous witness referred to comments by the committee that Canada should not be a federation—a criticism that maybe they will some day make about Australia. Then there has also been criticism of their comments in relation to the law in England which allows parents to withdraw their children from sex education classes and the like. In relation to international law, is that an appropriate element of the process—that is, that international committees are passing judgment on the laws of various countries? What response should Australia make if we are criticised similarly to other countries?

Prof. Triggs—The first point that needs to be made is that any mandate by any international human rights committee of any kind to consider and report on the position in Australia—for example, under the optional protocol to the International Covenant on Civil and Political Rights that Australia in 1994 accepted that right of individual application—is achieved only because Australia has allowed that committee or commission to consider the question. In other words, we have agreed to a process of reporting, complaints procedure or whatever it is. Firstly, the curing of any perceived defect lies in our hands.

Mr TRUSS—So tell them to go and jump.

Prof. Triggs—No. One could simply say that that power to report and so on will no longer be there. The position at the moment, however, is that we do report to the United Nations Human Rights Committee and we do allow individual applications under the optional protocol. The government position has been to allow this to occur, but it has been a sovereign decision by Australia as a sovereign entity. We are quite within our rights to withdraw that power on the part of non-government organisations and individuals in Australia to do so. That is the first point.

The second is that a report which is possibly critical of Australia is a logical possibility, having permitted this process of reporting and complaints. So in a way, if you cannot take the heat, get out of the kitchen. In other words, if we do not want to be exposed to that kind of reporting and criticism, then we should not expose ourselves to it.

These things have to be considered as a matter of policy. They have been considered as a matter of policy, and a decision has been made to allow the procedures to go forward, but a different government in different times may consider this differently—partly, I think, because of the very great risk that we have exposed ourselves to these possibilities and they may be used politically against us.

As you would be very well aware, Australia is one of the few countries in the international community which has accepted the compulsory jurisdiction of the International Court of Justice. This has exposed us to quite extraordinary cost and political consequences.

However, to get back to your point, if we permit these procedures to exist, the logical result is going to be that we risk criticism. So it is really for bodies such as this to make recommendations as to whether that should continue.

Mr TRUSS—How competent are the UN committees? Do you know anything about the background of them saying that Canada, in a report on the rights of the child, should alter its whole basic constitutional structure?

Prof. Triggs—If it is true, it is completely out of line and I find that quite extraordinary.

Mr TRUSS—It is true; that is what they have said.

Senator COONEY—You might have to read it in context.

Prof. Triggs—I would like to know more about the context. I did see a report of that, but I must say I rather dismissed it. I will certainly examine it more closely. It sounds to me as though it is completely beyond their bailiwick, and I cannot understand how they could conceivably comment on the constitutional structure of another country.

But the difficulty—and this is the risk, of course—is that, when you do allow procedures to committees of this kind, there is a risk that their views will be used perhaps by others in a political way contrary to Australia. We have to make a clear assessment as to whether it is in our national interests to allow this to go forward.

To answer your question in relation to committees, I do know something about the United Nations Human Rights Committee. It includes some of the highest quality international jurisprudential lawyers that one has in the international community. I am not convinced by the argument that that committee is not of a proper calibre to consider these questions. I fear that very often the reports are used by particular groups for political purposes. This is the risk Australia takes when we play a role in these sorts of things.

CHAIRMAN—The critics sometimes look at the countries from which they come

rather than at the individuals. My understanding—certainly, with the CROC committee—is that they represent themselves, not the countries from whence they come. At the same time, you cannot get round the perception that people say they come from less than democratic sovereign states—without naming some of the countries.

Prof. Triggs—Yes. I think that is a problem of perception and sometimes reality.

Senator COONEY—I think you have done this, but could you put in context the various ways you get to the International Court of Justice, the Human Rights Commission or whatever? For example, I understand that with the Human Rights Commission the government has to give a specific imprimatur and with the International Court of Justice it is a more general agreement.

Can you tell us what is specific and what is more general in the avenues that a person might pursue in getting before these bodies? For example, in the East Timor situation where Portugal took Australia to court, did Australia have to give a specific permission for that or was there a general permission given?

Prof. Triggs—No. That is exactly why we have exposed ourselves so widely to the Nauru application, for example, the Timor Gap one and others.

Senator COONEY—With the Toonen case in Tasmania there had to be a specific permission for that, didn't there?

Prof. Triggs—Yes. The point about the International Court of Justice is that Australia has accepted what is called the optional clause, that is, clause 36 (ii) of the statute of the International Court of Justice. What that means is that Australia has, in relation to the rest of the world, and on a condition of reciprocity, accepted that in a specific instance we can be brought before that court for any matter properly within the jurisdiction of the court, regardless of whether we consent to it.

Senator COONEY—So Australia was brought before the court on that occasion, because it had agreed, but Indonesia could not be, because it had not.

Prof. Triggs—Exactly. So that we became the closest convenient party and the court, as you know, took the view that the proper party was not before the court and therefore the matter did not go ahead.

Senator COONEY—What was the situation with Mr Toonen in Tasmania?

Prof. Triggs—Australia has accepted the optional protocol to the International Covenant on Civil and Political Rights and, on the basis of that optional protocol, an individual—when that individual has exhausted domestic remedies that are otherwise available to him—may appeal over the sovereign entity of Australia to the human rights

committee.

Senator COONEY—Does he or she need a certificate from the attorney or not?

Prof. Triggs—I am not aware that that is required, but I have not looked at that procedure. My understanding is that that is now a right of every individual in Australia. We have never had an individual right of application on exhaustion of domestic remedies prior to the acceptance by Australia of the optional protocol. This is to be contrasted, for example, with the members of the European Union who—and I think there are 15 or 16—have accepted the power of individuals to appeal to the European Court of Human Rights. That has created an enormous human rights jurisprudence for the European countries that have accepted that provision.

Senator COONEY—And Australia can withdraw from these situations?

Prof. Triggs—Absolutely. Yes, indeed.

Mr McCLELLAND—If the United Nations Committee on the Rights of the Child does make a ridiculous decision outside of their terms of reference—and I have not seen the criticism of Canadian federalism—and which is not consistent with their charter, is there a means whereby that decision itself can be called into question? For instance, could all the signatories to the convention say, ‘Look, the committee was out of line here’? What is the structure?

Prof. Triggs—The government has the power to report and make submissions, and that would be an obvious first step. Clearly another would be to call together at any time other parties to discuss the actions of the committee and its improper procedures. I think you would then operate through the secretary of that committee and request it to justify and explain its actions to all parties or the group of parties, presumably a majority. If it was unable to do so, I think it would be quite proper then for the parties to either reconstitute the membership of that committee or deal with it in some other way.

In other words, the power lies with the sovereign entities which have ratified that treaty. There is always that difficulty, however, that once you ratify a treaty and you create bodies, you create entities which, if not in legal, in political reality, assume a somewhat objective life of their own.

Mr McCLELLAND—Yes, but they are not all powerful.

Prof. Triggs—They are definitely not all powerful.

Mr McCLELLAND—They are ultimately the subject of review by the signatories.

Prof. Triggs—Absolutely. And it is always within the power of the sovereign

parties to regulate and deal with the entities that they have created. The difficulties lie at the political not the legal level.

Mr McCLELLAND—Yes. Certainly.

CHAIRMAN—We thank you very much for your evidence, Professor Triggs.

Prof. Triggs—It is a great pleasure. Thank you for your time.

Luncheon adjournment

[1.44 p.m.]

EDWARDS, Mrs Susan, Project Officer, Victorian Council for Civil Liberties, Level 2, 601 Bourke St, Melbourne, Victoria 3000

O'REILLY, Mr Joseph, Executive Director of Liberty, Victorian Council for Civil Liberties Inc., Level 2, 601 Bourke St, Melbourne, Victoria 3000

CHAIRMAN—We have received the written submission dated 27 March 1997. Are there any amendments, additions or errors that need to be reflected in the *Hansard* record?

Mr O'Reilly—No, Mr Chairman.

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

Mr O'Reilly—Yes. Firstly, let me thank the committee for the opportunity to appear before it today. It is extremely timely and useful that the federal parliament turns its mind to its obligations and those of Australia generally under the Convention on the Rights of the Child.

With respect to that initial submission which the Council for Civil Liberties made, we intend to provide the committee with a longer and more detailed submission addressing the terms of reference one by one. In the meantime, I will take the opportunity today to table—and I have sufficient copies for each of the members of the committee—a background paper that the council produced on the Convention on the Rights of the Child called *Children first*. I will come to that in a moment.

CHAIRMAN—It is agreed that the background paper *Children first* be accepted as an exhibit.

Mr O'Reilly—As a document it indicates the interest of the Council for Civil Liberties in the Convention on the Rights of the Child and our long-term interest in our obligation to an international treaty. It was a campaign which we ran to highlight Australia's obligations under the convention. We came together with a whole range of other organisations—which are indicated on the back of the broadsheet—which, broadly speaking, have a concern with children's rights and the status of children.

The Council for Civil Liberties is an organisation which sees its principal task as the monitoring of Australia's compliance with international human rights instruments. The Convention on the Rights of the Child comes under those and is of special concern to us. We also approach the Convention on the Rights of the Child, in a way, as a framework document by which we would seek to—as indicated in that broadsheet—promote the rights, interest and status of Australia's children and young people in a whole range of

areas.

One of the things which the council would like to draw the committee's attention to is the prima facie inconsistency that Australia has exhibited in implementing the Convention on the Rights of the Child compared with its implementation of other international instruments. It is customary for Australia to ratify international instruments and to return home and use that as a way of implementing domestic legislation which assists us in complying with the provisions of those conventions.

The Commonwealth generally argues that it is in fact done prior to ratification, and generally we actually already abide by the principles and the provisions contained within the instrument. But it is recognised that, for instance, when we ratified the Convention on the Elimination of Discrimination Against Women, we returned and enacted the Sex Discrimination Act. We have done similar things with respect to disability discrimination and, of course, race discrimination and, more broadly, with respect to our human rights obligations in the form of the Human Rights and Equal Opportunity Commission Act.

The Convention on the Rights of the Child, on the other hand, is one of the very few international instruments which Australia has ratified and really failed to give full effect to in the form of national domestic legislation and in the establishment and appointment of mechanisms around it directed at promoting compliance with it. In a sense, that illustrates the inconsistency in our treatment.

The council really took the opportunity, along with those other organisations, to impress that point upon the community and the parliament in particular. Today we seek to do that again and to say that, whilst we do not have an opportunity to talk about the exact detail of Australia's failure to really provide for the protection and the promotion of children's rights, we do have an opportunity to address that by putting in place a variety of mechanisms.

One of the committee's terms of reference is the implications of domestic ratification of Australia's treaty, the Convention on the Rights of the Child. I want to bring the committee's attention to a judgment of the Family Court yesterday in B and B and the Family Law Reform Act 1995. The court spends some 10 to 15 pages detailing its understanding of how the treaty, the Convention on the Rights of the Child, takes effect in Australia.

It does so in very detailed language. I think the committee would find it very useful to have a very senior court in this country provide detailed evidence, analysis and justification for how the treaty takes effect. They refer principally to its effect with respect to its annexure to the Human Rights and Equal Opportunity Commission Act and the reference to the overriding objective of the Family Law Act to promoting the rights and interests of children.

Apart from that, the Council for Civil Liberties is keen to reiterate the fact that conventions in Australia have only a moral effect until they are implemented in Australian law and, apart from the annexure to the Convention on the Rights of the Child to the Human Rights and Equal Opportunity Commission Act, Australia has done little to give effect to the convention. We believe that there are a variety of measures necessary to give greater effect to it. These include: parliament giving effect to a standard definition and understanding of child and childhood because there is some discussion and debate about that; the enactment of national umbrella legislation along the lines of other anti-discrimination legislation which gives effect to international treaties; a domestic mechanism to monitor compliance, such as a commissioner for children as we have in other areas, and a national advocacy project which would enable children to give effect to their rights contained within legislation by enabling them to take up those issues, have advocates represent them and give some effect to the provisions which would be enacted by the Commonwealth.

The other thing which I want to bring the committee's attention to is the recommendation of the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission in its latest paper—its recommendations paper—arising out of its inquiry into children and the legal process.

CHAIRMAN—This is the May 1997 paper?

Mr O'Reilly—Yes, exactly. It makes a recommendation for the establishment of an officer for children within the department of Prime Minister and Cabinet and it is something which we would like to broadly support and endorse. It does not detract from our general recommendation to the committee which is for the establishment of a commissioner for children because, as it indicates, they could work hand in hand. It accords the Office of the Status of Children in the department of Prime Minister and Cabinet greater priority because it sees that many of the areas which the convention on the rights of the child touches upon are principally service orientated in nature and the responsibility of states. In those terms, an office within the department of Prime Minister and Cabinet could direct its energies to standardising service delivery rather than enacting or monitoring compliance with a federal piece of legislation.

In closing, I want to say that the convention on the rights of the child really does offer Australia a variety of opportunities for authentically advancing the rights, the interests and the status of children and overcoming inconsistencies across jurisdictions—and I wanted to indicate just a couple of these. One of them which is of real concern to the council is children in detention and the variety of standards of care that those children receive in detention. This could effectively be addressed by using the convention on the rights of the child. I would like to bring the committee's attention in particular to the detention of children asylum seekers in this country, both in regard to the length of their stay, and the inadequacy of the detention arrangements for them.

Children in care is another area where there are real opportunities to advance standards for children. And lastly, I think, one of the concerns is access to and quality of education in this country where most children, of course, find themselves. We would like to endorse, in a sense, moves of that nature at a Commonwealth level for a national curriculum framework which provide an opportunity to standardise the treatment of children and to bring greater attention to their rights and interests in those areas. That, in a sense, indicates our very broad approach to these issues and I am more than more than willing, as is Sue Edwards, a project officer with the council, to answer any of the committee's questions.

CHAIRMAN—Thank you very much indeed. Just coming back to this concept of the children's commissioner—and there are very many models—is your model investigative, an ombudsman type? Is it advisory? Specifically, what is the role of that commissioner?

Mr O'Reilly—I think the model of existing commissioners provides a very good one in Australia. They have a variety of functions under existing anti-discrimination legislation. They are really to be responsible for the act, which you enact, under which they are appointed; to monitor our compliance with that act and the principles contained within it; and to entertain complaints and/or occasions where action, particularly government action and public policy, is in contravention of the act.

That already exists, of course, with respect to the general provisions within the Human Rights and Equal Opportunity Commission Act, where an individual or organisation can bring to the attention of the commission an act or omission on the part of government which contravenes the principles within the UN Convention on the Rights of the Child. This would, of course, give greater effect to that basic provision. It would also have an educative role and an investigatory role, which the commission already has. So that, for instance, the Sex Discrimination Commissioner has, in the past, undertaken investigations of awards and rates of pay at a state level to determine whether or not they, for instance, might comply with the provisions of the Sex Discrimination Act. We would see those broad provisions being within the purview and mandate of a commissioner for children.

In our discussion paper which you have, they are, in fact, enumerated. A model for the commissioner for children is discussed. There is international experience which can lend itself to this. I spent some time with the Office of the Commissioner for Children in New Zealand as an intern. He has a variety of responsibilities, including responsibilities at a much more direct level for investigating decisions of courts in New Zealand under the Children and Young Persons Act in that country. Broadly speaking, he is a deposit for complaints and an educative mechanism. He provides advice to the government on the compliance of its public policy with the act under which he is established and, more broadly, the convention.

CHAIRMAN—Is what you are suggesting more in line with the New Zealand model or the Queensland model? Is the Queensland model quite inadequate in what you envisage?

Mrs Edwards—The Queensland model seems to be somewhat inadequate in terms of its focus exclusively on children in the care of the Department of Community Services in Queensland and not being able to investigate outside that model for children broadly. The council would envisage that a commissioner for children would be able to look across the board of matters affecting children rather than just narrowly focus on children who are in the care of the state or children who may be in need of special care and protection because of actions of either themselves or of their parents. The commissioner for children needs to be able to look at all children in Australia. The Queensland model is deficient because it only looks at a fairly small band of children within that state and not across the board.

CHAIRMAN—Is it also deficient in terms of its independence? I think with the Queensland model there is a relationship with a state minister as well.

Mr O'Reilly—I think there is also a very significant relationship with the department, because the department has responsibility for service delivery. I am not enormously familiar with the Queensland Children's Commissioner Act, but I was conscious at the time that there were those criticisms levelled at its establishment.

I believe it is always preferable for these kinds of ombudsmen or commissioners to report directly to parliament rather than to have a principal relationship. I think that would be underscored with respect to the establishment of a commissioner for children, because we have a variety of ministers—the Minister for Family Services, the Minister for Employment, Education, Training and Youth Affairs, the Minister for Justice and the Attorney-General—all of whom would have a claim, as it were, on some of these different tasks of the commissioner for children. So I think a direct reporting relationship to parliament is preferable.

CHAIRMAN—The committee takes your point in terms of the New Zealand model. Were it not for the very serious illness of the present commissioner, we would have already taken evidence from him. If and when he is fit, we will take evidence from him as well.

Senator BOURNE—I must say that the *Children First* document is very good. It would probably be worthwhile putting out something in this sort of format to educate people about the document we are talking about—CROC. Have you gone about doing any education of people about the convention? Do you know what has been done on that here?

Mr O'Reilly—We have. In fact, this broadsheet was, in a sense, the lead in that. There is also a poster which goes with it. We published about, I think, 10,000 of those.

We distributed them through other organisations throughout the country.

We also conducted a postcard campaign—which was directed to the then Prime Minister, Mr Keating—calling on Australia to really comply with its obligations under the convention. The commissioner for children, the national children's and youth legal advocacy project and national legislation were the three claims we made. So they are also here. That was, in a sense, an educative exercise. I would hope we were really having a dual effect—one of eliciting community interest and, thereby, political will in implementing the convention.

But might I say that I actually think Australia has failed thus far in complying with one of the provisions in the convention, which is to educate people and, in particular, children about its provisions. Because our efforts in that respect have been piecemeal at best and I think even Australia's official report under the Convention on the Rights of the Child alludes to that. The principal work in those areas has been undertaken by the Human Rights and Equal Opportunity Commission with no additional funding or support from the Attorney-General for those activities.

Senator BOURNE—Yes. There has been some suggestion that we should be using our obligations—that were put up under human rights, of course—under this convention also as part of our national action plan. Has anybody asked you to have any input to that, because I know NGOs do have a bit of input to the national action plan?

Mr O'Reilly—One thing which—

CHAIRMAN—Sorry, to interrupt you, but did you have an input to the alternative report, for example?

Mr O'Reilly—Yes, we did. We were one of the agencies, in fact, which co-convened the establishment of the alternative report. With respect to the national action plan, we are represented on the Attorney-General's human rights forum. The national action plan is supposed to be reviewed, but I am not aware of any progress with respect to that. The re-issuing of a new national action plan on human rights, which I think is absolutely necessary, and the Convention on the Rights of the Child I think has to take a certain degree of primacy in anything that is done under the national action plan.

Can I just say, though, that without mechanisms designed to promote and protect children's rights and monitor Australia's compliance, you know as well as I do that Australia's report under the Convention on the Rights of the Child was over two years late and so it, in a sense, reflects the lack of political priority accorded to the convention generally and their compliance mechanisms, in particular. Whilst it is a weighty document and a worthy one, it does reflect the lack of priority that we have accorded to the kinds of systems that we need to put in place. I suspect that the committee has been critical of that. And, of course, it is asking for more information from the Australian government. I think

it will be critical of what we have done to date, which is far too little, in giving the convention greater effect.

Senator COONEY—Taking up the chairman's point about that commission, that is just a very descriptive term. Could you set out—not now, but ultimately in the paper—what you want? Do you want it exactly the same as, say, the Sexual Discrimination Commission or do you want it more like an auditor-general or what? If what was sought was an observing function where the commissioner simply reported to parliament without taking any action then that, in a certain sense, would be a lot easier than one where federal parliament tried to set up a body active in trying to right the wrongs that it observed. So from a political and practical point of view, I would be interested to know what suggestions you have got.

Mr O'Reilly—The primary task of existing discrimination commissioners is to provide a safe deposit for complaints of discrimination and to conciliate those complaints. I think that, as a primary function for a commissioner for children, would be more difficult because, by their very nature, children will have various barriers put in their way. I do not think it is necessarily desirable, at a public policy level, to use children or to have children only being able to remedy issues at an individual level and in a litigious kind of way by taking matters of a complaints nature to a commissioner.

However, there should be that opportunity for organisations which represent children to take complaints—particularly complaints of a systemic nature where human rights are being abused, such as through the care system or through, for instance, the imposition of voluntary levies in education, which is an issue which has some currency in Victoria—to a commissioner to, at the very least, bring down some sort of an assessment of whether the action on the part of government is in the public interest or not. Whether or not that commissioner would be able to force compliance, particularly by a state, with one of their determinations is another issue. That currently is not the power that the Human Rights and Equal Opportunity Commission has, but it has a moral one and a degree of moral authority in those terms.

The Attorney-General has made it very clear that it is his intention to do away with specialist commissioners within the Human Rights and Equal Opportunity Commission. We have some grave concerns about that as a general move towards watering down its effectiveness and ability to take on conciliation and education in very specific areas such as race and sex. If the Attorney-General were to continue to do that, were to do away with specific commissioners and were to appoint generalist commissioners, then we would argue that there are some areas which require a specialist commissioner for a short period of time—say, two or three years—around which an action plan can be developed and around which certain attention can be accorded to the new area.

I think that argument fails when we see the significant rise in race discrimination complaints that have occurred over the last couple of months in general, despite the fact

that we have had the Race Discrimination Commissioner for many years—one of the first commissioners appointed under the commission. So whilst I appreciate that the Attorney-General wants to rationalise the work of the commission in some way by doing away with what are arguably expensive commissions, I think to overcome that, as the corpus of anti-discrimination and human rights law develops as our ratification of international human rights treaties develop, appointing specialist commissioners in specific areas on a one-by-one basis to consider those could be justified. I think if we were to do so, then the appointment of a specialist commissioner for children could very easily be argued under those terms.

Senator COONEY—Could you give us a few thoughts about what the states could do and what the federal government could do? What is the name of the equal opportunity commission here in Victoria?

Mr O'Reilly—The Equal Opportunity Commission.

Senator COONEY—Is there not something added to that?

Mr O'Reilly—No.

Senator COONEY—Is that all it is?

Mr O'Reilly—In New South Wales I think it is the anti-discrimination and the equal opportunity commission. That is to be changed.

Senator COONEY—That is a commission that hears matters as well. What is it called? Do you know anything about the other states? Should we find out about that ourselves?

Mr O'Reilly—Maybe what you are referring to in Victoria is the fact that we have the Equal Opportunity Commission, which is the educative arm and the conciliation arm, and we have an anti-discrimination tribunal.

Senator COONEY—That is the one.

Mr O'Reilly—That tribunal is able to enforce decisions which it makes, as are other tribunals. They are, of course, appealable in the other courts throughout this state. That kind of model would exist at least in part under our proposals for a commissioner for children because they would be able to entertain group complaints as well as complaints from individual children. The question as to whether or not they could enforce a remedy, particularly on a state—

Senator COONEY—The state bodies can; the anti-discrimination tribunal can.

Mr O'Reilly—And the Human Rights and Equal Opportunity Commission will be able to after the passage of the Human Rights Legislation Amendment Bill, which will give the capacity to enforce remedies to the Federal Court. I think that bill is in the Senate at the moment.

Senator COONEY—That is only in so far as the Commonwealth has jurisdiction.

Mr O'Reilly—That is correct. None of the states has enacted anti-discrimination or specific legislation which applies to children's rights, apart from the establishment of the Commissioner for Children in Queensland, which is the establishment of a new body in that state. That, as Sue rightly pointed out earlier, really only refers to children in care and does not have a broader purview about public policy and its effect on children broadly.

So its jurisdiction is limited by its ability to entertain only matters that refer to a particular set of children in certain circumstances. But it is our view that that means that children in detention fall through the gap. A whole range of other areas in which children find themselves and are affected by public policy fall through that gap. That needs to be addressed.

At a state level, though, it is very much a welcome move that Queensland is doing that and according some priority to children, even though it is only children in care. So we would welcome Queensland's moves in those areas, despite some of the deficiencies which we indicated with respect to independence and resourcing.

Senator COONEY—Do you feel like doing us a little chart of the various states setting out what commissions, tribunals and courts are available in each state? You can say no. You will not be insulting us if you do say no. If you cannot, say no because it is a bit of a heavy task.

Mr O'Reilly—We would be happy to do that.

Senator COONEY—A little chart would be helpful.

Mr O'Reilly—That would be quite easy. Of course, South Australia had the Children's Interest Bureau. It has recently been unfunded and disestablished. The Children's Interest Bureau had an executive director, and it had a very broad focus on children's issues and interests in South Australia. It was not an independent statutory office but the office, as a whole, was established under an act of parliament. So there are a variety of ways in which it can be approached.

The benefit in the recommendation made by the Human Rights and Equal Opportunity Commission, and the Law Reform Commission, is that an office for children within the Department of Prime Minister and Cabinet overcomes all the other issues about remedies and compliance, et cetera, by focusing on coordination of service delivery, and

the establishment of a focus on children and public policy. I think these necessarily have to go hand-in-hand. These kinds of mechanisms are generally mirrored at a state level where the Commonwealth takes the lead.

For instance, the Office of the Status of Women which is within the Department of Prime Minister and Cabinet, is generally mirrored within states by virtue of the establishment of specific bureaus which are directed at working with the Office of the Status of Women on women's affairs in those places. I would imagine that that would happen if the Commonwealth showed some will in establishing an office for children within the Department of Prime Minister and Cabinet.

Mrs Edwards—I think there is another quite important aspect of the proposal from HREOC and the Law Reform Commission about an office for children. I think there is a need in Australia to get away from the convention being a 'them' and 'us' situation. There is a possibility that an office for children, which would then find expression around the country, may be a less confrontational way of emphasising the role of children and the need to promote their interests rather than just having a legislative or a judicial body that reviews. I think that is needed as well but there is a need to promote a common approach to the convention and to children in Australia rather than the feeling that has developed that people who advocate for the convention tend to be pitted against people who do not like it, and the children of Australia fall down in the middle.

Mr O'Reilly—The other thing that would have to be decided, under a dual model with a commissioner and an office, would be who would produce these reports. At the moment, this falls within the purview of the Department of the Attorney-General. For instance, our report to the committee on the Elimination of Discrimination Against Women is coordinated by the Office of the Status of Women. It is rarely late. In fact, there is a huge degree of community involvement in the formulation of the official government report, through the preparation of other documents and the engagement of the Office of the Status of Women with other women's organisations, and, of course, using that as an educative exercise. It would bring all of those other benefits.

In that chapter on the recommendation for the establishment of an office for children within the Department of Prime Minister and Cabinet, the two commissions indicate its effect on federal administration and how it would work, et cetera. I think they put a very compelling argument for the sorts of benefits that such an office would deliver.

CHAIRMAN—In relation to the proposed umbrella legislation, how realistic is such umbrella legislation in the light of quite marked differences in interpretation of the convention that we have heard this morning and in other venues?

Mr O'Reilly—I think the reality is that it will depend on what sort of interpretation the Commonwealth takes of the convention. There are, of course, very substantive interpretations of it by committees such as the committee on the Rights of the

Child which is the United Nations committee charged with monitoring Australia and other countries.

CHAIRMAN—But that in itself would be questioned by a lot of people.

Mr O'Reilly—Yes, of course. In a sense, all I am indicating is that it provides at least some direction. You are completely right to point out that there is not necessarily broad support for it. I just indicate that at the very minimum the Commonwealth is able to legislate for mechanisms to be established which have very broadly the focus of monitoring compliance with the convention and, in a sense, the day-to-day operation of it. How it will take effect can be left to the evolution of both that commission and its work, and the parliament and the political process around which there will be various tos-and-fros and different ways in which it will be affected.

Australia has to evince a commitment to the principles contained within the convention and give those principles some effect, even if it is only through a mechanism which provides for that kind of test on the interests of children, on any issue, which would be proffered as independent advice from the commissioner for children to the federal government or to state governments on particular issues. They can do what they like with it. So it provides for that mechanism. I think that is a minimalist position but it is a useful one.

CHAIRMAN—One way around that is to have at the Commonwealth level some sort of, as you indicated, statement of principles. That is bearing in mind that a lot of what is implicit and explicit in the convention is part of state functions. Perhaps some of the detailed legislation could be left to the states.

Mrs Edwards—I think you are going to have to leave some of the detailed legislation to the states precisely because of that constitutional difficulty.

CHAIRMAN—Yes, that is right.

Mrs Edwards—I think the problem we have at this stage, and why we do need some sort of overriding umbrella legislation, even if it is minimalist, is the need to actually have it owned by someone. I think Australia's report on the Convention on the Rights of the Child, and the sorts of questions that were coming back from the committee, are indicative of the fact that so many different bodies have legislative control over various aspects of children's lives, and that there is no-one who pulls it all together and has overriding responsibility.

There is a very real advantage in having some form of umbrella legislation and a body to look after the implementation of that legislation. I think this sends a very strong signal to the states—most of which is being done—that this needs to be coordinated. There needs to be provision across the board for children so that children do not get left

out in social security reviews and so that they do not get left out in reviews of the Family Law Act that are well—intentioned but maybe do not take the full interests of children into account. I think there is a range of areas where we have got good legislation. We have got quite a lot of good minimum standards within the country but no-one has responsibility for ensuring that they are all pulled together.

CHAIRMAN—Thank you. I think that is enough.

Senator COONEY—And you do not have to have that chart this afternoon!

CHAIRMAN—Not tomorrow but the next day! We would welcome that organisational comparison, if you would.

Mr O'Reilly—Thank you for your time.

[2:18 p.m.]

MUEHLENBERG, Mr William John, National Research Coordinator, Salt Shakers and Focus on the Family, 60 Carroll Road, Oakleigh South, Victoria 3167

CHAIRMAN—Welcome. In what capacity are you appearing before the committee today?

Mr Muehlenberg—I am wearing two hats today. The people who wanted to be here from the organisation Salt Shakers could not make it today so I have been asked to fill in. I have also put in my submission from Focus on the Family. I would imagine that in every respect our viewpoints would be similar.

CHAIRMAN—Are there any amendments, errors of omission or alterations to the Salt Shakers submission?

Mr Muehlenberg—No.

CHAIRMAN—I now invite you to make an opening statement.

Mr Muehlenberg—If it is possible, I would like to submit two supplementary papers. I do not know whether they will fall under Focus on the Family or under Salt Shakers.

CHAIRMAN—That will be okay but you cannot expect us to know what is in them.

Mr Muehlenberg—I will speak to them and perhaps they can be incorporated later into the general submission.

CHAIRMAN—Yes, they will be in supplementary submissions under one of the organisations.

Mr Muehlenberg—They are written with Focus on the Family on the letterheads so perhaps they should be added as supplementary submissions to that.

CHAIRMAN—So they are supplementary.

Resolved (on motion by Senator Cooney):

That the papers *The case for the two parent family* and *The case for marriage* be accepted as supplementary submission Nos 60A and 60B and received as evidence.

Mr Muehlenberg—From the submissions that you have in your possession from

both Focus on the Family and Salt Shakers probably the main point we would like to add at this stage is the fact that both Salt Shakers and Focus on the Family are quite concerned about the wellbeing of children. We believe that the best means of looking after the needs and interests of children is in the family—that the mother, father and child arrangement has proven throughout history to be the best means by which we can ensure the safety of children and look after their needs. That is what these two supplementary papers refer to.

One is called *The case for the two parent family* and the second is called *The case for marriage*. These two papers simply outline a number of studies, both here and overseas, that look into the whole area of how children fare in various family structures. The evidence, as summarised in these two papers shows—and, of course, there are exceptions—that generally speaking a child would do much better in the context of a mother-father household, preferably one cemented by marriage.

A whole range of the social indicators—whether educational performance, drug use or abuse, suicide rates, criminal involvement—show that on the whole and, again, there are exceptions, a child will do better in all of these areas if raised in a stable two-parent family and that, conversely, in a broken family situation or a single-parent family these problems tend to be exacerbated.

It is our position that if we really are interested in the needs of the child and the child's wellbeing, even in terms of things like child abuse, generally speaking the best place for a child to be is in the protection of its own home with its mother and father. The research here—there are something like 50-odd footnotes on each paper—refers to a number of studies both from here and overseas that show, again, that the evidence seems to be mounting that children do need a mother and father and, where possible, governments should be doing all they can to encourage that kind of situation.

While other things like an office of the child or a child's commissioner or even UN treaties on children may have a place, we feel they should not supplant or take over from the most important role, which is simply having a mother and father in the household.

That is probably the main point we would like to add to what we have already stated. We have mentioned, in our written submissions, concern about some of the articles which, to us, tend to give children perhaps more rights and parents fewer rights in some areas. We feel, again, that the best way to protect the child's rights is with a mother and father. As we begin to undermine some parental authority or undermine parental responsibilities in the name of protecting the rights of the child, it may, in fact, sometimes cause more harm than good. That is our general approach to this issue.

We did mention in our submissions that the Liberal Party, back in opposition, had mentioned on several occasions that if they got into power they would look into the whole treaty because they had concerns as well. Daryl Williams and Andrew Peacock are the two

particular individuals, so we would be keen to see these two, now that they are in power, live up to those promises and look into the whole issue of whether or not we need to modify the treaty or, indeed, pull out all together. I think the term is 'denunciation'. Is that the word?

CHAIR—Yes. You are not specifically recommending denunciation at this point in time, or are you?

Mr Muehlenberg—If there were not to be the review undertaken which Mr Williams and Mr Peacock promised earlier on back in 1990 and 1993, in a very thorough examination of the whole treaty and some of the articles they are in, then I think that probably the next best option, indeed, would be denunciation.

CHAIRMAN—I indicated to Mrs Francis before lunch, and we would ask you to do much the same, to have a look once again in the context of all four papers and give us some further comments about whether article 52, which is the denunciation article, is the one that should apply and why, in a little more detail; or whether the other option, which is amendment under article 50, might be the appropriate way and, if not, why not. Could you do that for us?

Mr Muehlenberg—Yes.

CHAIRMAN—My only question to you is: implicit or explicit in what you have said and what is in those papers, is the convention anti-family, in your view?

Mr Muehlenberg—The intentions of the authors of the declaration, and I am sure of many other people there, were not to be anti-family. I am sure many people reading this will not see it as an anti-family document. But, again, as we raised in our concerns about a number of the articles, especially 12 to 16, it gives the appearance of undermining certain parental rights, certain parental responsibilities, which we think in the long run can be detrimental to families and, indeed, detrimental to children.

So, in that sense, one could look at it in that light and be concerned that, again, if it is true, as we say, that the family is the best context in which to raise kids and guarantee them their rights, to the extent that we undermine some of those parental responsibilities and some of the roles that parents have traditionally had it may go against the interest both of family and child.

CHAIRMAN—Would you agree that the convention is and has been subjected to varying interpretative approaches, and that that is a major problem for, for example, coming up with some sort of umbrella legislation that may or may not cover exactly what the convention was intended to do? Would you agree with that?

Mr Muehlenberg—I think that is right. There certainly will be room to move on

these articles. How they are interpreted will vary greatly, I suppose, according to who is doing the interpreting and whom it is going to apply to, which I suppose is as much a concern to us as it may be to others who do not share our viewpoint.

But I take this whole thing back a further step to what the average Australian might feel—that simply so many of these treaties have been undertaken often by, say, bureaucrats in Geneva and New York. The average Australian might be saying, ‘How does their position there where they are at, how is that going to affect or deal with my family and my children? Are they in the best place to look at how the needs of my children could be looked after?’ In fact, it might be an interesting exercise, if not too cynical, to ask how many of the drafters of these treaties and the various UN officers themselves are family members—whether they have children of their own.

We get a feeling—and now I am speaking with the Focus on the Family hat on—from a lot of ordinary Australians in the work that we do, where a lot of our work is in the area of counselling; at last report we get at least 2,500 call a month from families wanting counselling in a whole range of areas. I believe it was Rod Kemp who at one point listed all the various overseas treaties that we are a signatory to, and I think it is something like 1,000-plus treaties. Again, most Australians would not have a clue what these treaties are, would not have had any input into them and are wondering why so many of the important issues affecting them as families are being underwritten or are signed over to international bodies like the UN and how in the long term that is going to help them as a family and whether they have the best interests in mind.

CHAIRMAN—I do not say that that is a total panacea for the problem, but that is what this committee is all about in the future. And that is why we have taken the CROC as an example for in-depth study in terms of extant treaties of which—you are correct there—there are about 1,000 at the moment.

Senator BOURNE—I just want to make the point that you would find most of those treaties incredibly boring and really something you do not particularly want to see. But of course there are a few that really should be looked at again.

Senator COONEY—You have some concerns about the process by which this treaty is being produced, because it is a United Nations document and because of the people who may have had parts in writing it. That is one objection, am I correct?

Mr Muehlenberg—Not a major one, but it is certainly one area of concern.

Senator COONEY—And then there are the terms of the treaty itself. Even if it was written here, you would say this treaty is a real problem, no matter who wrote it.

Mr Muehlenberg—That is right.

Senator COONEY—Is there any other objection? I am not trying to suggest that they are not very big objections, but do you have any other objection to it, besides its authorship—which is the lesser one, as I understand what you say—and, secondly, the content?

Mr Muehlenberg—I suppose there would be a major objection which is slightly more philosophical and, from what I overheard of the previous speaker, it counterbalances some of what was said there. That is, our general position is a concern that, increasingly, the functions and roles of the family tend to be supplanted by various government bodies, whether overseas bodies, the federal government or even the Victorian government.

If it is true that the family is the best provider of the welfare and safety of a child, to the extent that we are looking at creating other government bodies, an office of the child or a children's commissioner—all the things which you have undoubtedly heard many proposals for over the days and weeks—we are concerned that it is taking away from the very important roles and functions of the family.

That is not to say that families do not need help; families need all the help they can get. I am just concerned about the way these kind of questions are often dealt with. It is often more a question that, as a parent or as a family, you cannot quite do it and you need help. So we will let government come in, show you the ropes and help out where you are weak.

We do not mind governments helping out, but we would like to see them assisting, enabling or empowering—which is a big word today—the family to perform its own roles and functions. We would like them to allow a family to be all that it can be, so that a child can best succeed—not to take away its roles but to really help it. Whether that means financial assistance, legal assistance or cultural recognition of the importance of families, that is the way we would like to see governments step into this whole area—not to take away the roles that the family has but to really help mum and dad to do the work of raising their kids the best they can.

Senator COONEY—Correct me if I am wrong here. You see the Convention on the Rights of the Child as another legislative prescription introduced by the state to deal with what the family ought to be able to deal with under its own resources; that they do not need laws or regulations to tell them how to run a family. Am I correct in saying that?

Mr Muehlenberg—Basically. Obviously, there is a place for any number of laws and any number of issues. On the issue of child abuse, for example, we already have a fair amount of legislation against abuse in the home, whether and to whomever it occurs. We are certainly not anarchists. There is a place for governments but we feel that families have tended to be forgotten by many governments in Australia. The institutions of marriage and family have tended to be, perhaps not overlooked but, with various other groups all demanding their own rights in Australian society, it sometimes comes at the

expense of the family.

Some of this can be very pragmatic. For example, on the issue of family breakdown, the most recent figure is something like \$3 billion per year that the government spends picking up the pieces of marriage breakdown. Whereas on marriage prevention, counselling and education programs, we spend only something like \$20 million or \$30 million. It seems to me that if, for example, John Howard—in his concern to cut the budget—were really keen to save money, it is the old story: prevention is better than cure.

If only we can get more resources into helping families be better families and helping marriages to succeed—communication skills, parenting skills, all the practical things that we need. Parenting does not come normally or naturally; it takes a bit of work and we need help. So I would be keen if governments were concerned about the whole issue of the welfare of children. Let us put more resources into parenting skills and communication skills for husband and wife—areas that can help the child so that in the end hopefully there are a few less divorces and there are a few less of the resultant social problems that often occur as a result of family breakdown. Just in terms of utilitarian calculus, we would save a bit of money hopefully if we put more of the eggs in the basket on the side of prevention.

CHAIRMAN—Thank you very much. I invite you to leave those two papers.

[2.36 p.m.]

FRANCIS, Mr Charles Hugh, 12 Denham Place, Toorak, Victoria, 3142

CHAIRMAN—Mr Francis, in what capacity do you appear before the committee?

Mr Francis—I am here simply as a lawyer. I am a member of the Victorian bar's Human Rights Committee. I founded that committee when I was chairman of the Victorian bar in January 1988, but I am not here to represent that committee. I have lectured extensively on the subject of the UN Convention on the Rights of the Child in the United States, Canada, Ireland, England, New Zealand and Switzerland. I hand you, simply for your information, my curriculum vitae from the 1996 edition of *Who's Who in Australia*.

CHAIRMAN—Thank you. That is accepted as an exhibit. We have received your written submission. As a matter of procedure, are there any amendments, omissions or errors that you need to draw attention to?

Mr Francis—No, I do not think so. I have sent to you already two papers, one of which was published in the Australian Family Association magazine in December 1990. I also sent to you a paper that I delivered in the United States in 1993 and which was later published in the United States, and widely disseminated in the United States, in 1993.

CHAIRMAN—That is the one that was in the Population Research Institute publication?

Mr Francis—That is the one, yes.

CHAIRMAN—We have got both of those.

Mr Francis—That was also widely distributed in Ireland and subsequently I learnt that it had gone to Switzerland. That is one of the reasons why I was invited to lecture in Switzerland.

CHAIRMAN—Yes, we do have both of those papers. Would you like to make an opening statement?

Mr Francis—Yes, I wish to make a short opening statement. A number of the supporters of the 1989 children's rights convention maintain quite falsely that its main object was the protection of children and that it did no more than provide for those rights that were already law in more advanced democracies such as the United States. In reality, if such legislation had been introduced in Australia or in the United States, I do not believe it would have had any chance of passing through the House of Representatives in Australia or Congress in America.

By 1989 many supporters of libertarian and humanist philosophies had already realised it was easier to implement their ideas by incorporating them in UN conventions, which their countries might thereafter ratify, rather than taking on the more difficult task of trying to get that sort of material through their own legislatures where it would receive proper scrutiny. In essence, the 1989 convention was humanist, not Christian, and libertarian. It gave to children a sphere of autonomy and freedom from control, in particular a freedom from parental control, and thereby it introduced a radical new concept of children having rights entirely separate from their parents with the government accepting the responsibility for protecting the child from the power of the parents.

In most democratic countries—in fact there are not very many of them in the world—people do not believe that individual rights originate with the government. Rather they believe that they are inalienable rights coming to us from our creator. That is precisely the philosophy that was spelt out in the American Declaration of Independence and in the American Constitution. This contained ideas which came from, amongst other people, the philosopher Locke in England.

The United Nations Convention on the Rights of the Child is based on a very different concept, namely that a child's right should originate with the United Nations treaty itself or with the governments of the ratifying countries. Most of us do not accept that parents are mere trustees who receive such authority as they have over their children through some delegation by the state from its power over their children.

We believe the origin of the parent-child relationship is something entirely separate from the state and that the state can only intervene where there is obvious and significant harm being done to the child or there is a very real potential danger of harm to the child from its parents. Whilst there are some admirable features of the convention, it is a very serious invasion of parental rights and the Australian government should never have signed or ratified it.

When any government signs a convention, it undertakes to make the provisions of that convention part of the law of the country, but much of what is contained in this convention falls within the powers of the states rather than within the power of the Commonwealth. What does or does not fall within the powers of the Commonwealth will remain to be determined by the High Court. But if the Commonwealth passes laws, as of course it has undertaken to do, to conform with its obligations under the convention, very few parents would have the financial resources to fight against those laws, which might well be an unlawful invasion of their rights.

Much of the convention tends to be ambiguous and many sections need to be redrafted, at least for the purpose of clarifying their meaning. There is so much of the convention to which we would need to attach reservations that my view is that the only proper course for Australia is to indicate that, whilst it will adequately safeguard children's rights in Australia and that it fully supports the 1959 declaration of rights of the

child, it nevertheless gives notice of its intention to denounce the convention under the provisions of article 52.

CHAIRMAN—Thank you. My question would have been: what was your specific avenue of attack? It is obviously article 52. So it is 52, rather than is implicit in your written submission that the committee should:

. . . first determine which article should be altered or eradicated and then inform the United Nations that we do not now propose to implement these articles in their present form, indicating why those articles are objectionable or repugnant to the Australian people.

I suppose that implicit in that is some sort of amendment process under article 50?

Mr Francis—I would not be opposed to an amendment process, but I see enormous difficulties in an amendment process. I appreciated that you might ask me today what articles I would want to amend. Going through it as a lawyer, there is virtually no section of it that I would not want to amend, sometimes simply for the purpose of clarification. But the more you go through this, the more ambiguous you realise it is and you suddenly see new traps and all sorts of difficulties about it. One of the reasons I have swung over to denunciation rather than amendment or reservation is the—

CHAIRMAN—Bear in mind we cannot reserve now what we have already ratified.

Senator COONEY—We can propose an amendment under 50.

CHAIRMAN—We can propose an amendment under 50, which then goes through the Secretary-General, but once we have ratified and inserted our reservation under 37(c) we cannot insert another reservation. We can make some proclamations—‘declarations’ is the exact word.

Mr Francis—As a matter of international law, I am not necessarily satisfied that you are right; but certainly the United Nations would say that you were right, so it is not much good me trying to argue to the contrary. But that is a complex question. I also point out that reservations create a different problem because—I think this is under article 51—if the UN thinks the reservation is inconsistent with the convention, it can then turn around and say to you, ‘You are bound by the covenant but we cannot accept your reservation,’ and therefore your reservation becomes useless.

CHAIRMAN—Yes. As was indicated yesterday and again this morning, this document is a statement of principles. It is not a neat legal document, particularly under English common law. It is a series of compromises which were developed over a long period of time—it took a long time to get to the ratification process. You have raised this in your submission, and many others have, too. If you take the ratification by EC countries

and the reservations that they have made, and you take some of the Islamic states which have ratified without any reservation, you have to wonder about it. It puts a big question mark over the ethical and moral value of the convention when some of those countries actively indulge in female genital mutilation. That is the practical side.

But would you not agree that this is, in general terms, a reasonable statement of principles which might be embodied in Australian domestic law? I would be interested in your reaction to the international instruments legislative approach currently going through. Until such time as we embody it in law, even though it has been ratified it does not have the full force of our domestic law.

Mr Francis—No, I would not agree with that. The reason I would not agree with that will be clear if you read the lecture which I delivered in America. You will see the interpretation I put on this document. Articles 12 to 16, in particular, have a very unfortunate interpretation. I am not suggesting to you that my interpretation is the only interpretation, but wherever I have lectured and lawyers have been present who have studied this document, they have come to the conclusion that my interpretation is the correct one as a matter of law. I have had support on that, as I have indicated, in the United States, England, Ireland, Switzerland and New Zealand. None of the lawyers there who heard me lecture suggested that my interpretation was wrong. In fact, a number of lawyers—and some of them are extremely expert, far more expert than I—have come up with almost precisely similar interpretations. You have, for example, Professor Hafen, who happens to be in Australia at the moment. He is an elder of the Mormon Church. You have Professor Wilkins in America. You have Phyllis Shaffly, who is a very competent lawyer—people seem to forget that. You have Professor Newell in England. You have James Bogle, who is an English barrister who is an expert on human rights. There are numerous highly expert lawyers who have come up with either an identical interpretation or a very similar one.

I also point out that you should look at the history of this. This document really came about from two main sources. First of all, there were the radical libertarians who were involved in the children's rights movement in the United States. They saw the family as an obstacle to the progress of the child—an impediment to its development—and they wanted to create rights which children could enforce against their parents. Those people were primarily responsible for the drafting of this convention.

Then a quite different body came in and supported them. They got a lot of support from the old communist governments in eastern Europe—this is prior to 1989. Those governments saw that the convention would reinforce the rights of the state as against the parent because it gave the state and not the parent the right to determine what was in the best interests of the child. That was how this convention came about. It was drafted primarily by NGOs in the United States. Unlike most other UN conventions which were drafted at the UN, this was not drafted at the UN. It was put to the UN as a *fait accompli*. It received very little attention when it was laid on the table at the UN, and the nations

rushed up like so many lemmings to sign and ratify it without any understanding of what was in it.

CHAIRMAN—The other point in terms of the ratification is that a lot of people have said that we have had 189, 190 and, as of today, 191 nations ratify it. What some of them have not pointed out in that ratification process is the extent of some of the reservations, or no reservations at all from nations that—to be tactful about it—are less than democratic.

Mr Francis—In fact, of all the nations in the UN there are only about 21 democracies I think. There are very few democracies—as we understand democracy—at the UN.

CHAIRMAN—This morning Mrs Francis made some comments about the UN. I think most of us on this committee would be critical of some aspects of the UN. It is an inefficient organisation. Are you fundamentally saying that because it has come from the UN that it is wrong? Is that what you are saying?

Mr Francis—No. I am not saying it is wrong because it comes from the UN. I am saying that just looking at it, it is wrong.

Senator COONEY—We as a committee—and this is open to us—could recommend that the treaty be denounced, given that we have an alternative in article 50 to recommend that there be amendments. If we took your approach and said, ‘Let’s denounce it,’ that would be saying, ‘Look, there is nothing in this that we really reckon is worth saving,’ and there may be some problems in that. If I can go to the preamble—and I do not want to go through it all because you have been through it—it seems to me that we would be asking the Australian government to denounce it, which would be a very serious step in any event. This statement says:

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance . . .

There would be no problem with that.

Mr Francis—No.

Senator COONEY—The next one says:

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

That is very much family orientated. Would there be anything in that?

Mr Francis—No. There is no problem about that. But I do not see the same problem that you see about denunciation.

Senator COONEY—I would just like to finish before you speak, because you will beat me before I get out of the traps if I let you speak before I get through.

Mr Francis—Not always.

Senator COONEY—Yes, always. It goes on to say:

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

They could almost be your words.

Mr Francis—Yes.

Senator COONEY—It goes on to state:

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity . . .

You might say that is fairly loosely expressed and that leaves itself open to all sorts of interpretations. In the context of the preamble, it does not seem to be too bad. Then there is an historic description where it refers to the rights of the child, the Geneva Declaration of the Rights of the Child of 1924, and the Declaration of the Rights of the Child of 20 November 1959 which I think—

Mr Francis—They are in very similar terms.

Senator COONEY—I think there would be no great objection to either of those. The next part, for example, seems to me to be something you would want to look at. It states:

Bearing in mind that, as indicated in the Declaration of the Rights of the Child—

and then it quotes the Declaration of the Rights of the Child:

. . . ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’ . . .

I take it you would agree with that?

Mr Francis—Yes, I would agree with that.

Senator COONEY—Because it deals with both before and after birth. You do not find that sort of thing in many laws that are passed in this day and age.

Mr Francis—Just to take the part about before as well after birth, that went in at the insistence of the Vatican. The Vatican indicated it would not sign unless that went in and this is part of the hypocrisy of the United Nations because although they have this convention requiring the safeguarding and protection of the child before and after birth, nevertheless, the UN, through such institutions as International Planned Parenthood, is trying to introduce abortion on demand in many countries.

Senator COONEY—But that seems to me to be getting back to the point that the chairman raised that because it comes from the United Nations does it mean we reject it on those grounds. I thought you said no to that and you have to let the document stand on its own.

Mr Francis—I will make one other qualification to that. I touched on this in a paper I delivered in Zurich. I will leave a copy of it with you if you like. The nature of the UN is changing. Whenever you set up a government, the government always begins to try to attract further powers. It is interesting, for example, that in the United States they were unanimous when they set up a government. You had all these people working in cohesion together, signing the declaration of rights and signing the constitution, but even before the presidency of Washington had ended you had bitter divisions within the cabinet and government because there was a group, which later formed the old Republican Party, which is in fact the lineal ancestor of the Democratic Party, which by 1795 was saying that the government was grabbing too much power and it had to be stopped.

Now the UN is behaving in exactly the same way. When we began the UN we all thought of it as a great institution which would declare universal human rights and would intervene when nations were at war, but now the UN is beginning to see itself as a world government dictating to the nations what they will do. Whenever you sign a UN convention, you are giving up part of the sovereignty of your country to the UN. We hear an awful lot of complaints about the fact that the sovereignty of Australia is interfered with by the relationship with the British crown, but we have given away far more of our sovereignty to the UN through conventions than the British crown ever had.

This is a real problem about the UN. In particular, the officials of the UN are seeing themselves as having control over countries. That is apparent, for example, in the report which the UN Committee on the Rights of the Child has delivered in respect of Canada. That was delivered in June 1995. It was very critical of the fact that Canada has a federal system. In effect, it was saying to Canada, ‘You are in charge. You pull these states into line,’ as if the states had no rights. We may well be faced with the same sort of thing.

Senator COONEY—I take on board everything you have said. This might be a

political question more than a legal question, but you being a member of parliament in your day and still being a very considerable—

Mr Francis—I am still a member of the National Party. I confess that, for better or worse.

Senator COONEY—If we denounce this, cannot it be said with some legitimacy—I am not saying it be said with mala fides—that, ‘Having once adopted it, you have now rejected a document that at least gives protection to children both before and after birth. You are rejecting a document that, in its preamble at least, said that the family was a fundamental group of society and so on.’ Can you see any political problems in that?

Mr Francis—There are some political problems, but you have to have courage. I believe that, if you go about the denunciation in the right way, not only can you achieve something which is of great benefit to the people of Australia but you may also be able to achieve something which is of great benefit to the whole world.

For example, when Wilberforce started out saying slavery was wrong, most of the members of parliament thought he was an idiot, and for years and years he got nowhere. But if we go about our denunciation in the correct way—and it would take quite a bit of time to detail how we could go about it—we will certainly cop flack in the short-term, but in the long run I think the nations of the world will respect us more when they see that we are standing up not only for the rights of the child but also for the inalienable rights of parents throughout the world.

I think at the same time we denounce it we should say that one of the reasons for our denunciation is that it is clear to us that we cannot comply with our obligations because constitutionally many of the matters that are within this are for the states and that we will refer the convention to the states for their consideration to see what parts of it they want to enact as state law.

We will also point out some of the serious defects in the convention, which are well recognised now in the United States—the United States will not have a bar of it. We would also perhaps propose that we will draw a new and better convention which, whilst giving children rights, will nevertheless retain the inalienable rights of parents, and that will be in the best interests of children.

Senator COONEY—I think you made a point there that had not been quite apparent before. It is not as if you would leave the world without a treaty; you would get a better treaty. You would denounce this one and get a better one in?

Mr Francis—That is right. It would take quite a long time to draw that better treaty. It could not be done overnight. We could undertake to draw a better treaty. I am

sure we could do a much better one.

Senator BOURNE—Earlier today one way to get around this was suggested. Even now without the Teoh legislation, any court would take a very wide view and not a black-letter law view of any treaty. It might be an idea to write an enabling piece of legislation which would set out exactly where we saw the ambiguities; what the Australian parliament felt was the proper way to interpret this treaty, if anyone was going to interpret it; and what we saw as being our obligations under the treaty.

Mr Francis—That is quite a good idea, if I may say so, Senator, but that is an extremely complex question. Are you familiar with the decision in Teoh?

Senator BOURNE—Yes.

Mr Francis—Even the High Court could not agree.

Senator BOURNE—But isn't that because they were taking that from a treaty, and that is the whole problem?

Mr Francis—There are differences in their approaches to the treaties. It is quite a while since I have looked at Teoh, but it is a very difficult case. I would suspect that the High Court will retract part of Teoh because I am inclined to think that there is a good deal more sense in the dissenting judgment of Mr Justice McHugh than there is in the majority. Usually, I am inclined to go along with the majority rather than McHugh.

CHAIRMAN—The McHugh judgment is what I was referring to before. I hope you are aware that the international instruments legislation has gone through the House of Representatives and is now in the Senate as a post-Teoh legislative solution. In the debate that took place in the House of Representatives, Mr Tony Smith—who is not here this afternoon but who has been here for the last day and a half—who is a lawyer, raised a lot on the McHugh judgment. He highlighted some of the very points you make. Personally, I have some sympathy with that approach as well. However, if you are not aware that there is legislation in the parliament at the moment—

Mr Francis—I am aware, but I have not seen the legislation.

Senator COONEY—It is much the same as the previous government brought in.

Mr Francis—I would suspect that even that legislation would create problems because although the process is one of declaring it is an instrument which binds Australia, the problem is if the instrument is not within the constitutional powers of the Commonwealth, despite the extension of the foreign affairs power in such cases as the Kowato and the Franklin Dam case, the High Court may nevertheless strike parts of the instrument down as not falling within the constitutional powers of the Commonwealth.

I think you will find that that will happen more in the future. There will be somewhat of a retreat from the Franklin Dam and Kowato decisions. Of course, it partly depends upon who the new judges on the High Court are. But I do not think you can expect that those judgments will last in their entirety, and there may well be some rethinking on Teoh. You are really operating in a very uncertain field.

Senator COONEY—We cannot do much about what the High Court does.

Mr Francis—I know you cannot.

Senator COONEY—I do not think Teoh is aimed so much at the High Court as government saying, ‘The administration is too difficult a proposition to say that the executive should have to take these things into account.’

CHAIRMAN—That is right.

Senator COONEY—It is more about government than about the High Court.

CHAIRMAN—It is a legitimate expectation thing which is covered in the legislation. Professor Triggs, the professor of international public law at Melbourne University, was in the witness chair before lunch. She made very similar points to yours in terms of the composition of the High Court. But it is rather subjective at this stage. What she was saying was that as a result of this piece of legislation, they might see fit, in terms of a case, to once again make a judgment which opens up a festering sore. It is too early, but in her view, it is a step in the right direction. Some of the NGOs we have heard from do not see it that way.

Mr Francis—I do not know why the Commonwealth wants to get into this children’s rights issue at all. It seems to me that it falls far more within the jurisdiction of the states. Whilst it would be quite appropriate for the Commonwealth to set out important principles with which it hopes the states will comply, it would be far better to leave it to the states to legislate on these matters rather than the Commonwealth buying into it.

CHAIRMAN—Yes, that was going to be my final question to you. Bearing in mind the wide interpretation of this convention, it is a pretty wide spectrum. Irrespective of your black and white exposition or interpretation of it, the interpreted perceptions are still fairly wide. What some have suggested is that we need umbrella legislation at the federal level. It seems to me—and I would be interested in your views—that where there is so much of a question mark about interpretation of some or a lot of the articles, it would be very difficult for parliamentary counsel alone to come up with some sort of umbrella legislation which would satisfy the intent of the convention anyhow.

Mr Francis—I think it would be extremely difficult to do. I certainly do not underrate the difficulty of that task.

CHAIRMAN—One solution might be, as Senator Bourne has said, if you are going to have some legislation at the federal level, you have some sort of motherhood type legislation—I do not want to be too sexist or whatever—in matters of principle and leave the detail to the states in specific areas; that is, whether it is child welfare, whether it is protection, whether it would be things that are more appropriately, as you have said, dealt with within state jurisdictions. Do you agree with that?

Mr Francis—Yes, I do. I think that the much better way to go about it is to allow the state to deal with this through its criminal jurisdiction. If there are specific offences in relation to children, the state ordinarily will only intervene where an offence has been committed. There should also be provision for counselling parents who are falling short of appropriate standards. If they are proceeded against under the criminal law, the court may need to decide whether it is going to impose a penalty or whether it is better to give the parents a period of compulsory counselling so that they are better able to handle the situation.

The history of Australia in the 20th century has shown that, in general, the intervention of governments in relation to children has been most unfortunate. I need hardly emphasise that in the light of what has happened in relation to the stolen Aboriginal children. The government at that time thought that they were doing that in the best interests of the child. They might well have intervened in those circumstances using the UN Convention on the Rights of the Child, and look at the disaster it has created.

If we allow this convention to stand with state or federal bureaucrats intervening whenever a child makes a complaint, we are just going to build up another stolen child type problem in 30 or 40 years. Children will be saying, ‘You wrongly persuaded me to come out of the custody of my parents. You have done me an enormous amount of harm.’

CHAIRMAN—I think we have run out of time. Do you have any other broad comments that you would like to make before you go?

Mr Francis—No. I just wanted to say this in relation to the interpretation. I believe my interpretation is probably the correct one. I concede the possibility that I may be in error, because there was a paper written by Professor Moens, who is probably one of the best experts in the world on human rights. He is at the Beirne law school in Queensland. He delivered that paper late in 1991, and he was very diffident on expressing any views in relation to what the convention meant. He said it was loose and ambiguous and most difficult to interpret.

CHAIRMAN—We have a series of these public hearings around the country. We will then, possibly in October, have a number of final hearings and discussions in Canberra. It may well be that we need to get you and Professor Triggs, as two that immediately come to mind, involved in that. I assume that you would be happy to do something like that, would you?

Mr Francis—Yes, I would, provided I get reasonable notice.

CHAIRMAN—Yes, that is fine.

Senator COONEY—I cannot resist this. One of the most traumatic things to happen to children would be to be kidnapped.

CHAIRMAN—Touche.

Mr Francis—I know precisely to what you are referring. It is surprising that the real story of that will probably never come to be written, but some of them regarded it almost as a picnic. There was certainly an element of fear, but in some respects it was a picnic at which they were singing songs.

CHAIRMAN—Thank you very much for your evidence. We will be in touch.

Mr Francis—I presume you have got Senator Helm's speech.

CHAIRMAN—Yes.

Mr Francis—I will leave a copy of the paper I delivered in Zurich. I think you really only need the first two pages of that. The rest of the paper has been covered by what I said in America in 1993, but the first two pages cover some of the things I said earlier this afternoon.

CHAIRMAN—Thank you very much.

[3.18 p.m.]

BARTL, Mr Anthony Andreas, 24 Market Street, Kensington, New South Wales 2033

BARTL, Mr Bernd Elmar, 24 Market Street, Kensington, New South Wales 2033

CANTWELL-BARTL, Ms Annie Marie, 24 Market Street, Kensington, New South Wales 2033

Mr B. Bartl—I appear here as an individual concerned about the treatment of children with disabilities, being the father of a teenage boy with a severe disability.

Ms Cantwell-Bartl—I am here to talk about disability in general and our treatment of Anthony.

CHAIRMAN—We have received your very extensive submission. Are there any errors of fact or omissions in terms of that written submission before we hear your statement?

Mr B. Bartl—I do not believe there is.

CHAIRMAN—Let us have your opening statement.

Mr B. Bartl—The three concerns with which we come to the committee are to do with justice for children with disabilities within the Catholic Church, with the Catholic Church being the recipient of very considerable Commonwealth funds for schools and other activities. Also, we ask for justice for students with disabilities more generally. We frequently encounter people who have difficulties supporting their children with disabilities and getting them integrated into regular schools.

We wish to point out that the Commonwealth has both obligations and powers with which it could redress the situation. In fact, in recent years, things seem to have become worse rather than better. It is something that has to be halted and reversed, in my opinion.

As far as justice for children with disabilities within the Catholic church is concerned, I will very briefly recapitulate on our experience. Anthony was injured in a car accident at the end of 1986. We approached the local Catholic school to take him back early in 1987. He had been attending that school for nearly two years prior to the accident. The school was tardy in responding and fairly quickly said that they did not wish to take him, despite our having the admission from the Transport Accident Commission that they accepted liability and they would be prepared to fund his integration into that school.

Anthony then went on to the local state primary school, Kensington primary school, who willingly accepted him. In the final year of his primary schooling, we decided

that it would heal the very deep wounds that the earlier rejection had caused and we approached the Catholic school again in 1992. Again the school said no. This time it was despite the Transport Accident Commission having given a commitment in writing to support all the needs that the school said it had for funding.

At that stage our only legal recourse was to proceed with an equal opportunity complaint to the Equal Opportunity Board or, as it subsequently came to be called, the Anti-Discrimination Tribunal. In June last year, the Catholic authorities commissioned a QC, a barrister and two solicitors to argue before the tribunal that we do not have standing and that the case should not proceed and that the complaints should not be heard.

We have since written to the new archbishop saying that there does appear to be some injustice here; that three agreements have been reached through the good offices of the equal opportunity commission and each of the three agreements had been broken, with the last one being a formal conciliation agreement; and that the archbishop, under the Catholic church's constitution—the new code of canon law—was obliged to inquire into such injustices and conduct a hearing by a church tribunal so that an apology and any other redress could be properly given in a church which does stand for justice. I have here the last letter to the archbishop and a copy of his reply. Basically, the archbishop is saying that he will not follow the church's constitution and conduct such an investigation or hold such a hearing and that, as far as he is concerned, the matter is closed.

Why is this of importance to this committee and relevant to the rights of children? Clearly, Catholics are citizens like any other citizens and are entitled to proper protection, both by law and by policy. The government has a policy of allowing the growth in non-government school numbers and of continuing the funding. In fact, there have been significant increases in the funding of non-government schools in the last budget. But I think that that giving of money to schools has to be accompanied by proper safeguards.

The second matter I want to quickly address, which is already in the covering letter to our submission, is the matter of disability discrimination more generally. The committee would be aware from my commission that the National Children's and Youth Law Council issued a report in April of this year on disability discrimination in Australian schools. That report has found yet again—the problem never seems to go away—that there is widespread discrimination against students with disabilities in Australian schools. It confirms that there is disability discrimination in Catholic schools as well as other schools and it makes a number of recommendations both in relation to Catholic school integration and other school integration.

The final matter—and I guess the most important as far as this committee is concerned—concerns Commonwealth responsibility in this area. The first thing I want to raise—I have a document which summarises the issues—is not really to make a political point but to merely point out that, when parents and families are promised things, it is bitterly disappointing for them if those promises are broken. I point out to the committee

that the current government parties promised prior to the last election that they would fund each student with a disability by an additional \$500 per child. Clearly, the government was at that stage aware that the funding for students with disabilities was inadequate and that this was a small measure for redressing that inadequacy, but so far the government has not seen fit to keep that promise.

The DEETYA agreement with the Victorian Directorate of Schools Education which was reached last year apparently, from correspondence I have obtained under freedom of information, expressly allows what I would call substitution of funds. The Victorian department wrote to DEETYA saying that they did not want the agreement to insist that there be what they called 'a maintenance of effort'—that is, to keep continuing to fund at the same level—what they wanted was a clause which merely stated that the Commonwealth funds were supplementary. It seems quite clear from that correspondence and from DEETYA agreeing to that clause to be changed that the Commonwealth is allowing substitution of funds. I do not know whether it is unparliamentary language but, from a lay person's point of view, that is countenancing the stealing of money from children with disabilities.

The second issue I raise in this document is the weakening of funding accountability. There were quite extensive accountability requirements under the previous national equity program for schools—or NEPS as it is known—many of which have now been abrogated by DEETYA and, presumably, by the government. One of the programs which was specifically targeted and which had specific guidelines was the Commonwealth program for severely disabled children. That program disappeared with the bundling together—higgledy-piggledy from my point of view—of a whole range of targeted programs and the slimming down of the accountability requirements that went with that. The result, as I detail in this document, is that already last year not a single child received equipment under that Commonwealth program to make up for their disability, including absolutely essential items of equipment like communication aids, because the Victorian government decided they would spend that money on integration aids which were previously funded through state department funds.

Then this year—and I have a letter to that effect—the education department is now saying that they do not even want applications for equipment because they propose to no longer fund it. The consequences for children with disabilities are almost unspeakable; I think that is a good word to use when you have children who cannot communicate except through aids and they have one of the very few avenues for obtaining those aids taken away.

As I point out here, the proposed alternatives which the Victorian department of education suggest actually mean that where previously a student had a piece of communication equipment which they could take home any time, which they could transfer if they went from one school and enrolled in a different school or if they went from school to employment, that is no longer the case. Under the Commonwealth program

for severely disabled students the piece of equipment belonged to the student and could be used wherever and whenever. Under the new Victorian policy that piece of equipment effectively belongs to the school.

The final point, which does tally in with the much larger submission I made back in April, is the new resource agreements and what they oblige education systems to do in relation to parental participation. The one 1997 resource agreement I have sighted, which does relate to students with disabilities in the Victorian Catholic system, simply talks about the approved authority that the Catholic Education Commission of Victoria having to give to the Commonwealth in writing the principles it has used and the arrangements that it will have for consulting with parents and others. That agreement, which appears to require consultation with parents, does not say when that advice has to be given to DEETYA—it could be in the year 3000; it does not say what kind of consultation is required; there are many varieties and some of them are next to useless. Nor does it even say something as simple as the principles which are used in allocating the funds have to be fair and proper.

The Commonwealth, in recent times, appears to actually be worsening the situation and weakening the accountability requirements. It is something which I think needs urgent remedy. I do not see the United Nations Convention on the Rights of the Child as the primary safeguard for these things, but I think the principles it enunciates are unobjectionable and I think they merely require of countries to apply standards of common decency.

CHAIRMAN—Thank you. I regret the difficulties—administrative and otherwise—that you have encountered. In the context of this inquiry you are quite right—you want something quickly and that is not the sort of thing that is going to come simply because we may reflect specific anecdotal stuff in a report of the type that we would be writing. What I think is more appropriate, and I hope that Senator Bourne and Senator Cooney would agree with me, is that I will give you an undertaking, as the result of this afternoon, to write to Dr Kemp, who is the minister responsible in these broad policy areas, enunciating the difficulties both in terms of the general schooling—the facilities one and the equipment one that you mentioned—and the requirements on the private schools, in this case the catholic system, to keep faith with what you put in your submission. I will do that as a matter of some urgency.

I think we have got enough information to do that in the light of what you have said this afternoon and in the light of what is in the submission. If Cheryl can convert this into a draft submission from me to Dr Kemp I will give you an undertaking that I will get that away in the next few days. I do not think quite honestly that, irrespective of what we may or may not recommend on the Convention on the Rights of the Child, that that really is going to have anything directly of substance to correct Anthony's problems—there are things that cannot be corrected—or make life easier and his schooling, et cetera. Anthony, how do you feel about this?

Mr A. Bartl—I think the Commonwealth should show more respect towards disabled people. I think all Australian schools, especially catholic schools, should show more support and provide more money so students could get the most out of life and they would be able to live a lot more easily.

CHAIRMAN—How much has his progress been put back as a result of all of this, in schooling terms?

Ms Cantwell-Bartl—I do not think it has been put back because we have worked enormously hard to open opportunities for him, but I think it is true to say that it has been enormously personally costly.

CHAIRMAN—Have you got other children?

Ms Cantwell-Bartl—Yes, three other children.

CHAIRMAN—Of what age? Anthony is what age?

Ms Cantwell-Bartl—Anthony is 17. We have a 19-year-old, a 13-year-old and a four-year-old. I think that most people, coming up against the barriers that we have come up against, and keeping in mind that the responsibility involved in looking after a child with a disability is huge anyway, would back off and the child would miss out on opportunities. But Anthony lives a very full life and does things that most children do. He is a happy, bright, hopeful person which is a source of hope for us too. He has been given opportunities and has thrived as a result, but many others have not got those opportunities and hence their quality of life is poor.

CHAIRMAN—Anthony, you will never play full-forward for Essendon will you?

Mr A. Bartl—Maybe one day.

CHAIRMAN—That is what I like to hear. Are you happy with that? Would you like me to go ahead and do that?

Senator COONEY—I thank Mr and Mrs Bartl and Anthony Bartl.

Senator BOURNE—Can I just suggest one more thing? When that legislation comes up again I think it is worthwhile bringing this up in the chamber as well. I expect it will because it is a state grants matter, so it will come up fairly regularly. I will take this back and do something about it too.

CHAIRMAN—That can be done, but we are not going to sit again till the end of next month.

Senator BOURNE—It will be next year that it comes up.

CHAIRMAN—But you would want something a bit faster than that?

Senator BOURNE—Yes.

Ms Cantwell-Bartl—We will be happy if there are changes at all.

CHAIRMAN—We will see what we can do with Dr Kemp. I find him a very receptive fellow. We will wait and see. I will give you that undertaking—coming out of this afternoon—that we will get something to him in strong terms within a week on those points that you raise. Some of them are things that he should, if he is not already aware of them, be addressing anyhow in terms of the probity of some of these allocations, and the tying of some of these allocations—if that is the right word. Rather than hold you up, that is what we will do and that will happen pretty quickly. I cannot guarantee what the response might be, but at least we can get something to Dr Kemp as quickly as possible.

Mr B. Bartl—May I make a comment and to ask what is, I understand, a favour? The comment is that it is—and I suppose the committee is aware of this, having heard evidence now for some time—enormously difficult for people from disadvantaged circumstances and, particularly, for children who are vulnerable and for children with disabilities, for their families to speak out on their behalf. As the submission says, even if you are prepared to put up with the hostility in speaking out for yourself, to speak out when that then rebounds on your child is enormously difficult. So, things like the Human Rights and Equal Opportunity Commission having a very substantial reduction in its funding—I understand more than 40 per cent—and the Victorian government, in the last few days, having eliminated the funding for all regional or country disability advocacy services where the Commonwealth, again, has joint responsibility under the disability agreement between the Commonwealth and the states, really means that people are less and less protected.

The favour I wanted to ask is—

CHAIRMAN—I would like to interrupt for a moment. In terms of the 1997-98 budget, there is substantial increase in disabled funding, particularly, in relation to carers. But, basically what you are saying is that that is not the problem you have. The problem you have relates to the education process and the actual use of those funds for what they are intended for.

I wanted to make the point that the disabled have been given a very large increase in terms of this year's federal budget, particularly, in relation to the carers. I had to make that political point, but I do not want to make it too political because it is too serious to be political.

Mr B. Bartl—Yes. I understand that it is a favour within your power, but there is an enormous amount of work which has gone into the documents which make up my submission. A lot of it is information which is not available anywhere else. Rather than the committee just publishing the first four pages of the submission, I would have hoped that, in fact, the full submission could go into one of the submission volumes so that it is public information and other people can respond to it and discuss it.

CHAIRMAN—Everything officially becomes an exhibit, and that will happen. As you would understand, this will get a mention because the broad subject is part and parcel of the inquiry. The detail will not be in that report. That said, the exhibits will be there for posterity. There is no real documentation that is for public consumption as a result of any of these public hearings.

Mr B. Bartl—Is it possible, for example, for the documents that I circulated to the committee today to be part of today's record?

CHAIRMAN—We will have a look at that and I think that we can incorporate them. The secretary has indicated that we have 6,000 pages of exhibits. We will have a look at it, but I think it will be difficult because of the magnitude of the task. If you keep in touch with the secretariat on it, we will see where we go. The most important thing today is to get these issues to Dr Kemp. You hang in there, Anthony, won't you?

[3.46 p.m.]

SHARPE, Mrs Diana Dorothy, Principal/Teacher, The Yoga Better Living Centre, 1A Butler Street, Essendon, Victoria 3040

CHAIRMAN—Welcome. Do we have a written submission?

Mrs Sharpe—Yes, there was one, and it has gone to Canberra. This one is the amended one.

CHAIRMAN—We will just ask you to encapsulate in a few minutes what you have said in there. Procedurally, we will cover your submission when we have our next meeting elsewhere. I think that is the best way to do it. Just give us a few minutes on what you were saying in there so that we have got it on the record, and we will see where we go from there.

Mrs Sharpe—I am a classically trained yoga teacher. I trained in India many years ago when I was a young person. I had a feeling that our country and the world really would not be going as well as what it was 30 years ago, so I went to India to look at how the Indians and the ascetics look at life and what we could also incorporate into our society eventually. At the age of 21 or 22 I think that that was quite something, because I got into a boat and went to India by myself. I trained as a classical yoga teacher at the Yoga Institute in India, which is recognised by the government and is an authentic school in India. It also is involved with the International Board of Yoga. So I established the Yoga Better Living Centre, after a lot of journey through my life and many things happening and coming to that plateau where I would like to teach something of a higher understanding.

My concern really is for the children of today. I do not think the children of today are getting the inner direction that they are really looking for. I think the external environment is not leading them to anywhere worthwhile, unless they have parents who are very caring and parents who are there nurturing them and guiding them through this existence that we live in today.

I look at classical yoga in terms of a system of existence and a way of existence. It is rather highly idealistic but, rather than looking at the common denominator, I think it is better that we look at what is ideal in human existence. The first code of conduct, the first step, is yama miyama. I have listed the eightfold path of classical yoga. The first one is to teach people about their own inner journey by the thoughts that they think are very important, because our thinking and our mind create tomorrow—not only the children's tomorrow but our nation's tomorrow.

If we could start to educate the children into something worthwhile—this might seem very idealistic, but the human being is not just a physical entity; the human being's

existence really is to go back to divinity. If we look at the child and see if we can put something good into the child, we can teach them about their own conduct, their own morality, their own physical aspect and the way that they also think in terms of their education.

This sounds a bit distorted, but I have taught teachers that have told me that after they have come to my course they have incorporated the yoga principles and practices into their classrooms, and they have found the children have been much better behaved and they are of much better understanding of themselves, like with the meditation or the quietness of the mind, the psychosomatic practices. They have a quiet time to relax and the teacher tells them how to relax their bodies.

Today the children are rushing the whole time; there is hardly any quietness for the children. I feel that with classical yoga, if they could start to understand the principles of what good health is and how they can prevent disease, this education of the self is going to make them be of service to themselves so that they can develop their full potential, and also they will not be such a burden on our society.

I think at the moment the young children are expecting to get everything, and they are not really understanding that they have to put in, and that they also have a responsibility towards themselves, towards their classmates, towards their teachers, towards their family. This sense of responsibility is going to make our nation a far better nation if we have people who understand what it is for a parent to understand their responsibility towards their child: the father, the mother, and then the brothers and the sisters, the relationship towards one another, and that we live in cooperation and not just in competition with each other. These principles help us to live in harmony with ourselves and also with the external world.

I have also mentioned that I think we should revere motherhood according to the Vedic literature. I have done extensive reading and I am also an acupuncturist and a Chinese medical practitioner, studying also Western medical science subjects too—and so I am interested in the health and the development of the human being. Children have mothers, and if mothers are respected then the children respect the mothers. If the children respect other people then they also respect themselves. I think this sense of respect is something that we need to be incorporating back into our society again.

The sense of the individual being a very selfish entity should be looked at in terms of, it is not really going to do us any good if everybody is just out for themselves, because we have a nation of very selfish people and in the end we have a very divided nation where people are lost. They have to come back to a sense of who they are.

This universal code of conduct that I mentioned in regard to yaminyama: it is the universal principles for one's self and also for one's understanding and relationship to other people. An Australian declaration of rights and responsibilities. There is one paragraph:

We affirm our commitment to the universal values of a civilised, multicultural society that encompasses and promotes a mutual respect, tolerance, sharing, equal access to opportunities and resources, the rule of common law and democracy.

They talk about universal values but there is nothing actually set out. When I was a young woman and I was searching for my own identity, I was searching for what my spirituality was, I was prepared to go to the end of the earth, and I went to India. A lot of people thought that was the end of the earth, but I knew that it was the beginning of some type of understanding of the metaphysics of something aesthetic, something that the human being is also capable of. We are capable of great understanding, of great powers of consciousness. These powers of consciousness and the liberation of one's self are blocked by a lot of things that are going on in our society.

We have a lot of casinos now. We have a lot of things that are educating people towards how to gamble and how to get rich quick. Do we have anything to educate the children of today? We should say, 'Take responsibility for your own actions. If something happens, don't look outside, look inside. Get your perspective and then look out.' If we have children who are developing in this way and in this sense, then we can start to have a society that is going to be reflective, that is going to be productive and that is going to be, to a great extent, selfless. Even though this is a very high ideal—and I would rather go to the highest ideal than stick to the lowest—I really think we should be incorporating something and teaching the kids who are being born right now and making provision for these children further down the track.

I do not know whether anybody has ever come before you as a committee or as the government in regard to yoga—

CHAIRMAN—Not in my experience.

Mrs Sharpe—I am breaking new ground. It has always been in my heart and my soul. I love my country, and I love humanity. I want to help people. I want to help them overcome their suffering—physical, mental, emotional and spiritual. If I can do it in my own small way, if I can try to be an example to other people and live my life accordingly, then I think that is what life is really all about.

CHAIRMAN—In that submission you talk about youth suicide. Could you talk a little about youth suicide?

Mrs Sharpe—I have an 18-year-old son. I have been a sole parent, and I have had a very difficult time without any family or social support. If I had not have had my yoga, if I had not have had the goodness that I learnt and incorporated it into my life, I would never have been able to have him at the stage that he is and my practice at the stage that it is. I have come to speak about youth suicide because my son went through a certain period in his life. I was there on my own supporting him. I looked around at the suffering

that was going on. A couple of his friends had committed suicide. I saw that it affected my son tremendously, and I was always in fear of my son committing suicide.

Children have to have support. I find that what is happening now in our society is no-one is supporting the children very much. The parents are out to work. They are putting them into creches. The attitude of mothering and the attitude of the people towards children really is not creating a better tomorrow. I think that people need to be educated into being good mothers and into being good fathers. The values are not earning more money but whether you are a good mother or a good father. Do you have love? Do you have support?

Youth suicide, to me, is a personal thing. I have read papers on youth suicide. I have come to the conclusion that it is as a result of the lack of support that we have for our children. It is that we do not value our children in our society. They are precious jewels. They are gems. Every human being is potentially divine. Every child that comes into the world deserves to have parents who are loving and nurturing and kind. They deserve to have all the right in the world to that support.

So I guess I will come back to my submission. I feel that teaching classical yoga would give something back to the child within. Teachers who were properly trained—people who understood themselves and had a certain development within themselves—could pass that unknown element onto the child. Our Australian society is very materialistic, and it is known in other countries as being very materialistic. At the institute they did a survey on all of the countries and their potential for spirituality, their potential for looking after the people, and Australia did not really fare very well at all.

Senator BOURNE—Yes, we are seen that way. You mentioned before that children had been taught some yoga principles—friends of yours—

Mrs Sharpe—Teachers, yes.

Senator BOURNE—They seem to be a lot calmer and better in class. What sorts of principles are they taught? What sort of level were they taught to?

Mrs Sharpe—All they really did was just sit quietly.

Senator BOURNE—So it was the meditation and—

Mrs Sharpe—It was meditation and relaxation and they talked about relationships with one another and about hurting other people, so the children were less aggressive and more manageable not only for themselves but also for their teachers.

Senator BOURNE—It is not really a particularly high level teaching of yoga that you are looking at to get benefit out of it.

Mrs Sharpe—All it has to do is to give a bit of love and support to the child and let the child relax and be cut off from the outside world to bring the child within themselves. It is to guide them into themselves for quietness and inner peace. They do not really need a lot at all.

Senator COONEY—I think it has been put very well on the record. Thank you very much.

Senator BOURNE—Yes. Thank you very much.

Mrs Sharpe—Thank you.

[16.01 p.m.]

TUCCI, Mr Joseph, Executive Director, Australians Against Child Abuse, PO Box 525, Ringwood, Victoria 3134

ACTING CHAIR (Senator Bourne)—We have received submission No. 208 from you. Do you have anything in your submission that you would like to change because of any factual errors?

Mr Tucci—No.

ACTING CHAIR—Would you like to make an opening statement?

Mr Tucci—I would like to thank you for the opportunity to present my submission. I will be brief because I know it has been a long day for you; it has been a long day for me as well. There is only one point that I would add to the submission and that is that we have an opportunity with the United Nations Convention on the Rights of the Child to actually establish a cornerstone for preventing child abuse across this country. If you have a look at the latest statistics from the Australian Institute of Health and Welfare that have just come out for 1995-96, there were 91,734 reports of child abuse during that year.

Senator COONEY—How many?

Mr Tucci—Over 91,000—close to 92,000 reports. That compares with 49,000 in 1990-91. Over the space of six years, there has been an increase of 85 per cent in the number of reports of child abuse in this country. That is just reports. Some people might argue that reports do not mean that child abuse is actually happening. In fact, what has also increased is the number of cases of abuse of children that have been substantiated across the country. That has increased by 41 per cent over that same time.

What we have with the United Nations convention is an opportunity to make children more valuable and to emphasise their importance to us. I guess I would encourage this committee to build a report that is going to fully implement all of the basic tenets of the convention, especially around the political structures that are required. You are well aware of, and would have read, the written submissions and you would know all of these arguments.

Federally, there is a Department for Family Services and, in this state, there is a Department for Human Services and, every time we mix up children with adults, the children's needs are not prioritised. If there ever was a good reason to begin to build some political structures that are going to actually help children and, in the long run, prevent child abuse, this is it. That is all I have to say.

ACTING CHAIR—Do you believe that perhaps that very large increase—which is a bit scary—could, in part, be due to education and to people knowing where to go if they believe that a child is being abused or, in fact, even to children feeling that they can go and get help somewhere?

Mr Tucci—I think that if we look at the media today, the reporting on child abuse and children is much more evident than it was six years ago. There is a growing sense about the need to do something about child abuse. Where once it may have been kept secret, it is now a more public phenomenon. Education has certainly helped. I also imagine that what we saw back then was an under reporting of it.

ACTING CHAIR—Can I go to the commissioner for children? You mentioned that you think it would be a good idea at federal and state levels. What sort of a framework would you see as being appropriate? Would you see a commissioner looking at the global area of children and who made recommendations, or would you see something under HREOC, for instance, where there was a commissioner who took individual complaints?

Mr Tucci—Both. At a federal level it would be good to have every public policy scrutinised in terms of its impact on children. At a state level, one of the things that strikes me, having been a social worker for 10 years, is that we are more inclined to ask children whether they want an extra pickle in their hamburger than we are to ask them for feedback about processes in institutions that are important to them. We need some structures at a state level—I am not sure that that can be achieved federally—where children can report and provide the sort of feedback about the quality of care that they receive and the institutions that they are involved in, particularly, the institutions of health, education and protective services, if you like. They are the three major institutions that I think children have a right to complain about, and we should listen to them.

There should be a combination of both. At a federal level it would be good to scrutinise and at a state level we need—whatever you want to call them—a children's ombudsman or a state commissioner, somebody who is going to listen to children and have the skills to take on board what children have to say and actually do something about it to the satisfaction of the children, rather than the adults.

ACTING CHAIR—You mention education in the community. Where do you see education in the community at the moment, about children's rights and about what possibilities are open to them?

Mr Tucci—It is very haphazard. We offer a specialist counselling service to children and young people who have been abused. Children's rights is a misnomer. They say, 'Sure, you adults talk about them as if they are real. But for us it has no relevance because every time we say something, nobody listens to us.' In terms of education and ways of getting through to them what their rights are, we need to be a lot more creative

than we are. We also, most definitely need to have the children and young people on board in creating those forms of education for them. It will work better if they are already participating in making those programs as relevant to them as possible.

We have a pilot program that is looking at teaching children from primary and secondary school to identify risk situations for themselves and to identify ways of being able to minimise those risks. It is okay to target children and young people and to give them the opportunity to learn about their rights. But it is probably more important for adults to dispel some of the myths that if we endorse a convention on the rights of the child, we are giving away the rights of parents to discipline their children, or the rights of a family. That myth should be dispelled and the convention itself provides that.

If there is one part of the convention that I would ask you to act on, it is the one that provides the forum to interpret standards of child care and to give some interpretation for some of the legislation that is relevant to children now. For example, when the Children and Young Person's Act was passed in Victoria, it was a revolutionary act and it certainly made up for 15 years of having an old one. But some of the child deaths that have happened in this state over the last few years can be traced to an interpretation of the principle of the best interests for the child. It is being interpreted in a way that over emphasises families and parents' rights, to the detriment of children.

ACTING CHAIR—Thank you.

Senator COONEY—The secretary suggested that I ask the right question here. Your submission has indicated that you believe that there are still many ways in which the rights of Australian children are not being protected. Can you cite some examples—not now, necessarily; but can you go away and give us some examples—that you think are good illustrations of this, so we can write it up and say—

Mr Tucci—Sure.

Senator COONEY—We would not use any names—we have to respect the rights of confidentiality—but if you could give us some good illustrative cases.

Mr Tucci—So you want some specific case examples?

Senator COONEY—Yes; that is what we want.

Mr Tucci—I am happy to do that.

Senator COONEY—If you want to, you can give the secretary a ring to gather some more ideas on what to look for.

Mr Tucci—I am happy to do that.

Senator COONEY—When you get them ready, you can give her a ring and see whether they are good enough.

Mr Tucci—I have spoken to Cheryl already.

Senator COONEY—Can you do that?

Mr Tucci—Certainly, I would be happy to do that.

ACTING CHAIR—There is just one more down here that sounds as if it would be useful to ask you. Your organisation is concerned about the lack of legal measures against the punishment—

Mr Tucci—Of children.

ACTING CHAIR—Of children, yes. What would you like to see in place?

Mr Tucci—Again this is where we probably need some community debate about what is appropriate physical disciplining of children. It is not enough to say that parents should not smack their kids full stop, because it is unrealistic. What is our community set of beliefs around what is the most helpful way to discipline children? I think it comes down to two areas. One is in the institutions that children live in—health, welfare and education. Certainly, I do not think the legislative framework that is applied to those areas is strong enough. We need to be clearer that children should not be physically disciplined in any institution in which they are being cared for.

On the question of the institution of the family and where we stand with that, personally I would not want us to legislate. I mean, you could not realistically legislate for parents not to physically discipline their children. But legislation that clarifies the rights of children in relation to physical abuse is much needed. The only way we can charge an adult at the moment is with assault. ‘Assault’ is too big, too blunt a term to use for the physical discipline of children. I think it would be a helpful way to begin some community debate about introducing some changes to some crimes acts across the country that would define physical discipline of children, and physical abuse of children specifically. It certainly covers the more gross forms of assault at the moment.

Senator COONEY—But your criminal justice system itself applies penalties that are fairly severe. I mean, imprisonment is not a laughing matter.

Mr Tucci—No, it is not, but I am not sure that it provides such severe sentences. It has, if a child dies.

Senator COONEY—I know. I am not talking about the consequences of damaging a child. I am talking about the criminal justice system itself. You are talking about a

system of punishment that parents may impose upon their children and what is appropriate in that system, but you have society itself being fairly severe, have you not?

Mr Tucci—I might debate that with you because—

Senator COONEY—You do not think a term of imprisonment is severe?

Mr Tucci—I think it is, but I do not think it is used as frequently with children.

Senator COONEY—No, but generally, adults or children, the system?

Mr Tucci—Certainly, in terms of its repercussions.

Senator COONEY—The way that society deals with punishment sets up a model, wouldn't you think?

Mr Tucci—If I understand you, yes. I think I agree with that.

Senator COONEY—I have heard some evidence here before that the sort of people that discipline their children harshly tend to be those people who themselves were subjected as children to a harsh discipline and a particular regime. Capital punishment—if you look at what happens in America and the rate of murders there—does not seem to stop murders. What I am talking about is the paradigm of punishment and I was just wondering what thought you had upon that? Perhaps, you could put that in, too?

Mr Tucci—I will take your question and I will have a think about it.

Senator COONEY—What you seem to be advocating is that if you treat your children badly, we will come in and grab you and lock you up.

Mr Tucci—But if you treated an adult badly, we would do that.

Senator COONEY—Exactly. You seem to be approving of that.

Mr Tucci—I think that it would at least clarify the position that we have. We need some clarification of that.

Senator COONEY—Thank you.

Resolved (on motion by Senator Cooney):

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

Committee adjourned at 4.17 p.m.