COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

PERTH

Thursday, 3 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:

Treaties tabled on 11 February 1997 (double taxation agreement with Vietnam).

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

UN Convention on the Rights of the Child

PERTH

Thursday, 3 July 1997

Present

Mr Taylor (Chairman)

Mr Bartlett

Mr Hardgrave

Mr McClelland

Mr Tony Smith

Mr Truss

The committee met at 9.05 a.m.

Mr Taylor took the chair.

CHAIRMAN—Welcome. Thank you all very much for coming along to this public hearing into the United Nations Convention on the Rights of the Child. For those of you who are not aware, this committee has been sitting for some months and has already held hearings in Canberra, Brisbane and Sydney. Tomorrow we take evidence in Adelaide, and next week in Melbourne.

The reason we are doing this is that, as most of you would know, this convention was ratified by the previous government in December 1990. I asked the secretariat to produce an exploratory paper on the UN convention over the last Christmas-New Year break. Having been fairly involved in it myself in opposition, and hearing the reservations that existed at that time, six and a half years on we felt it was appropriate, bearing in mind the need for a report to the United Nations on Australia's progress, that we should have a look at it.

Under this committee's terms of reference, quite apart from dealing with new treaties between the signature process and the ratification process—we are given 15 sitting days to recommend back to the parliament ratification or otherwise—we are allowed to have a look at all treaties that are extant. There are something like 950 or 960 treaties in existence at this point in time. This committee is a cross party committee consisting of members from both houses, and is the second largest in the parliament. We agreed that we should have a look at the UN Convention on the Rights of the Child.

As a result of putting out the terms of reference, we initially had something like 1,200 or 1,500 inquiries. Since then we have had over 300 written submissions. That gives an indication that there are still things out there to be said, and that there are still reservations in some quarters. There is a wide spectrum of opinion, and no doubt we will hear that here today—as we have in other areas.

We want to thank everybody who is here this morning for the evidence they will give. As I said before, over the next couple of months we will continue to receive evidence. We hope to close off about October—the submissions stay open until that time. After that, of course, we will report to the parliament. Just what we will report remains to be seen but, as I said, we have already received a lot of evidence, written and oral, that indicates a wide spectrum of views—emotional, emotive, substantive and otherwise—on this convention.

To start off, there are a few domestics to perform in relation to the submissions which are being discussed today.

Resolved (on motion by Mr McClelland):

That this committee authorises for publication submissions Nos. 141, 177, 157, 213, 140, 145.

CHAIRMAN—Our first witnesses are from the Western Australian government. A few minutes ago we were handed a written submission from the Western Australian government, so we will add that to the list as well.

ASHFORD, Mr Michael, Principal Policy Consultant, Policy Office, Ministry of the Premier and Cabinet, 197 St Georges Terrace, Perth, Western Australia 6000

GUPTA, Ms Tara, Principal Legal Officer, Family and Children's Services, 189 Royal Street, East Perth, Western Australia 6004

KEATING, Mr Terence Patrick, Director, Juvenile Custodial Services, Ministry of Justice, Westralia Square, 141 St Georges Terrace, Perth, Western Australia 6000

MARSHALL, Mr Andrew John, Director Policy, Policy and Legislation Division, Ministry of Justice, Westralia Square, 141 St Georges Terrace, Perth, Western Australia 6000

VAN SOELEN, Ms Sandie, Assistant Director, Protection and Care, Family and Children Services, 189 Royal Street, East Perth, Western Australia 6004

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

Mr Ashford—Yes. I will be starting off just with a general overview which outlines the key aspects of the written submission. I would like to thank the committee for giving us the opportunity to appear today. I will broadly outline what the content of the submission is. I will hand it back to the committee if they want to raise any specific points or ask any questions. The representatives from the agencies are here because of their specialised skill or knowledge in key areas relating to children's services and legal aspects.

The submission does not specifically address every term of reference. I would like to add at the end of this short presentation matters I suppose which relate to reference 3 which arise from this report which has just been released, *A matter of priority: Children and the legal process*, which we now consider has some reasonably significant impacts or considerations for point 3.

The submission just covers Western Australia's approach to treaty negotiations in general. A historical concern has been about the lack of consultation with states, but the consultation has improved significantly since 1996. So we are very thankful for that opportunity. Western Australia has advanced significantly in the area of strengthening and supporting the role of the family and the care and wellbeing of children. Many of the state's programs and legislative support go beyond the principles incorporated in the convention.

While monitoring and reporting can be an onerous task, the state supports voluntary reporting against the content of the convention as opposed to mandatory compliance in reporting. Similarly, the state is concerned about any possibility of the

Commonwealth using external powers to implement elements of this convention and treaties in general.

The recent release of *A matter of priority: Children and the legal process* report by the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission contains draft recommendations which, if implemented, duplicate the roles and responsibilities of the states in the care, development and protection of children. Recommendations relating to the establishment of a Commonwealth office of children within the Department of Prime Minister and Cabinet are not supported. Similarly, calls for the establishment of a Commonwealth children's commissioner or children's ombudsman are not supported.

That report relates to justifying some of the recommendations in light of Australia's compliance and implementation of the convention. The major theme of Western Australia's program supporting children relates to the reconciliation and strengthening of the family unit. Calls for adversarial advocacy bodies are contrary to both the state's programs and the basic underpinnings of the UN convention. In addition, the extra draw on the public purse and the requirements for more monitoring and reporting would be a misuse of valuable resources in an area clearly the responsibility of the state.

I will basically now just summarise the key aspects of family and community service programs and initiatives which relate to the convention. I would like to spell out the department's goals. They are to advance the general wellbeing of families, individuals and groups within the community, particularly those who are disadvantaged; provide and promote preventative community support and assistance to people which may reduce the need for welfare service; and prevent maltreatment, neglect and exploitation of children.

One of the most important themes is that the department strongly supports that generally children are best cared for in the context of their family and emphasises a need to support and strengthen parents in their parental responsibilities. Removing a child from his or her family is seen as a measure of last resort. This process is only initiated when there is a belief that the child has suffered significant harm or it is at risk of suffering harm. When a child is removed from his or her family contact, the family is facilitated and the goal is to return the child home unless this would not be in the child's best interests. I mention that mainly because it does capture a lot of the intent and some of the key definitions of the convention which was ratified.

I will not go over each of the terms of reference other than to say that the information contained in the section on terms of reference lists the initiatives of the department which we firmly believe are allowing Australia to show that the convention is being met. As I mentioned, they are about the strengthening and support of the family. In terms of compliance and monitoring, we also list some of the reporting aspects that the state is involved in which relate to the convention. We also refer to new legislative initiatives and representation of children both within the welfare and legal sectors.

Similarly, there is a final comment on the Ministry of Justice which relates to the Young Offenders Act. I will turn to the committee to raise any questions bearing in mind that the people with the knowledge of those programs are present.

CHAIRMAN—We guarantee that we have a few questions for you. Let me open by making reference to the submission from Legal Aid Western Australia. I understand that as an instrumentality of the Western Australian government that those witness will not now appear. Is that the case?

Mr Ashford—Have they been listed to appear today?

CHAIRMAN—We have them on the list at the moment, but we understand that they are not going to appear.

Mr Ashford—They would have to reiterate their position in light of the submission that was given to you previously.

CHAIRMAN—What I think we need to do to start off with is, if they are not going to appear—and we understand they are not—ask the government to take on notice the issues raised in that submission. For the benefit of the *Hansard* record those areas of concern relate to juvenile justice, the child's qualified right to bail, the child's position under the Young Offenders Act—specifically the detention of children—the child's position under recent amendments to the criminal code in Western Australia, the inadequacy of programs, accommodation and support services for young people with intellectual disabilities, medical difficulties and particularly those suffering from ADHD, and the representation of children in care and protection proceedings. Can you take those on notice and give us some written comments? Secondly, could you also give some more detailed written comments, as they affect the terms of reference, on the Human Rights and Equal Opportunity Commission report? I think it is appropriate that that happen.

Mr Ashford—Yes.

CHAIRMAN—About two weeks ago I was involved in a radio interview in relation to that report. Some of it concerns me as an individual not on behalf of the committee. We would like some further advice on that. My first question relates to term of reference one where you talk about the High Court Teoh case and some potential difficulties for states. Are you aware that the Administrative Decisions (Effect of International Instruments) Bill has just gone through the House of Representatives to clarify the post-Teoh situation. It has gone into the Senate. As the WA government representative, could I ask you to have a look at that?

Mr Ashford—Yes.

CHAIRMAN—You could perhaps add that to the list. That could be a third thing

to review. One of the underlying concerns in that legislation is to make sure that states have their say, particularly when it comes to these sorts of issues.

You make the comment here about not having a children's commissioner or a ministerial arrangement for children. Are you aware of the situation in Queensland, where they have a commissioner for children? We have already taken evidence from him, and I suspect that we will take some more. He has only been there five or six months. Would you like to make some comments on behalf of the Western Australian government as to why you do not think that sort of office is appropriate?

Mr Ashford—I will start with general comments and then hand it over to one of my colleagues. We believe that what is currently in operation is satisfactory. We believe we can meet the reporting aspects and requirements of the convention, bearing in mind that our program is really about the care and development of children in WA. We believe that if those bodies are established at the Commonwealth level there will be a lot of duplication. We believe that the changes they list as being required to federal administration are quite significant. Some of the aspects, like having a national network of supported advocates, we believe are not really consistent with the approach to WA's programs in terms of the reconciliation of families. The main argument is that we believe that it is just not necessary at the Commonwealth level. There is need for better coordination and reporting through the ministerial councils—that is fine. It is an added level which will just duplicate and unnecessarily require a lot of monitoring and reporting. There are significant aspects listed in that report.

CHAIRMAN—What about having the Queensland equivalent at the state level?

Mr Ashford—The position of the government, which was given by a past minister for family and community services—correct me on this—was that the government did not support such a body in Western Australia. That was a policy decision.

CHAIRMAN—What was the rationale for that decision? Can you talk about that?

Ms Gupta—I have here some comments from the previous minister.

Ms Van Soelen—I do not think they add anything to what you have already said. You have covered the government position.

Mr Ashford—It was a clear policy announcement, and that is the current situation.

Mr McCLELLAND—Can I take it from what Western Australia is doing that you have no real objection to the treaty per se? The Western Australian government does not favour renunciation of the treaty by Australia, as I understand it.

Mr Ashford—No, that has not been articulated at any level.

Mr McCLELLAND—Your concern is that a federal regime could be created which in some way overrode state autonomy?

Mr Ashford—That is generally the government's line. We really are concerned that the administration in that concept is significant for the state governments and the Commonwealth government.

Mr McCLELLAND—You mentioned that the coordination of information could be done through the ministerial council, but don't you think that, in terms of pulling together information about what different states are doing—best practice in various states or organising the register of child abusers on a national level—some federal office given responsibility for pulling together that information and register would be of use?

Mr Ashford—The process of having coordination of information at the Commonwealth level is a fine concept. We are saying that as it is outlined or inferred in a report such as that, it is far too much. We also believe that it is not necessarily needed to that extent. It is not an insignificant bureaucracy that they are proposing. I think what you are raising about better coordination in information is something we can all do better. Perhaps one of the outcomes of these hearings has been a realisation that the reporting needs to be refined or better coordinated. That is fine, but that is different to what they are proposing here.

Mr HARDGRAVE—My questions follow on from Mr McClelland. In a federation, I guess we look for the best practice and hope that each of the states will forget parochial differences and take up the best practice. How does Western Australia rate itself in comparison to other states and, if you are not the best, who is?

Mr Ashford—I am not in a position to answer that. I might ask someone over here to add to that.

Ms Van Soelen—I can talk about the area of child protection and placement of children. Western Australia is a significant player on national groupings such as SCCSISA—the Standing Committee of Community Services and Income Security Administrators. That actually does provide a very good coordinating response. We are currently chairing a national working group which is looking at safety screening to make sure that people who pose a risk to children are not employed in any paid or voluntary capacity and we are looking at how that can actually be achieved.

We also see that body as promoting best practice in terms of trying to improve child protection practices to make sure we investigate those allegations of maltreatment where there is actual evidence of maltreatment. We do try to provide services to families where the major issues are to do with families not being able to cope with children or being under other kinds of stresses and being able to develop better practice in that arena.

We have certainly been invited, from Western Australia's perspective, to provide information to a number of other governments about how we are progressing in those sorts of strategies here. I would say that Western Australia stands up very well. We are already

part of national networks and the national networks that are there are actually working very well.

Mr HARDGRAVE—In your submission to the committee today, there is the best part of 2½ pages of initiatives that are listed, efforts being made by the Western Australian government to bring about policy legislation to back that policy up and programs to help the state run its affairs in accordance with the convention. How does that compare with other states? Are you pushing ahead and boldly going where others have not gone before?

Ms Van Soelen—I think there are some areas where we would be seen as being at the cutting edge, particularly some of the child protection practices. The family support strategies that have been implemented to strengthen families—such as the parent information centres and other parenting supports—are certainly seen as very innovative, and other states are looking to us in terms of how those are working. I could not say that we are ahead in all of the strategies. I think there are states in different jurisdictions that are making better progress in some areas and we are making better progress in others.

Mr HARDGRAVE—On the concept of a Canberra based central agency, I am from Queensland so I have two fingers crossed against anything that is centralised in Canberra as well. The concept of a central agency in Canberra has one bit of merit—that is, where you have a patchy development of policy in one state and you have another state that is at the cutting edge, like Western Australia, it could be a legitimate role of a central Canberra based agency to oversee that. Is that a fair and reasonable approach, or can the states sort out their own progress amongst themselves?

Ms Van Soelen—I think the states can use bodies such as the community services ministers and SCCSISA to sort that out. I think there is a difficulty in having a central body that assumes it knows what best practice is. That can actually be a problem for innovation in different states because it is the very difference that actually challenges us. Hearing about differences in other states and trying something different is actually really important to keep innovation going. To assume that everything needs to be standard can be a problem.

Mr HARDGRAVE—So to paraphrase it, you are a good federationist suggesting that six or seven bodies across Australia could provide ideas more frequently than one body based in Canberra telling six or seven entities what to do. Is that basically what you are saying?

Ms Van Soelen—I am not sure I am saying quite that.

Mr HARDGRAVE—I think you are. I may not have put it as clearly as you would like. Can I put it one other way if I may. There certainly was some evidence in Sydney and I believe in Brisbane as well. I know you have touched on it with regards to some matters you have put on notice. There certainly are a few concerns in the east about matters with regards to the treatment of children in extreme situations here in Western Australia such as repeat juvenile offenders, Aboriginal children and those sorts of things. Are you confident that Western Australia is doing the right thing by some of the extreme examples?

Mr Ashford—We could put that question to the representatives from the Ministry of Justice. Those bodies in the east—I am just trying to get a feel for the issues they were raising.

Mr HARDGRAVE—I apologise for the inexactitude of my comment, but I certainly recall that a number of comments were passed. Mr McClelland might be able to help.

CHAIRMAN—Just before the Ministry of Justice replies, can I also put you on notice that, in every system, whether it be good or bad or indifferent, there will be things that fall through the cracks. This afternoon we are taking evidence from a very tragic case of which I suspect you have some information which may have to be taken in camera involving a youth suicide. It seems to me that in all good systems things fall down. We can be very specific in these but we would be interested in the light of that human rights report for some further comments because I think it will bring out some of these issues that Mr Hardgrave and Mr McClelland want to bring up.

Mr McCLELLAND—The one I am aware of, Mr Hardgrave, is that in the last month or so there was a report of a magistrate expressing regret that he had to incarcerate a minor—I am not sure of the age of the minor—because of the three strikes and you are out rule. That was one instance that I can recall recently, Mr Hardgrave. There was quite some criticism of that in the east media, at least in the Sydney newspapers.

CHAIRMAN—Three strikes and you are in in Western Australia.

Mr McCLELLAND—Yes, three strikes and you are in.

Mr HARDGRAVE—Mr Chairman, I do not want to state specific examples either. I will try to keep it generalist, but the principle of what I am saying is that there is some criticism about the strength, if you like, of Western Australia's treatment of the more extreme cases of offenders, et cetera.

Mr Ashford—The representatives here can only comment on the administration of it and not the policy decisions. So I will hand it over to the Ministry of Justice.

Mr Marshall—I will comment on the best practice theme you are developing and where Western Australia stands in relation to Aboriginal juvenile offending. We believe that Western Australia is taking a bit of a lead in relation to the impending indigenous deaths in custody summit in relation to piloting of a program of primary crime prevention—that is, as per the interim report of the Muirhead royal commission, getting to the core of what creates crime.

We are doing this through a series of agreements right through from the state level down into service level agreements between Aboriginal representatives. We are concentrating on a particular town that has a high rate of Aboriginal juvenile offending. Through this system of agreements and service level agreements, we are working with agencies such as family and children services, the health department, Homeswest and our housing authority to actually tackle the causes of juvenile crime amongst Aborigines. I just wanted to raise that as our best practice. It is going to be raised in more detail at the summit. Do you want me to comment on the three strikes legislation just in terms of a response?

Mr HARDGRAVE—Sure.

Mr Marshall—The issue that the government certainly took into mind when developing that legislation was the fact that Western Australia does have one of the highest rates of home burglary in Australia. I think the other consideration was the considerable effect that home invasion has on the people in the home as opposed to when people are not there. There is the effect of the invasion of your privacy and your personal space and the possibility, of course, of confrontation and what that could lead to. The other thing that needs to be borne in mind is that many of the kids to which what is called the three strikes legislation might apply are probably those who are going to be detained anyway. Our experience, which Mr Keating might be able to amplify on, is that, of the 32 juveniles so far sentenced under the legislation, in their anecdotal opinion—obviously they cannot second-guess the courts—because of their history, most would have been detained anyway.

CHAIRMAN—Mr Keating, do you want to make a comment?

Mr Keating—Mr Chairman, that certainly is the case. Our observation of those young people that have been detained under that legislation is that they would in fact have been sentenced to detention. The only variation was that there may have been a small percentage that may not have served quite as long as what the current legislation provides for. In addition to that, the current legislation allows for some discretion by the President of the Children's Court, and that has been exercised in a number of cases.

Mr HARDGRAVE—To round off this line of questioning a little further, this convention really does not overly approve of this kind of an approach. It would be seen, perhaps, that this domestic law may be not in keeping with the convention so far as the

detaining of children and so forth. That is perhaps a policy area for you. Are those matters considered when you are looking at these sorts of approaches, the way the convention perhaps could override or impact on this sort of domestic law?

Mr Marshall—The policy setting for Western Australia is that which is set out in the Young Offenders Act. I think what you are probably touching on is the balance between the rights of the child and the rights of the community.

Mr HARDGRAVE—The victims.

Mr Marshall—Yes. I think that is probably best spelt out in section 125 of the Young Offenders Act which says that, where you are dealing with a repeat offender, the court is to give primary consideration to the protection of the community ahead of all other principles.

CHAIRMAN—Anyway, that can be picked up on in a lot more detail when you take that on notice.

Mr BARTLETT—I was going to pursue the same line of questioning for a moment. It seems to me that this case of the Juvenile Offenders Act goes to the essence of the whole issue of the convention, vis-a-vis the state government's assumption that its own legislation is correct. There is an assumption here with the Western Australian government that what we are doing is correct; we do not need a national body to tell us the way to frame our legislation with respect to the rights of the child. There is an assumption that there are no gaps within our own legislation. We cannot benefit from a national ombudsman or commissioner for children. Could it be possible, however, that while from your own perspective your legislation does seem to accord with the convention and the principles of the rights of the child and the family and so on, there are gaps there, albeit in Western Australia or in other states, where a national framework might be of benefit to close those gaps?

Mr Ashford—Are you talking specifically on the justice issue?

Mr BARTLETT—I am just saying that is indicative of the potential for this sort of problem.

Mr Ashford—I will answer that generally, and someone might like to add something specific. I suppose we are reiterating a fairly consistent stand by Western Australia in that we believe that in certain areas the states have key responsibilities. Generally, those conventions that touch on human rights, trade and commerce do impact or have a potentially significant impact in the area of states responsibilities. So generally we are against this, but in that specific case it is not saying that we are against better coordination, better information sharing. Perhaps I was not as specific. We just do not think that the level of specifics contained in that report is necessary. We have ministerial

councils that I believe can be looked at as a way of strengthening the reporting and coordination. We are not into trying to create another body that is trying to pick up what existing agencies should be doing better anyway. It is really that key issue. That is a general statement. Specifically on the juvenile legislation, I will see if there are any more comments.

Mr Marshall—If I could just add to that in relation to the juvenile legislation, because we need to put this in perspective. When we are talking about repeat offenders in a state the size of Western Australia, which has a population of 1.7 million, we are talking about 200 or 300 repeat offenders. We believe that the principles contained in the Young Offenders Act, which is one of the most recent pieces of young offenders legislation in Australia, most closely aligns with the conventions—or at least equally aligns with the conventions as any other young offenders legislation in Australia. But I reiterate that, where that may be compromised with something like the three strikes, we are dealing with at most 200 or 300 children.

Mr BARTLETT—I am more interested in the principle which says that there may be some doubts about the legislation in any particular state as it impacts on the rights of child and whether the assumption that every state is doing the right thing is an accurate assumption. If I can just change tack for a moment: has there been a history of conflict within the state between the perceived rights of the parents and the rights of the child? Is there a widespread concern in the community, for instance, that the convention might well lead to a diminution of the rights of the parents and the rights of the family?

Mr Ashford—I could add some general observations: obviously, in the lead-up to the signature and ratification, those issues were raised by individuals and groups in the community; and I would assume those groups and individuals still hold those views. You may hear some of them today. The intent of a lot of those programs listed there is about, I suppose, protecting and supporting the family as the main unit for care and development of children, which is the key principle when it is defined in the convention. So, yes, those issues have been raised and most likely will be raised.

Mr BARTLETT—One of the submissions we will be looking at this afternoon raises a case where there was concern expressed by the parents that the department of family services acted too hastily and that a young person's rights were looked at without regard to the rights of the family and, in this particular case, the parents' pleas were ignored. What measures are there to counterbalance the rights of the child with the rights of the parents and the family? For instance, when a young person applies for a youth homeless allowance, what steps are taken to check their claims with the claims of the parents?

Ms Van Soelen—Our department does not actually deal with the youth homeless allowance—that is Social Security—but we certainly have the youth homeless protocols which means that, where a child is under 15 or where there might be protective issues, we

certainly do an assessment. I guess the philosophy that guides us all is to make sure that all of our consumers, both children and parents, have a right to say and to represent their views. So we would be hearing what the issues were for the parents, what the issues were for the child and, wherever possible, to actually attempt some reconciliation of that problem. Obviously, of paramount importance is the safety of the child. If there are issues that are to do with the safety of a child, that will be the guiding principle. But in the first instance we would try to make sure that, if there is any chance of reconciliation, that actually does occur.

Mr BARTLETT—Have there been to your knowledge any instances of complaints by parents where they feel that their claims have not been heard and that the child's case has been heard at the expense of the parents?

Ms Van Soelen—We have certainly heard of some cases prior to the introduction of those protocols. Recently, no, we have not heard of any cases where our staff have been involved in addressing the matters coming up. It is notoriously difficult in cases where there is parent-teenage conflict of a serious nature and where reconciliation is not possible. One does have to make sure that children are protected, that they do have means of support and that they do have somewhere to live.

Mr BARTLETT—But there is a concern expressed in one of the submissions that we have received that a very jaundiced view was taken by the department.

Ms Van Soelen—Without actually seeing the case, it would be very difficult to comment on that.

Mr TRUSS—Could I go right back to your initial comments, Mr Ashford: did the Western Australian government approve of the federal government's ratification of the rights of the child convention?

Mr Ashford—All I can comment is from my own personal knowledge. At the time of signature and ratification the current government was not in government. It was the Labor government that went through that process. I am not aware of exactly the details of their level of support or of the issues raised but my understanding—and it is just my understanding but we can try to check this for you—was that generally Western Australia went along with the proposal.

CHAIRMAN—If you could, that would be helpful.

Mr TRUSS—That would be consistent with the information that was given to us. That is why I was querying your initial statement about the concern in Western Australia about the ratification of the convention. You mentioned subsequently that the arrangements in relation to consultation with the states have improved. Bearing in mind that the Treaties Council still has not meant, has it?

CHAIRMAN—No, later this month.

Mr TRUSS—How have they improved?

Mr Ashford—Being a member of the Standing Committee on Treaties, I just believe that there is more of an awareness. Certainly, between agencies there is a lot more effort by both parties. Sure, we can all increasingly improve, but I just believe it is getting better. I cannot really comment on the Treaties Council meeting or not meeting. But personally I have seen improvements from how it was when my predecessors were handling the work. I just believe it is generally getting better in terms of the exchange of information. We still have problems about timing of consultation information requests but we work through those things. My observation is that it is improving.

Mr TRUSS—Since you are, I gather, personally involved in the Western Australian assessment, I think it would be helpful for the committee if we knew what you did when the Commonwealth advised you that they were about to sign, say, an economic agreement with Vietnam, an air services agreement with Saudi Arabia or something like that.

Mr Ashford—Basically, you have the Commonwealth administrative bodies, both in DFAT and Prime Minister and Cabinet, who are constantly sending us updated information. We have also got the information on the Internet where we keep a strong database. All in all, the information is significantly improving so that we are a lot more up to date with what is happening.

The information that comes across notifies us that either a national interest statement was coming out or was going to be tabled in parliament, what we would immediately do is work out the relevant portfolios and sent it directly to the ministers' offices. They might then request specific details from the Commonwealth on certain pieces of information and then we would feed the comments which go through the ministerial offices back to the Commonwealth. It is getting to be a reasonably routine process now. Sometimes the deadlines are very urgent but at other times we have a lot more time. I think we are all learning and that it is getting better.

Mr TRUSS—Are you coping okay with the fact that there is a tendency for eight, 10—I think 15 at the best—treaties to be all tabled at once in the parliament or do you have advance information before they actually get to the tabling stage?

Mr Ashford—We do not that I can tell. They do tend to come saying that these ones will be listed and they might list three or four. We then try to get the information around as quickly as possible and also try to get any comments back as quickly as we possibly can. I suppose if there is any observation on the process now—I mean, we would all like more time—I think the numbers of treaties which are being tabled and the ability for us to circulate them to the key ministers is an issue, because there is a lot of interest in

certain aspects of the treaties.

Mr TRUSS—Have you noticed Canberra taking any notice of your comments on various treaties?

Mr Ashford—I have been in the position since February, so I could only comment from my own point of view. It is a bit too early to say. But in certain negotiations recently on GATTs and indigenous peoples, my observation is that the level of consultation and communication are improving. We have not seen the results but certainly in certain individual cases with individual officers, it has been quite good. To answer your question, no, we have not seen the result as yet.

Mr TRUSS—Finally on this line of questioning: have you given consideration as to whether you may be able to use this committee as a way of presenting your views on an issue of concern?

Mr Ashford—Given that the guidelines for new treaty making processes came out towards the middle of last year and given that the Treaties Council has yet to meet, I think we are still feeling our way there. This is my first experience with the joint committee. Yes, perhaps this is a mechanism for raising any issues of concern. However, I would like to say that I am personally a believer in looking at the existing systems. I think there is a lot of goodwill now between individual officers in DFAT and the states. Just in my five months, I have seen a difference in the level of consultation and information and at this stage being able to put forward our concerns. I have not seen a final outcome on any yet.

Ms Gupta—I can probably make a comment in respect of one convention, and that is the Hague Convention on Intercountry Adoption. There have been extremely useful discussions occurring between the states and the Commonwealth. It would appear that the Commonwealth has or is in the process of taking on board a number of the views in particular put forward by Western Australia.

Mr TRUSS—Good.

Mr TONY SMITH—Just in relation to the last page of your paper where you refer to subsection 118(4) of the Young Offenders Act whereby:

If a court sentences an offender to imprisonment it may, if the offender is at least 16 and under 18 years old and having regard to the matters in section 178(4)(a), direct that the offender serve the sentence in a prison . . .

What are the matters in section 178(4)(a)?

Mr Marshall—Just from my experience—and Mr Keating might be able to tell you some more—in many cases it is a request from the child himself or herself to be

detained in an adult prison because there may be a relative in the adult prison. I will read you the conditions under 178(4):

(a) in the case of an offender who is under 18 years old, if the Court is satisfied that the offender should be transferred to a prison because—

(i) the offender's behaviour in the detention centre (including when serving a previous sentence) is or has been a significant risk to the safety or welfare of other people in custody . . .

in other words, the child is becoming a very serious management problem in a detention centre—

(ii) of the offender's antecedents—

in other words, he may have in fact been in prison before—

or

(iii) of any other reason the Court thinks is relevant.

Mr TONY SMITH—So you say the antecedents relate to a previous term of imprisonment?

Mr Marshall—Could.

Mr TONY SMITH—Rather than a previous criminal history?

Mr Marshall—It could be that as well.

Mr TONY SMITH—It could be both.

Mr Marshall—But I suspect in many cases it is because the kid has been in prison before.

Mr TONY SMITH—Is there a reference to relatives as well or are they all the provisions you have mentioned?

Mr Marshall—They are the provisions under section 178(4)(a).

Mr TONY SMITH—I see. Is it the experience that those who go down that path at 16 years of age and under 18 are very difficult management propositions; is that the situation?

Mr Keating—No, that is not the case. It would be an unusual case where a young person under 18 was sent to prison but it does happen from time to time. I cannot recall in

the last year or so of an under-18 person going, and that would normally have been as a result of a request by them where they have a substantial period of time to serve on a sentence. We would normally look to transfer them to an adult centre after they turn 18 if there is a substantial term to serve and, in those circumstances, it would be at the request of the young person. It could be, as Mr Marshall has said, that family members are in the adult centre or it might mean the opportunity to be in a locality nearer to their home if they are in the adult system.

Mr TONY SMITH—But there does not have to be a request by the person concerned?

Mr Keating—No. In normal circumstances it falls back to me actually to sign an affidavit for that process to take place and to be brought before the court. I would not do that until we had pursued that matter with parents, the young person themselves, their legal representation—

Mr TONY SMITH—What would you have to be satisfied of before you signed an affidavit?

Mr Keating—If it were a matter concerning the good order of the centre, I was satisfied firstly that we could not manage that young person in the centre and, secondly, he was a danger to other detainees. In other cases I would need to be satisfied that he or she had the maturity to deal with going into a prison and that it had the support of the young person, their lawyer, parent and any case worker.

Mr TONY SMITH—But I imagine there would be some resistance to any such move by anyone acting for that person if they did not want to go.

Mr Keating—That is right.

Mr TONY SMITH—Do you have any cases at all of a person 16 years of age being shifted to an adult prison?

Mr Keating—Not in the recent past.

Mr TONY SMITH—At all?

Mr Keating—I think there may have been one sent probably a decade ago. That was a young man who was not only extremely big but also extremely violent. They just could not manage him. It followed a range of staff assaults and a range of assaults on other detainees. He had a very long sentence to serve and at the end of the day he was transferred.

Mr TONY SMITH—But I guess the point is that there is the potential for

someone quite young to go to an adult prison.

Mr Keating—There is certainly the legal capacity, but it would be unlikely the court would allow it.

Mr TONY SMITH—But it has allowed it in some circumstances?

Mr Keating—In the case that I mentioned, yes.

Mr TONY SMITH—Was there any reference at all to article 37(c); that is, the previous government placed a reservation on article 37(c) which is fairly broadly worded, 'a child deprived of liberty shall be separated from adults'. I presume that means adult inmates, although it does not say that. If that provision had been in there, would that have made a difference to the operation of this particular provision? It is a bit of a hypothetical question but still.

Mr Marshall—Possibly the best way of resolving this way is to draw your attention to one of the general principles of juvenile justice contained in the Young Offenders Act. It says:

. . . detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detain at the facility, although—

(i) a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner . . .

Mr TONY SMITH—Is that the prisons act?

Mr Marshall—That is the Young Offenders Act. That attempts to mirrors—

Mr TONY SMITH—So they are 'not to share quarters with'?

Mr Marshall—They are 'not to share living quarters with'. In other words, not in the same cell.

Mr TONY SMITH—But they could walk in the yard with them?

Mr Marshall—Yes, and they could go into programs with them such as educational programs.

Mr TONY SMITH—And associate with them generally in the prison but not at night in a cell. That is basically what that means, is it?

Mr Marshall—Yes.

Mr TRUSS—But you would not favour Australia withdrawing that reservation?

Mr TONY SMITH—Somebody said that there was some discretion for the president in the sentencing process. You were relating that to this particular provision, were you?

Mr Marshall—The three strikes provision.

Mr TONY SMITH—So it is only the President of the Children's Court who has that discretion? You have a Children's magistrate. Does that person have that discretion?

Mr Keating—No, because a magistrate does not have the power to sentence a young person to detention beyond six months. They must go before the President of the Children's Court.

Mr TONY SMITH—In respect of the discretion, where is it spelt out how it should be exercised or is it not spelt out? If it is not spelt out, how has it been exercised? Is there any law on is it?

Mr Keating—No, it is a precedent created by the President of the Children's Court sitting in that capacity as a judge.

Mr TONY SMITH—Are you aware of how the discretion has been exercised and what factors have been taken into account in not sending someone in or in sending someone in?

Mr Keating—A belief that the other principles of the Young Offenders Act would be of such importance that that discretion should be exercised as the act stands now.

Mr TONY SMITH—I do not quite understand that.

Mr Keating—There are certain principles in the legislation in relation to last resort and endeavouring to deal with young people in the community where appropriate and the like, taking into account age, circumstances and antecedents of the case. As with any judgment by a member of the judiciary, all those factors are taken into account. In taking those matters into account, under the current legislation, there is a capacity for the young person not to be sentenced mandatorily under the three strikes legislation.

Mr TONY SMITH—That is a different picture to what has emerged in the eastern states. It was assumed that there was no discretion. That is just not the case—there is a discretion?

Mr Marshall—My understanding is the present exercise of discretion in sentencing a young offender to detention for the first time is placing him on what is called

a conditional release order, which is essentially a detention order which is then suspended.

Mr McCLELLAND—Is there any discretion after the three strikes?

Mr Marshall—That was his interpretation.

Mr TRUSS—The submission we have received from somebody giving evidence later in the day suggests that both the government and the opposition parties are committed to withdrawing that discretion.

Mr Marshall—It is not a matter of withdrawing. The government is committed to fixing what has been called a loophole in the legislation in relation to allowing that to happen.

Mr TONY SMITH—So it is the case is it not that that discretion is going to go so that is the argument. Is that the political proposal?

Mr Marshall—That is the government's intention, yes.

Mr TONY SMITH—Just going back to a couple of things that we have in the submission from Legal Aid Western Australia. Is Legal Aid Western Australia starved of funds? Is there a real problem for legal funding for Legal Aid Western Australia?

Mr Keating—The only comment I can make on that is that young people going through the children's court process have ready access to legal advice currently. What the long-term circumstances of Legal Aid are and what their funding is I could not comment on. At present there is widely available legal advice to juveniles.

Mr TONY SMITH—So the availability of legal aid for juveniles is not an issue in the current saga about legal aid funding?

Mr Keating—It has not been to date, but then again that is quite a current issue in terms of their funding.

CHAIRMAN—Tony, this particular one will be picked up when they take that Legal Aid Western Australia paper on notice. But you can explore some of these if you like.

Mr TONY SMITH—There are a couple of other points in their paper—

CHAIRMAN—You may not have been here when I asked them to take paper on notice. Our understanding is that Legal Aid Western Australia is not going to appear because they are an instrumentality of the Western Australian government. So what I have

asked the representatives here to do is to take on notice everything that is in that submission and get back to us.

Mr TONY SMITH—I see. Could I ask a couple of questions about that submission?

CHAIRMAN—Sure.

Mr TONY SMITH—There is a reference on page 3, the top of the paragraph, which concerns me:

A child may be, and often is, denied bail for reasons solely pertaining to homelessness and lack of family support. There is anecdotal evidence to suggest that children have pleaded guilty to offences which could have been defended, rather than remain in custody . . .

Is there a supervisory jurisdiction for bail in the Supreme Court? In other words, can a child apply to the Supreme Court for bail getting away from all of the lower court stuff?

Mr Keating—My understanding is that that would still apply. But there is a capacity to apply to the President of the Children's Court for bail if bail is not forthcoming. But I should say that there is a supervised bail scheme that operates in this state and its sole purpose is to endeavour to ensure that young people do not stay in custody because of lack of bail. Because there is usually no monetary requirement, it can be either a responsible person or a very minimal surety of $1. That particular program will pick up and supervise young people and provide accommodation for them if that was the only that they were being held in custody.

Mr TONY SMITH—Could you take on board the general thrust, if I may summarise it, of what Legal Aid Western Australia is saying. It seems to me that they are saying that gaols are basically the last resort repositories for children that society does not know what to do with. I would like to hear your comments about that, because that offends what Lord Goddard said many years ago about prisons. I would be interested in having your comments about that because that is what I think Legal Aid Western Australia is saying.

Mr Keating—I think, generally, those people who are least equipped in our community to manage often get caught up more readily in the justice system—whether it be adult or juvenile. That will have those sorts of undesirable outcomes. All I can say in relation to juvenile justice is that the program I referred to and the processes that we have work rigorously to ensure that a young person is not held in custody at any time purely because there is no-one to care for them or no accommodation.

Mr TONY SMITH—But, in a sense, that is what ultimately seems to happen because there is just no-one to care for these children. Some of them are basically feral

and nocturnal—there are no other words for them. This is the only home, effectively, that is left for them. In a sense, the state is taking on a ward of the state situation using the detention centres to do so for some of these kids; are they not?

Mr Ashford—I would like to jump in there. The Legal Aid Commission talks about anecdotal evidence. I would like to take this on board and really look into it further. We do not really have the information on hand.

Mr Marshall—I will just say on that that the Attorney-General has expressed a concern about the number of juveniles remanded in custody. I am talking here remanded in custody. As a result of that, a committee has been formed to look at the particular problem of juveniles being remanded in custody.

Mr TONY SMITH—Lastly, could you, not now, respond to their assertions on page 4 with regard to the interpretation of the position of children re sentencing and the position of adults re sentencing?

CHAIRMAN—That is going to be done on notice, Tony, if you are happy with that. I will just come back to the whole subject. First of all, let us go back to potential de-ratification. What you are saying is that the Western Australian government, under no circumstances, is implying or suggesting that the extreme measure of de-ratification should take place.

Mr Ashford—I would have to say that the government has an expressed point of view at this moment. That is all I can say.

CHAIRMAN—At the ministerial level what you are saying is that responsibilities in these areas—whether they be for families or for children—are adequately covered at the ministerial level within the state in conjunction, as necessary, with federal authorities and the federal ministerial level?

Mr Ashford—In terms of care development and protection of children?
CHAIRMAN—Yes, anything to do with children.

Mr Ashford—I would say that we have a large number of programs that are specifically for those purposes and are consistent with what is contained in the convention.

CHAIRMAN—In other words, that the work done by the Standing Committee of Attorneys-General and other ministers under the COAG arrangements is appropriate and working reasonably well at this stage in relation to the needs and the rights of children?

Mr Ashford—I have not had direct involvement with that ministerial council.

CHAIRMAN—Are you happy with that?

Mr Ashford—There is the Attorney-General's one and there is also the ministers—

Ms Van Soelen—In terms of community service, I think it is working well. An example of how information is shared to actually have a look at trends and best practice is that all jurisdictions contribute—and that includes the Commonwealth—to the Australian Institute of Health and Welfare that brings out these sorts of publications, which brings together information about child abuse and neglect in Australia and actually analyses that. These are the sorts of documents and discussions that form the basis of forums that a body such as the community service ministers would be supporting. So we have certainly had national forums about child protection where we have looked at what is best practice, what are the trends that are emerging, what are the innovations that are occurring in various jurisdictions that we can share with each other and how we share our evaluations. I think that is working extremely well.

CHAIRMAN—At the bureaucratic level, what you are saying is that the commissioner concept is not appropriate to Western Australia?

Mr Ashford—What we are saying is that the establishment of a centralised Commonwealth agency is not supported.

CHAIRMAN—At the state level, your coordinating mechanism does not necessarily entail a commissioner but entails an appropriate arrangement which you feel is in place at the moment. Is that what you are saying?

Mr Ashford—Yes, there are coordinating mechanisms in place, and like everyone else I am sure we can improve our coordination. The question of those sorts of concepts at the state level have not been examined by government yet other than the official ministerial statement of two years ago.

CHAIRMAN—At the legislative level, are you also saying that it is not appropriate to have some sort of umbrella legislation to encapsulate what is in the convention at the federal level?

Mr Ashford—Administratively, I do not think it is necessary. You really are then legislating in a way some of the critical issues the states are concerned about generally in treaties—external powers.

CHAIRMAN—Bearing in mind that under constitutional arrangements states have the responsibility in general terms in children's areas. That brings me to my next question in relation to state legislation. I guess what you are also saying is that you cannot have an umbrella piece of legislation; you have legislation in various other areas—whether it be in welfare services, children's services or in the judicial or legal justice area. Is that what you are saying?

Mr Ashford—Yes, and we also have units like the Office of Youth Affairs, which do not have a legislative mechanism but are very current involvement in youth and children's services. We would probably argue that we would look at how best we could coordinate the existing programs and structures with the aim of always improving.

CHAIRMAN—My final question relates to Legal Aid Western Australia, which you will take on notice. Implicit in why these people are not going to appear today—and I understand why they are not going to appear, because I understand they are instrumentalities of the Western Australian government—do we imply from that that there is some difference of opinion between what those two officials were saying and what is the Western Australian government's view.

Mr Ashford—I could not come up with the Western Australian government's view on that submission as yet, but we will certainly respond to that.

Mr HARDGRAVE—I have two quick questions. We have talked a lot about penalties imposed on children for offending. What about penalties on offenders against children? How does Western Australia stack up? I am not talking about matters such as child abuse and sexual misconduct and those sorts of matters. It seems to me that there is a lot of inconsistency around the country as far as penalties that are imposed on offenders against children. It is probably justice that should talk about it, but how does Western Australia stack up against other states?

Mr Marshall—My general comment would be that our penalties in our various state statutes stack up favourably comparatively with other states.

Mr HARDGRAVE—I have one question that links with that. I appreciate that the Western Australia government is against a Canberra centralised bureaucracy with regard to children. But when I look back to this time a year ago and the conduct of the debate over uniform national gun laws, we saw an urgency attached to that but we nevertheless saw six or seven or eight separate pieces of legislation passed in each of the states, which brought about uniform national gun laws still recognising the rights of individual states to frame their legislation. Would the Western Australian government agree to any process that brought all of the states together to bring about some uniformity as far as the laws are concerned affecting children, offenders against children and all those sorts of matters?

Mr Marshall—I really cannot comment on that.

Mr Keating—In the states and territories and New Zealand the Australasian juvenile justice administrators meet twice yearly and work on administrative protocols and directions in juvenile justice specific to use as administrative guides in any directions we take. That has been quite a successful forum over the last couple of years.

Mr HARDGRAVE—Are there many inconsistencies between the states?

Mr Keating—There are significant inconsistencies in terms of legislation and local requirements and needs. Initially, when it was formulated, probably seven or eight years ago, there was some hope that we would be able to develop legislation that was similar, but that was quite a massive task. So we have opted in latter times to go through a set of processes and protocols and national standards that can become administrative guidelines when we work within our own states. That seems to be quite a successful way of developing it.

Mr Marshall—SCAG, which is the Standing Committee of Attorneys-General, is probably the appropriate forum for this to be raised in.

Mr McCLELLAND—Who coordinates these meetings? Ms Van Soelen, who would publish that paper? It just does not happen. Who says, 'Alright, we'll bring in the submissions here and I'll send it to the publisher and get the product out?' Who would organise that?

Ms Van Soelen—For something like this, the Australian Institute of Health and Welfare actually has a body of staff and they actually have contact with people collecting information in each of the jurisdictions. So there are national meetings. I have attending some of them myself as well as our data people or technical people who actually need to collect it. So we work on standardisation of definitions so that we are collecting the same kinds of information.

Mr McCLELLAND—I suppose the thrust of my question is: there is obviously some sort of mechanism that pulls all these meetings together—

Ms Van Soelen—It is actually paid for by all of the jurisdictions under SCCSISA, which comes under the community service ministers. So there is already a coordinating body that has agreed to collect information on a national basis.

Mr McCLELLAND—That is the federal community services; is it?

Ms Van Soelen—It is state and Commonwealth, yes.

Mr TRUSS—There is a number of submissions that we are dealing with today where there are suggestions that various pieces of Western Australian law—in the opinion of the people who are making the submissions—are not in conformity with the UN Convention on the Rights of the Child. How seriously does the Western Australian government take the convention? Would you introduce a piece of legislation that you felt was not in conformity with it?

Mr Ashford—That is a hard question. All I can say is that we are very aware of Australia's signature to the convention. We comply with all reporting and monitoring requests. For example, a substantial piece of information was put together arising, I think,

from 42 questions that came out to us specifically on aspects of the convention. So that convention is in operation, and we will continue to report and provide the information as required.

Mr TRUSS—In drafting the three strikes and you are in legislation, did you take care to ensure that it was, in your opinion, in conformity with the UN Convention on the Rights of the Child, or was that not a factor?

Mr Ashford—I could not comment on that. I was not drafting it.

Mr Marshall—I answered that one previously at the beginning of this conversation.

Mr TRUSS—You answered it?

Mr Marshall—Yes, in the sense of the state's position being that burglaries of such a dimension in this state and the consequences of home invasion are so serious that that legislation was formulated in that way.

Mr TRUSS—Irrespective of whether it offended the UN Convention on the Rights of the Child or not?

Mr Marshall—I think that was the position.

CHAIRMAN—What you said was that the community was of paramount importance whereas, of course, what this convention would say implicitly, and perhaps explicitly, is that the rights of children are paramount.

Mr Marshall—I did qualify that by saying that the repeat offender legislation only applies to a very small number of children.

Mr TRUSS—What I am trying to do is get to the principle of it as to how seriously our state government takes into account the UN Convention on the Rights of the Child in determining whether or not it will legislate in a matter. I think—correct me if I have interpreted you incorrectly—you basically said that the community demand for the three strikes and you are in legislation was so strong that the government was going to do it whether or not it offended the UN Convention on the Rights of the Child.

CHAIRMAN—Let me put it another way. If, in fact, the UN Convention on the Rights of the Child did not exist, do you think that the Western Australian government would have gone ahead and done what it did anyhow?

Mr Marshall—Again, you need to put this in perspective. My understanding—and, as you are going around the states, you may be in a better position to assess this—is that

the principles contained in the Young Offenders Act of Western Australia probably best reflect the UN Convention on the Rights of the Child of any juvenile justice legislation in Australia. However, bearing that in mind, the state government's position in relation to burglary, because of the circumstances in this state, is such that the three strikes legislation was proclaimed.

CHAIRMAN—That is why I think we need to have your comments on the international instruments legislation going through the House or into the Senate when we come back in August, because I think that is the post-Teoh situation which gets into domestic law and all the rest of it. I think we would be interested to hear your comments on that.

Mr TONY SMITH—I specifically wanted you to address what I think is probably the most serious allegation in the Legal Aid submission at page 6. The first full paragraph states:

Relevantly, a child must elect to be dealt with in the Children's Court before he or she is entitled to full particulars of the charge (Section 19B(4)).

If that is so, that offends High Court decisions. So I would be very interested to hear whether that is a correct statement of the law and the position in terms of election.

Mr Marshall—It seems a matter which I cannot respond to off the top of my head. We would have to take that on notice.

CHAIRMAN—Thank you very much. Your evidence has been very helpful. As we have said to a lot of other people in previous hearings, we may have to come back depending on what further evidence is provided and as a result of other evidence that we hear around the country. So thank you very much.

[10.45 a.m.]

BOYD, Mr Stuart John, Youth Services Coordinator, Fremantle Community Youth Service, 7 Quarry Street, Fremantle, Western Australia 6160

MCDOUGALL, Mr James, Coordinator, Youth Legal Service of Western Australia, 79 Stirling Street, Perth, Western Australia 6000

ACTING CHAIR (Mr McClelland)—In the absence of the chairman, Mr Taylor, we will start the ball rolling. I welcome Mr Stuart Boyd and Mr James McDougall to give evidence. Your submissions have been published, but are there any amendments that you would like to make to them?

Mr McDougall—There are no amendments.

ACTING CHAIR—Do either or both of you have a brief opening statement that you would like to make to the committee?

Mr McDougall—I would actually like to take the opportunity to express two reasons for concern at the fact that the Legal Aid Commission is not giving evidence before the committee. The first area relates to the commission's capacity to give evidence. It is my understanding that the Legal Aid Commission is an independent statutory authority. It does, as a matter of practice in the form of its youth law unit, represent more young people within the legal system in Western Australian than any other agency. Therefore, it is particularly well placed, I think, to make comments on representation of children and young people within the system and also the types of issues—such as sentencing, care and protection matters—that come before the courts.

The second area is that I would assume, from the contact the Youth Legal Service has with the youth law unit of the Legal Aid Commission, that the commission in its submission has raised a number of areas of concern that the Youth Legal Service would share as well. I would not like to see those issues not addressed by the committee because the Legal Aid Commission is not present. I can offer that, because the two agencies do work together at least in the area of juvenile justice, if there are any questions in respect of the commission's submission that the committee wishes to address to me, I am happy to attempt to answer them. There are some particular issues that the committee has already identified in its questions to the previous witnesses—the Western Australian government—that I would also like the opportunity to comment on. That is just a brief overview.

In terms of how we have divided our areas between Stuart and me, I am happy to comment on the issues of legal aid and legal aid funding, sentencing legislation, the convention in general terms, the issue of coordination between government departments within Western Australia and also the Bail Act. Mr Boyd is keen to provide you with further information about the issues of policing, of how young people with disabilities are

treated within Western Australia and of public space.

Mr Boyd—That is right.

Mr McDougall—He also has the advantage of working closely with young people at his agency in a number of situations where a lot of the reality provides him with some anecdotal evidence.

ACTING CHAIR—Thank you. You mentioned coordination between departments. We saw, in the previous group of witnesses, a number of departments—regrettably not legal aid. What is your assessment of the coordination between departments concerning youth?

Mr McDougall—My observation is that coordination may very well work at a ministerial and upper departmental level. In terms of service delivery there is a quite frightening experience of gaps in services and of young people falling between those gaps. There are a number of examples I could give you. A lot of the ones that come to our attention as an agency are ones where the justice system is involved and where, as a committee member observed before, there are occasions when it appears that detention is provided as a solution when, in fact, there are other government departments that could or should be addressing other underlying issues with different responses. That would be the case in respect of young people with drug problems and those unfortunate enough not to have the active support of their parents or who are often not provided with accommodation. Quite often they will find themselves falling between the services offered by Family and Children's Services and the Ministry of Justice. Stuart will also have some experience of that.

The other government department involved in that process is the education department. There is a point up to which each of these departments will take responsibility and then their services will end. At the level of providing those services there will be young people who will miss out completely.

ACTING CHAIR—Are you aware of the existence of the children's commissioner of Queensland?

Mr McDougall—I am.

ACTING CHAIR—Do you think that there would be a valuable role that could be performed in Western Australia, for instance, and nationally by such an office?

Mr McDougall—There could be an important coordinating function performed by an office such as that. I do not have any particular view as whether that is a children's commissioner or an office of children. At a state level the experience up to now is that the coordination does not work in practice. There is an office of youth affairs, but in my view

it has not at this stage addressed the issue of the actual coordination of service delivery. So yes, that mechanism would be useful at a state and a national level.

Mr McCLELLAND—In terms of the issues regarding your experience with the situation where it is possible for a youth over 16 to be incarcerated in an adult prison, we have previously heard evidence that that has rarely occurred, and that usually the youth was close to 18 and usually requested that that occur. Does that match your experience?

Mr McDougall—It does.

Mr McCLELLAND—We have also heard evidence that the provisions regarding the 'three strikes and you're in' legislation are not as mandatory as some of us believed, and that there is an element of discretion there. Firstly, in your experience is that discretion exercised? Secondly, do you know if there are any moves afoot to remove that discretion?

Mr McDougall—The discretion is exercised, as I understand it, relatively rarely. The background that I think might be useful is that, over the last few years, it would have to be said that the tariff applied by the Children's Court to these types of offences is to sentence to longer periods of detention. The court has addressed some of the concerns that I think the previous witness identified about community concern in that area.

This legislation, though, applies a mandatory provision. What has happened is that the president of the Children's Court has interpreted that legislation in light of the underlying principles expressed in the Young Offenders Act. The president of the Children's Court has basically indicated that, where a sentence of detention is imposed and a conditional release order is also imposed, that still falls more generally within the definition of a sentence of detention for the purposes of the three strike legislation.

In response to that decision, the Attorney-General has announced that that discretion will be removed, and has foreshadowed amendments being presented to parliament—I think in the present session. It is my understanding that the Labor opposition has indicated support for those amendments. It is my understanding that, if those amendments were presented and do what the government has said they will do, that discretion will be removed and it will no longer be possible for a conditional release order along with a sentence of detention to be seen to comply with the legislation. Therefore, the discretion will be removed completely.

CHAIRMAN—I want to bring you back to the Western Australian government's evidence—you were here for all or most of that, I think—and their comments about the non-necessity of having a commissioner for children. Do you share those views or do you see one of the solutions as having central coordination or another role for a commissioner in Western Australia?

Mr McDougall—I do not have any particular view about the type of mechanism used, but I think that a coordinating mechanism would be very valuable in Western Australia.

CHAIRMAN—Are you saying that it is not satisfactory at the moment?

Mr McDougall—No, definitely not.

CHAIRMAN—Can you be more specific than that? Why is it not satisfactory?

Mr McDougall—Because from a services point of view the service delivery is not coordinated. I cannot comment on the level of coordination at ministerial level or departmental head level, but we have seen a number of situations where government departments have set boundaries for their services or the services that they will fund and take responsibility for, and yet clearly there are young people who fall through the gaps outside the boundaries of those government departments.

Mr Boyd—Perhaps I can give you an example; it is a situation that has been in the press here quite recently—over the last two or three weeks. The actual case goes back about three years. It is the case of a young brain injured man who has been trying to establish semi-independent accommodation outside institutions, and the frustration the family has felt in trying to move that case along. He is now in remand in Graylands, which is quite an unsatisfactory position given the accounts of everyone who has been involved to date. I think the magistrate at the time made some comment about his reluctance to do so, but said that he had few other options. Speaking with the parents and with a number of other people involved, it seems that the boundaries are fairly clearly drawn in the sand and people do not step outside those boundaries. Someone with an acquired brain injury does not actually fit the mental health act and they do not fit a whole range of other areas, so they just slip between the cracks.

CHAIRMAN—What is the relationship between the Youth Legal Service of Western Australia and Legal Aid Western Australia? Where do you get your funding from? How do you relate to Legal Aid Western Australia? Are you aware of their submission? Have you read their submission? Do you agree with their submission?

Mr McDougall—Youth Legal Service is a community legal centre and the Legal Aid Commission is the statutory authority. We are a fellow service provider in terms of legal services for young people. As a result of that we need to coordinate our services fairly closely to make sure we do not overlap and we can try to prevent there being gaps between service delivery as well. At that level we work quite closely together. The agencies share concerns about particular issues. I have had some discussions with the authors of the Legal Aid submission. I know in general terms the areas that they were concerned about and I share those concerns. Some of them are as a result of direct experience. Having said that, the youth law unit of Legal Aid works in a larger number of

areas. They work in care and protection. The Youth Legal Service does not work in that area.

CHAIRMAN—You have a more specifically defined responsibility which is set out in your submission?

Mr McDougall—That is right.

CHAIRMAN—In light of our asking the Western Australian government to take on notice to provide some comments on Legal Aid Western Australia's submission, could we have some further comments from you on that submission?

Mr McDougall—I can try to do that.

Mr TRUSS—In your submission you identify a score of areas where you believe Western Australian legislation is arguably in breach of the rights of the child convention. Do you believe the Western Australian government takes the rights of the child convention seriously?

Mr McDougall—There is not a lot of evidence to support that, in my view.

Mr TRUSS—Have you raised with Western Australian government agencies your concerns that aspects of their legislation breach the convention?

Mr McDougall—Yes, in respect of the Young Offenders Act there was a very limited consultation period at the stage that the bill was presented to the parliament and we were involved in presenting our concerns at that stage. We have taken other opportunities to express those concerns to the government.

Mr TRUSS—What was the response?

Mr McDougall—In terms of the Young Offenders Act there were some relatively minor amendments made to the legislation. None of them I think really addressed the areas where we have suggested the convention was being breached.

Mr TRUSS—Have there been changes made because of breaches to the convention or because you were able to argue the merits of the case?

Mr McDougall—No, I do not think there have. I think the only exception to that would be that—and this was not as a result of anything in particular that the Youth Legal Service did—the first serious and repeat offender legislation passed by the Lawrence Labor government lapsed and it was not re-enacted immediately or in the same form and there was criticism of that legislation in terms of it being in breach of the convention. Having said that, the new repeat serious offenders legislation which actually forms part of

the Young Offenders Act is probably also in breach of the convention.

Mr TRUSS—What should be done about that?

Mr McDougall—Ideally at this stage we are talking about legislation that is in place and operating. I understand that a review of the Young Offenders Act is being proposed by the state government. It has not been publicly announced as far as I am aware. I think the practical solution would be to invite a public consultation process as part of that review and encourage debate about the views on the various aspects of the legislation that are in breach of the convention.

Mr TRUSS—You haven't considered a legal response to the fact that all this legislation is in breach of the convention, in your opinion?

Mr McDougall—We consider it at a theoretical level. The two practical issues are that we are a relatively small agency, not resourced to such an extent where we alone would have the capacity to undertake a challenge. That could happen, I think, if there was a coalition of groups and individuals who were prepared to do that. But the other issue is that you need a client who is prepared to provide the facts situation to do that and I am not aware of that occurring.

Mr TRUSS—If there are all these breaches of the convention in Western Australian legislation, what is the value of the convention in the first place?

Mr McDougall—That is a good question. It does provide an opportunity for public debate about the principles that are expressed in the convention. It is more than just a regulatory mechanism, I think, for the law. The fact that it is an instrument of international law and is not an entrenched part of our domestic law means that it is less accessible than other mechanisms.

Mr TRUSS—But once we have ratified something it is a bit more than a debating document, isn't it?

Mr McDougall—Yes. Although that is obviously a matter for debate as well.

Mr HARDGRAVE—In the submission, under the title of 'The Over Policing of Young People', it states:

Young people are often excluded from many public resources including public space.

It take it Mr Boyd was talking about this. What do you mean?

Mr Boyd—There are two particular examples in Fremantle which we have dealt with, one about two years ago, I think, and one which is currently under way. At the

discretion of the regional office of police—the first one was not at discretion; I think it was a metropolitan program called Operation Sweep and two major areas were targeted—and using the Child Welfare Act, police were able to apprehend young people at certain times of the night and take them home to the parents or request their parents attend at the office.

Mr HARDGRAVE—Isn't it fair enough that a 12-year-old out on the streets at 2 o'clock in the morning might be scooped up by a police officer and taken somewhere safe?

Mr Boyd—The response from the City of Fremantle was to actually lobby very strongly against that because Fremantle, being the place that it is, has a number of entertainment facilities for young people—cinemas and the like. It was against the use of the clause—I think it was 'in moral danger', as used in the Child Welfare Act. The intention of the police was not to look at that; their stated intention was, as Operation Sweep suggests, to sweep the streets.

Mr HARDGRAVE—But surely to pick up a 12-year-old child wandering the streets late at night, at midnight or 2 o'clock in the morning—in all major cities, I suspect, around the world there is always a handful of these sorts of cases—does seem to me, especially under this convention, a legitimate protection of that particular child.

Mr Boyd—It would depend on the circumstances around that. The age and the like of the young person would obviously be the issues that would be considered. It is the response to that which is the legitimate area of debate. The response by the police of apprehension and informing the parents may or may not be the best course. In contact with our district office of police they actually say that they are not comfortable with that role to a large extent. Subsequent to the protests by the City of Fremantle the program was actually dropped and some more open discussion with police on best models of dealing with issues such as that were taken into place.

From the young person's point of view, they do not see it as someone looking out for their welfare. They see it as someone arresting them and that was the contentious point. We actually have outreach workers who work at different hours of the night, including up to midnight and the like, and their ability to intervene in situations like that is seen as a more legitimate way to address those sort of concerns.

Mr HARDGRAVE—You comment on article 15, which is about the rights of the child to freedom of association and to freedom of peaceful assembly but, surely, a young 12-year-old child associating with a much older person at 2 o'clock in the morning or assembling in a group with other 12-year-old children at 2 o'clock in the morning in the middle of a public street is not exactly looking after the best interests of children.

Mr Boyd—Again, the method of response to that would be the question. We also have a fairly large Aboriginal population which frequent Fremantle. Oftentimes, elder cousins and the like take responsibility for younger children—the 12- to 13-year-olds—and that is seen as being quite appropriate. The parents of Aboriginal children would actually condone that sort of activity. So there is some level of interpretation. But I think it is seen as somewhat over the top for police to then apprehend young people on that basis.

Mr HARDGRAVE—I am glad I have asked questions about this because the qualifications you are making—in conceding there are possibilities where it may or may not be a good or bad thing—are not in your submission. With regard to the 'three strikes and you're in' burglary law, what do you mean by 4.1 of your submission:

. . . considering article 3,

> the best interests of the child are not considered by the three strikes law . . . Children who commit burglaries because of drug addictions or for survival are dealt with without consideration of their well being.

Are you saying that because a child is a drug addict—who goes and commits a crime and who turns the life of a victim of crime upside down and destroys his or her whole being—that child should be treated more softly before the law?

Mr McDougall—It is not a question of them being treated any more softly; it is a question of the capacity of the sentencing system to address the underlying issues—to deal with punishments but also to try to prevent crime. The system needs to be able to identify that there are some issues in that young person's life that need to be addressed in order to prevent them from committing further crimes. Therefore, you need the capacity for drug counselling, drug rehabilitation and other such issues—programs that may or may not be provided by the community but are not necessarily provided within a detention setting, nor are they appropriate to be provided within a detention setting. It is a question of whether detention is the best solution. I am not suggesting that punishment is not a necessary part of what needs to be done to that person.

Mr HARDGRAVE—So to paraphrase that: there is detention of young children who may be addicted to drugs, for instance, taking place but there is no counselling of that particular addiction while they are detained.

Mr McDougall—There may not be an appropriate program. That may not be something that is provided.

Mr HARDGRAVE—So there are programs but they may not be appropriate?

Mr McDougall—Yes, that is right.

Mr Boyd—And maybe the support services leading up to the actual arrest may be lacking as well. I think that is one of the major concerns.

Mr HARDGRAVE—You have taken the sting out of my next line of questioning.

Mr TRUSS—Does the rights of the child convention balance the rights of the children living in the home that is being invaded with the rights of the child who is committing the offence?

Mr McDougall—That is the challenge. I think the challenge is for a justice system to balance those rights. It is always going to be a matter for debate.

Mr BARTLETT—You mentioned in your submission that there is widespread concern by parents that their rights are somehow being infringed and you argue that that is a misunderstanding of the convention. Would you concede that the wording of the convention is vague and, in fact, has been a cause of that misunderstanding in the way it has been worded?

Mr McDougall—There are particular phrases within the convention that are vague—probably necessarily vague—but, as a whole, I think the document spells out reasonably well how those competing interests need to be balanced.

Mr BARTLETT—For instance, article 13 concerns the right of the child to seek, receive and impart information and ideas, and article 15 concerns the right of the child to freedom of association—you have mentioned both of those articles in the context of overpolicing of young people—where do you see that overlapping with the right of the parent to restrict that association or to restrict the right to receive information that the parent perceives as being harmful for their child?

Mr McDougall—I think the second paragraph of that article sets it out when it says that the exercise of this right may be subject to certain restrictions. There are other parts of the convention that also identify the role of parents in the education of young people. So I think they do balance themselves out.

Mr BARTLETT—But is it fair to argue that those rights of the parent are not explicitly stated in regard to their right to restrict the rights of their child in those areas?

Mr McDougall—Not in that article, no, not as rights of the parents.

Mr BARTLETT—Do you think there is an argument for some explicit statement of the rights of the parents to curtail the rights of their child where they think it is in their best interests? It seems to me that there is a large degree of uncertainty in terms of interpretation of the best interests of child and who it is that actually determines that.

Mr McDougall—Yes, that could be the case. There actually has not been as much attention on the interpretation of the convention—and there should be—to identify those issues. I personally do not necessarily think the document leaves parents out at all; I think

it puts them in appropriately in a number of situations. I acknowledge your point about article 13 that it does not specifically refer to parents. However, within the convention there are very strong statements of the role of parents.

Mr BARTLETT—But some of those other statements are also qualified by saying that the rights of the parents depend on the level of maturity of the child and development of the child. If there is a conflict, then clearly there is the possibility of a teenager arguing that they are mature enough to seek and receive information that they think is appropriate for them; whereas their parents might argue very strongly that it is not appropriate for them and that it is not in their best interests. Who decides if the teenager and the parents are in disagreement about the appropriate level of maturity?

Mr McDougall—It is something the convention does not address in terms of developing that mechanism. I suppose it is the responsibility of parliament to identify—if you are going to enshrine that right—and to provide adequate mechanisms. Sometimes it might be the court; but there might be other times when the court is not appropriate; sometimes it will just be a matter of practice and policing the extremes, as it were.

Mr BARTLETT—So you would accept then that, if either a state government or the federal government were to go any further in applying the convention, part of that needs to be an explicit statement of the rights of the parents in some of these areas where there are still some degree of uncertainty.

Mr McDougall—I would think so, yes.

Mr TONY SMITH—I take it you would concede that there are circumstances in the parent-child relationship where the state might have a role. For example, in a dispute between the child and the parent about whether the child's evolving capacities were significantly recognised by the parent and, if they were not sufficiently recognised, whether in those circumstances the state would have a role to ensure that they were. Would you?

Mr McDougall—Yes, I think that is right.

Mr TONY SMITH—You would support the proposition then that that would be something that could be enforced judicially; would you?

Mr McDougall—Yes.

Mr TONY SMITH—Would you concede that the Mums and Dads of Australia would not be too impressed with that?

Mr McDougall—Well, it already exists in some areas. It already exists in care and protection.

Mr TONY SMITH—But, specifically, I would argue that parent protection is a slightly more discrete area. What we are talking about here is really a sort of philosophical argument, in a sense. Would you agree that the phrase 'in a manner consistent with the evolving capacities of the child' is pregnant with doubt?

Mr McDougall—No, I do not agree. It is a statement of principle; it is something that has to be applied practically in every circumstance.

Mr TONY SMITH—But because of that the argument is—I think you have said that earlier—that the state can intervene in determining whether those evolving capacities have been recognised or not and that that could be enforced judicially.

Mr McDougall—Yes. Without being specific, I am a bit wary because I do not think the courts are necessarily the appropriate forum for doing that sort of thing.

Mr TONY SMITH—But in a dispute situation it is arguable that article 12(2) would give the child a right to be heard in an inter se argument between it and its parents. You would support that?

Mr McDougall—I would support that, yes, definitely.

Mr TONY SMITH—Would you support the parents being represented in a proceeding?

Mr McDougall—Yes.

Mr TONY SMITH—You mentioned Teoh's case. Do not take this as being an offensive question: have you read the full decision in Teoh?

Mr McDougall—No—not that I can remember anyway.

Mr TONY SMITH—You say in your submission:

The Convention was used by appropriate processes of law to make it a powerful Commonwealth government department reconsider (not reverse) a decision that would have had the effect of ripping a family apart.

Did you know that in that particular case the father was in prison, the mother was a heroin addict and then went to prison; so the children became wards of the state?

Mr McDougall—I was not aware that the father was actually in detention at that point in time.

Mr TONY SMITH—He was serving a sentence with six years imprisonment.

Mr McDougall—Okay.

Mr TONY SMITH—So it kind of weakens what you said there a little, doesn't it?

Mr McDougall—Yes, I would have to concede that. It was on the basis that I understood that the father was the parent who had the active custody of the children at that time.

Mr TONY SMITH—You would also, I take it, concede that legal representation for young people is important but obviously it depends on the quality of representation too.

Mr McDougall—Yes.

Mr TONY SMITH—Mr Boyd, just taking you back to what Mr Hardgrave was saying: say, for example, we had a group of 12- to 14-year-olds on the street meeting late at night—after midnight but not after 4 a.m.—would you say, 'We would have to look at the circumstances of why they are meeting before the police could intervene to do something about that?'

Mr Boyd—I would say if they are not undertaking any unlawful or there is no public disobedience, then I think that is the case.

Mr TONY SMITH—So assuming that they are required by law here to go to school the next day and knowing the obligations that are imposed—certainly in Queensland anyway—for children to attend schools, would you say that that would not impose upon the police a duty to act for their benefit; and that, in acting for their benefit, that would mean ensuring that they got home and got to sleep so that they could go to school the next day?

Mr Boyd—This is why I say that it is case by case and circumstance by circumstance, because police intervention is not seen by young people as being for their welfare. The perception of the policing role is one of arrest and detention. That is clearly what they see as occurring. Looking at it from the point of view of the welfare of the children involved, it would be reasonable to argue that there are other agencies best placed to do that role.

Mr TONY SMITH—Except that they do not cruise the streets at midnight—

Mr Boyd—Which is exactly the point. We have a reasonably good relationship with our district police office. One of their greatest frustrations is that they are the only

people out there at that time of night; therefore, they have to take on roles which they are not particularly comfortable in doing and are not the best people to do. That then goes to the point where if the police do see someone who is, for instance, homeless on that night or wherever, they then have the responsibility to place them in care somewhere and very often they have a great difficulty in doing so.

Mr TONY SMITH—Let us say there was a mixture of Aboriginal children and European children in that group, do you subscribe to the view that, generally speaking, it is in their best interests that they not be meeting at 2 a.m. in a public place when they have to go to school the next day?

Mr Boyd—I think making a blanket statement would be a bit foolish myself because, again, you would have to look at it on a case by case basis to see why they are there and what sorts of things they are doing. Again, if it is unlawful—

Mr TONY SMITH—Not unlawful but just in that blanket situation—they are only there because they are perhaps disobeying their parents in staying out at night. So in that sense it is unlawful as far as the family is concerned, but they are just there. Would you generally accept that it is in their best interests to be home?

Mr Boyd—The reason I am reluctant to answer is that our service actually looks at supported accommodation, and what we see are the results of people who are victims of family violence and the like. In some instances, a young person takes a view that their best interests are served by not being in a home at a particular time because of a range of things that may be happening. So, again, a blanket answer is really quite difficult to give.

Mr TONY SMITH—What about a general answer?

Mr Boyd—Again, I find myself in the same predicament because I think a general answer—

Mr TONY SMITH—You would not make a general rule. You have made qualifications but, generally speaking, you are not prepared to concede that those kids should be at home.

Mr Boyd—I suppose there may be a general argument that that would be okay but I think the application of that is the difficulty. My value to this committee, I imagine, is because I have some practical experience. The practical value of general statements are that they are applied blanketly. I think that is the difficulty I have in that if a young person is going to be sent home to someone who is going to beat them up, then that is quite clearly not in their best interests.

Mr TONY SMITH—Just lastly, Mr Chairman, you are not suggesting—and maybe the slant I have on your report is wrong—that police are deliberately imposing on

children, are you?

Mr Boyd—There are two programs: the Operation Sweep program certainly did; and the current program, which goes under a number of names of either 'no tolerance' or 'civic maintenance' does do that. It gets to the point where people—

Mr TONY SMITH—I mean in a malevolent sense, deliberately imposing in a malevolent sense.

Mr Boyd—Not in that sense, no. The police respond to what they see to be community concerns and they then take action as they see fit. I think one of the difficulties is the discretion of either individual officers or the like to assess a situation. With the no tolerance program in Fremantle, for instance, the police stop and question every young person they see in practice.

Mr McDougall—If I could just make a comment: I think it actually does come back to the issue of responsibility of government departments. It is quite clear that police are left as the only agency with a visible presence and also the only people who are prepared to act in a number of areas. The example you are proposing is a good example where, presumably, it is the responsibility of the education department to ensure that someone is attending school; yet there is no program or even a coordinated mechanism as far as I am aware for that type of thing to happen. And similarly with other issues. So there is that level.

When you are talking about welfare policing, there is also the concern that every single individual would have a different view as to when he or she is going to intervene. The examples that our agency has come across can often include where, for various reasons, police officers are intervening a lot earlier and in situations that others would not necessarily support. We are not just talking about young people being picked up at 2 o'clock in the morning; it could be 8 o'clock in the evening; or it could be on the way home from school—and there is anecdotal evidence to support that—that can occur when the police choose to intervene. There are not guidelines as to how that is to occur. Welfare policing is given broad discretions and it is a question of when that those discretions are abused—maybe not malevolently, as you say, because they are often with the very best of intentions and they are reflecting community concern—but we would argue the discretions are used inappropriately in many circumstances.

Mr McCLELLAND—I would like to tidy that up. On that same theme, perhaps, Mr Boyd, it may be that the rights of the child cast an obligation on society to inquire, for instance, through an appropriately trained person, just why a child is out at 2 a.m.—whether it is because they have got problems because of violence in the home or whether they themselves have an alcohol or drug problem which prevents them getting an education. If I understand the thrust of the combined evidence, it is appropriate to inquire and to ascertain the facts, but it should be done through the appropriate coordination with

respective agencies?

Mr Boyd—Yes, I think that is the case. That is the role that an agency like ours—and, I think, the value that I can bring to this committee as a local non-government agency—takes on. That is seen as non-threatening by young people and the like. I was not trying to say that police are acting inappropriately all the time; it is just that in some instances I think they are put in a position where they are the only ones there. It is not a position they actually wish to be in. Their favourite complaint is that they end up being a taxi service at 2 o'clock when they take people to, for instance, a youth hostel or the like. That takes two of their officers out for a period of time, which leaves no-one patrolling. They have that legitimate concern as well.

I am not trying to paint police as horrible and evil in all this. I think they are in an unfortunate position. From a young person's perspective, they see police as only one thing: they see them as arresting people, and that is pretty much it. Other agencies like ours—there is a host of other youth agencies and the like—are better able to inquire, I think.

Mr HARDGRAVE—Mr Boyd, is there a mechanism for people who feel they have been unfairly detained or treated or rounded up and sent home or whatever to appeal that or to point that out?

Mr Boyd—There is. One of the good things, and police are, perhaps, leading the way in this—in WA, at least; I forget this is a national inquiry—is that in the metropolitan area the district superintendent is given management responsibility for their local area. We had a case recently where we raised quite a serious concern about the way a young woman was detained. We took that up with the district superintendent. The unfortunate thing in that case was that we did not get the resolution that she wanted, and she did not follow that through. I think it is the case in a number of areas where there are complaints that the time it takes and the effort it requires for young people are seen as too much, and they do not pursue it—even with the support of an agency like ours, for instance.

CHAIRMAN—Thank you very much. That has been very good evidence. We are running about half an hour over time, but the reason we are doing so is that the evidence is good. Thank you for that.

[11.33 a.m.]

CORRIE, Dr Loraine Frances, Lecturer Early Childhood Studies, Faculty of Education, Edith Cowan University, Pearson Street, Churchlands, Western Australia 6018

MALONEY, Ms Carmel, Lecturer Early Childhood Studies, Faculty of Education, Edith Cowan University, Pearson Street, Churchlands, Western Australia 6018

MELVILLE JONES, Mrs Helena Elizabeth, Lecturer in Education, Edith Cowan University, Pearson Street, Churchlands, Western Australia 6018

CHAIRMAN—Welcome. We apologise for holding you up. Would you like to make an opening statement?

Mrs Melville Jones—Just a short one. We are here very much in the spirit of Edith Cowan herself. I need say no more about that; you are no doubt aware of her concerns. I will read this statement that we prepared as a little opening statement. Our submission was based on the assumption that the concept of the rights of the child applies to all children—I might add it is generally claimed by those not disadvantaged by parents on their behalf. It applies particularly to those from disadvantaged groups in society. Properly applied, the rights of the child can become a means of protecting and improving the well-being of these disadvantaged children.

Evidence suggests that Aboriginal children are the most disadvantaged group of children in Australia. Our submission is therefore directed to Australia's policies on Aboriginal children which relate to their welfare, their education and their health. So we have these three aspects in mind here.

For better or for worse, Australia has been a signatory to this United Nations treaty and therefore is now required to demonstrate that it is fulfilling its obligations under the treaty. Australia needs to develop its policies on the welfare, education and health of Aboriginal children in accordance with clearly stated ethical principles. Programs and services in welfare, education and health for Aboriginal children are not at present providing enough improvement in any of these aspects of Aboriginal children's lives.

Programs and services in welfare, education and health for Aboriginal children need to be integrated. Government departments and private providers responsible for them should deliberately seek ways to link their work so that a unified effort is developed and sustained.

Adult Aborigines are a crucial factor in Aboriginal children's welfare, education and health. Their understanding of and participation in programs which address these are often the most important factor in the program's success. Two sets of recommendations

have arisen from our submission. The first of these sets of recommendations addresses two specific terms of reference of the inquiry: No. 2, federal and state progress in complying with the convention; and No. 7, the adequacy of programs and services of special importance to children.

Firstly, we recommend that funding is provided for researching, designing and implementing strategies to prevent abuse and neglect of all children, the Aboriginal and Torres Strait Islander groups in particular. In addition, research should be conducted into effective ways of helping the psychological recovery and social reintegration of abused or neglected children, particularly Aboriginal and Torres Strait Islander groups. Secondly, the cutbacks in funding to the child-care sector should be reversed. Research should investigate ways to enable highly skilled child-care staff to act as role models for parents at risk of abusing or neglecting their children and to encourage parent participation in child-care centres, particularly with children aged from birth to three years. We are talking here particularly about Aboriginal and Torres Strait Islander children.

Thirdly, all four-year-old Aboriginal children should have access to a high quality, four-year-old education program. Fourthly, trained Aboriginal teachers and teacher assistants should be employed and teacher training places and training as assistants should be encouraged and supported. Fifthly, health work related to Aboriginal children from birth to age five should seek to involve Aboriginal adults as much as possible, with a view to increasing their participation and cooperation in programs designed to benefit their children's health.

The other three recommendations which arise from our submission and do not particularly address the terms of the treaty are as follows. Firstly, community based child-care centres should be staffed by Aboriginal people who will be role models for parenting skills, and parents should be encouraged to participate in such centres. Secondly, research should be carried out into ways of increasing the numbers of Aboriginal people qualified to work in the areas of early childhood care and education. Thirdly, an investigation should be carried out into the adequacy of the present provision of programs and services relating to the care and education of pre-school Aboriginal children, with particular reference to the use of such programs and services by Aboriginal people.

In summary, our submission is really looking at those early years of an Aboriginal child's life where we feel that the problems that we heard from the last set of evidence that was taken all begin. Carmel Maloney will be addressing questions concerned with the education aspect of the submission, Loraine Corrie will talk about care and I will talk about health.

CHAIRMAN—In your statement you said, 'For better or for worse, Australia has been a signatory to this United Nations treaty.' Can you explain what you mean by that? I am not quite sure what it means; maybe it is the way you phrased it.

Mrs Melville Jones—No, it was a deliberate phrasing.

CHAIRMAN—Can you tell me why it was deliberate and what it means?

Mrs Melville Jones—The phrase 'for better or for worse' was deliberately put into our statement that we made this morning because it is my view that Australia has not done itself a good turn in signing treaties such as this one. It would be infinitely preferable if we were left to manage our own domestic affairs. However, we have signed it and we are now being asked to look at what we have done to honour our obligations under the treaty and therefore we need to do something about it.

CHAIRMAN—Are you aware of the High Court Teoh case, specifically in relation to CROC?

Mrs Melville Jones—Yes, we are.

CHAIRMAN—Are you also aware that legislation passed through the House of Representatives the week before last and has gone into the Senate to clarify the situation and to avoid the perception—I am not criticising you, but they are very strong perceptions—that simply because New York or Geneva coughs, Australia gets a treaty cold. Are you aware of the legislation that is going through to make it clear—the post Teoh situation—that until such time as these things become part of Australian domestic law they do not have the impact that even perhaps the High Court was suggesting in Teoh.

Mrs Melville Jones—I was not aware of the legislation but I was aware of the Attorney-General's speech at the May seminar. That was good news as far as we are concerned.

CHAIRMAN—It has now been introduced and it is going into the Senate. It got the strong support, in general terms, of the opposition, including Mr McClelland. Some of his colleagues on that side of the House had other views but that is better left to the Labor caucus than the parliament. Nevertheless, it has now gone to the Senate and undoubtedly in August-September it will take its usual tortuous path through the Senate.

The second one is, in fact, an error of fact. In recommendation 2 you say 'The cutbacks in funding to the child-care sector are reversed.' That, in general terms, is quite incorrect. It is only in specific areas—perhaps you have picked that up in recommendation 1. I refer you to an article in my local newspaper today because it is a very topical subject at the moment. I have listened to the ACTU and others making comments about child care. It would be pleasing if they had the facts rather than the political rhetoric.

In recommendation 1 you talk about community based child-care centres. Is recommendation 2 in the terms of reference area related to community based child-care centres or is it just in general terms? The first one is wrong if it does not relate to the

second.

Dr Corrie—Quite clearly there have been cuts to funding to community based child-care centres.

CHAIRMAN—That is the point I am making. It should be 'Cuts in funding to the community based long day care child-care sector are reversed.' That would make it clearer. I do not want to get into a political argument here, it is not the place, but the reason for that is to reorder the child-care cards. At the moment, in our judgment, the strategy has placed child-care centres in a number of wrong areas. We are trying to readjust. At the moment long day community based child-care centres take up 30 per cent of child-care places in Australia. The private sector takes up 70 per cent. The operational subsidies provide about $20 per week per child. Yet, on average, the fees for the community based centres throughout Australia are only about $4 per week less than the fees at private centres. The basic question has to be: 'Where has the other $16 gone?'

That is one of the reasons why Judi Moylan and the government have taken the decision that they have. It was not taken overnight, which was the point I was making in this article. It was taken in the context of the August 1996 budget, when some of these community based centres were given the opportunity to be part of a restructuring. Fewer than 100 throughout the country have taken up that offer. Only two in my area have. I think there are about 22 centres in my area.

So I just make the point that I think if your recommendation 2 is taken at face value it is incorrect. If it is taken in consultation with 'community based child-care centres should be staffed by Aboriginal people', the recommendation below, and recommendation 2 is adjusted to reflect 'community based', then I would not have too much difficulty with it. Do you agree with me?

Dr Corrie—Yes, and that is fine. Regardless of the rest of what you have been saying, we do have a major concern about the quality of staff in child-care centres in the private child-care long day care centres. That is a serious concern.

CHAIRMAN—Yes.

Mr TRUSS—Since you are dealing with mainly Aboriginal children in your submission, as I understand it, I suspect there may be a higher concentration of community based child-care centres serving Aboriginal children than in the general sector in the community?

Dr Corrie—Yes, I think that is the case.

Mr HARDGRAVE—Mr Chairman, I am probably taking up your points but I will not labour them, because they were very well made. On page 7 of the submission you talk

about the $10 million provided over four years with regards to child-care places available to Aboriginal and Torres Strait Islander children in preschools and then you comment that it is not known to what extent these places have been taken up. But of course there is the call for a reversal of cutbacks in child-care funding. I just wondered whether you would like to perhaps restate or reorganise that particular approach. Obviously there is more money being put into the area of trying to provide child-care places for Aboriginal and Torres Strait Islander children. You concede that in one part of your submission, yet in another part of your submission you talk about cutbacks. I just wondered whether you wanted to try to reorganise that particular part of your submission as well.

Ms Maloney—I think the $10 million over four years applies to preschool places rather than child-care places. Whilst money has been put into that area, there is not a lot of evidence to say how many Aboriginal children actually take up these positions. I think that is an area that needs a lot more investigation through broad based research projects. We know that children who do take up these positions are better off educationally. We really want to know why they are not actually taking up the positions. The issues of access, of choice, of suitability are all questions that we really do not have answers for. I think we really need to find out more about the situation.

Mr HARDGRAVE—Is there any theory that you want to test on that? Is it more a case of the parents not being motivated to get their children there?

Dr Corrie—I think that is a fairly simplistic view. I think another view is—

Mr HARDGRAVE—It is not necessarily my view.

Dr Corrie—What we have been tending to do is impose a top-down model on various groups of people and saying, 'This is what should happen in the preschool environment. These are the programs that should take place, regardless of the context.' What all the research evidence is suggesting is that programs are successful when they are contextually orientated, that they reflect the values and the mores of a particular group and a particular cultural setting. So again we think much more research is needed there to go and find out in various sections and various cultural groups exactly what programs really are going to work for people.

Mr HARDGRAVE—I do not like to generalise or typecast anybody by their race or ethnic origin, but it would be a fair suspicion that, if there were to be a group in the community that would be targeted, if you like, by the Convention on the Rights of the Child, it would be the Aboriginal community. They would be the group that could probably best be served by this convention.

Dr Corrie—Certainly the evidence is that that is one of the most needy groups, although that is not the only group.

CHAIRMAN—I would be presumptuous enough to say that I do not think you would get any disagreement on this side, irrespective of the party political dimensions here. This is where some of the stuff that Ms Hanson comes up with is quite ridiculous. She has to understand—as, indeed, some of her ilk have to understand—that Aboriginal people, particularly Aboriginal children, are the most disadvantaged. The Aboriginal people are not at fault. It is the programs and the moneys that perhaps arguably have been poured counterproductively down the drain. That is a political statement.

Mr TONY SMITH—I just wanted to probe you a little bit further, Mrs Melville Jones, on the comment that Australia has not done itself a good turn. What do you mean?

Mrs Melville Jones—Is that my comment on the treaty?

Mr TONY SMITH—Yes.

Mrs Melville Jones—I will just read again what I wrote. Is that in the introduction on page 2?

Mr TONY SMITH—I thought you just made a comment.

Mrs Melville Jones—When I was speaking this morning?

Mr TONY SMITH—Yes.

Mrs Melville Jones—I think I could direct your attention to what I said in the first two paragraphs of the introduction on page 2 of the original submission. That would be a fair reflection of my views on this matter.

Mr TRUSS—While you are reading that, can I ask you a question about page 7 of your submission in which you suggest that a cutback in funding for child care may oppose article 3 of the convention. I am not getting back into the cutback in funding argument, but I want to again explore this question of the role of the convention. There are scores of countries which have signed this convention that do not have child care at all. So how can you argue that reducing child care in Australia is a breach of the convention?

Mrs Melville Jones—I will come back on that, Loraine, with your permission.

Dr Corrie—Certainly.

Mrs Melville Jones—Then perhaps Loraine will speak because, as I say, we have divided this into three. Loraine will talk about care. I would like to respond by saying that, if you look at the countries which were signatories to that convention in the first place, one comment that was made at the time in writing was what illustrious company Australia found itself in. Just because we happen to be aligned with countries of the Third

World, whose record in honouring rights of children is reprehensible to say the least, I do not think it means that we have to behave like that as a country. I think we can do a lot better. It is in that spirit that we are addressing it. We do not really want to get bogged down in the politics of whether the government has done a good job or not done a good job on cutbacks, et cetera. We are really anxious to try to improve the lot of Aboriginal children.

Mr TRUSS—What I am saying to you is that you cannot argue that the convention says, 'Thou shalt have government funded child care.'

Mrs Melville Jones—I think the argument was not precisely that. It was, if you look at the convention, it says this: if Australia is to be taxed as not meeting its obligations under the convention, that is one thing that might be said, given the way that this country operates and the sorts of things that it does for its children. You have to look at it in the context of this country. We are not saying, 'In Chile there are no child-care centres.' We are saying that the convention makes general statements. How do they apply in a particular way to our country? In our country these are the things that we do. These are the examples of ways in which we could prove that we had been honouring the requirements of the convention. You would have different answers from other countries.

CHAIRMAN—Rather than being in contravention of CROC, arguably that is a measure of a country's inability to meet its social obligations rather than just the CROC.

Mrs Melville Jones—What I am saying is that, if I were coming in—like Madeleine Albright or somebody from the United Nations—to say, 'Tut, tut, you haven't done what you should do under the convention,' I would be looking to see what this country said it had done and what it purported to have provided. That would be the evidence I would seek. In different countries, the evidence would be different. In the Third World country, it would be saying, 'Look we are not having them making sandshoes in Nike factories any more.' In Australia we say, 'We are not providing child care for them.' You have to look at it. It is not that there is one way worldwide of translating how that convention is exercised in different countries.

CHAIRMAN—As an example of that, I think all of us on this side of the table would share a view that although they have ratified it—as, indeed, a number of the Muslim countries have—they indulge in female genital mutilation.

Mrs Melville Jones—That is a different matter.

CHAIRMAN—Yes, I know, but they have ratified it. If they have ratified without reservation, and some of them have without reservation—as you know, we have made one relatively minor reservation in relation to the imprisonment of children with adults, and that is not small, but it is relatively small compared with some of the other major issues—there is a big question mark as to whether we are just ahead of the game.

At our last hearing in Canberra we asked Amnesty International—as a result of Amnesty International coming before us and making the point that Australia was lagging well behind and children were not well treated—to come back and give us some comments, whether they be statistical or anecdotal or whatever, as to how well we stack up in the spectrum internationally. I suspect we are up near the top, irrespective of some of the criticisms we all share in relation to the treatment in one way or another of children.

Mrs Melville Jones—I am not sure that that would be a sustainable defence. I do not want to lead into a full-blown moral relativism or anything of that sort.

CHAIRMAN—Feel free.

Mrs Melville Jones—It is not a position I would defend or adopt. I do believe, as I said, the sort of evidence that we produce is related to the kinds of things that we purport to be doing. I feel that we would be ill-advised if we did not stay in that position.

CHAIRMAN—Yes, I understand.

Mr McCLELLAND—Mrs Melville Jones, despite your reservations as to the wisdom of Australia having ratified the treaty, is it your position now that Australia should denounce the treaty?

Mrs Melville Jones—I am not sure that I find that a question that relates to this submission specifically, but I will answer it on the grounds that I am not here representing the views of my colleagues; I am giving a personal opinion. Is that acceptable, Mr Chairman?

CHAIRMAN—Sure.

Mrs Melville Jones—I think Australia would be very well advised if it had never entered into the treaty in the first place. I think now we should pick up our skirts and run away from it as fast as we possibly can if we wish to retain our sovereignty as a nation. But that, I hasten to add, is my personal view. It is not necessarily the view of my colleagues.

CHAIRMAN—I can tell by the body language.

Mr McCLELLAND—That is because you believe that treaties are a threat to domestic sovereignty. That is your philosophical point of view.

Mrs Melville Jones—I think it would be preferable for us to have the maturity of a nation which could handle its own affairs. I think we might perfectly politely be willing to offer information to the rest of the world if we were asked to do so. I think we should

be prepared to do that. As I have argued in the submission, we need a very well articulated and sustainable ethical position that we can present to the rest of the world in the doing of this, because it is on that basis that we justify our actions. We need a very well articulated and sustainable ethical position that we can present to the rest of the world in the doing of this, because it is on that basis that we justify our actions.

Mr McCLELLAND—That is okay. I was just getting the philosophical underpinning of your view. My question of substance goes to Dr Corrie. Is it fundamentally your view that it is more productive, probably more economically desirable or beneficial, to put a fence around young people falling off the cliff rather than later on having to go and pick them up from the bottom of the cliff and get them out of the problems that they confront? Do you see the community based child-care system as a means of bringing together the community ethos in starting children off on the right footing?

Dr Corrie—I certainly think the things that happen to a child from birth to age five are the most crucially important and will account for much of what happens to the child in later years. So I think the really important thing for us to do is to strengthen parenting and to strengthen the family. One way to do that may be a community approach to child care and parenting. I am not saying child care in the view of a dumping ground for young children; I am saying a place where there can be community involvement so parents can see and learn by imitating good models of parenting, child caring, raising and educating young children.

One of the things stopping that happening at the moment is the separation of early child care from parenting and education. If we had a situation where those two groups were brought more closely together, we might start getting somewhere.

In my own personal experience of working with many families—not Aboriginal families, I have had no experience in that at all—in the Perth metropolitan area, there is a huge need for parenting skills to be developed, for the family to be strengthened, for the parents to learn how to be assertive and say no in a loving and informed way to their children and for the parents to learn how to guide their children. I think this must happen in the early years, and that is where we need to focus.

Mr BARTLETT—Mrs Melville Jones mentioned the superiority of our child-care arrangements compared with a lot of the other countries which are signatories to CROC?

Mrs Melville Jones—What I did say was that one of the things that we purport to offer in Australia is child care. Other countries do not necessarily do that.

Mr BARTLETT—The point I want to make, and to extend to the area of health, is that the child-care services that we have in this country are in place because of our commitment to our children arising out of those community values that we hold strongly

as a community—not as a result of our ratification of the convention on the rights of the child.

In the submission that you have put, you have also mentioned article 24 in relation to areas of Aboriginal health, and you made reference to a number of projects going on that will improve the health of Aboriginal children. Is it right to say that there is a growing commitment in this country to issues of Aboriginal health because of our growing awareness of those needs and because of a growing sense of responsibility for those young Aboriginal people, rather than a sudden realisation that we are not applying the convention? What I am suggesting is that the improvements we are making in so many areas in the lives of our children are because of a commitment to them rather than a commitment to the convention as such.

Dr Corrie—That may be the case, but unfortunately the statistics show a larger proportion of children are being abused and neglected, for example. The recent 1997 report is quite clear about that. In spite of the fact that there may well be new initiatives, new projects and new programs going on, something else needs to happen to strengthen those and to make a real difference.

Mr BARTLETT—In the areas that it is happening, isn't it true that it is happening because of an increased awareness and an increased commitment, rather than a sudden determination to apply the convention?

Ms Maloney—I would agree with that statement. I do not think you have the convention there up-front and you are working towards making sure you are fulfilling that convention just for the sake of being seen to be doing the right thing as a nation. I think we as Australians do have a sense of responsibility for the children in our society and we work very hard to provide a good lifestyle.

Dr Corrie—That may well be the case but, unfortunately, with more emphasis now going towards privatising the child-care industry, what we are finding is that younger and younger and more unqualified staff are being employed in the child-care industry. We know for a fact here in Perth—and I know because I visit them—that the quality of care in many of those places is completely substandard and that many of the children's needs are not being met in them.

Mr TONY SMITH—There is no substitute for the parents, is there?

Dr Corrie—High quality child care will arguably do a child no harm and will make no difference to the child's development.

Mr TONY SMITH—There are a lot of arguments about that.

Dr Corrie—Well, the research is quite clear. It depends on the length of time and

the age of the child.

Ms Maloney—And the quality, of course.

Dr Corrie—The most important thing is the quality, and that relates directly to the quality of the staff. When you have 15- and 16-year-old girls in charge of infants and toddlers, the quality of care is not there.

Mr TRUSS—So are you saying that the national accreditation system is a failure?

Dr Corrie—In my view it has major holes in it and other people will support that.

Mr TRUSS—The bane of child-care centres is that they have got three or four different groups coming around inspecting them. Are all of them failing?

Dr Corrie—The state takes care of buildings and functional things like that. The national accreditation system is designed to look at relationships, programs and quality of staffing. There are major problems with that. For example, I know of a centre here that has been awarded three-year status, the top status, for accreditation. It was sold a few months later with a complete change of staff and yet it maintains its three-year status. That is what I mean when I say there are holes in the system.

Mr HARDGRAVE—Is there not a mechanism for you to take it upon yourself to write to Minister Moylan, who after all lives in Perth, and draw her attention to it? I think you should. I would invite you to do that. I think what is important is that you do not frame laws that essentially punish the people who do the right thing because of all the restrictions that the law places upon them. If somebody is doing the wrong thing or something that is outside the spirit of the law or the legislation, they should be punished or highlighted instead. You have an opportunity to do that.

Dr Corrie—Certainly, we have to remember that we are dealing with probably the most vulnerable members of our society—that is, very young children.

CHAIRMAN—I would agree with you about the proliferation of private child-care centres. Even in the city of Toowoomba where I live they seemed to have mushroomed everywhere. I share your reservations about standards, quality, et cetera. What Judi Moylan—and we are not here to discuss the politics of it—is trying to do is re-order the deck to try to get the right balance. You would argue perhaps that by removing operational subsidies for community based centres is not the way to go. We would argue differently, but I agree with you in terms of the proliferation and standards of private centres.

Mr TONY SMITH—I thank Mr McClelland for extracting that private view. It is one that I am impressed with privately.

Mrs Melville Jones—It is all very private.

Mr TONY SMITH—I think it is fair to say that I am the only member of this committee on the Aboriginal committee, both the backbench and joint standing. As someone who has practised law in that area quite extensively, the intractable problem that you mention of different ways of looking at the world was highlighted to me in a visit to the Torres Strait and Murray Island where a beautiful ripe mango dropped on the ground and a woman and her child were walking under that tree and they both had a can of coke. That mango sat there in front of them. I thought that was extraordinary.

It is right to say is it not—and I do not think this is being unfair to Aboriginal people—that in some ways they are their own worst enemies. Sometimes they are very self-deprecating. They do not understand. I have heard elders say to younger people, 'You do not understand this. This is white man's talk,' when I know they do because I had spoken to someone about it. My point is that this is one of the intractable problems. Do we not have to tell them, 'Essentially what you are saying about spirits and sickness is not right. It does not stack up?' Do we not have to get that through to them?

Mrs Melville Jones—I run this debate with my students every year as a catalyst for precisely that problem. The notion of trying to build a conceptual bridge between the competing views of the world is one that we discuss—whether it is possible to forge that link. I am talking in philosophical terms there. Bringing it down to practical terms, I think we have to try to build practical bridges which is why we are talking about child-care centres and bringing Aboriginal parents in.

One of the reasons that the health side of things has been good is that the Aboriginal women have been involved in some of these programs. You are never going to take a culture's views away from it and why should you anyway. Aboriginal people have to live in a country which is controlled and governed not by Aboriginal people. Somehow they have to be helped to accommodate those frameworks that surround them.

I think that is the best that we can do. We can't force them to believe that evil spirits don't cause disease, any more than we can make Aboriginal people go into Exmouth. They wouldn't go near Exmouth because a terrible disaster happened there. There are no Aboriginals in Exmouth; you will not see an Aboriginal there. We cannot tell them, 'Look, it's all right; it's perfectly safe if you want to go', nor should we waste our efforts on trying to do that. I do not wish somebody to convert me to Confucianism if I go to live in an Asian country.

I think we need to be more practical in our efforts. We need to try to encourage Aboriginal parents with young children to look at what schooling is all about and to see that there are opportunities here for their children that are priceless for them for their futures. I think it is those sorts of things that we should be trying to do.

Mr TONY SMITH—I hate to be so patronising but when you do see those successful Aboriginal role models who have moved on, as it were, that is what you are really saying—to get them into the system.

Mrs Melville Jones—Yes, to get them into the system.

Ms Maloney—You have a better chance of succeeding if Aboriginal people tell Aboriginal people what to do. Just getting back to the education issue, I think that we have done Aboriginal people a huge disservice by not making a greater effort by providing opportunities for Aborigines to train, for example, to become teachers, teacher assistants and child-care workers and to enable them to take on that educational role.

Mrs Melville Jones—If I could put in an educational plug for universities—we would be quite happy to hear the political side of the table speak, if we may, Chairman—one thing that is very much exercising our minds at the moment is two phone calls we have had from Broome, where we have an Aboriginal enclave. We put some Aboriginal students into primary teacher education and we have a permanent resident tutor up there. It is very hard work. Several benighted souls have to fly up and down and spend hours in the boiling sun doing their best to keep this going, but we do it because we think it is highly important that at the end of the day we can produce maybe two or three Aboriginal teachers in primary schools.

They are desperate to do the same thing for early childhood teachers up there, but we cannot do it. We have no money to write the courses and we have no time to write the courses. Universities are desperate in these sorts of matters. In particular, the three of us are bitterly bewailing the fact that yesterday Carmel got another call, and what can we do?

Dr Corrie—Here's a golden opportunity to do something very real and very practical.

Mrs Melville Jones—That is exactly the sort of thing that we were talking about.

Dr Corrie—We do not have the resources.

CHAIRMAN—Thank you very much. It has been very good evidence and we thank you for it very much.

[12.14 p.m.]

JACKSON, Judge Henry Hall

ACTING CHAIR (Mr McClelland)—Welcome, Judge Jackson. In what capacity are you appearing before the committee?

Judge Jackson—I appear as a private citizen.

ACTING CHAIR—We have read your submission, for which we thank you. Are there any amendments you would like to make to the submission?

Judge Jackson—No. I would like to supplement it with a statement that I have written out. It has some typographical errors in it, but I have some spare copies. Unfortunately, I did not get it from the typist in time to correct it. I will read it into the transcript, or however you want that done and then perhaps answer any questions that you might have.

ACTING CHAIR—How about you read it into the evidence.

Judge Jackson—Okay, thank you. Before I start, I would like to say that I am a judge of the District Court of Western Australia and I was the first President of the Children's Court of Western Australia from 1989 to 1994; I am a member of the board of the National Children's and Youth Law Centre in Sydney; I am a consultant to the Australian Law Reform Commission and Human Rights and Equal Opportunity Commission on children and the legal process, which has just published a paper that was referred to earlier; I was a participant in the process that led to the alternative report the Defence for Children published; I have served on various committees over the years in areas such as the young offending, child abuse and so on. The comments that I now wish to read really are to be regarded as supplementary to the letter that I wrote. If you will forgive me, it will take a few minutes.

There can be no doubt that the Convention on the Rights of the Child addresses issues which have been of very great concern in Australia, both historically and recently, and which have, in the immediate past, generated very considerable controversy and comment. Take, for example, the paedophilia issues which surfaced in the Wood royal commission; the issues raised by the report on removing Aboriginal children from their families; the recent allegations concerning medical experimentation on orphans and other babies; moves by Australia and others to reduce child sex tourism, especially from Australia to Asia by Australians in our case; the issues arising out of the forced emigration to Australia of children from the United Kingdom, known as the 'leaving Liverpool' stories, and so on.

These illustrations show that problems between government, public officials, non-

government agencies and others in relation to the rights of children have persisted in various places over long periods and are still matters of current controversy. The lessons to be learned from these issues, in my view, boil down, in many cases, not merely to the stamping out of malevolence but to the creation of an environment in which children's needs are not simply submerged under the pressure of greater adult social issues. As part of that process, there has been the establishment of two principles: the best interests of the child shall be a paramount consideration—in some cases, the paramount consideration—and that the child has a right to be heard.

It is the latter which is most often forgotten or ignored and which is one of the strongest methods of avoiding problems, which the inquiries I have mentioned have illustrated. For a child's voice to be heard, it is often necessary to recognise that the child will not exercise the right to complain or repeal or protest as adults often would but that monitoring and advocacy mechanisms must be in place as well as the requirement that children be consulted and listened to on matters affecting their destiny.

Governments in Australia have responded in recent times in various ways to these concerns—for example, the institution of the stolen children inquiry itself, the creation by the government of Queensland recently of a children's commissioner's office, the joint inquiry of the two commissions to which I am a consultant, and the House of Representatives select committee report on youth homelessness and others like Burdekin and so on.

Australia was a leading participant in the preparation of the Convention on the Rights of the Child, which has been signed and ratified by more nations internationally than any other treaty. I recently read that only Oman, Somalia and the United Arab Emirates have yet to either sign or ratify the convention.

The United Nations Committee on the Rights of the Child is now considering Australia's initial report in relation to its performance in implementing the convention. The committee has previously considered reports by other like countries, including the United Kingdom and New Zealand. Australia's report is an unsatisfactory document in that it lacks analysis and essentially represents merely a catalogue of individual governments' comments on the issues raised. For that purpose, Defence for Children International prepared an alternative report, which is referred to in the committee's own terms of reference.

The alternative report and the papers already produced by the joint ALRC HREOC inquiry as well as the issues which have arisen in relation to the other matters, which I mentioned at the start, illustrate that the rights of children are not breached simply in Third World countries, although the problems faced by many children in many such countries are of course terrifying. The fundamental misunderstanding which has bedevilled debate on the convention in Australia are the propositions: one, that the convention represents a threat to the proper functioning of parents and families; and, two, the

proposition that the convention is an attempt by the United Nations or its agencies to interfere in our domestic life. Even a cursory reading of the convention clearly demolishes both arguments. Any other view would hardly be consistent with the widespread international approval of the convention and its ratification by governments such as that of the Holy See.

It seems to me that there are three essential questions for this committee. The first is whether Australia should withdraw its reservation concerning the housing of adult and juvenile offenders in the same facilities. Whilst I recognise that difficulties arise from time to time in remote areas and in jurisdictions with limited capacity to provide separate facilities, the general position stated in the principle is a valid one. Although, no doubt, many breaches occur around the world, the matter is no different from other matters covered by the convention. I can see no reason for the reservation remaining.

The second is to identify the areas in which Australia fails to conform to the convention's aspirations. In this area, I can do nothing more in the space and time available than to adopt, for example, the many reports, such as the alternative DCI report that I have touched on. If the committee needs persuasion, for example, in the area of care and protection, committee members need only read the book recently published by the Australian Association for Children in Care entitled *Every childhood lasts a lifetime*. There are many such reports and documents and one might take those relating to the policing of young people, care and protection, disability issues, education and so on as each containing very significant areas of shortcoming in which the convention stands as a landmark against which to measure our national performance. A major study casting light on issues of national significance is the ALRC HREOC joint reference that I have mentioned already.

The third is to address particular matters raised by the United Nations Committee on the Rights of the Child following its meetings earlier this year to discuss the Australian report. Again, that is beyond the time and space available to me. Indeed, a number of the matters raised by the committee require quantitative or qualitative answers which can be provided at an administrative level.

So may I for my part simply endorse the proposals in the DCI alternative report and the proposals made by bodies such as the National Children's and Youth Law Centre, of which I am a member, to the former government prior to the access to justice system being announced.

The mechanisms which, in my view, are required include: firstly, a national agenda for children along the lines of our national agendas in other areas such as the environment; secondly, an office for children strategically placed at a national level with links to states and territories and different portfolios of the Commonwealth government; thirdly, a commissioner for children or office of a like type to deal with individual complaints and policy issues arising from inquiry into specific areas of concern and so on—and such an

office could either be a stand alone office of an ombudsman type or be located within, for example, the Human Rights and Equal Opportunity Commission—fourthly, an adequately resourced network of advocacy agencies throughout the states and territories and regions, perhaps linking in or part of existing legal aid commissions and community law centres but with national mechanisms, including, for instance, the National Children's and Youth Law Centre in Sydney and the National Aboriginal Youth Law Centre in Darwin; fifthly, complementary state and territory arrangements perhaps based on but improving upon the existing arrangement—for example, in South Australia the Children's Interest Bureau has existed for many years, and the Queensland Children's Commissioner's Office has now been established—and, finally, a realistic and meaningful attempt to develop national standards in areas of critical concern, including, for example, juvenile justice, child protection and education and so on.

CHAIRMAN—Thank you for that latter part and for being a little more specific as to what you were moving towards in terms of the ideal strategy. If you take the Queensland example—and we have listened to the Queensland commissioner—is that the right model? You are obviously aware of these terms of reference.

Judge Jackson—My understanding is largely second hand. Although I have a copy of the legislation in my office, I have not, I must confess, read it section by section. I do have contacts in Queensland and so on. My friends in Queensland are concerned that the office grew out of a specific concern about paedophilia issues—and there is nothing wrong with responding to that because that is a very important issue, but that is not the only issue involved with children. There are concerns that the mechanisms that are in place are limited, that there is inadequate independence. Also, there are concerns about the selection process and so on. They are personal issues that I think I better steer away from.

CHAIRMAN—Yes, we have heard that, too. So what you are saying in general terms is that it is not independent enough?

Judge Jackson—And the second limb of it is that its terms of reference seem to be unnecessarily limited. No doubt the government was concerned at the very current issue of paedophilia, which had surfaced. But, if you are setting up a statutory mechanism that is intended to last for a good while, I think you have to get beyond the immediate concerns. That is not to say, of course, that the Queensland parliament cannot address some of those issues in due course. Certainly my Queensland friends hope it will.

CHAIRMAN—You do not think that by having the commissioner, the ombudsman, whatever you want to call it at the federal level that is injecting yet another level of bureaucracy into the process?

Judge Jackson—I have not thought out exactly what the role of the Commonwealth ombudsman, if that is what he is going to be, would be. I would like to think that, especially with children, you can have as much of a one-stop shop as is

possible. But I do not know enough about, for instance, the way the ACT is governed or about the way the Commonwealth would want to address its own areas of responsibility—say, immigration, children in detention centres, such as the one we have in Port Hedland. I do not know.

All I would say about that is that we need to cover the territory. We need a mechanism which is there for all our kids. But obviously cost is a problem. The fact is—as I think one of the youth legal service coordinators mentioned; I do not know whether it was Stuart or James—children are very loath to complain. The usual complaint is through their parents. It is almost impossible to get them to stay on the bureaucratic course. Children just will not last the distance.

CHAIRMAN—But you would stay away from ministerial relationships—in other words, if you had this sort of organisation at the federal level within the office of the Prime Minister, or in the Department of Prime Minister and Cabinet, or the Minister for Families Services or whatever?

Judge Jackson—I would see the office as being a policy making and coordinating body. I would see a need for a separate complaints mechanism through an equivalent to an ombudsman. We all have ombudsman, I think, around Australia. But there are no statistics on how many children complain to them. My guess is that the figures are very low. They tend not to be in the sorts of places where those complaints are going to surface. There are vast numbers of complaints about the police treatment of children but very few complaints. If you want to know about police treatment of children, look at some of the reports that have been written. Do not try to find them in the reports of the ombudsman; they are just not there.

Mr McCLELLAND—Your point of view is interesting in your capacity as the President of the Children's Court.

Judge Jackson—Formerly.

Mr McCLELLAND—You have obviously seen children whom people would describe as villains, but nonetheless having seen children who—

Judge Jackson—The vast majority of the villains are former victims and many of them are current victims. There is this idea that children break down into good ones and bad ones, which is the sort of media thing. You get the appealathon baby, the angelic little kid in calipers, and then you get the juvenile delinquent. It is not like that. Reality is not like that. The reality is that the vast majority of juvenile offenders are victims.

Mr McCLELLAND—Thanks for that. We hear concerns, and I think it is fair to say that we have heard evidence, that the threat that the treaty poses is to the autonomy of the family unit.

Judge Jackson—I do not accept that for a minute. I have never known it to interfere with my three children's autonomy or mine.

Mr TONY SMITH—It is part of our domestic law.

Judge Jackson—No, it is not. Is it suggested that we are going to make it part of our domestic law?

Mr TONY SMITH—Defence for Children International wants it to go into domestic law holus-bolus.

Judge Jackson—If that's on the political agenda, I will address that. I have started from the proposition—and I think it is confirmed from what I have heard this morning—that it is not on the political agenda. It is part of our domestic law in the sense that it is one of the international documents that is attached to the Human Rights and Equal Opportunity Commission Act mechanism.

CHAIRMAN—But it shouldn't be on the agenda?

Judge Jackson—I would like to think that we could move to a stage where it would be on the agenda, but I do not think we are ready for that.

Mr McCLELLAND—Even if it was on the agenda, in your view, it would not take away the ability of parents to properly raise their children?

Judge Jackson—No. I think that is one of the great furphies. That is one of the great fears and worries. It is a benchmark statement about the way governments and their agencies, non-government organisations and so on should treat children. It is a benchmark against which we can primarily judge ourselves in the relationship of the way the state and its agencies and non-government organisations treat children.

It does say things about families. The vast majority of the things it says make families and parenting central to the experience of children growing up. But, of course, there are parents who do not meet adequate standards, and that is a very difficult area. I have heard the questions before about a complaint or a submission from a parent saying that the agency had stepped in too quickly. There are only two sorts of things you ever hear about care and protection agencies. One is that they step in too quickly and the other is, why did they wait until the kid was bashed to death? That is one of the hardest things.

Mr McCLELLAND—We would all like to think children are raised in a traditional family environment that we all would aspire to. In your experience, is it the case that there are still a great number of children not raised in that environment?

Judge Jackson—I sit in the District Court now. I sat in the District Court before I

went to the Children's Court and I sit in it now. I do not know what percentage of cases in my caseload are about adults sexually molesting children. One of our judges recently sat in Kalgoorlie and every case on his list for three weeks was a case of children being sexually abused by the adults in their environment, mainly in their immediate family. It is a vast problem.

Mr TONY SMITH—Or a step family.

Judge Jackson—And step families and uncles and brothers. It is a vast problem.

Mr TONY SMITH—I think it is important to distinguish those sorts of allegations in relation to—

Judge Jackson—They are not allegations. Bunbury Prison is full of sex offenders.

Mr TONY SMITH—I am aware of the seriousness of it. However, it is important, is it not, to distinguish between where those sorts of things are happening and what sort of families they are happening in? To make a blanket statement that it is happening across the whole spectrum of families without saying that it is more prevalent in one area than another—and there are figures that suggest that it is much more—

Mr McCLELLAND—In fairness to Judge Jackson, I don't think he was saying that.

Judge Jackson—I am not suggesting that at all. I don't think it happens in my family, for instance. But the point was raised about whether the state is concerned with the convention or whether it is a parenting issue. There are points at which the state and its agencies have a legitimate role in taking an interest in what is happening in families for the protection of children.

CHAIRMAN—So you don't share the view that articles 12 to 16 are specifically anti-parent?

Judge Jackson—I don't think there is a word that is anti-parent in the convention.

Mr TONY SMITH—Or is capable of being anti-parent or is arguably able to be used.

Judge Jackson—I am not trying to be clever, but it is only capable of being construed in that way if you approach it in the way that some fundamentalist Protestants approach the *Bible*.

Mr TONY SMITH—Judge, you wouldn't call some of the members and patrons

of the Australian Family Association fundamentalists. The late Professor Daryl Lumb was on that board. Kim Beazley is a patron.

Judge Jackson—I am not saying anything about all the people on the Australian Family Association—

Mr McCLELLAND—You are talking about the method of construction in the document.

Judge Jackson—I am saying that if you approach any document in an antagonistic way and a very literal way and take sentences or phrases out of context, you can make them mean almost anything. It is a benchmark statement.

Mr TONY SMITH—But the way the document is, the legal reality is that it is arguable, for example, that you could have a situation, in articles 12 to 16, where a child could get a mandatory injunction against its parent to approach a state official. That is the argument. Whether it can succeed or not is another thing.

Judge Jackson—The closest example to that, or the most well-known example of that sort of issue that I can think of on the spot, is probably the famous Gillick case in England. No doubt you are aware of what the House of Lords said in that case. Mrs Gillick was a Catholic mother of about eight children. The local authority in whatever part of England they were living in had a service of providing family planning type advice to people, including adolescents. Mrs Gillick sought an order from the court that no child of hers should be given advice relating to pregnancy, abortion and those sorts of issues without her being notified and having a right of veto.

The House of Lords refused to make such a declaration on the basis that children are not the possession of their parents; that they have an emerging capacity to manage their own affairs, in accordance with their age and maturity; and that there are circumstances in which adolescent girls are entitled to advice about those issues from independent bodies, whether their parents like it or not. That is a matter where Mrs Gillick differed from the authority. You and I might or might not take different views, but there are perspectives about these things which parents do not necessarily agree with.

Another one that surfaced recently in Australia is the sterilisation of adolescent mentally handicapped girls without their having a say in it. The High Court of Australia has said that cannot be done without a court order. The parents' motives, which will no doubt be expressed as being for the child's best interests, can cover the most trivial concerns about whether the girl will embarrass them in public and matters of that sort. There are different perspectives. A lot of the issues are very hard issues. This document has been prepared for the world community. It has to be written in terms which are sufficiently all encompassing to be acceptable from Bosnia to Oman, South Africa to Venezuela, or wherever.

Mr TONY SMITH—It can mean one thing to one and one thing to another. One group of countries said it outlawed abortion; another group said it supported abortion.

Judge Jackson—As I say, I think any document is capable of different views being adopted about it. But what is the alternative? That we do not have any international treaties? They have to be international.

CHAIRMAN—You have said that the number of countries that have ratified it is great. If they have ratified without reservation—and a lot of them have ratified with reservation—

Judge Jackson—In that case, only one.

CHAIRMAN—Even if you look at what the Holy See has said, you could say that it is not an open-ended thing. But, as I indicated earlier, if you take some of the Muslim countries where it is ratified, how can they put their hands on their heart and say they are ratifying something where they fly in the face of female genital mutilation?

Judge Jackson—I am not here to justify either the hypocrisy of some governments or the behaviour of citizens around the world. The question is: are we prepared to accept this document as a benchmark of aspiration for our society, not is it breached in Chad or—

CHAIRMAN—No, but the point I am suggesting to you is that simply because a record number of countries have ratified is not really the issue.

Judge Jackson—No, it is not the only issue, but it is a sign that at a governmental level this document has reached very widespread acceptance.

Mr TONY SMITH—Not in the community.

Judge Jackson—I cannot speak for the community. I only know certain members of the community. I always have doubts about people who speak for the community. They are often speaking either for their own interests or for the interests of a particular group which they mask by talking about the voice of the community.

Mr TONY SMITH—We all have self interests, Judge.

Mr HARDGRAVE—Judge, thank you for this evidence. I note in this summary of your submission—to paraphrase the submission, hopefully, I am sure, quite correctly—that there are one, two, three, four essential agencies or extra structures that you are proposing to ensure that we do have a stronger adherence to this convention.

Judge Jackson—Or that existing agencies be strengthened.

Mr HARDGRAVE—Yes. There is a national code of child and youth rights, the establishment of a children's ombudsman, a child and youth bureau, the establishment of a national agency to coordinate multiple legislation and of course the enactment of legislation, I guess that could be state or national.

Judge Jackson—I think what I said was a national agenda for children, much along the lines of, say, the national agenda for the environment, or for women or for other issues.

Mr HARDGRAVE—Thank you for that. The Western Australian government made it pretty clear that they do not want Canberra telling them how to run children's matters.

Judge Jackson—I have never heard a Western Australian government—Labor or coalition—say anything else on any topic.

Mr HARDGRAVE—There are four of us here from Queensland and I think we will backup your comment about our own state. But we are members of the national parliament, so we are trying to look at things from a national perspective, despite our particular state parochial pressures. But, given that states can and will resist any sort of central agency, Canberra based agency, do you think it is worth somebody deciding to pursue an external affairs approach through the High Court to try to crash or crash through on this issue?

Judge Jackson—I think there are a number of problems implicit in that. The only way the High Court could make a statement about these standards being binding on the states and territories would be, as I understand it, if the convention were part of our domestic law. They went as far as saying that the convention gives a right to the citizen to a legitimate expectation, I think was their phrase, that the convention would be looked at, or considered or borne in mind in decisions of an administrative nature. The federal government, and both major parties seem to be agreed on it, has overridden the High Court's ruling on that by its legislation. Given that political agenda, I do not know how the issue you have raised can ever be pursued any further. If the convention does not even raise a legitimate expectation that its terms will be borne in mind by administrative decision makers, then it is dead in the water.

Mr HARDGRAVE—I guess I am driving at your comments about 'fair and reasonable'—that this is a benchmark document and something we should aspire to and use is a fair observation. But the impact of these treaties is potentially a lot more complex and a lot more overpowering than just simply an aspiration. They can become an absolute.

Judge Jackson—They cannot in the present state of Australian law become an absolute.

Mr McCLELLAND—Unless they are legislated by the parliament.

Judge Jackson—Unless they are legislated by the parliament. CROC does not of itself just stand alone. The minimum standards for the administration of juvenile justice spell out more detailed provisions that are in CROC. So you get subsidiary documents and so on. I think the RIYADH principles on the prevention of delinquency are another category. But I do not understand the fear that it will somehow or other become a document of legal purport in Australia unless and until at least the relevant parliament makes it so.

CHAIRMAN—Do I discern a degree of cynicism, Judge, in terms of the legislative solution that is going through the parliament at the moment post-Teoh? Are you suggesting that there could, as a result of all that, assuming it does go through, be further High Court challenges under legitimate expectations?

Judge Jackson—No. I have not read the Commonwealth legislation. If I had read it and I had reservations along those lines, I would not be telling this committee about them. My point was: if that is the attitude they take to what the High Court decided in Teoh, then the rest of the agenda is dead.

Mr McCLELLAND—Is it though? It still presents a useful benchmark document.

Judge Jackson—Yes. If you want my advice of a legal type, I think that, when there is an ambiguity in state or territory legislation—notwithstanding the Teoh type legislation—if the courts can interpret the legislation consistently with our international obligations, they would rather do that than do it inconsistently.

Mr McCLELLAND—That is from a legal point of view—I accept that—but it is not dead in that it is a useful guide.

Judge Jackson—No, it is not dead. I just mean that at a legislative level it is dead. Even if Australia took the step of unsigning, unratifying—whatever you do—I do not think that that would kill the convention for the purposes for which it is presently used in Australia: as a benchmark. Organisations would still regard it as the international standard.

CHAIRMAN—To come back to the statement that you made: you did say that, in general terms, it was really a framework on which nation states would build and we might build it a little differently from others. But are you suggesting that, if it were not in existence, we would have gone that route anyhow?

Judge Jackson—I think a lot of what it says represents best practice anyway. If you take juvenile justice, a lot of the people who know what they are talking about in that field would have written out those sorts of principles whether or not they were in a United Nations convention.

Mr TRUSS—But how can you argue that it is an international standard when it is so clear from the evidence before us today and for that matter from the debate that has gone on for decades that it means absolutely opposite things to different people. It is anything but a clear document and therefore an inappropriate standard.

Judge Jackson—It took, as I understand it, about 10 years of drafting to get it to a point where it would be regarded as internationally sufficiently all encompassing.

Mr TRUSS—Ten years of compromises.

Judge Jackson—Perhaps, but Australia played a leading part in that process. All I can say is that, although I recognise there are areas of uncertainty and that some people would have difficulties with a phrase here or a phrase there, I personally—having read it more than once—cannot see how I could improve on it.

Mr TONY SMITH—Judge, you may not wish to answer this, but I was very concerned by a submission that was made and it relates—

CHAIRMAN—Tony, I am sure the judge would be very disappointed if you did not ask something he might not want to answer.

Mr TONY SMITH—It relates to the Children's Court Act 1988 and it is a particularly legal question.

Judge Jackson—The Children's Court Act in Western Australia?

Mr TONY SMITH—Yes. If I can just read this submission, because it concerned me:

Prior to this Act, any serious indictable offences was [were] tried by Judge and Jury in the Supreme or District (Adult) Courts. The Act gave the child the right to elect trial by Judge and jury, or by the President of the Children's Court sitting alone.

And this is the important passage:

Relevantly, a child must elect to be dealt with in the Children's Court before he or she is entitled to full particulars of the charge (Section 19B(4)).

Judge Jackson—I heard you ask the people from the Youth Legal Service about that and I spoke to James McDougall about it afterwards. The position in Western Australia is that the police will not provide short statements of the alleged facts to children or their legal representatives as a matter of course before the child appears in court. Now that is a scandal in my view.

Mr TONY SMITH—Absolutely.

Judge Jackson—But it has long been the position. I am not saying that individual sergeants will not give it to you, but you have to be nice to the sergeant to get it. And it

should be given as a matter of right.

Mr TONY SMITH—My concern is the tying up with the election though.

Judge Jackson—The election is usually made at the first or second appearance. I would say the police practice overall, notwithstanding that there are better practice sergeants around and so on, is that the facts are not made known. I gather from what I heard earlier that you are a lawyer. For instance, even as President of the Children's Court, I have heard murder charges and so on. You still do not get depositions like you would on an indictment, say, in the Supreme Court or the District Court of wherever you are from in Queensland, you still only get a short statement of the facts. But in the less important charges, I would have thought that, in the day of the photocopier, all they have to do is provide to the child or his or her legal representative a short statement of the facts as soon as they are available to the prosecution. But they do not do that.

CHAIRMAN—Thank you very much. I am sorry to keep you so long.

Judge Jackson—That is all right. Thank you.

[12.50 p.m.]

COLTISH, Mr John Lawrence, Secretary, Western Australian Grandparent Support Group Inc., 41 Hetherington Drive, Bullcreek, Western Australia 6149

PAYNE, Mr Robert John, Founder and President, Western Australian Grandparent Support Group Inc., 41 Hetherington Drive, Bullcreek, Western Australia 6149

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

Mr Payne—We are here on behalf of the Western Australian Grandparent Support Group to seek the right of the child to maintain contact with their grandparents and for it to be written into the family law. The main thrust of why we are here is to get recognition for grandparents. As we mention in our submission, we went to Canberra in 1994 and 1995 to get grandparents recognised. Grandparents were recognised in section 69C of the act but later on we found out that section 69C really does not help the grandparent because the grandparent would not use 69C of the act.

Mr McCLELLAND—You are presenting your position from the point of view of the child having the right to maintain contact with grandparents, so you see it of use that there is some prescription of children's rights; is that the case?

Mr Payne—Yes.

Mr McCLELLAND—You would be concerned if Australia was to denounce or to withdraw from the rights of the child treaty obligations?

Mr Payne—Yes.

Mr Coltish—We see that as being fairly important—

Mr TRUSS—Are you saying that the rights of the child treaty gives a child right to maintain contact with grandparents?

Mr Payne—Yes. When you are talking about in the best interest of the child, who is qualified to determine the best interest of the child—that is a major question. The child should have the right himself or herself, but somebody else is determining the best interest of the child, not the child.

Mr TRUSS—But some might argue that, in some circumstances, the best interest of the child is not to have any contact with the grandparents.

Mr Payne—Some will.

Mr TRUSS—So what is the rights of the child convention got to do with it?

Mr Payne—We believe that, with the number of cases we are getting regularly involving grandparents and with a lot of the problems they are getting in the court system, the child should have the right to maintain contact with its grandparents.

Mr TRUSS—I think you are arguing it as a moral right almost separate though from the rights of the child convention.

Mr Payne—Most probably, yes.

Mr TRUSS—You talk about amendments to the Family Law Act. I have a case in my electorate where a mother was killed in a car accident, the father remarried or developed a new relationship and his new partner insisted that there would be no further contact with the grandparents. The Family Law Act had absolutely nothing to do with that case. It was a natural event in that the mother died prematurely. How can the government act to fix a case like that which does not go anywhere near the Family Law Court?

Mr Coltish—That is very difficult. I am sorry, I cannot really answer that question. Our main area of concern is the problems associated with the Family Court of WA once the cases get in there.

Mr TRUSS—I know that is the most common case, but there are other instances where the family law courts have been involved.

Mr Coltish—Of course. We would have to be realistic and say that some grandparents probably should not and will not be even granted contact. We are not just pushing the right purely for the grandparent against everything else. We would certainly support the convention along with the idea of an office for the children, although naturally with reservations; the family unit and more especially parents still have some right as far as the child is concerned. I guess that virtually goes back to the idea of maintaining the family unit at all costs but also bearing in mind the rights of the child.

CHAIRMAN—Have you seen the evidence that was given by the ACT Grandparent Support Group?

Mr Coltish—We do have a copy of that, yes.

CHAIRMAN—In general terms, we went through these issues at some length with the lady who represented the grandparents in the ACT.

Mr Coltish—I think that was an excellent representation. They virtually covered the whole lot.

Mr Payne—We totally support her submission and statement.

CHAIRMAN—You totally support what she is saying?

Mr Coltish—Yes, exactly. What is happening here is that, because of the problems of modern-day society and grandparents are now getting more burdens put onto them, we are getting so large that we are basically becoming a national group. Earlier on when you were talking about children in care, we know that between 70 and 80 per cent of children are in the care of grandparents while the parents are at work. So it is becoming a major problem. Our group, the ACT group, Liela Friedman's group in Victoria and Joan Armstrong's group in New South Wales are all gaining members and getting stronger. We are basically becoming a national group. It is getting so large. We go along with what you said.

Mr BARTLETT—You argue strongly that the child ought to have a right to access to their grandparents. What is your opinion of the situation where the child does not want to see their grandparents?

Mr Coltish—That is totally up to the child.

Mr BARTLETT—So you do not argue for any rights of grandparents to have access to the grandchild in that situation?

Mr Coltish—We align ourselves a bit in there with the grandparents and the grandchild. But the bottom line has to be as long as that is in the best interest and welfare of the child. We have to bear that in mind.

Mr BARTLETT—But who defines that though?

Mr Payne—Exactly, that is the question: who says it is in the best interests of the child? Mr Truss said a while ago that he had a case of woman who did not want the grandparents to have anything to do with the child. I had the same case myself but I had to go to court and get that child out because he was being abused and beaten.

Mr BARTLETT—But if the grandchild does not want to see their grandparents, then you would not argue that there ought to be access?

Mr Payne—No. The child has to have the right to make the decision whether they see their grandparents or not.

Mr McCLELLAND—The child has to have the right to make the decision and the right for someone to present argument on his or her behalf?

Mr Payne—Yes.

Mr BARTLETT—How would you respond to a statement in one of the other submissions that, essentially, divorce is contrary to the rights of the child because it disrupts family life and that a protective family is in the best interests of the child?

Mr Coltish—Once again it would be an ideal world, I guess, if divorce did not happen but unfortunately it does.

CHAIRMAN—But the act of divorce is not, in your view, in contravention of the convention?

Mr Coltish—Not in actual contravention, no, it is a part of life.

Mr TRUSS—Grandparents can be taken into account in the development of parenting plans these days, can't they?

Mr Payne—Not including a form 16 in the Western Australian Family Court, a grandparent usually does not get involved in a break-up of the marriage until it is a couple of years down the track. If we knew it was going to happen and we could see things in a crystal ball, we would make an application through form 16 of the act to be considered in parenting or to be considered in the magistrate's decision. We usually come from behind when we see the trouble happening. It is very hard.

Mr TRUSS—But the process now is to put a parenting plan in place. I presume Western Australia is the same as federal that you no longer have the custody arguments—

Mr Coltish—There is no longer access and custody, yes.

Mr TRUSS—You have a parenting plan which can involve parties other than the natural parents, including grandparents, as I understand it.

Mr Coltish—We hope to be involved with that through this particular form, yes. We have made approaches to the family court counselling services because, to put it very bluntly, any application by a grandparent for contact was not essentially a good bet in the Family Court. So we then approached the Family Court counsellors to see if we could somehow be incorporated and, hopefully, the attitudes of magistrates may change. They may even suggest that, if there had been an existing solid and positive relationship, that should remain and should not be to the detriment of the grandchild.

CHAIRMAN—I am sorry that you are the short segment compared with everybody else but I guess that is the way it has panned out. Are there any other points that you wanted to make over and above the written submission and your introductory comments?

Mr Coltish—No, just that we totally support the submission by the ACT. It is to

be commended and, hopefully, it will be implemented.

CHAIRMAN—Thank you very much. We will adjourn until 1.30 p.m.

Luncheon adjournment

[1.34 p.m.]

GLEESON, Mrs Lyn, Coordinator, Karawara Community Project, Karawara Community Centre, Walanna Drive, Karawara, Western Australia 6152

MCDONALD, Miss Lynette Rose, Library Coordinator, Meerilinga Young Children's Foundation, 1186 Hay Street, West Perth, Western Australia 6005

REED, Mrs Yvonne Penelope, Administrator, Playgrounds on Demand Inc., PO Box 1212, West Perth, Western Australia 6872

CHAIRMAN—We have received your written submission. Do you wish to add or amend anything in that submission?

Mrs Reed—No, there are no amendments.

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

Mrs Reed—Yes, I would. POD is a member of IPA which is the international association for the child's right to play. IPA members were instrumental in having the word 'play' added to article 31 of the convention. This is because IPA members felt that play needed to be revisited and acknowledged worldwide as a genuine need and right of every child. There are numerous articles that make up the convention on the rights of the child—all we believe are of equal importance, including article 31, the right to play.

We also believe that through play many of the articles in the convention can be addressed. For example: article 2, non-discrimination; article 3, best interest of the child; article 4, implementation of rights; article 6, survival and development; article 12, child's opinion; article 13, freedom of expression; article 18, parental responsibilities; article 23, more appropriately called people with disabilities; article 27, standard of living; articles 28 and 29, education; article 30, children of minority or indigenous people; article 31, play; and article 42, awareness of the convention.

Through understanding the convention as well as the developmental needs of all children, parents can begin to accept what is a good and sound basis for their children to be able to develop into socially acceptable adults. This could be done through children's play which provides a comfortable mechanism that children can understand and absorb. To achieve this, play environments will play an important role. That is not to say that playground equipment should pop up everywhere. There is a need to provide perhaps the quiet nook for social interaction, natural environments that encourage sensor experiences, spaces that encourage integration and areas that are acceptable for teenagers to feel comfortable in without being harassed or moved on. This can only be done through community involvement at the local level, especially with possible involvement from children and young people.

Research has shown that this involvement helps to provide a sense of ownership for the community, which in turn helps to reduce the incidents of vandalism. Many current play environments in Western Australia can offer only the static, bright coloured playground equipment that reduces children's imagination and exploratory behaviour to a point where boredom enhances vandalism. If I can now hand you over to Lyn Gleeson, who will talk to you about community involvement.

Mrs Gleeson—With the environment that I work in, which is the Karawara community, the playground that was developed there was developed out of need. The parents recognised that there was a need for children to play, so they lobbied hard and worked with the local council and state and federal bodies and gained funding to develop their adventure construction playground. This playground has been established now for 10 years and has developed in a way that responds to community needs. It is now successfully running youth programs and community play events, bringing the whole community together. These events reduce isolation, develop friendships and allow people the opportunity to try out and test new skills.

The playground itself and the programs that we offer the children allow the children to test the skills they already have and to take them that little bit further. This can be seen in the children's programs, where in the playground itself they might be practising their bush cooking skills or they might be practising their rope skills. They then move off into the youth activities. They actually go camping. They actually go bushwalking. They actually do abseiling and do those types of things. This is one small community providing play opportunities for their young, and we are inundated by children who attend our programs from across the suburbs and say, 'Why can't we have one of these in our suburb?' The need for play within suburbs that is accessible for children is essential. This is totally going away from what I have written, but that is okay.

When developers and local governments set about establishing suburbs, the need for the child to play is not considered. The need for the older child is also not considered. Skateboard people are moved off into other areas. There is no facility for them to skateboard. They skate on the roads. They are picked up by the police and are harassed and moved on, as Penny says. There has to be established in the development the opportunity for children to play.

Small children will not travel far from their home to play. With the way the suburbs are structured at the moment, there are very little play spaces where children can meet. The older child might travel further by bike, by foot or by transport, but again the need to travel across busy roads and move into other suburbs to meet their play needs is also a problem.

Then you have the older youth again whose social needs are not being accommodated. What happens when the older child's needs are not being met appropriately is that they venture into establishing their own adventures, which takes on

risk taking behaviours. That might include inappropriate criminal activities such as stealing cars or drug taking. They might leap off rocks into pools and cause themselves head injuries or spinal injuries—all because they are seeking out the adventures that are not provided for them appropriately within their community.

I am also suggesting that there needs to be greater resources provided for the young people that will accommodate their needs. At the end of the spectrum—and I heard Judge Jackson talking earlier about this—the juvenile justice systems are reduced when you take into account the needs of the child in more appropriate ways. I can talk forever on this subject, but I know we have not got a lot of time and I am also aware that Lynette needs to speak.

Children's play is considered to be the only means in which the whole child is able to attain maximum development. That is through cognitive, physical, emotional, and mental play and mental wellbeing. Focusing on the child's need to play allows the child to make sense of this adult world in which they find themselves, through role playing, through testing out, through trying out, through making mistakes safely. They are the ways that they can actually reach their adulthood in a way that Penny was talking about and become worthwhile citizens in a community.

It also means that the young people are able to establish relationships with older generations. We have a range of ages participating in our programs. I think the intergenerational stuff that happens when you have an 86-year-old assisting in a mural arts program under the Canning bridge with 16- and 17-year-olds is an absolute bonus. You just cannot measure the benefits that both those parties have.

I would ask that the need for play be seriously considered and that it be promoted in all sorts of ways and means in the legislation. I would ask that it be seriously considered when governments make decisions about how they are going to spend their money. I have here some pictures, examples of the types of things that the children participate in, particularly the older children. Our young women's group is very busy in painting murals. But we do not do things in isolation of one another. If we see the need for drug education, we work with the Bentley Health Hospital and the young people are given basic first aid skills. They talk about harm minimisation. If you are with a group of people and they are using drugs, what is the best way to do it safely? How can you do it so that someone is not going to be hurt? We cannot stop them from doing things, but we can get them to do it in such a way that they will survive it.

CHAIRMAN—Can we have a copy of that?

Mrs Gleeson—You can. This is just to give you an idea of the types of things that we do. I could speak forever, but I am sure you will have questions, so I will respond to those.

CHAIRMAN—Are there any further opening comments?

Miss McDonald—On behalf of the Meerilinga Young Children's Foundation, I speak with genuine concern about the diminishing status of play in the lives of young children. For some time now in my roles as adviser, superviser, lecturer and member of an early childhood professional organisation, I have become increasingly concerned about the gradual eroding of time that children have for play. There may be a multitude of reasons for this, but we must speak out on behalf of children.

Although I have not undertaken any formal research, my own observations, together with information gained from both professionals and non-professionals involved in the early childhood area, suggests that immediate action is necessary to ensure that the child's right to play is preserved. There seems to be general community feeling of increased pressures on parents, children and professionals, all affecting the play opportunities for children. Play spaces have been reduced in many homes, schools, pre-schools and child-care centres, and natural play areas within the community have been swallowed up with modern developments.

Not only have spaces been reduced but with curriculum pressures on professionals, the amount of time for play opportunities, even in early childhood programs, has also been reduced. This greatly affects all areas of children's development and thinking, especially minimum opportunity for dramatic play, which allows time for exploration and the internalising of experiences.

We are committed to the philosophy based on sound research that play should form an integral part of young children's learning and development. It seems that the most practical way of addressing the right to play, and, in fact, all issues affecting young children, would be the appointment of a children's commissioner or children's ombudsman. The role of such a person would include: being an independent office responsible directly to parliament; having an oversight over the interests and the wellbeing of all children under 18—the UN definition of children—having a broad overview of children's issues in both government and non-government; and providing a voice in the heart of government administration for children and young people on issues that affect their lives, a voice that would otherwise be largely lacking. A copy of a recent submission to the Australian Law Reform Commission from the Meerilinga Young Children's Foundation is available to provide further information.

Mrs Reed—There is a general acknowledgment that zero to five years is an important part of a child's development and that a play environment should reflect that. POT supports this view, but our concern is: how well is it observed in practice? Children of primary age need play environments that help them master the skills they learnt till they were five years old. Does this happen? In a variety of instances no. Similarly, there should be an integration of play spaces with children with disabilities, as they are children first and their disabilities should be seen as secondary. Does this happen? In most instances no.

Play environments do not encourage integration or the master of skills by children. After the age of 12 children are told that they do not play any more unless it is structured sports activity. Does this mean they are redundant? Yes, I do mean the children. Children, or young people as they prefer to be called, between 12 and 18 years have the same needs and rights to play as younger children. So that you can still provide that play environment, all that changes is the terminology so that it is at an acceptable language. For example, cubby becomes a pergola—it is the same rooms without walls.

A recent research by the WA child health survey shows the following information: 21 per cent of 12- to 16-year-olds suffered with mental health problems and boys seemed to have a higher prevalence of mental health problems than girls; and 16 per cent of youth have suicidal thoughts. This report identifies that the mental health of teenagers is at risk owing to the types of opportunities afforded the child. It also identifies that in the future the stronger relationship between a variety of health risk behaviours will have important implications for the design of programs of prevention. POD believes these issues can be attributed to deprivation of appropriate play opportunities at an early age.

On so many occasions adults take away from teenagers any form of play environments on the basis that they have no further need for play. POD's question is: on what grounds do these adults act? Adults take away from youth and give nothing in return, hence boredom increases along with vandalism, low self-esteem and anti-social behaviour and sometimes with devastating effects—such as youth suicide.

POD believes we can turn this situation around. We can involve children and young people in planning their own play environments thereby giving back to individuals a sense of ownership and belonging of their own environment. I would just like to share with you some photographs of children actually designing their own play spaces.

As children have no political voice of their own, their needs are vulnerable and often ignored. In the childhood field we have not yet been able to convince politicians that children are the most important long-term investment for the future economic health of the community. Therefore, the UN Convention on the Rights of the Child must be a voice for all children. Now is the time to reinforce the UN Convention on the Rights of the Child, to market it properly—not as a tool to separate families but as one to assist families to understand both sides of the intended coin, to coin a phrase, with the sides being held together by governments.

This reinforcement of the document we believe would be enhanced by the development of an office for children or a children's commissioner—one within each state and entirely independent of all political boundaries. This move would be supported not only by POD and Meerilinga but also by the Australian Early Childhood Association.

In some of the thoughts presented here today, this group feels that, whilst we may not be in the same economic position as some Third World countries or have many of the

issues facing these other countries, we do have our own set of problems that are attributable to the standard of living we have set for ourselves. We feel that a number of these problems can be addressed and our focus is to be able to prevent some long-term detrimental effects for children and young people by providing developmentally appropriate and safe play environments—that is, reinforcing article 31 of the UN Convention on the Rights of the Child.

We cannot ignore the child's right to play any longer. If we do, we deprive them of their education, wellbeing, right to life, survival, development, freedom of expression, their opinions, standard of living and their understanding of others and we openly discriminate against children, which is contradictory to accepting the best interests of the child.

Play is the right of all children. From analysing the power of play to playing for peace, playing in adequate spaces, playing for learning and playing for the integration of all children, play, perhaps in a very fundamental way, represents the deepest level of human meaning. Play is an innate force within each individual and a powerful way for people to learn to live together. As adults, we have a responsibility, as guaranteed to children in article 31, to create fertile places where children can flourish vigorously.

CHAIRMAN—Could I refer you to your written submission on page 2 where you state:

Whilst it may appear that we are somewhat sceptical as to the Joint Standing Committee's intentions . . .

I am not sure what you mean by that. Would you like to share with us your perceptions of this committee's intentions?

Mrs Reed—As mentioned in that submission, there have been on two occasions two different reports made to the UN Convention on the Rights of the Child. We would like to know what is going to happen now. What are your intentions with regard to doing something about the UN convention? Where do we go from here?

Mr BARTLETT—Just a question about your name. Are we to read 'on demand' literally?

Mrs Reed—Hopefully, yes.

Mr BARTLETT—So whenever children or young people want to play they ought to be allowed to? Is that implicit in the name?

Mrs Reed—No, it is not.

Mr BARTLETT—You mention here on page 1 of your submission that you believe the convention has been marketed incorrectly thereby setting up potential conflict. Are you suggesting that in reality there is no conflict between the rights of parents compared with the rights of children within the convention, that it is only a perception resulting from the way it has been marketed?

Mrs Reed—I have worked with a lot children. It has been marketed to the point now where a lot of children will say, 'You can't do this because we can sue you, it is our right.' Parents are afraid of that. It is increasingly coming to the fore that parents are moving away from the convention. But I believe the convention has a lot to offer families. If we work together on both sides of the coin we can understand it. At the moment, I do not think we do understand it.

Mr McCLELLAND—When you talk about play, you talk about the whole box and dice of play in sport. Would you include that as play as well?

Mrs Reed—Yes.

Mr McCLELLAND—And not only for preschool but right through?

Mrs Reed—Right through to 18 years old, yes. It is not a question of looking at playground equipment. Please, do not think that. It is a question of interaction; it is a question of cooperation; it is a question of providing different types of play opportunities for children and young people.

Mrs Gleeson—You must bear in mind that not every child wants to participate in organised sports, and nor are they able to.

Mr TONY SMITH—You were not impressed by the Defence for Children International's handling of your submissions I take it?

Mrs Reed—No, I was not. We put a lot of work and effort into responding to Defence for Children's alternative report, of which I have a copy in front of me. Nothing of that was mentioned in the alternative report that went to Geneva. We were definitely concerned about that.

Mr TONY SMITH—I would not have thought there would be too many average people who would argue with what you are saying. I do not want to speak for everyone at the table, but it seems to me to be great. But why do you need a UN convention to do it? If I had the power to grant your wishes, that is really what you want; isn't it? Don't you really want what you were saying there implemented so that children are allowed to be children?

Mrs Reed—That is right.

Mr TONY SMITH—Who needs a UN convention to do that?

Mrs Reed—Not everybody understands the UN convention. Not everybody understands 'play', believe me. Without a framework from which to work and without somebody there who is ensuring that this is actually happening and working, there is not anything, you do not have a foundation.

Mr TONY SMITH—I understand what you are saying about framework, but who needs a UN framework? Why don't you have a Western Australian framework or an Esperance framework or a Perth framework?

Mrs Reed—We have been accused of being parochial enough. I do not think we need to go any further than that.

Mr TONY SMITH—There are a lot of down sides to the convention.

Mrs Reed—I think that is purely because of the way it has been marketed. I do not see any part of it as being a negative document.

Mr TONY SMITH—If we had a couple of hours I think I could persuade you otherwise.

CHAIRMAN—We do not have a couple of hours. Lyn, do you want to add anything to that?

Mrs Gleeson—Whether it is a state, federal or united need to protect the child, if you have a united umbrella it makes it far more powerful for us to implement change from the ground level. I am thinking of an experience that is happening right now where a community is being totally turned over—all the play spaces and play opportunities for the children are being lost or relocated and not being replaced within that immediate vicinity. So the children who are currently using that space are now going to have houses and fences and roads.

What I am saying to you, and what the council is saying, is that we do not have to put pressure on a developer to make play space available for the children because they will do that anyway to sell the land. But there is no written guarantee that that is going to happen. So the children who lived within two seconds of a play space are now going to live further away and will not have access to it in a safe way either. If you can say, 'This is what is being recognised worldwide as being a benchmark, a level for children's play,' then we can say, 'You're not meeting that.'

Mr TONY SMITH—But what you are saying is, with respect, great for an affluent country—let us spend more money on another bureaucracy—but what about the countries that have kids who are bonded to labour from the age of five through to 15.

Shouldn't we be doing something about that first? Shouldn't that come first?

Mrs Gleeson—It comes hand in hand. No, you cannot ignore the children here because—

Mr TONY SMITH—In scarce dollar terms, where does the money go?

Mrs Gleeson—In dollar terms?

Mr TONY SMITH—Yes, where does it go?

CHAIRMAN—There will be no further questions. Thank you very much, indeed. We will table the additional material.

[2.04 p.m.]

EASTWOOD, Mr Lawrence Anthony, Secretary and Executive Director, Parents and Friends Federation of Western Australia Inc., PO Box 4022, Wembley, Western Australia 6014

CHAIRMAN—We have received your written submission. Are there any amendments or additions to the written submission?

Mr Eastwood—No.

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

Mr Eastwood—I would just like to emphasise some of the points we have made in our submission. I would like to firstly state that the Parents and Friends Federation of Western Australia currently represents the interests of over 52,000 children in Catholic schools in Western Australia and their parents. We were concerned in 1990 about some of the clauses in the UN Convention on the Rights of the Child and their wording and ambiguity and the inadequacy of article 5 in protecting the pre-eminent role of families and the inalienable right of parents to bring up their children according to their values and beliefs. Should I go ahead and emphasise some of the points in our submission?

CHAIRMAN—It is up to you. We will explore some of them, but if you want to emphasise some in your opening comments go ahead.

Mr TONY SMITH—You said that articles 12 to 16 seem to be the most serious ones. Would you like to enlarge a bit on those?

Mr Eastwood—We are concerned that those particular articles appear, either through their ambiguity and/or perceived difficulties in interpretation of those articles, to either accidentally or deliberately undermine parental and family rights and responsibilities, ostensibly in the interests of providing greater autonomy for children. Those five articles, in our view, have the capacity to drive a wedge between parents and children and present grave difficulties for parents in their relationships with their children and in their attempts to ensure their proper development.

Article 12 seems to just set the scene for the following articles by providing children with the right to express freely their views in all matters affecting them and their opportunity to be heard in any judicial and administrative proceedings affecting them.

Article 13 guarantees the right to freedom of expression, et cetera, including the freedom to seek, receive and impart information and ideas of all kinds via any media regardless of frontiers. We think that is pretty broad and has all sorts of difficulties embedded in it. We think that article has the ability to render it impossible for parents to

protect their children and manage their normal development by denying them access to instruction and raw materials which are harmful to them morally, physically or on religious or ethical grounds. Such materials could include, for example, unsuitable instruction or influencing their children in such areas as sex education, drug education and regarding homosexual and other lifestyles, which could in turn encourage or condone lifestyles and practices which are not only morally damaging but also physically damaging.

One of the areas of increasing concern for parents, which we have pointed out in our submission, and ultimately for the wider community is the dissemination of increasingly violent and pornographic films and videos, which unfortunately modern day libertarian governments do not have the will to prohibit. There is a lot of that material about in our society these days. We see Canberra, unfortunately, as the porn capital of Australia. We understand the ACT government makes a lot of money out of the distribution of that pornographic material through taxes on it and so on. We think that is really non-productive, to put it mildly.

The desensitising influence of these materials on our society is obvious from the alarming increase in statistics relating to crimes of violence and sexual abuse in the last 10 or 20 years. I think we have made the point fairly strongly that what parents need from governments is their assistance and support in limiting the quantity and content of such materials in our community rather than their collusion with the purveyors of pornography and violence in the name of freedom of expression.

Article 14 provides the right of the child to freedom of thought, conscience and religion. Since parents have only a limited right under the convention to direct children in the exercise of this right, the article appears to free children from any form of parental control or guidance, for example, where they may wish either to exclude themselves from the family's normal religious practices or to join a fringe religious sect—we have seen plenty of that in the last few years in Australia, and it is concerning.

The second and third clauses of article 14 do little to assure parents of their ongoing role and responsibility in the upbringing of their children, even though parents are obviously the ones who naturally have the greatest love and concern for their children's physical, moral and spiritual welfare in the large majority or cases—of course, it does not always apply.

Article 15 recognises the rights of the child to freedom of association and of peaceful assembly. This article appears to clearly undermine the right and duty of parents to ensure that their children do not associate with people of unsavoury character or persons of a different age group who may have quite different ideas of right and wrong and who may have different levels of maturity and so on. Those people may exert a bad influence on their children or they may be persons who encourage the children to reject normal accepted standards of behaviour or discipline, particularly in the areas of respect

for other people and their property, sexual activities, drug use, business ethics, honesty and integrity. These are all areas in which children normally acquire a set of values from their parents, families and peers. It is an area which requires constant guidance and surveillance by parents during the developing years when the natural tendency is to be as non-conformist as the environment will allow in the name of establishing a separate identity.

One of our local researchers, Dr Steve Houghton, at the UWA has done a lot of research on the propensity of children to establish what he calls a 'non-conforming reputation'. Some of his figures and statistics about what young people will do to establish those reputations are fairly alarming. He points out that many of the children who get themselves into trouble in our society are not necessarily those who have low self-esteem but, in fact, have very high self-esteem and are trying to achieve something—a non-conforming reputation; the worse the things they do, the better they look in the eyes of their peers. Anything that helps them to do that sort of thing is, in our view, destructive of our society and family influences.

Article 16 ensures that no child shall be subject to arbitrary or unlawful interference in his or her privacy, family, home or correspondence. This may prevent parents, in the best interests of their children, protecting them against unscrupulous associates, for example, medical practitioners who may give a child advice or prescribe treatments which would be of concern to the child's parents without reference to the parents, such as contraceptive and abortion advice and so on to children of a young age. It could also mean that parents would be unable to ensure that their children's activities, even in their bedrooms under the parents' roof, are such as would contribute to a normal healthy development.

I had the experience some years ago of debating on the television a female in the legal fraternity here in Perth at the tine. We debated a document the Law Reform Commission had produced on the medical treatment of minors. Some of the things they were suggesting were quite unbelievable—lowering the age of consent to 12 years of age and so on. I accused this particular person at the time of aiding and abetting child abuse, if that was the case, and she got up in arms about that and said that that was not what she was on about at all. We have an age of consent of 16 and many children at that age are not mature enough to make those sorts of decisions and to reduce it any lower would certainly be very damaging to the very large majority of children, almost without exception.

We were most concerned when the convention was ratified back in 1990—just before Christmas when everyone was asleep or doing their shopping—by the federal government of the day. They had assured us that they would be including reservations in there to protect the pre-eminent role of the family as the body that looked after the interests of the children, yet those reservations were not included.

One of our initial points in our submission which I would like to emphasise is a

fundamental difficulty with this convention. The convention does not really define 'child' and 'life', which would seem to be fairly basic to us. The eighth and ninth paragraphs of the preamble to the convention rightly draw attention to and support the provisions of the 1959 UN Convention on the Rights of the Child and the Universal Declaration of Human Rights and reiterate the declaration that:

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

Article 6 states:

. . . every child has the inherent right to life . . . States Parties shall ensure to the maximum extent possible the survival and development of the child.

We understand that in a recent federal government report—the first report under article 44(1)(a) of the UN Convention on the Rights of the Child—the government reported to the UN on the operation of the convention. It was implied that abortion, for example, is prohibited throughout Australia, and that is so in most states. Yet we know that something like 90,000 to 100,000 babies a year are aborted in Australia, to our disgrace. The great majority are facilitated by the federal government and funded unwillingly by taxpayers via the Medicare rebate scheme. We are now seeing a strong push by some people to go even further to legalise the taking of life via euthanasia procedures. We are very pleased to see that the Commonwealth parliament knocked that on the head for the time being, but no doubt it will rear its head again.

Therefore, it seems to us to be pretty incongruous to be talking about extending further rights to children—who are often either immature, misguided and/or unduly influenced during the various stages of their early development towards adulthood—very often against both the best long-term interests of the children and the wishes of their parents, when we as a nation cannot even guarantee to all our children the basic right to life itself from the time of conception to the time of their natural death.

I might leave it there. I will just emphasise the last paragraph of our submission. Our view is that the federal government should withdraw ratification of the convention—and we understand that is allowed under section 52 of the convention—or at least add a reservation that we are not sure that is possible at this stage, since it is so far down the track.

CHAIRMAN—Thank you. I think you have covered a lot of the areas that some of us would have had questions on anyhow. Articles 12 to 16 are of a lot of concern, as they were in 1990, but perhaps things have moved on since then. My first question to you in relation to that would be: to what extent is there any evidence that, as a result of the convention and those particular parts of the convention, anything is any worse than it was in 1990? Has that evidence been substantiated?

My second point—and it is really just a point rather than a question—is that, yes, one of the avenues for this committee is to recommend, in the extreme, deratification. That is possible technically. It does have some diplomatic international ramifications, and I am not sure, as an individual rather than as a committee member, that at this stage that would give the right signals. Nevertheless, we need to discuss that in a lot more detail as a result of the evidence that is given.

On the point of reservations, once a country has expressed a reservation—and we did under 37C—we are not in a position to insert further reservations. We can respond to another country's reservations. So I just want to make it clear that the second of your suggestions, the alternative, is not possible. The former is, but it has a few problems with it. So I just wanted to ask you for a reaction to my first question about whether things have moved on without too much difficulty as a result of articles 12 to 16 in particular.

Mr Eastwood—I suppose it is difficult to quantify or find statistics about some of those matters, but I think there is a general feeling in the community and amongst parents—and we certainly hear a lot of discussion within our parent groups—that they are concerned about the increasing freedom for children to the detriment of families. I think, if you give additional rights to some people, it virtually implies that you are taking some rights away from somebody else. We would be very much concerned about the suggestions that there be appointed a children's ombudsman or a special children's commissioner, for example, because we really think that continues to undermine the role of the family. Certainly there could be a family commissioner or a family ombudsman.

We would certainly like to see things like family impact statements for all legislation, for example, that would determine how legislation that is put before Commonwealth and state parliaments will impact on families, because we think that most of our major problems in this country in the last few years have really been to do with a grinding down of our previous strong family oriented society, and the fact that people have found it very difficult to operate within the rules in the last few years. I think there is plenty of anecdotal evidence of parents being concerned about their children these days being able to leave home at an early age and get government assistance, such as the homeless youth allowance and that sort of thing. We have heard stories of children suing their parents for divorce and that sort of thing in Victoria. That happened a few years ago. It is really quite ridiculous to have that sort of thing happening.

I think somebody mentioned in the earlier discussion that we wonder why we needed a UN convention to tell us how to run our country and set up laws that look after children. I would think that most of our laws already protect children very adequately. We certainly are not opposed to, or have no objection to, any of the articles which prohibit child prostitution or slavery or neglect and abuse of various types, particularly in other countries. We consider those matters are matters which need to be seriously addressed by some of the other ratifying countries, whereas they seem to be adequately protected in this country by existing Australian laws. It is interesting when you talk about ratification too,

that we understand the United States, probably the greatest democracy in the world in some ways—

Mr TONY SMITH—Apart from ours.

Mr Eastwood—Apart from ours. It apparently has not ratified the convention either in league with some other countries. It was interesting to see the list of countries which have ratified the convention early that had very bad records on human rights and so on. We wonder who we are getting into bed with, if you like, if I can put it that way.

Mr TRUSS—In your submission you say, particularly when you are referring to articles 12 to 16, that some of the articles appear to deliberately undermine parental and family rights. You then go on to speak about articles 12, 13, 14, 15, and 16 specifically. Can you provide the committee with any evidence that—for instance, in article 12—the convention has strengthened children's rights? Can you demonstrate any evidence that parental and other authority has been diminished, or in 13 can you provide any evidence to support your statement that the freedom of expression and access to media is denying parents the right to guide the proper development of their children, et cetera? Do you have any evidence to suggest that the fears that you express there have, in fact, eventuated?

Mr Eastwood—Not of a solid nature so that we can say, 'We know this particular case or that particular case,' without going back to talk to people who have talked to us over a period of time. Most of it is anecdotal evidence.

Mr TRUSS—Do you think anyone anywhere is going to be able to demonstrate that a child has exercised his right to access to the media and, therefore, denied the parents' rights to proper guidance and development?

Mr Eastwood—I think there is the fact that children have access to the Internet, for example, these days. I think you would agree that most of them know more about how to access that than adults do.

Mr McCLELLAND—Coming back to Mr Truss's question, why has the UN Convention on the Rights of the Child given children access to the Internet?

Mr Eastwood—No, I did not say that. I was about to say something else, but I was just setting the scene. There are those sorts of media opportunities for people to access information, and I think you will agree there is some fairly doubtful information on the Internet that you would not want children accessing, yet many of them can. To have this sort of convention really just supports their right to do that, whereas parents would like to say, 'We would like to control what our children have access to, particularly up to a reasonable age of maturity and development.' Having these sorts of things come forward in these conventions really just supports the right of the child to virtually do as they like.

Mr TRUSS—What I would like you to be able to tell me is of an example where a child has the Internet in defiance of their parents' wishes just because the government signed the UN Convention on the Rights of the Child. That is a very simplistic example. I am looking for examples of how the family relationship is being destroyed as a result of Australia having signed this convention.

Mr Eastwood—That is probably fairly difficult to put your finger on exactly.

CHAIRMAN—Let us take your Internet example. Some would argue that it would be as the result of CROC and things that go with CROC. If CROC was not there, some children would get around it anyway. I think there is a big question mark about the chicken and the egg.

To take Mr Truss's question a bit further, is it a question of a lack of comprehension of the convention or a question of ambiguity in the convention? What you are saying and from the perceptions that were around in 1988, 1989 and 1990 prior to ratification, from the evidence that has been given to this committee so far, those perceptions are still around. But the difficulty for us is in exactly the question that Warren Truss asks—that is, where is the substantive evidence to show or demonstrate that there has been a negative result of those particular articles?

Mr McCLELLAND—As a result of the convention as opposed to the technology of the Internet?

CHAIRMAN—Yes.

Mr Eastwood—I do not think you would have to be a Rhodes Scholar to come to the view that if you have a piece of legislation or a United Nations convention or some sort of government document, if you like to put it in general terms, that gives acceptability, normality and credibility to some sort of activities that previously were proscribed to some extent, it makes it easier to get involved in those activities.

For example, last year a lady appeared at one of our national meetings of the Australian Parents Council, of which our body is one of the 11 affiliates. She was from the state school parents national group. She told us that one of her children, through accessing the Internet and the information on it, made a bomb. He ended up blowing up himself and his mate and injured themselves fairly seriously. They recovered.

Mr HARDGRAVE—Surely that is more of a comment on the parenting ability of the parents involved with that child than it is on—

Mr McCLELLAND—Wouldn't United States children be accessing the same information on the Internet, even though the United States has not ratified CROC?

Mr Eastwood—Probably, yes, but what I am really saying—

Mr McCLELLAND—But that is a feature of the Internet, not a feature of CROC.

Mr Eastwood—What I am saying is that having these pieces of legislation and documents and so on really helps to provide the—

Mr McCLELLAND—But are you aware that it is not a piece of legislation? I think Mr Smith said—

CHAIRMAN—This is a lack of comprehension. I am being critical because at the parliamentary level we have had that and perhaps in some quarters we still have that as well. I think it may have been raised before you came in; I am not sure. A piece of legislation was introduced in the House of Representatives the week before last out and it is now in the Senate, which makes it very clear that until such time as whatever is in a convention is encapsulated in domestic legislation, it really does not mean too much.

You will have the critics of that say, 'Well, why ratify?' Nevertheless, it is there and it gets round the perceptions that you and a lot of other people and perhaps a number of us would share that we need to clarify the situation. At this point in time it has quite strong bipartisan support, it would seem.

Mr McCLELLAND—The convention.

CHAIRMAN—The legislation, to do that—to clarify the situation, until such time as whether it is CROC or whether it is something else.

Mr TONY SMITH—What you would say, Mr Eastwood, would surely have regards to terms of reference 3—the difficulties and concerns arising from implementation in its current form. That is really the crux of what you are saying, isn't it? Here we have a treaty. There are some groups saying to us, 'Implement it holus-bolus into Australian law; it's the best thing since sliced bread.' What you are saying is these concerns that you have relate to articles 12 to 16 because there is the potential for these sorts of conflicts in relationships between children and parents to arise. Secondly, you would say, surely, wouldn't you, that having regard to Teoh—

Mr TRUSS—The counsel's leading the witness.

Mr Eastwood—I think this is an interesting line of discussion.

Mr TONY SMITH—The one case that has considered in any depth the convention has come up, by what some would say—at least one of the great intellects of the High Court who dissented in the Teoh case, Mr Justice McHugh—a tortuous line of reasoning, with a view that a heroin dealer can stay in Australia because he had a

legitimate expectation to be afforded procedural fairness in relation to a deportation order. That is the potential we have seen that can arise when it is not in Australian law.

Mr Eastwood—Mr Chairman, you and Mr Truss were asking me earlier to specify what evidence we had that those articles were affecting us. It is a bit like the current problem we have with people rushing around the country having meetings—and one of your esteemed members from the ACT legislature was here recently—suggesting that we should legalise or decriminalise the use of heroin. Some of them say, 'People are out there using it anyway. You may as well make it legal and make it as nice as possible for them so they can shoot up with nice clean needles.' It is patently ridiculous to be encouraging people or facilitating them to inject themselves with a drug that is potentially dangerous and death dealing, if you like. Somebody else made a comment on that on a television show I was watching a couple of nights ago.

Mr McCLELLAND—Even taking your impugned articles, article 13, for instance, preserves the right of the parliament or the government to make laws to protect public health or morals. Where is CROC, the treaty concerning the rights of the child, facilitating the legalisation of heroin? There is a great logical gap there, is there not?

Mr Eastwood—No, the logic that I was trying to explain is that if you have people that go around the country side saying, 'We have a problem already so let us legalise it. We have children doing things already so let us support them by saying it is quite okay for them to do that,' surely that encourages the activity that could be harmful.

Mr McCLELLAND—Do you know of anyone who has said that? Do you know anyone who has said that children are doing it anyway so let us legalise it?

Mr Eastwood—In the medical treatment of minors

Mr McCLELLAND—No, in any field.

Mr Eastwood—Yes, that is an area of great concern. The Law Reform Commission's approaches on the medical treatment of minors, for example—

Mr McCLELLAND—If you have parents who are of some particular religious belief and they are denying the child access to a blood transfusion, which happens—there are cases on it—do the parents have that overarching right to deny that child access to a blood transfusion? If you are taking parental authority to its logical conclusion surely you must agree with that proposition?

Mr Eastwood—I think that is a very sensitive and very difficult issue. It has come down to whether you are providing the child with the right to continue a healthy life and if you are denying that to them then the parents' rights to deny them should be curtailed.

Mr HARDGRAVE—On the question of abortion, which you have raised, if a child whose parents were devoutly Catholic was in a life threatening situation regarding the need to have an abortion or her potential death and the parents took the view that her death would be the will of God and they would be against it, would that be fair enough?

Mr Eastwood—I think that is making a very simplistic argument.

Mr HARDGRAVE—I have heard a lot of simplistic evidence from you this afternoon so I thought I would throw one back at you.

Mr Eastwood—Thank you, Mr Hardgrave. You do not have to be a devout Catholic, for example, to be anti-abortion. There is a body here called the Coalition for Defence of Human Life that includes something like 20 different organisations, only two or three of which are Catholic, which are opposed to abortion—the killing of unborn children. If a young lady, for example, my daughter became pregnant out of marriage and wanted to have an abortion, I would do all in my power to talk her out of it not only for the sake of the fact that you would be murdering an unborn baby but also for her own psychological and physical health—that is, taking into account the psychological effects later, the moral questions involved and so on. We have heard of young ladies who have three or four abortions.

It becomes a bit blase. It is like another means of birth control for some people, which is pretty sad. So that is a very difficult question. You have to treat all those things sensibly, of course. But in our state, for example, we know that there are something like 9,000 or 10,000 abortions a year. They are not all performed because the life of the mother is at risk; very few of them would be because the life of the mother is at risk.

Mr HARDGRAVE—I think you have turned my particular challenge to you around. That is fine, but I do not think we are getting very far with it. There are a couple of things that I am wondering about. I guess really you are going to the heart of parents' ability through the normal course of parenting—a process of osmosis, if you like—to give them a caring, nurturing and inspiring environment. Children will pick up the values of their parents as a natural course, I would submit.

Mr Eastwood—Hopefully.

Mr HARDGRAVE—Yes, hopefully. There is always a rebellious stage when children will challenge those values. I think we all cross our fingers and hope they will grow out that, because we would like our children to accept our values and perhaps adopt them and use them themselves. But your concern, I guess, centres on the fact that this convention, despite the fact that this osmosis is a natural process, would be used by children to thwart their parents' natural attempts to pass on those values. That is what you are saying, isn't it? You think that there are actual cases of that occurring. You need to help us out with this because we have the urban myth about this. We have all heard it,

and we all desperately want to find real physical examples of it so that we can actually have evidence that says, 'This is it—a living breathing example of that occurring.' We have not found it yet.

Mr Eastwood—We have certainly heard of cases. We could probably get hold of information for you and pass it on—

Mr HARDGRAVE—We would appreciate it.

Mr Eastwood—from people who have said their children have tackled them on the basis that, 'You can't tell me to do that. I'm able to do what I like. I have freedom of expression and so on. I'll go to the police if you do.'

Mr TRUSS—Particularly if you can add onto that that the kid said it was because of the rights of the child convention. If you have got specific cases that would be very helpful.

Mr TONY SMITH—It is interesting because it cuts both ways. On one side of the argument it will teach us that kids are using the convention. On the other side of the argument it will teach us that the educational authorities are not doing their bit in telling kids about their rights under the convention. So we get two lots of evidence out of it.

Mr TRUSS—You know that I have been questioning both sides along the same line. I have been trying to get those people who believe the convention is doing wonderful things for the country to provide that information for me—I would have to say that so far they have been pretty unsuccessful. But I have to say that you have also been unsuccessful in persuading me that the convention has wrought great evils on the country.

Mr Eastwood—It has not been ratified for very long yet, has it? As the Chairman said, legislation has not really been put in place in the country as a result of or consequential to the convention. What we are really talking about is a possibility that—

Mr McCLELLAND—They are two different things, aren't they—possibility as opposed to actuality?

Mr Eastwood—Sorry. Should I say, a scenario that is being promoted or developed that gives children a great right to have freedom for themselves to the detriment of their families' rights to protect them and nurture them.

Mr McCLELLAND—For my part I agree with Mr Truss: so that we can work out whether you are talking about actualities or possibilities, if you can bring some examples to our attention I for one would greatly appreciate it.

CHAIRMAN—I do not think I would be so presumptuous as to say that nobody in

this room would disagree that, over the last 20 years perhaps, more traditional values in our society have not been eroded. I doubt there is anybody in this room, irrespective of their views on other areas, who would say that things have not gone downwards instead of standards being lifted or at least maintained. It is a question of cause and effect. Nothing that we have heard today—and in many ways nothing that we have heard in previous evidence—has given us substantive evidence to show that the CROC is the instrument that has done that. That is the difficulty for the committee. Do you see what we are getting at?

Mr Eastwood—Yes, sure. It is certainly not the only instrument. We have the effects of the media, and so on, over the last few years, which is pretty damaging, I think, in our society; it can be very positive, but it is often very negative. This is just another nail in the coffin of parental or family rights.

Mr HARDGRAVE—In fact, it would be quite an interesting exercise to juxtapose your submission, the Catholic social response and a number of other agencies within the Catholic church, because there are quite a number of inconsistencies in the approaches.

Mr Eastwood—I certainly hope so, because many of us in the Catholic church are not that happy with the Catholic Social Justice Commission and their approach on these matters.

CHAIRMAN—That is for another time. Do you have a final question, Mr Truss?

Mr TRUSS—I want to go back to an earlier point you made—that is, that Australian law should be made and implemented by Australians free of pressure from international organisations or their members. I do not think you would find anyone in the country who would argue that Australian law should not be made and implemented by Australians. Why did you make that statement in relation to the United Nations Convention on the Rights of the Child?

Mr Eastwood—Because the convention seems to be saying that states' parties ought to then rush about and bring in legislation that conforms with the convention. We have this list of 45 or 47 questions or whatever it is that has come from the United Nations asking us to say how we have implemented the convention and what we are doing about it, and there is a smack on the hand if we are not doing it. It is almost like we are answerable to the United Nations, and we should not be.

Mr TRUSS—It is an article in the convention that you do report, but I do not know whether you get judged on it at the end. Since we have never legislated to make this a part of our national law, the pressures from the international organisations or their members must be pretty slight. Either that or we are very good resistors.

Mr Eastwood—I hope we are, but I think there are a lot of people in our community—including a lot of politicians—who would like to see us legislate along these lines.

Mr TRUSS—But then that would be a decision by Australians making Australian law, wouldn't it? It would not really have much to do with anybody else.

Mr Eastwood—No, but it comes from there.

Mr McCLELLAND—It comes from where?

Mr Eastwood—The United Nations. The people who are connected with that sort of thinking all tend to work together and push these sorts of ideas of international law.

Mr McCLELLAND—You think this treaty is an act of the United Nations, do you? You think it is an act of some sort of legislative prescription laid down by the United Nations. Is that your perception of the treaty?

Mr Eastwood—That people are involved and support the United Nations as a body ought to be dictating to people around the world how they should operate and the sort of legislation they should have on a whole range of matters.

CHAIRMAN—That is why I go back to the legislation that has been through the Representatives in the last couple of weeks. To coin a phrase which I have used on many, many occasions over recent months when I have done interviews all around the country on this, because Geneva or New York coughs, Australia should not get a treaty cold. That is the analogy. This legislation will show quite clearly that that does not happen. That is the intent of the domestic legislation. I hope that, once it is through, your perceptions might change a little.

Mr TONY SMITH—Have you felt any pressure in the Catholic school system from the government or from other groups in relation to corporal punishment? Is that in anyway connected with an interpretation of some of the clauses of the convention? In New South Wales, corporal punishment has just been outlawed by legislation, I believe.

Mr Eastwood—It is a bit difficult to make that connection, probably. That is a matter that has developed a lot over the years, I think. I still have some bruises on my hands from when I copped the strap at school. It probably did not do me a lot of lasting harm, I do not think. But certainly these days you could not do that in schools. We in the Catholic sector tend to follow what happens in the government sector. They make legislation for the government schools and we tend to follow it pretty closely.

Mr TONY SMITH—Do you still have corporal punishment in the Catholic schools?

Mr Eastwood—Not that I am aware of.

CHAIRMAN—Thank you very much. We are sorry to take so much of your time.

Mr Eastwood—I pass on to you the regards of Rear Admiral Kennedy.

CHAIRMAN—Everybody seems to be doing that today. But Philip has not arrived.

Mr Eastwood—He thought he should stay away.

CHAIRMAN—Thank you.

[2.45 p.m.]

GOODIER, Dr Gareth, President, Australian Association of Paediatric Teaching Centres, PO Box 42, Deakin West, Australian Capital Territory 2600

CHAIRMAN—I welcome Dr Goodier from the Australian Association of Paediatric Teaching Centres. We do apologise for holding you up; we have slipped behind today. Do you want to make any amendments or additions to your written submission?

Dr Goodier—No. I have handed out a sort of report—another copy of the 'Office of Children'. There is one issue in the report we refer to—some problems with pharmaceuticals—so as to give you more detail on that.

Resolved (on motion by Mr Hardgrave):
That the document be accepted in the transcript of evidence.

CHAIRMAN—So we can catch up a little bit of time, would you talk to one or two of the points?

Dr Goodier—I will be brief. In fact I think you will probably catch up time here. First of all, just for your information, the Australian Association of Paediatric Teaching Centres represents all the stand-alone children's hospitals in Australia and includes Auckland. It also represents the major paediatric units in Flinders, Monash and Newcastle. It basically covers all the major paediatric units in Australia and New Zealand. This submission, 'Office of the Child', has the support of the Australian College of Paediatrics and the main advocate within our organisation was Dr John Yu, who was Australian of the Year in 1996.

To be brief, we support CROC. We believe that whilst we have made fantastic advances for our children and our adolescents over the last 50 years many of the simple problems have been removed, but we are left with some more complex problems, which are harder to tackle. I give some examples there such as our suicide rate amongst our youth, which is of great concern, I think, to all Australians, and the increasing incidence of things like eating disorders. The numbers for child abuse go up, but really the evidence for whether that is an increase, better reporting or more awareness is difficult to ascertain. Our immunisation rates are appalling.

Of course there are subsets within our population, such as our indigenous members of the community, where the adolescents and children there suffer appalling health. When I say appalling I mean that infant mortality in some northern Australian communities would be higher than, say, in Tuvalu in the South Pacific. If somebody were to come here from another country or another planet they would be surprised that we have done so well in the simple medical problems that we face and so badly wherever there are social complications involved. For that reason, we believe fundamentally that there is need for an

Office of Child to review legislation, to advocate for children and to stand for children's rights.

We do not believe that there is any role to conflict with the basic premise that a child is better with its family. However, we do have concerns that there are a number of families within our community who are not good families and there needs to be protection for children raised in those sorts of families. I see this as the standard tension that we have to fight with, day in and day out, on all sorts of issues. Whether it is gun control or civil liberties generally, there is a tension between the rights of the individual and the rights of the community, or the rights of the family versus the rights to protect children. It is not black and white. It is complex and it is difficult. Certainly, we would not advocate in any way reducing or removing the rights of parents to look after their children. But we are very conscious of the high rates of child abuse and the very significant sequelae of child abuse, particularly sexual abuse, suicide, drug abuse and ill health mentally.

Mr TONY SMITH—And re-offending, no doubt, when they get older.

Dr Goodier—Yes, absolutely. I think in this country we tend to dwell on the superficial. We look at youth suicide but we do not necessarily look at, 'Why youth suicide?' We look at drug problems but not, 'Why drug problems?' I think there are a number of children who are unfortunate enough to be in families which actually lead to them entering into that cycle of drug abuse, suicide and so on. We are strong supporters of families, but we believe that there is a small minority of families that are aberrant and that there needs to be a body in our country which advocates for the rights of children and can stand up for children against all people in all spheres.

At the end, we have highlighted some issues, and I think some of the photocopies are out of order. In relation to the specific issues page, there are a number of issues where we believe children are discriminated against. Pharmaceuticals is one in particular. It is a small point, but, because it costs extra money, drug companies often do not do the drug trials to show that a drug works in children. They do it just in an adult population. So a lot of the drugs we use in this country have not been authorised for use in children. We use them because they save lives but they have not been through the mill. They have not been checked out. There have not been clinical studies done.

The drug companies do not produce them in a form which is appropriate for children. We had the very misfortune here in Western Australia of a death where one of these sorts of drugs which is prepared in an ampoule for adults required dilution. The doctor miscalculated the dilution and that led to the death of a child. When we checked it out nationally, there had been another one in the Children's Hospital in Sydney and there had been similar problems discovered before that. There are real issues to deal with control of drugs and medications for children having appropriate trials done before a drug is authorised and having drugs prepared in a format which suits the delivery of that drug to children.

The case mix system works very much against children. I am not sure whether you are familiar with the case mix system, but most parents would understand that children under three require more attention for feeding, dressing and supervision. In America, they calculated that it was equivalent to 26 per cent more nursing hours to look after children under three, equivalent, if you like, to looking after somebody with a stroke, somebody very old.

The federal team which sets up the case mix classification system, despite all our efforts, has refused to acknowledge that extra requirement under three years of age. So fundamentally, the children's hospitals are remunerated on a classification system that recognises no difference between a one-year-old and a 10-year-old or a 40-year-old. Therefore, we as hospitals are punished for that. In fact, we are not punished because we fudge the whole system, but we would like some recognition amongst federal bureaucrats of the need to have a classification system that reflects the extra workload for children.

Finally, I need to restate the fact that the health and well-being of Aboriginal and islander children is a national disgrace. I know a lot has been done and said, but I think it has to be restated at every forum.

Mr HARDGRAVE—Doctor, you have given us good and practical evidence, if I could offer the observation. The thing that concerns me though is the creation of a new central agency, a new bureaucracy, which could become a generalist kind of forum anyway. You have raised a whole range of issues which in themselves individually seem to need specialist assistance. Surely it is better that we look at ways of enhancing existing systems, be they church, community based or even bureaucratic systems, which look at specific problems like the ones you have raised.

Dr Goodier—That would be the obvious argument against setting up another office, smaller government is better government and so on. We believe that we have tried that. Clearly, we have that. We have any number of lobby groups. You no doubt are meeting a very great number of them. We are failing our children in this country. There is no doubt that we are failing our children. Our immunisation rates are Third World in many ways.

Mr HARDGRAVE—Yet Dr Wooldridge has made very special and, in fact, in a lot of ways, very heavy-handed efforts to beef up immunisation in recent months.

Dr Goodier—I spoke to him about this and he stated that, if and when he left the ministry, the one thing he would like to achieve is better immunisation rates. I admire his support for that. It is going to be a long haul to increase the rates from what, if you use the old schedule, is a rate of about 55 per cent compared with the UK of 90 per cent to 95 per cent.

The issue with immunisation is you require herd immunity for most of these

things. In other words, if you are to protect the community, you require the rest of the herd to be protected so that the disease does not spread amongst the herd; it is isolated to the one or two who have it. If you cover the whole herd, nobody gets it. If you only have half the herd covered, it can spread like wildfire.

Mr HARDGRAVE—From what Dr Goodier has said, the fact that you have a system in place, inspired perhaps by the very top of the system—the federal health minister—to tackle this problem of immunisation is in itself evidence that the current system and the current arrangements can address some of these concerns. That is a statement, and you can perhaps comment on it. But the second half of my question's statement to you is that you are suggesting, then, that child welfare agencies established primarily to look for the very worst examples in our community, to pick up those aberrant parents and to deal with the problems, are failing; that Aboriginal welfare agencies established to deal with the very specific and very critical needs of Aboriginal children are not doing the job, are failing.

Dr Goodier—To take your points, I think the Minister for Health will achieve an improvement in immunisation rates, but it is long overdue and you would have to ask: why has it not occurred previously? Why wasn't there the focus on that? Why was it allowed to be so bad for so long? I would say that that is a simple Health portfolio issue. Most of the issues we are dealing with are complex, multi-portfolio. That is the problem. They come across in many different portfolios, as they are deep social problems within our community. The difficulty is having somebody who carries the interests of children throughout the different portfolios.

I think we all recognise that those dealing with the problems to do with Aboriginal and Islander diseases and poverty and so on face an enormous task. Their success has been limited. I have personally spent a long time working in northern Australia and I know of those issues, as regional director both in the Kimberley and in North Queensland. So I am fully familiar with the problems and the efforts that go on in those areas and the difficulties that exist. But the realities are that, if you were to improve the health of Aboriginal people, you would probably be looking at issues to do with self-esteem, employment, housing, plumbing, education and training. Those are the sorts of things which lead to the improvement of health. Health picks up the diseases, but the problems are to do with other portfolios, in the sense that you have a community there that has lost hope.

Mr HARDGRAVE—So you are saying that an office for children would provide a whole of government focus?

Dr Goodier—I think so. We were not expecting anything more than a handful of people—

CHAIRMAN—That is the point I was going to make. It seems to me that there

are two ingredients in the merit of your association's proposal: one is small and the other is advisory—not large and investigative. I think that is the thing that gets right up the noses of a lot of people. It seems to me as an individual—I do not know what others feel, but we will look at this in some detail—that it is quite an attractive proposal.

Mr BARTLETT—It is a balance.

Mr TRUSS—Would it lack jurisdiction over state matters?

Dr Goodier—We would like to see an office in each state. Queensland and New South Wales are pushing ahead with these, they are in the process. We would like to see one in each state and then a network of small offices developing perhaps some national standards and national policies to do with these problems.

Mr TRUSS—So nine small offices?

Dr Goodier—Yes. But we are talking maybe four people in each office. I think our children are worth that.

Mr HARDGRAVE—Chairman, I hate to use the analogy in one sense, but are you suggesting a productivity commission which essentially produces a report which is then considered by public discussion and by governments, whether or not recommendations or a report would be accepted, that kind of mechanism?

Dr Goodier—We see it as being a small office that looks through other legislation, looks through other portfolios and has the interests of the child and the rights of the child at heart and can offer advice to the different portfolios. My day time job is Chief Executive at Princess Margaret and the women's hospital at King Edward. We have, say, an adolescent ward. The children come in under their particular specialist, but there is somebody who looks over the top of them as adolescents and has a whole of adolescent perspective. What we are looking for is a small office that has a whole of child perspective, looking after the rights and interests of the child against all comers.

Mr TRUSS—Would you draw an analogy between what you are proposing and some of the status of women offices?

Dr Goodier—Something like that.

Mr McCLELLAND—In point 18 of this document, you say that the office would exercise no statutory authority or have no ability to initiate investigation. It would have to have some statutory authority, but I assume it is intended that it would have no coercive authority.

Dr Goodier—Yes. If it was a creature of statute, it would have some.

Mr TRUSS—But it may be an administrative action rather than a statutory body.

Dr Goodier—Yes, that is true.

CHAIRMAN—Thank you very much, Dr Goodier, for appearing before us today. It was a great help.

[3.02 p.m.]

WHITELY, Mr Denis John, Executive Director, Council for the National Interest, GPO Box K845, Perth, Western Australia 6001

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

Mr Whitely—There are no amendments.

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

Mr Whitely—Yes, thank you. The Council for the National Interest is a non-party political organisation. It neither supports nor is aligned with any political party. Its organisation in Western Australia comprises an executive committee, known as the Western Australian committee, and its members. The members are loosely arranged in small groups or branches based on the federal electorate in which they live. The committee itself, the branches and the members as individual citizens lobby politicians of all political persuasions, whether they be state, federal or whatever their parties are.

The viewpoints which we put forward publicly are basically the views of the members, because it is they who meet in their groups. They develop their policies, discuss and debate them and send them on to the executive committee for approval. It is the members too who have a vision for Australia, and their vision has a starting point, which is the family. They believe that the family is the cornerstone of our society and that government policies should protect, maintain, support and promote the family. In fact, they believe that the family is so important to society that all cabinet submissions coming before government should be accompanied by a family impact statement to show what adverse or beneficial effects there are on the family and where they are adverse, what countervailing measures are to be taken to offset those adverse measures.

They also see children as an integral part of families. They believe that by building strong families, we will minimise the problems of children and protect their rights. It is because of this emphasis on the family and also because of certain articles in the convention that they believe that there is and has been division caused in families by these articles. They support the denunciation of the convention at this time and the adoption of a charter of family rights and responsibilities in which the rights and responsibilities of both children and parents could be safeguarded.

They believe in the rule of law and the constitution. They do think it is warranted intrusion by the United Nations Committee on Children's Rights to be more or less questioning the way Australia is handling its management and implementation of this particular convention. That is all I have to say by way of background.

CHAIRMAN—Thank you. If we assume that it were not de-ratified or enunciated, why couldn't it still be possible for Australia to develop a charter of family rights and responsibilities, as you suggest?

Mr Whitely—It would be quite possible to develop such a charter but I think in doing so the charter would come into conflict with some sections or articles in the convention.

CHAIRMAN—I think there are some basic misconceptions in your council's submission, and you were not here earlier when we talked about this in some length. I look specifically at point 8 in your submission which argues:

. . . that Australian Law should be made by Australians, for Australians, in Australian Parliaments and should be enforced by Australians NOT by non-elected, non-democratic, non-government bodies based elsewhere . . .

I would like to suggest to you that that is already happening. To counter any perceptions to the contrary that may be about, statutory provisions are being made in the parliament at the moment to effect that. Are you aware of that development?

Mr Whitely—I am aware of those statutory developments.

Mr McCLELLAND—Why do you say that the treaty concerning the rights of children would prevent such a code of family rights being enacted?

Mr Whitely—I did not say it would prevent; I think I said that it would be in conflict.

Mr McCLELLAND—What particular provision?

Mr Whitely—For example, nowhere in the convention can I find where it states that the parents' rights are primary rights.

Mr McCLELLAND—Even if you are right in that, why does it prevent the federal or state legislature setting out a code of parental rights? Surely there is nothing in here that prevents that occurring?

Mr Whitely—That would be all right provided that that then became the law and overrode the way in which this convention is being implemented.

Mr McCLELLAND—This comes to a point Mr Truss asked a previous witness about. You have said on page 92 that articles 12 to 16 inclusive have proven to be the most serious intrusion into parents' rights. Can you give us some specific examples where those articles have intruded into parents' rights? I ask you to not talk in generalities; a

former witness spoke in generalities and we asked him at the end of the evidence to try to get some specifics back to us.

Mr Whitely—The only way I can answer that is to say that part of my role for four or five years was to be present at the branch discussion meetings—I would attend something like five or six a month on a regular basis—and consistently members there would talk about their children coming home from school and telling them, 'You cannot stop me doing that because I have rights.' Those rights were coming from the schools; they were being taught those rights at school.

CHAIRMAN—Is that a direct result of CROC or is it the unfortunate change in our societal values?

Mr Whitely—I could not tell you.

CHAIRMAN—That is the difficulty that we as a committee have, to come back to Mr Prosser's earlier question, which you heard. I know you have said that you do not accept it, but you specifically said that article 5 does not protect parents. It says:

> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Mr Whitely—That is all it does—it is of those rights in that convention. So the parents' right under article 5 is to have the right to recognise the children's rights.

Mr McCLELLAND—But isn't your analysis assuming that the only rights parents have are the rights set out in this convention? The convention is not purporting to do that; it is purporting to provide a code or guide, if you like, on children's rights. Don't the overall rights of parents—

Mr Whitely—They are not spelt out in the convention.

Mr McCLELLAND—They are not intended to be, but why does this convention override those rights? Doesn't article 5 expressly reserve the rights of parents to give direction and guidance?

CHAIRMAN—And particularly in the preamble. Again taking it back to the preamble, which you do not agree with either, it says:

> *Recognising* 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 . . .

Mr Whitely—I appreciate that, Mr Chairman.

CHAIRMAN—Doesn't that set the scene? The preamble sets the scene, and surely article 5 is in the spirit of that preamble.

Mr Whitely—My understanding of the preamble is that it is of no legal effect.

CHAIRMAN—That is correct.

Mr Whitely—You can have all the feel good statements you like in the preamble but they are of no effect in the application of the convention itself. In terms of article 5, it is clearly a right in relation to only the exercise by the children of their rights in this document. It does not recognise the right of a parent to make a subjective judgment about the evolving capacities of the child—whether that child is actually ready to receive this sort of information, mix in this kind of company or get involved in this kind of religious cult or something.

CHAIRMAN—As an individual, I would agree with you that what it does do is make it very difficult to develop any sort of umbrella legislation that would make it very clear. I think the convention is a motherhood statement, most of which no reasonable person, I would suggest, would disagree with, but articles 12 to 16 in particular are the ones that generate a lot of emotion and a lot of emotive comment—and understandably in some quarters. It is a question of interpretation, isn't it?

Mr Whitely—It is, but one interpretation which cannot be faulted is that there is nowhere in the convention which specifically says the parents have these rights.

Mr TRUSS—This is a convention about the rights of the child. It is not a convention about the rights of parents. Should we have another one about the rights parents have?

Mr Whitely—We say you should have one about the family, because children are part of a family until such time as they are being treated so badly that they should be taken out of that family or until such time as they grow to be an adult and then they are not part of the family as such, they are not subject to their parents.

Mr McCLELLAND—There is nothing stopping you from having a convention concerning the rights of the family as well. That may be an inherently good thing as well.

Mr Whitely—I believe it is an inherently good thing to have a broad based acceptance of family rights and responsibilities. If it could be done in such a way as it can override or make clear that the rights of parents are paramount in bringing up their own children, then that overcomes the problem. The real concern we have is those particular problems there.

Mr McCLELLAND—Assuming the federal parliament decided to legislatively implement the provisions of the treaty, however they construed the motherhood comments—and I agree with the chairman—they could similarly contain in such legislation prescriptions on the rights of the family and the inherent superiority of parents in bringing up their children, couldn't they?

Mr Whitely—Our preference would be that, because of the vagueness of this particular document, the convention, it not be legislated. In fact, our members considered legislation explaining how the parents do have these rights and that they do override, but it is all the other issues in there which are so vague and the way it is written that—

CHAIRMAN—Personally, I think it would be almost impossible to do.

Mr Whitely—Start again, in other words, but take the best out of the convention, make a family thing—not concerned with just children's rights—and let us rebuild our families. That is essentially what our members are saying.

Mr BARTLETT—Just taking up again the issue of tangible evidence of 'disastrous results', as you say on page 2. You have referred to examples of children coming home from school quoting the UN rights as taught to them at school. Could you give us any specific examples of schools or do you have a list of schools where that has happened? I know that you refer to that newspaper article which appears in the *Australian* as a letter to the editor is again very vague. Are you aware of a list of schools where those rights are being taught?

Mr Whitely—I would have to go back to the members whom I met in various meetings over the last four or five years and try to identify or to recall those member who raised the issue.

Mr BARTLETT—Have you been aware at all of any specific schools—without wanting a long list?

Mr Whitely—I can recall one particular lady who took her children out of a school, and that was one of the reasons she took the children out of the school. That school was up in the northern corridor and I would have check on which school it was. It was somewhere around the Mullaloo-Heathridge area.

Mr HARDGRAVE—If you are going to check the name of the school, could you find out what grade and also whether it was a set subject or within a curriculum for social studies or whatever? It may well have been that a teacher may have made a comment off the cuff—

Mr BARTLETT—And also whether it was in the context of children's responsibilities being taught and not just rights.

Mr TONY SMITH—With respect, Mr Chairman, where does this all take us?

CHAIRMAN—Mr Whitely, I think the point I should make at this point is that this committee does not have an agenda. A suggestion was made some weeks ago that this committee was here to mouth the views of the government or perhaps to undo what has already been done in terms of this convention. That is untrue. What we are trying to do is to explore the facts. You will understand why we keep on coming back to this point, as we did before with the Parents and Friends Federation, because we would just like some substantive evidence. If we can just ask you to take on notice—

Mr TONY SMITH—Can I—

CHAIRMAN—What point are you making.

Mr TONY SMITH—I am looking for a term of reference that asks us to consider the potential problems involving implementation of the convention. Isn't it more the difficulties and concerns arising from implementation? But it has not been implemented. Therefore, to seek information about whether anyone is concerned about what will happen is—

CHAIRMAN—No, let us go back: Warren and I perhaps were the only two involved in this in 1988 and 1989. There were strong perceptions out there that, in particular, articles 12 to 16 were the things that were unacceptable and where too much emphasis was put on the rights of children at the expense of the rights of parents. So one element of what our review and investigation is all about is first to see whether those perceptions still abound—they do in certain quarters; there is no doubt about that—and, as a result of that, we have to come up with some sort of evidence, substantive if we possibly can, to say whether there is any foundation to those views or whether it is a lack of comprehension on the part of people, misunderstanding or a lack of education in terms of what this convention is all about.

Mr TONY SMITH—But it is speculation, because you can only speculate about what can happen given the terms that are there—

Mr McCLELLAND—That is not the evidence, Tony. The evidence is that articles 12 to 16 inclusive have proven to be the most intrusive—

Mr HARDGRAVE—We are testing the evidence.

CHAIRMAN—Just if I can jump in as the chair. I think we are jumping ahead a bit, Tony. Once we have completed the investigation, these are the sorts of issues we need to discuss in private as to how important they are in the context of what we are going to recommend. But what we do need to get from those people who say, 'This has had the wrong impact in certain areas,' is some sort of evidence to back up their perceptions.

Mr TONY SMITH—But with respect, Mr Chairman, you will not get that evidence. Quite simply you will not get it because it has not been implemented.

Mr TRUSS—It has not been legislated; it has been signed.

Mr TONY SMITH—But it has not been implemented. That is the point.

CHAIRMAN—Yes, I know, but the sections are still there. What I am getting at is that we have to address perceptions, and those perceptions still abound in some quarters.

Mr TONY SMITH—But our terms of reference No. 3 reads:

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

And the submission by CNI is really addressing that. They are saying, 'If it is implemented in its current form, we believe blah, blah, blah.' That is as I understand it.

CHAIRMAN—Anyway, Mr Whitely, if you could take on notice and give us—as the Parents and Friends Federation have been invited to do and we will be asking others as well—some more substantive evidence to back up what you are saying in written evidence.

Mr Whitely—I do have a couple of newspaper articles where the *Sunday Times* here in Perth ran a series under such headings as 'families under pressure', 'people helping people', 'the pressures on family life have never been more stressful', 'children are growing up with a new set of rules often in direct conflict with their parents' and so forth. But I will try to—

CHAIRMAN—But are they specific in terms of schools or are they just some journalist writing a good story?

Mr Whitely—I suppose it is a good story but it does relate to the divisions in families where governments seem to be—

CHAIRMAN—How about you take on notice and come back to us.

Mr Whitely—I will take it on notice and I will try to get other information. I reiterate that my basis for the statement in that evidence was my many meetings over the period of four or five years. I have not done that for over 12 months now; so I will have to go back into history.

CHAIRMAN—All right.

Mr TONY SMITH—I have one question about article 13 for example: is it not arguable under article 13 that a child ought to have a right to go to a meeting and impart information which could be defamatory of another person and being a child the child could not be sued for defamation; isn't that something that you can infer from article 13? How does a child determine what is defamatory—how does an individual but older people generally are a little bit more careful with their words than you would expect children to be? But on its face an argument arises that a child could make a defamatory statement, because one would assume it has got a right to impart information in a public place, and at the same time defame someone. But the person defamed ought not or may not be able to sue the child because the child is not sui juris.

Mr Whitely—Yes, you could make a case out for that.

CHAIRMAN—Thank you, Mr Whitely, but if you would take that one on notice because it is an important point. I think you understand that we do not have a particular agenda but that we have to come to grips with the facts and report accordingly.

Mr Whitely—I will take it on notice and I will do my best to get some information for you.

[3.20 p.m.]

BARICH, Mr John Robert, President, Australian Family Association, 949 Wellington Street, West Perth, Western Australia 6872

EGAN, Mr Richard John, Secretary, Coalition for the Defence of Human Life, GPO Box S1505, Perth, Western Australia 6845

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

Mr Egan—I am also a member of the state executive committee of the Australian Family Association and will assist Mr Barich with that submission.

CHAIRMAN—Thank you very much. We have received the written submission from the Family Association and also one from the Coalition for the Defence of Human Life. Are there any amendments or additions to either of those submissions?

Mr Egan—Our proposal would be to take the coalition one first. It deals with a very specific article of the convention.

CHAIRMAN—All right, but do you want any additions or amendments to those two submissions?

Mr Barich—Yes, we put in a supplementary one dated 25 June from the Family Association and we will be speaking to that.

CHAIRMAN—No, we do not have that. It is not in our papers unfortunately. Are you going to speak to this supplementary submission?

Mr Barich—Yes.

CHAIRMAN—We can cover it that way. So there are no additions or amendments to the first submission from each organisation. Who would like to go first with an opening statement?

Mr Egan—I will go first. The essential thrust of the coalition's submission is that article 6(1) of the convention, both on the face of it and technically, endorses the right to life of the unborn child—a right that is routinely violated in Australia. The history of this is that, apparently in the traveaux preparatoire evidence in formulating this article, it was not trying to rule clearly on the abortion question. But, nonetheless, the actual wording of the article and in particular the preamble—which cannot be on its own, of course, but which can be used to interpret an ambiguous article—which speaks of the rights of the child both before and after birth to protection and so forth, meant that when various

nations signed the convention the abortion question was one which came up in the domestic debates.

In Australia, Senator Evans, the then foreign minister, ran the line that the article just simply stands back from the question and that it is up to countries to decide for themselves. That was the thrust of his comments. Other countries did not see it like that and saw fit to protect their abortion regimes by taking reservations on article 6. Countries such as France, the United Kingdom and several others have reservations on article 6. On the other side, some countries, including Columbia I think and some others, made statements that article 6 would be interpreted as supporting the right to life of the unborn child and took reservations on the articles dealing with the provision of family planning education to make it clear that this did not extend to services relating to abortion.

So that was the state of play, as I understood it, up until recently. Then in relation to article 6(1), the Australian government—in reporting to the committee on the rights of the child in its very detailed way on each article—cited the laws against abortion in the several states and territories of Australia but it did not canvass at all the question of whether the various exemptions in law or the actual de facto practice violated the convention. The thrust of the coalition's submission is simply that, by mentioning the abortion laws in connection with article 6(1), there is an implied admission by the Australian government that article 6(1) applies to the child before birth as well as after birth; otherwise there would be no reason whatsoever to mention the laws against abortion in this context at all.

The committee on the rights of the child has made some rulings on this and, certainly in the concluding observations on the Russian Federation's report, it was concerned about the resort to abortion as a method of family planning and the very high number of abortions in the Russian Federation. We think in the broader sense that the UN Convention on the Rights of the Child incorporates two kinds of rights for children: one of which could be called autonomy rights and the other could be called protection rights. The right to life clearly falls into the area of protection rights. The right to life, of course, is the fundamental one. If your life is extinguished, you cannot enjoy freedom of expression or having a family or any other right at all that the convention might purport to give. Effectively, the present situation in Australia is that some 77,000 abortions annually are conducted with Medicare funding and possibly some 20,000 or 30,000 in addition to that.

In particular, we draw attention to the increased resort to abortion for foetal disability. According to the report released in March 1997 on congenital malformations, the abortions for foetal disability jumped from 421 in 1991 to 718 in 1994. This is largely as a result of blood serum screening programs that are being endorsed by health departments in every state and territory and result in near universal screening of pregnancies. Women are referred very quickly after getting a risk factor result back from the blood serum test of down syndrome or spina bifida and have an amniocentesis. There is then pressure to abort within a week or two so as to beat the 20-week deadline that

doctors do not like violating, although they do in other circumstances. This clearly seems to contradict the non-discrimination provisions in the convention—article 2 and article 23(1), which says that the child—no distinction between born or unborn—has the right to a full and decent life. That is an article dealing specifically with a disabled child.

Obviously, the result of that is if we were to take seriously this obligation—and I would not put it forward primarily on the basis of the UN convention but on the inherent human rights of the unborn child—the Commonwealth government should immediately cease funding abortions through Medicare and should certainly cease funding the discriminatory pre-natal screening programs.

CHAIRMAN—Let us move to the Australian Family Association.

Mr Egan—Would it be possible to take questions on that? I think it would be easier to separate the two submissions then.

Mr BARTLETT—Your second recommendation was that no children's commissioner or similar body or position be created by the Commonwealth. How do you respond to the suggestion by Dr Goodier from the Australian Association of Paediatric Teaching Centres?

CHAIRMAN—That is the family association

Mr BARTLETT—Yes.

CHAIRMAN—I thought we were only dealing with the Coalition for the Defence of Human Life.

Mr BARTLETT—We are doing the second one.

CHAIRMAN—Yes.

Mr BARTLETT—I have jumped the gun.

CHAIRMAN—Do we have any questions on abortion?

Mr McCLELLAND—In so far as you say article 6 of the convention is an anti-abortion clause, are you in favour of retaining the convention or do you think Australia should rescind or renounce the treaty?

Mr Egan—I think the rights to life are contained in the earlier declaration on the rights of the child and in the 1948 general declaration of human rights. So the convention is merely another expression of a right already recognised in international law. On that basis, I think there are other reasons, aside from the issues raised by article 6(1), to

denounce the convention. They are not reasons that engage the particular interests of the coalition, which I am speaking for at the moment.

So, therefore, I guess what we want to do is point to the inconsistency in Australia's behaviour on this matter rather than to take a position formally for or against the retention of the convention. We are simply pointing out the massive hypocrisy involved in ratifying a convention which purports to protect children when we are slaughtering close to 100,000 of them annually. One in four Australian children do not get to run in the race. So everything else we are doing for the three out of four that we let into the race really is of a secondary nature in the light of that fact.

Mr TRUSS—You have mounted a pretty powerful argument that the convention is useless. If article 6 does outlaw abortion—and that is very much an arguable position—it has not been very successful.

Mr Egan—I certainly think that is the case. I would not, having been engaged in the abortion debate for the last 10 or 15 years, have expected the pro-life side to win it by citing article 6(1) of the UN convention. That kind of fundamental decision about the kind of nation we want to be is going to have to be made by Australians and made with conviction. I believe we will eventually come to the point of seeing that all human beings ought to be accepted as part of the human family from fertilisation onwards just as the United States eventually came to see that black people should be and so forth. That kind of paradigmatic change will not come because of an arguable interpretation of the UN convention.

Mr TRUSS—Why do you mention only article 6(1) and not article 6(2)?

Mr Egan—I will have to refresh my mind on article 6(2). The inherent right to life goes to the question of state approved directed tax on life. That is the area in which abortion law operates. Article 6(2), as I read it, is to do with the maximum extent possible, which indicates resources. So you are here talking about nourishment programs for children and so on. The unborn child, in that area, would come in pre-natal programs of care for the mother and child and so forth. There is no question of the maximum extent possible when you are talking about the inherent right to life. If it is inherent you do not just do it when it is possible. So it is not a question of creating the conditions for survival and wellbeing and so on. Article 6(1) is about whether you are allowed by the state to directly take life or not.

Mr TRUSS—But 6(2) says you should allow the survival and development of a child.

Mr Egan—Yes, it is a further development of it. I am quite happy to cite it in our favour. But I think the phrase 'the maximum extent possible' indicates that you are not talking about a black and white thing, you are talking about resources and ability to do so.

In some African countries you cannot ensure the survival of every child so this commits them to trying their best no doubt. Even here we cannot ensure the survival of every premature child born, but we should try our best.

Mr Barich—I am a member of the coalition, so maybe I can add a bit of information. When the convention first came out, Attorney-General's was making it available. They had a heading against that article which read 'Right to life'. I rang Richard or one of the other people in the coalition and said, 'We won. We finally got the right to life principle enshrined in UN legislation.' So I rang up Attorney-General's and they said, 'No, calm down, sir. It is not the right to life, it is the right to live. You have to be born first and then we will protect you.' Ronald Wilson, who was a former justice of the High Court, had a meeting and I asked him the same question. He was amazed that this double interpretation could be applied to it. So, obviously, there are some people in the UN who see that article as only applying to children after you are born, after you are been allowed to live by your mother or your father or whatever. Maybe the committee should turn its mind to that.

Mr TONY SMITH—It is interesting that the word 'life' is used but not the word 'live' in regard to article 6(2), which is the duty provision on the state. Article 6(1) is the philosophical position. Article 6(2) is the duty position. It is interesting that the word 'live' is not put there as opposed to 'life'.

CHAIRMAN—Are there any more questions for the coalition? Did you have one Gary?

Mr HARDGRAVE—I will withdraw my question.

CHAIRMAN—Let us move on to the Australian Family Association.

Mr Barich—Our involvement with this convention goes back to the start. We helped organise a large meeting here in Perth where 400 people turned up, which, in proportion, would be a meeting of 4,000 elsewhere, say, in Sydney or Melbourne. So it was an enormous meeting that we had. I think 398 were opposed to it and two were in favour of it. Then we waged a campaign. We then had a Labor government. We were given undertakings by Senator Tate, which your secretary and I cannot find yet, but I will find it before you people report, that there would be reservations taken out by Australia on articles 12 to 16. That did not happen.

So the campaign moved to the opposition. We have correspondence from Mr Peacock, the shadow Attorney-General at the time, and he told us that, in government, they would do something to fix that up. We have since written to Mr Williams and he has written to us and said, 'Don't worry. Go back to sleep. This convention does not really apply much to Australia. It is more aimed at the less developed countries, therefore, there is really no need to exert ourselves into getting reservations on those four clauses that we

consider bring friction between parents and children.'

Then we gave evidence to the Human Rights and Equal Opportunity Commission and we found that the commissioner was not telling the entire truth. He was boasting that the Vatican ratified it and was one of the first to sign and ratify it. He forgot to tell his small audience that the Vatican had put reservations in on exactly the same clauses as us. My colleague will tell you in a minute what they have done to the Vatican. The UN has since been back to the Vatican telling them to stop being silly and to withdraw the reservations. Commissioner Sidoti very cleverly did not tell the audience that the US had not ratified it. Very strong opinions from America—in fact, one of the American professors from Harvard, whose paper we put in our submission, is giving a talk here later this month—say that America will never ratify it. So you can keep boasting about the 145 countries that have ratified it, but the largest democracy in the world does not feel the need to have the UN tell it how to run its business whereas Australia seems to want to do it.

I attended the World Conference of Families in Prague last March where Professor Hafen spoke. There we were clearly told that there is a move afoot in the UN to diminish the importance of the family UN documents and that the Charter of Human Rights, which talks about the family being the fundamental unit of society, will be altered. So you can see our concern about all these UN pushes.

The second thing that has excited our interest is the 45 impertinent questions that these people asked. Everyone has them now. Canada has been treated even more shabbily than Australia. Some of the questions that they asked Canada were more impertinent than ours. I found most of those 45 questions very impertinent of a sovereign government.

The third point I object very strongly to is the previous government funding the Defence of Children International group to appear to represent non-government organisations in this country. I objected to a number of things in their report and was given very short shrift. Here is the first report these people put in. They are dumping on Australia with great relish and telling the UN that, astonishing though it seems, there are no government departments that have the word 'child' or 'children' in their title. You heard evidence from one group this morning from Western Australia. Our department is called family and children's services. I am a member of the Family and Children's Services Advisory Council. In any case, what does a name matter? Australian departments of welfare have been looking after children since before federation. How dare these people tell the UN porkies like that. Nothing has changed. They are still telling porkies.

Their latest report was sent to me the other day. Sandra Prunella Mason—this woman is visiting here next month with her Russian friend—told the UN that it was not part of official curriculum to teach toleration in our schools though some schools and individual teachers cover these issues. That is a porky of the first order. In Catholic schools toleration is pushed to the extent that some parents resent it. I am a member of the

curriculum council in Perth. We have just finished those documents. Toleration is one of our top principles. How dare these people go to the UN and dump on Australia. They were given $12,000 by the previous government to go and dump on Australia.

My fourth point is that we do not really see, what I have been hearing here all day, that it is an argument between the rights of the child and the rights of the parents. It is the rights of the parents to be good, loving, nurturing parents. That is why we object to 12 to 16. We think that that is intruding in a very sensitive area which we accept has to be done in the minority of cases that the doctor spoke of—that is, in the three, four or five per cent where there is child abuse. We do not want the UN, we do not the federal child commissioner or the state child commissioner to be interfering in the 80 or 90 per cent of cases where it is working.

All you are going to get is a reaction. You are going to have more parents saying what a lot of American blacks and others in other countries have said and that is, 'Stick it. You look after the children—the government.' We do not have enough social workers to go around. Our job is to make sure the families do the job that nature has designated. This convention is not doing that.

As my colleague will tell you in a minute, the difference is that up to declaration there was a philosophy of protecting the child. That philosophy has changed and now it has become the autonomy of the child. Another professor who gave a paper in Prague said, 'That was not quite correct because they were leaving the parents on their own. What you needed is a middle ground where the parents were supported to do their job.' The protection model was slightly wrong. You should not jump over an autonomy model, you should go to the middle and provide support for the parents and the families so that they can do their job properly and save us a lot of money, a lot of juvenile delinquency and a lot of burnt schools. Nine schools have been burnt in this state in the last two or three weeks. What is causing that? It is all this nonsense that kids can do what they like and no-one can touch them. If the police try to get them you get what we had this morning—a witch hunt about laws that are draconian and so on.

I implore the committee to look very seriously at this matter. For all those reasons, we reluctantly propose that Australia denounce the convention and maybe begin the process again. We wanted little initially. We just wanted the four reservations. We were badly treated by the government of the day and not so well treated by the opposition which made promises that it obviously knew it could not keep so now we say the only way to go is denounce and start again.

CHAIRMAN—Your revised recommendation one deals with denunciation. You say that it undermines the natural rights, prerogatives and responsibilities of parents to raise their own children without undue interference. That is something that has been discussed by many people today, including yourself. The second recommendation says that it involves the United Nations unnecessarily in purely domestic matters within Australia

that are properly a matter for national sovereignty and not for international relations. I come back to this legislation at the federal level. That will overcome that very strong reservation you have.

Mr Egan—Will it?

CHAIRMAN—You say no, but why?

Mr Egan—The anti-Teoh legislation deals with one specific doctrine, the legitimate expectation doctrine, which is part of common law. The High Court used that in a particular application to Mr Teoh and his children. It is clear in clause 7 of the Administrative Decisions (Effect of International Instruments) Bill that it has no effect on any other use that can be made of international instruments under Australian law. It is still available for interpreting ambiguous statutes. It is still available for the development of common law by the High Court and other courts. The concerns about the UN conventions predate the Teoh case. I do not think that the concerns depend in any way solely upon the legitimate expectation doctrine.

Mr McCLELLAND—But aren't your concerns applicable even if Australia had not ratified the convention? I mean, there is a long history of courts looking at international conventions for the purposes of applying the common law, irrespective of whether Australia has ratified a particular treaty or not.

Mr Egan—That is one of the difficulties. I notice that in the foreign affairs submission they claim that the number of countries that have signed the convention now makes it part of customary international law. So, even if Australia denounces it, you are quite correct. It could still be drawn on by the High Court and other courts as a source for international law.

Let us say this: we have never maintained from the first public debates about this until today that the convention itself, as it were, is a black letter law that some court or lawyer is going to hang on to. We have never said that. Other groups may have, but the Family Association has not. What it does is give added legitimacy to a particular view of child's rights and child-parent relationships. It gives added legitimacy. That is all we are saying. It is a particular form of added legitimacy because it is a statement Australia makes in the international forum. We commit ourselves to being accountable to a United Nations committee. The people from Burkina Faso, the Lebanon, the Russian Federation and so on tell them how we are going with it all.

In Professor Hafen's paper, which I understand the committee has been supplied with, probably from numerous sources, and I think you had evidence from him, he puts forward the thesis and demonstrates it in his paper that it was a United States child rights activist who, failing to get their agenda up in US courts and in the US forum, did an end run to the United Nations and who was heavily involved in the drafting of the convention.

His analysis of the distinction between the autonomy rights or the mini civil rights charter, if you call it that, and the protection rights is one that we would wholeheartedly agree with. It is with those rights that we have difficulty.

Other people have been asked for particular evidence. Our argument is not based on particular direct links from the ratification of the convention to some child exercising a particular right. Every time a child's rights case comes up, the convention is one of the things that is in the background and that is adding added legitimacy to the youth advocacy people, to the child's rights movement, to the Law Reform Commission reports that have come out and to the Human Rights and Equal Opportunity Commission reports. All of these cite the convention as endorsing and strengthening their case for a model based on the autonomy of the child. By stepping back from the convention, by denouncing that, the Australian government is making a very clear statement on that principle.

Mr McCLELLAND—In relation to clauses 12 to 16, would you still have the same view that Australia should denounce the treaty?

Mr Egan—What we would say is that, in relation to the kinds of declarations the UN has had in the past, we have no difficulty with Australia signing declarations of general principles and so on. I think it changes when you have a committee like the committee on the rights of the child to which we have to report. I cite the concluding observations of the committee on Canada. In one part, it tells Canada off for being a federation. In section 25 of their concluding observations that say, in part, that, in this regard, and in the light of the provisions set out in articles 3 and 19, not the ones we have cited, of the convention, the committee recommends that the physical punishment of children in families be prohibited. Here we have women from Burkina Faso and Lebanon and a bloke from the Russian Federation and so on telling Canada that they must pass a law—

Mr McCLELLAND—They are recommending.

Mr Egan—You say that the committee recommends. Okay. Who are they to be making this recommendation? Why do we need this interference in our domestic relationships, an interference that is based on this particular view that has clearly gained dominance at the UN bureaucratic level?

CHAIRMAN—Yes, but I come to our legitimate expectation again. I do not agree with you that that international instruments legislation will not have the effect that I was suggesting earlier. I think it will.

What has been about—and still is until that becomes law—is what I said before: simply because New York and Geneva get a cough, Australia should get a treaty cold. That is not true.

Mr Barich—But it is happening. In this very town where you heard these people this morning all more or less supporting what we were saying, there was an examination of section 257 of the criminal code, which was a beautifully drafted provision for how far you can go with smacking children. Any objective parent would say, 'This is exactly right.' It is providing the discipline that is required, it says. That is teachers and parents saying that.

I did not even object to the teachers because I knew in the east the battle has been lost and, as you heard this morning, the Catholic schools here have probably given up anyway. I kept asking, 'Are you going to do something about parents?' I could not get an answer, but I finally got it. Yes, parents were going to be prosecuted if they smacked their children. So the Premier was informed and the Premier pulled it out. It is not going to happen. The public servant came and told us it was on the verge of being announced.

CHAIRMAN—That is WA criminal law.

Mr Barich—Yes, the criminal code, but the mentality came from here. We could smell it.

CHAIRMAN—Was that mentioned in the model criminal code?

Mr Barich—No.

CHAIRMAN—It is completely different.

Mr Barich—They went off and did it themselves. You could smell it at 100 metres. It is the philosophy here. One of them actually said to me that in Sweden they have figures to show that, if you stop smacking, you are going to have less child abuse. That is unbelievable. How do they know? Sure, we know the Swedes stopped smacking by law and at the same time this happened, but where is the causal link? We produce all sorts of so-called causal links, and everyone laughs at it and says, 'Prove it.' Even with smoking until recently you could not prove it.

Mr HARDGRAVE—But until we start to see somebody put on a piece of paper that they are going to bring about a change in legislation because of this UN convention—in other words, to spell it out in black and white—you can suspect that that is probably what it is but you cannot definitely prove it. You need actual evidence of it. It goes back to what we have said a couple of times—we need that evidence.

Mr Egan—The report of the Australian Law Reform Commission, *A matter of priority*, cites the convention throughout as endorsing their views. That is not unusual for government bodies. There are many other reports that do similar things.

CHAIRMAN—This is the May 1997 report?

Mr Egan—Yes, the most recent one.

CHAIRMAN—Remember, that was post Teoh legislation.

Mr Egan—But the Teoh legislation has no effect.

CHAIRMAN—With due respect, I think it will. I think we should wait and see, but it will.

Mr BARTLETT—Do you think it would be possible to set up an office or officer for children attached to each government whose charter includes a recognition of the rights of the parents, whose charter explicitly states that there will be no legislative response to the convention and whose charter is merely an advisory charter to the government with respect to children's issues and the rights of the parents and the family?

Mr Barich—I forgot to say my last point in my opening address. Yes, the government should seriously think of an office of the family or an office of the something, like we have here. We have a Family and Children's Advisory Council. But, unfortunately, again you have to look back in history. Why is it that this has not happened? This association has been going for 17 years. We started in 1980 and we did not manage to get an office of the family. There are lots of other offices—ethnic affairs, women's affairs, Aboriginal affairs, you name it. We did not get one. But now, everyone wants a children's one. Are we not to be regarded? What is the hold-up?

You are saying to us now, 'Let's put in someone who has a function like that.' We are willing to listen to it, but we have to remind you that there is a suspicion in our minds that the word 'family' is a dirty word, despite the fact that both major parties appear to be pro-family. But why aren't we getting this? As a former public servant, it is the first thing I would have done—I would have promised an office of the family. But Fraser did not promise it. Hawke did not promise it. Keating did not promise it. They are all good family men. There has to be a suspicion in our minds. Would you agree?

Mr BARTLETT—Yes, but it could be done, couldn't it?

Mr Barich—Of course it could be done. But why wasn't it done?

Mr HARDGRAVE—Priorities probably were set based on vulnerability. Maybe ethnic affairs matters—

Mr Barich—Families don't matter?

Mr HARDGRAVE—I am not saying that. Maybe ethnic affairs matters, Aboriginal affairs and women's affairs matters were seen as slightly more vulnerable and, arguably, families are now at a vulnerable stage.

Mr Barich—They have been vulnerable since the Family Law Act was introduced.

Mr TRUSS—Mr Smith had to leave. He asked that you be asked for examples in reports citing the UN Convention on the Rights of the Child as being influential in determination. I think you part answered it earlier in reference to one particular report. If you have other evidence on that score, I think he would appreciate it.

Mr Egan—On the office for children, I notice that the child lobby has switched from their previous recommendation for a children's commissioner within HREOC to a federal office for children. The only feel I could get for that is that they understand that HREOC is under siege by the present government in terms of funding and so on and asking for another commissioner there is an unlikely take, so they have gone for the office for children.

But our concern is wherever you set up something that is specifically for children and is not strictly limited to the proper role of the state in protecting children where the parental area fails. We have no objection to the general parents doctrine in the common law that the states should step in, the blood transfusion case that an earlier witness was asked about, child abuse and so on. All of that we have no difficulty with.

But the convention on the rights of the child, whether it is there or the ideology is coming from another source, if you tie that in any way to a children's commissioner or an office for children, you are giving an opening, a wedge, into ordinary families—families that are not failing in their duties and families that may well need support. If you are taking the child and looking at the child's interests and the child's rights and advocacy for the child, you are certainly undermining parental rights.

CHAIRMAN—If you take the paediatrician's approach of small and advisory in relation in children and if you were to make it small and advisory in relation to the family, would you have any objections?

Mr Egan—No, we would support such a thing—family impact statements. We would have some concerns about definitions of family and how that would function. That was the big 1994 debate. So we certainly have some reservations. If it was done in the right way, it could be useful and children's needs could certainly be taken care of there.

In relation to the paediatrician's proposal, in terms of coordinated government response on issues, the issues they raised seemed to all be health ones. We certainly would have no objection to an office within the health department looking at paediatric health needs. I could not see how that would not meet their requirements. It is only by bringing in other areas such as children's autonomy rights. The paediatricians were using the phrase 'children's rights', so which ones are we talking about? Even if you are just talking about an office with no investigative powers and so on, you are still creating a push.

We just think these ideologies are so far apart from one another—one says that families are the natural place for children and the first thing you do is support the family and it is only in the most desperate and hardest of cases that you intervene independently with the child. A different view is the view enshrined in article 5 of the convention that the child gets to exercise these rights in accord with their evolving capacity. That is where the rub comes. We assert that if you say that, somebody else is going to judge whether the child is capable of exercising the right or not. It will be an adult who is a stranger to the child as opposed to a mother or father who loves the child. That is the difference. It does not give parents the right to determine how the child exercises those rights; it undermines the fundamental natural right of parents.

Mr McCLELLAND—You say that they are too far apart. What about if you included, going to Mr Bartlett's proposition, establishing a looser information type structure? I do not think it is reservations of the Vatican; I think they have included clauses which they have described as interpretations or something where they have actually interpreted how they read clauses 12 to 16, giving the paramountcy to the family and so forth. What about if, in establishing such a committee, you included your expressions as to how clauses 12 to 16—the controversial clauses—were to be construed and you had provisions similar to the construction that the Vatican has placed on those clauses?

Mr Barich—Let us get this clear: you are calling for the establishment of a national children's commissioner?

Mr McCLELLAND—I am just floating a proposition to you.

Mr Barich—We oppose that.

Mr Egan—We are just getting clear what the proposition is. Would it be an office for children or a children's commissioner? They are very different ideas in a way.

Mr McCLELLAND—Either of those. Let us say that you take up the former witness's proposal, the looser structure, and you had—

Mr Egan—In terms of their proposal, again to reiterate, if it is restricted to the health thing, I cannot see any problem at all from the family point of view. You are saying that you want to look after children's health or parents want to look after children's health.

Mr McCLELLAND—Yes, but I went a step further than the—

Mr Egan—If you want to go a step further and say, 'There should be a body within the federal government that looks at the general interests of children,' we say that is complete nonsense. That is what families are doing. They are doing it every day. They

do not need a government department to be looking over their shoulders and seeing how the bulk of children are going. In relation to specific areas, yes—education needs to be looked at, health needs to be looked at and so on. But how do you bring all that together in an office that takes the child, considered in itself, as the interest? That is the proposition we have trouble with. The child—

Mr McCLELLAND—That is your proposition, but I will put one that I would like you to address: couldn't you include, in establishing such an office for children, your statement as to the paramountcy of the—

Mr Egan—No. What it should be is an office for the family that has as one of its terms of reference the issue of looking after the needs of children. Once you say, 'An office for the child,' you are taking the child conceptually out of the family. Even if you try to cover that over by putting all the reservations in and the definitions in and so on, you have three or four bureaucrats sitting in Canberra thinking, 'The child, the child the child.' They are not thinking, 'The child within the family, the child within the family.'

CHAIRMAN—What you are also saying, am I right, is that an office for the status of the family within the Prime Minister's department, where we have the Office for the Status of Women at the moment, would be the appropriate thing and for there to be a family impact statement?

Mr Egan—We would certainly support both of those, with some reservations because of the definitional questions.

Mr Barich—Can I just finish that one off. You have to remember that the definition of 'children' is persons up to 18 years of age; we are not talking about 12-year-olds. You people just took the youth allowance or the unemployment benefits off them. I supported that, because I thought that was a good move towards making the family responsible. But then you have to give the family some resources to do it. You cannot just say, 'Right, you look after the kid,' and give him a $70 a week allowance like the government used to. So, if you are going to be making the family responsible for them up to the age of 18, then they have to be given support. This office of the family perhaps could argue for that, say, 'This is how much it would cost,' and so on and say how you do it through tax deductions, like we used to have, or through a direct payment or whatever. But you must remember that you are talking about children up to the age of 18; that is the definition of 'child' in this convention. It is not up to the age of 12.

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

Mr Barich—Thank you.

[4.05 p.m.]

WALTON, Mr Peter

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

Mr Walton—As a private citizen.

CHAIRMAN—We have received a confidential submission. I want to ask a couple of questions. Firstly, are you happy that this be dealt with in open session, or do you want to go in camera? If we go in camera, those other than the committee will have to leave the room. We will understand—and I am sure others will understand—if you want to do that. If you do that, then we can still use the evidence that is given, but we have to seek your approval before we use it and attribute it.

Mr Walton—Unless we actually get into some very specific details about my daughter's case, I see no need to resort to that.

CHAIRMAN—I am at your discretion, but it might make it a little easier on you to open up the forum a little bit if we were to make it in camera.

Mr TRUSS—I think we should make it public if we possibly can.

CHAIRMAN—We cannot use the confidential material to ask questions.

Mr TRUSS—I am just making the point that it is always better if a parliamentary committee has hearings in public, unless there is a very good reason to go in camera.

Mr Walton—I am quite happy to ride with that. If something really troubles me, I will certainly signal that.

CHAIRMAN—I assume that you would like to make a short opening statement.

Mr Walton—I would like to make a few comments. Thank you very much for the privilege to meet with you today and talk to you about our situation and concerns. I perhaps will not be as coherent or as eloquent as I might otherwise have been at another time. The grief and dislocation caused by our daughter's death is still too near. This is not going to be an academic or intellectual exercise for me. It is very real, and you will appreciate that from the correspondence that you have read. I want to say, too, that I do not believe ours is an isolated case with respect to the impact of the youth homeless allowance. I am not necessarily talking about it ending in death, but certainly there is an impact on young people and, more importantly, the families.

I have left before you a list of the relevant articles, having read through the charter very quickly, that I thought might actually have a bearing on our particular case, and I leave that with you. I am not going to talk to you in any great detail. You will make the connections yourselves, no doubt. What is interesting, though, is it seems to me that, when I first learned of this committee, I thought, 'You beaut. I'll be able to talk about the rights of the family.' Yet when I read through the convention, most of those articles in some way make reference to the rights of the family. So there is something very peculiar happening in the translation and application of this charter.

Although I came in on the tail end of the previous group, many of the things that they were saying struck a chord for me. There is something about this charter and the way it is being applied and interpreted that actually takes away the proper responsibility and authority of the family. In fact, it is almost as if children are encouraged to rebel and test the limits by using the implied powers of this particular charter.

The love, care and responsibility that should rest with parents should only be abandoned as a last resort, yet that gets swept aside very quickly. If families become vulnerable, society is vulnerable, kids are vulnerable. So, whilst this thing sets out to do the right thing, in fact it seems to be precipitating the very opposite. When our family needed support it was shunned by the system—I do not use that word lightly. It was treated as if it was dirty. It was disregarded, if not dealt with by contempt, by the officers who administer the program. Quite frankly, I cannot reconcile this with the spirit of the charter and what I would think all decent Australians would be about. Thank you for the opportunity to make those few comments.

CHAIRMAN—It is very difficult to get into the issues without being a bit specific. Let me ask you a general question first without getting into any of the detail. As a result of all this, did you get a response at ministerial level after you left my office last week? Has anything substantive happened since then?

Mr Walton—I had a very good open meeting with Senator Newman, and also with Minister Moylan, following that. I also spent a bit of time with Minister Warwick Smith. On the day I had a good hearing, and I was very satisfied with the events on the day. Nothing has happened yet following those meetings, so I await—

CHAIRMAN—As far as Senator Newman is concerned, were assurances given—as much as they can be given—that something as serious as this and with the tragedy that this entailed is not going to happen again? Is she taking steps to make sure that it does not happen again?

Mr Walton—I came away reassured about the humanity and genuineness of all the ministers. I remain very worried about how that gets translated into practice. That is not to do with the ministers themselves, but with the whole system—the machinery, the administrative side of government. Having been on the receiving end, a victim of the

administrative side of government, I must remain very sceptical. The head of Social Security did undertake to get back to me, and he has done that. Actually, he signalled via his secretary that he was not able to get back to me personally because of other commitments, but he intends to do that shortly. I will be very interested to see what develops there. I will also be very keen to get a response to the detailed letter from my wife and me to the minister. Nothing has come back yet.

CHAIRMAN—But she is going to do that, is she?

Mr Walton—On the day I did not actually push her on that point. I am just assuming that the normal processes of bureaucracy will happen.

CHAIRMAN—Yes. On the youth homeless allowance and all that goes with that, I do not think that there is a lot of party politics—I hope there is none. There might be some different views, but I think all our offices have suffered the same sorts of questions, without the extreme tragedy that you have gone through. The same points have been made about the undue secrecy—if that is the right word—and the draconian privacy that seems to come into these things, and the rights of parents to know why these things are happening in the circumstances in which they find themselves. Is that a reasonable summation of the difficulties?

Mr Walton—Yes.

Mr McCLELLAND—I suppose in essence your submission is that, while you received a fair hearing, it is a shame the hearing did not occur earlier in the piece when you could put contrary points of view. As parents, you would deny procedural fairness in any shape or form, it seems.

Mr Walton—Yes. In the letter I talk about checks and balances which provide due process for the accused of inappropriate behaviour, home based interviews, defence or validation of accusations, et cetera, pure mechanisms at arms- length dealing. Again, when you read the charter, it is there. But the way the thing has been picked up and applied, it is all oriented in the interests of the children and not the family and the parents and the balance. That is our experience. I would have hoped that, just as the social worker who was looking after our daughter was a total advocate for the daughter, we could have had someone that we could have gone to that would have been an advocate for the family—the parents and the siblings—and for those two advocates to work it out, but it is loaded at the moment.

Mr McCLELLAND—But that procedural fairness should exist irrespective of whether—

CHAIRMAN—I suspect that we have all heard the comment that one of the few growth industries in our country, regrettably, is the social worker network, and that that social worker network does tend to have particular views which make it very difficult for

parents, in particular, to come to grips, plus the bureaucratic approaches, plus perhaps some of the legislation that is involved. Again, is that a fair comment?

Mr Walton—Yes, it is. It is really very worrying. The minister had the basic decency to acknowledge our loss on meeting, as did Tony Blunn. I had to point out to them that that was the first occasion, in dealing with officers of her department, on which anyone had acknowledged our loss. It is just incredible.

CHAIRMAN—Yes. You made that point in your letter.

Mr TRUSS—During this whole affair, did anyone at any stage quote to you the rights of the child convention as being a factor in any of the decisions that were being made?

Mr Walton—No.

Mr TRUSS—So you are just regarding it as a part of the underlying culture rather than a specific cause?

Mr Walton—I think it has set the scene and it gives a reference point that you do not necessarily have to acknowledge, but it is part of the framework of contemporary thinking.

Mr TRUSS—Let me follow that a step further then. Is the convention a reflection of contemporary thinking or has the convention led the public to a view that it might not otherwise have had? Has the convention led contemporary thinking?

Mr Walton—I would have thought in the Australian context that by and large the convention reflects, to a very large degree, what all decent people and parents and families would expect. But there is something in the way it is being applied that is really worrying.

Mr McCLELLAND—To come in on Mr Truss's point, there are some close personal friends of my wife in particular, moreso than me, who went through a similar situation, though not with a final tragedy, before 1990. There was this lack of procedural fairness of the parent's views. They were very decent people. The parent's views just were not considered by the department. That is one thing we have got to address. How far have these practices been occurring, irrespective of the existence of the convention?

Mr Walton—When I read the convention, there was nothing in there that was particularly new to me in terms of the way in which one would hope society would treat children and families. It is all very decent sort of stuff.

Mr TRUSS—On a different subject, but to follow on from your discussion with

the minister, did she talk to you about the changes the government is making in relation to testing people before they are granted the homeless allowance and, if so, were you satisfied with what she had to say or do you think it will not work?

Mr Walton—She did brief me on that. I had already acquainted myself with some recent studies done by the head of the Salvation Army—his name escapes me at the moment—and the pilot cases that are being done at the present time. These are the matters that I hope to be able to follow up with the department to give a particular point of view. Again, I am fairly sceptical about how these things end up being applied. I get layered through an organisation from Canberra, through to the upper echelons, through to the state, et cetera. They can get distorted and miss the point.

CHAIRMAN—I think that is the rationale behind the Prime Minister's personal decision to appoint that Salvation Army officer to carry out the first study and then to follow it up, to take the bureaucracy out of it and get some people at the practitioner level, outside the government bureaucracy, involved. The Salvos see a lot of this—the extreme situation which, unfortunately, you find yourself in.

Mr HARDGRAVE—Mr Chairman, by way of a question, I have a comment to Mr Walton. Would you like to see this committee take the matters that you have raised before us further—it was incredible composure because I am certain I could not achieve what you have achieved in the time you have spoken to us under the same circumstances—to the point of inviting the Department of Social Security to give us an insight as to whether or not the implied pervasive logic of the UN Convention on the Rights of the Child is behind comments from social workers that—as you said—you have had no right to know what was happening in the case of your daughter? Would that be a preferred course of action?

Mr Walton—I think that would be very good to do that. It is a possibility that you might need to probe quite a bit because it might not necessarily immediately occur to them why they are behaving in a particular way. If it does, and it is clearly behind it, then that needs to be exposed for the fallacy that it is.

CHAIRMAN—It is up to the minister—she provides the officials really. But do we have your approval then to see whether we might call witnesses from the Department of Social Security to give some evidence in relation to the specific case of your daughter?

Mr Walton—I would. But what I would ask, if it is at all possible, is that I be present when that occurs. I would expect that would need to be in camera. It really would need to be treated confidentially.

Mr HARDGRAVE—Mr Chairman, for the record, the reason I brought that up is that today, again, we have been searching for tangible proof of the way this convention has actually impacted on domestic law and its application in Australia. Unfortunately, Mr

Walton may have provided us with some tangible proof.

CHAIRMAN—Let us put it this way, can we then have your approval to approach the department—in this case I suspect that the minister would want to be consulted as well—to call witnesses and, depending on what the attitude is, can we then consult you as to how that might best be done?

Mr Walton—Yes.

CHAIRMAN—I thank you for coming along today; I know it has been difficult. Nothing, of course, can replace a daughter who has been lost under the circumstances. But our thoughts are with you. Let us hope that, as a result of this tragedy, we can perhaps make sure that it does not happen again. That is the main thing.

Mr Walton—I hope.

CHAIRMAN—No consolation to you, but that is it. Thank you very much.

Mr McCLELLAND—I move:

That this committee authorises publication of evidence given before it at public hearing this day.

Committee adjourned at 4.24 p.m.