

**Corrected**

**REPORT OF PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON LAW AND JUSTICE**

**Inquiry into a NSW Bill of Rights**

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**At Sydney on Monday, 5 June 2000**

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**The Committee met at 10 a.m.**

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**PRESENT**

The Hon. R. D. Dyer (Chairman)

The Hon. P. Breen  
The Hon. J. Hatzistergos  
The Hon. J. F. Ryan  
The Hon. Janelle Saffin

**ANN PATRICIA WANSBROUGH**, Minister of Religion ordained in the Uniting Church in Australia, 222 Pitt Street, Sydney, sworn:

**CHAIRMAN:** In what capacity are you appearing before the Committee?

**Reverend Dr WANSBROUGH:** I am a member of the staff of Uniting Care of New South Wales ACT which I should explain up until recently was called the Board for Social Responsibility, so that is the name that appears on our written submission, but we are now Uniting Care of New South Wales ACT.

**CHAIRMAN:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Reverend Dr WANSBROUGH:** I did.

**CHAIRMAN:** Are you conversant with the terms of reference for this inquiry?

**Reverend Dr WANSBROUGH:** I am.

**CHAIRMAN:** Would you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

**Reverend Dr WANSBROUGH:** Yes. I have worked for Uniting Care New South Wales ACT for 15 years in the area of policy analysis, research and theological reflection. I also have a doctorate in the area of methodology for this work taking account of the major church traditions and human rights.

**CHAIRMAN:** The Board for Social Responsibility, Uniting Church, as it was then known, has made a written submission to the Committee. Is it your wish that that submission be included as part of your sworn evidence?

**Reverend Dr WANSBROUGH:** Yes, please.

**CHAIRMAN:** I would like now to invite you to speak to the submission to the Committee.

**The Hon. P. BREEN:** Could I interrupt for a moment to confirm that that is the submission of 21 March 2000? It is signed by Reverend Harry Herbert.

**Reverend Dr WANSBROUGH:** That is right, yes. He signed it as Executive Director.

**CHAIRMAN:** We would like to acknowledge the thoroughness of the submission and express our gratitude for it. Could I now invite you to address the Committee briefly about the submission?

**Reverend Dr WANSBROUGH:** Thank you for the opportunity to address

the Committee on behalf of Uniting Care New South Wales ACT. We make our submission to this inquiry as a Christian agency concerned with human rights of some of the most disadvantaged members of our society. We also make the submission as a community service organisation that engages in policy analysis and advocacy, not as a legal agency. We would urge the Committee to give priority to the substantive issues of human rights before dealing with the technical issues and exactly how a bill of rights should work.

One of our concerns about weaknesses in much of the literature about a possible bill of rights for Australia - and it seems to me that this is a problem with the recent Queensland report - is that little attempt seems to be made to grapple with the meaning and substance of human rights for disadvantaged people. The focus seems to be on technical questions.

I would like to respectfully comment that human rights are not rights that governments grant. Human rights are those rights to which we are all entitled simply by virtue of being human. The international human rights instruments do not grant those rights, rather they recognise them as existing and as requiring respect from governments. Australia has ratified those international human rights instruments, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In doing so Australia has accepted the responsibility of ensuring that all people in Australia experience those rights. That is an undertaking that has been freely entered into by Australia, it has not been imposed on us.

It is fundamental to those documents that respect for human rights in some way requires that the substance of those rights be expressed in law. The covenants themselves require this and while, at the State level, we currently have protection against discrimination in certain areas of life on the basis of certain characteristics, State law does not seem to offer any absolute protection of any human rights, so that if those rights are violated for some reason other than discrimination, they are violated equally for all of us, then we do not have redress.

Current protection of civil and political rights is patchy and inadequate. There seems to be no current human rights framework for domestic policy formation at either State or Commonwealth level and this is particularly noticeable with regard to economic, social and cultural rights. We are not suggesting that all our rights are violated all the time. Obviously in many ways much of our social policy is highly consistent with human rights, but nevertheless there are many people who do not experience their full economic, social and cultural rights and that is our concern, the margins where we could in fact do better.

Under international law the Federal system of government in Australia has no excuse for failure to fulfil the obligations we have accepted as a nation with regard to human rights. Both State and Commonwealth governments need to operate in a way consistent with human rights.

The work of Uniting Care leaves us in no doubt that the current situation with

regard to human rights at both State and Commonwealth levels is inadequate and that Australians need their governments to develop effective mechanisms for taking human rights into account in formulating policy and developing legislation, so we suggest there are a number of issues for this Committee to consider.

The first issue is: What exactly are the human rights set out in those instruments that we have ratified? Those instruments are the codification of rights that we already have by virtue of being human and it seems to me when that is recognised it becomes a crucial foundation for the discussion.

The second issue is: To what extent do the people in New South Wales experience those rights and who does experience a violation of their rights and to what extent?

The third issue is: What do the international instruments that Australia has ratified require that governments do to ensure the realisation of human rights for all who live here in the light of the information that we have about violation of rights or inadequate enjoyment of rights?

It is important to recognise that the human rights instruments were designed to lay down minimum standards and in some ways we should do better. Uniting Care has some dealings with people whose civil rights are at stake - for example, through our prison chaplains - and there are some issues that would concern us with regard to civil rights in the light of their experience, but our major work is with people whose economic, social and cultural rights are ignored or violated from time to time; people who lack adequate food, clothing, housing; children for whom child protection does not work adequately or who find the education system does not cater for their needs; Aboriginal people who are perhaps not so much our clients but are certainly members of our church and speak to us very strongly about their needs as members of our church, from one Christian to another; people in rural areas; people with mental illness. These are all people with whom we work.

There is substantial evidence that some people in these and many other groups experience violation of their economic, social and cultural rights daily. This will continue as long as policy is formulated without explicit regard to those rights and as long as there is failure to review legislation policy on the basis of how it actually in practice, in terms of measurable outcomes, changes the experience of those people.

We suggest that these are the substantive issues that need to be kept at the forefront of this inquiry, the meaning of civil, political, economic, social and cultural rights in the everyday lives of the people in New South Wales, especially those who are disadvantaged in some way. Only when those matters are taken seriously is it appropriate to deal with the technical issues as to the most effective way of fulfilling those obligations and we would acknowledge that exactly how legislation should acknowledge those rights is the subject of legitimate debate and exactly what mechanisms for protecting those rights and for seeking remedies are all subject to legitimate debate.

It is also important, I believe, to recognise that human rights instruments themselves provide some forms of qualification about the other requirements that law makers must meet, so that there are some articles that talk about conditions under which human rights are not the only consideration.

Our submission has argued for a bill of rights based on both the covenant on civil and political rights and the covenant on economic, social and cultural rights, but we believe that, if we have a bill of rights based on those covenants, that alone will not be sufficient. Serious consideration would have to be given to other accompanying mechanisms such as a Scrutineer Bills Committee in Parliament, a human rights manual for members of Parliament and for public servants and for outside consultants so that thinking in terms of human rights becomes part of policy formation and review. We refer to benchmarks and indicators in our submission and I would point out at this point that there is actually a plethora of statistical information available, there are regular reports from departments and so on, a lot of quantitative and qualitative information, but it is rarely reported in terms of its relevance to human rights considerations apart from by specific bodies like the Human Rights Commission or, perhaps in some instances, the Anti-Discrimination Board. So in seeking benchmarks and indicators we are not seeking a whole stack of new research or work so much as a rethinking of how it is presented.

Our submission also suggests that an effective bill of rights will need legislation that requires courts to interpret legislation in a way consistent with that bill of rights. Perhaps more controversial is the issue of remedies for violation of rights. We have suggested in our submission that rights should be enforceable, but again there are, we think, legitimate areas of debate as to exactly how that should be done. It is clearly important that those remedies are accessible, affordable, effective and prompt.

The burden of our submission is not with remedies. We see the most important role of the bill of rights as being its role in policy formation, implementation of policy and review. When policy is well-formulated to take account of human rights then the need for remedy should be minimal.

In conclusion, section 5 of the Constitution of New South Wales gives Parliament the power to make laws for peace, welfare and good government of New South Wales and criteria for that are provided within the Constitution. Respect for human rights, those rights that we all have by virtue of being human, is surely fundamental to peace, welfare and good government.

**CHAIRMAN:** Dr Wansbrough, can I commence by asking you a theological or religious question as distinct from a legal question, if I may. There is a section of the Uniting Church submission at pages 5 and 6 headed "Theological Introduction", which as I understand it seeks to set out the theological basis for the stance the Uniting Church takes regarding human rights generally.

Reference is also made there to the documents of other churches such as the

Orthodox, Anglican and Catholic churches, which you say also describe the importance of human rights.

I have mentioned to you in informal conversation, prior to the hearing commencing, that some conservative evangelical Christians take an entirely different stance regarding human rights. I do not want to put you in a false position by asking you to justify their position - we will have an opportunity later this morning to do just that - however, can I ask you to indicate to this Committee the theological basis for your own church's stance regarding human rights and a bill of rights?

**Reverend Dr WANSBROUGH:** Yes, I find the position of conservative Christians somewhat strange, in the light of what seems to be quite widespread official teaching of the churches that supports human rights, and as our submission, I think, also says at some points, churches were involved in the formulation of the human rights instruments.

May I draw attention to a couple of documents. One is the most recent major statement from the National Council of Churches, which is made up of fourteen churches, which was adopted by the National Executive of the Council of Churches last year, and that means it was adopted by people who were the official representatives of the major churches, often the heads of those churches.

It is a statement called "The Covenant for Employment", and on page 20 it says "All the churches support the international human rights instruments". The front of that document lists fourteen member churches in the National Council, all of whom were prepared to be associated with this whole statement, including that particular sentence, which in fact is quite fundamental to the argument of the document.

The Uniting Church sees itself as operating within the broad tradition of the Christian church. That is, we do not see ourselves as taking an idiosyncratic view, but of trying to draw on the best of the Christian tradition throughout the Christian churches. So in preparing my doctorate in the last few years at Sydney University I actually examined official teaching of Orthodox, Anglican, Catholic and Uniting Churches, and of the international ecumenical tradition through the World Council of Churches.

It may be of some use to the Parliament to have a copy of that thesis, and I would like to offer that so that that work is accessible. It has had to withstand some academic rigour, and is now under debate. Well, I hope it has; one would like to think that a doctorate requires some academic vigour. But it is now also being discussed within the National Council of Churches and the New South Wales Ecumenical Council, so it will be tested out.

But really those documents are very clear. They all refer at some point or other to human rights. The Anglican Church has been hard to tie down to tradition, but the Lambeth Conference, the international conference of Bishops, has passed resolutions referring to the United National human rights instruments.

Pope John Paul II, in *Centesimus Annus*, the statement he put out on the centenary of *Rerum Novarum*, says the Vatican has long been involved in the human rights work of the United Nations, and of course the Vatican does that as a member of the United Nations.

The Orthodox churches do not often engage in political advocacy, but they have on occasion in their official statements expressed concern to the United Nations itself about human rights issues.

So there is a substantial basis for the Uniting Church then saying that we are not acting on our own in this, we are drawing on a substantial tradition, and in fact our own tradition of Methodism and Reformed Church also has elements that we believe are consistent with a human rights approach, although we do not have the formal teachings of say the Catholic Church over the same period.

But since our inauguration we have made a series of statement which refer to rights and to human rights, that have become an accepted basis for our own advocacy, and we trace that back to the Bible itself, as I believe do other churches. Firstly to the same basis as the United Nations itself used in formulating those instruments, which is the dignity of the human person; that is a matter of common agreement between the churches and secular society. We would trace that back to the fact that we believe human beings are made in God's image.

But we would also look at substantial teaching in the Bible itself, which protects for example people's rights to food. It makes strong statements from time to time about God's judgment on particular Kings who want to override the rights of individuals within the people of Israel.

If you go to various parts of the Prophets, they clearly express concern that there are standards that Kings and governments ought to meet, and within the New Testament there is the parable of Jesus calling the nations before him and dividing them into the sheep and the goats, on the basis of how they have treated the hungry, the thirsty, the naked, people who are sick, people who are imprisoned.

So while the concept of human rights as we now know it is slightly anachronistic when you apply it to the Bible, there is very substantial teaching which leans very clearly in that direction. I believe that that is what the major Christian churches, including the Uniting Church, have picked up and built on in many of their documents.

**CHAIRMAN:** Dr Wansbrough, the Committee is very grateful for your offer of a copy of your thesis for the benefit of the Parliamentary library, if you are willing to do that.

**Reverend Dr WANSBROUGH:** Can I provide that now?

**CHAIRMAN:** Yes, you certainly may, if you wish.

**Reverend Dr WANSBROUGH:** Obviously that is not part of the submission, but it would be relevant to documenting some of the things in our submission. The thesis is the first volume. There are appendices in the second volume, some of which explore the material relevant to the submission. For example, I looked at how the Toomelah Report had been followed up in policy formation ten years after that report was made.

I looked at the National Action Statement, and also in terms of benchmarks and indicators I looked at the Senate Inquiry and the National Citizenship Project, and what they were developing in terms of benchmarks and indicators. So there is substantial documentation there that underlies a lot of what is said in the submission.

**CHAIRMAN:** Dr Wansbrough, you did refer to one other document. Could you just for the record clarify the title of that document?

**Reverend Dr WANSBROUGH:** It is called "A Covenant for Employment" from the National Council of Churches in Australia. It is a position paper.

**CHAIRMAN:** Thank you very much. At page 6 of the submissions there is reference to the Ten Commandments as being not simply a convenient summary of middle class values. You say rather they were, in their original context, an expression of the view that all members of the community have rights and responsibilities, and these are not to be sacrificed at the whim of government or fellow citizens.

Some organisations and individuals who have made submissions to the Committee have made the point that a bill of rights ought to include responsibilities as well as rights, while other persons and organisations making submission have said that it is inappropriate to include responsibilities in a bill of rights, perhaps on the basis that virtually every law that is enacted imposes a responsibility, and often provides for a penalty in default of the responsibility being discharged.

Could I ask you what the attitude of the Uniting Church is to that, whether you think a bill of rights should deal simply with responsibilities?

**Reverend Dr WANSBROUGH:** In our submission we deal with that question.

**CHAIRMAN:** Sorry, could I clarify that - should it deal simply with rights?

**Reverend Dr WANSBROUGH:** I think it could do with some clarification. We would be very concerned about a set of responsibilities that was not directly related to human rights themselves. I have heard various suggestions about responsibilities that people ought to have, and that is what was in mind in suggesting there were dangers in having a set of responsibilities in a bill of rights.

On the other hand, we do say that it would be appropriate to have an acknowledgment that human rights are in fact both rights and obligations. In accepting that I have human rights, I have an obligation to equally respect the human rights of

everyone else. It is appropriate that that be included in a bill of rights, and there is an acknowledgment of that in the international covenants themselves.

So we would not want any other sort of responsibilities taken up in a bill of rights, but we would want that acknowledged, because it is intrinsic to what human rights are about.

**CHAIRMAN:** Some people have a concern that if there is focus on "my rights", so to speak, that that may lead to a breakdown of the concept of reciprocal responsibilities of society. I understand what you have just been saying, but can I ask you to comment on whether rights perhaps can arguably promote individualism ahead of a collective ethos?

**Reverend Dr WANSBROUGH:** From the viewpoint of the Uniting Church, that is not the way we read the international covenants, that in particular they are about responsibilities of governments towards citizens. So we all have a responsibility to ensure that those human rights work, but governments clearly have a specific responsibility within those covenants. But they are about things that therefore require some collective will.

It is true that an individual has a right to education, but surely that is not some unreasonable thing for someone to assert. An individual has a right to a fair trial, but surely that is not an unreasonable thing to assert, if you are accused of a crime.

I believe that the reason why the international covenants themselves recognise that there are concomitant responsibilities is to avoid that danger of people just interpreting them in a purely individualistic, selfish fashion.

**CHAIRMAN:** If I could perhaps now turn to legal aspects rather than theological ones, at page 3 of the submission there are some dot point items being suggested mechanisms for making a bill of rights effective. One of the items in that list is, "providing adequate budgets for the program areas that fulfil the government's responsibility for human rights". Also at page 7 of the submission there is reference to the Toomelah report. You make the point that many of the problems it documented are still at least partly unresolved. Could I ask you whether possibly the point you are making there in both places arguably goes beyond the scope of bill of rights and infringes on the responsibility of the executive government of the day to determine budget priorities? Could I ask for your response regarding that?

**Reverend Dr WANSBROUGH:** Yes. It was not our intention to confuse those two things. We did recognise that they are separate. What we are saying is that a bill of rights on its own is no panacea, that it also requires other mechanisms within the policy processes and within the decision-making processes and clearly our economic, social and cultural rights depend on government decisions about budget from year to year. I apologise if that was worded in a confusing way but what we were actually saying was you have a bill of rights and you must also have other mechanisms to make that real in the lives of people.

**CHAIRMAN:** Your submission makes reference to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Some people when considering a bill of rights in any particular jurisdiction might focus on what might be termed core rights flowing from the covenant on civil and political rights. Is it part of your submission that ideally a bill of rights here in New South Wales would be based also on the International Covenant on Economic, Social and Cultural Rights?

**Reverend Dr WANSBROUGH:** Yes, that is our submission, that it be based on both. The human rights in those two covenants are described as inalienable, indivisible and universal. That description that includes "indivisible" has been used by both Labor and Coalition parliamentarians, particularly Federal, and in fact our current human rights manual which was published under the current Coalition Government includes the phrase I have quoted somewhere in here and it is somewhat strange that all the emphasis in a number of bills of rights around the world, given that that is the generally accepted understanding of human rights, is to only put civil and political rights in a bill of rights. At the State level it would seem to me particularly important that economic, social and cultural rights are taken into account because that is a major area of State responsibility to actually deliver appropriate services in those areas and therefore to recognise this framework.

**CHAIRMAN:** At page 10 of the submission there is this statement appearing: "Judges have been more willing to uphold the actions of governments than the human rights of individuals". Could I ask you to elaborate on that statement?

**Reverend Dr WANSBROUGH:** That statement was made as a summary evaluation of what was being said in several books by legal academics examining case law. I think they are cited in the end notes, people like O'Neill and Handley, Davidson and Spiegel, Peter Bailey, some of the writing of Philip Alston and others, who have examined extensively case law and seem to me to come to the conclusion that I have expressed there. It is in my words but it is based on what seem to me to be very firm statements by those writers that our human rights are not adequately protected and that there are problems in the way courts look at human rights. There are some outstanding examples, of course, where the courts have taken account of human rights, but I believe that in those books they are looking at the weight of the overall case history rather than just the outstanding examples and, of course, you can produce some fairly outstanding examples where the courts have ignored human rights. That has come up sometimes in industrial law. They are also taking, I think, a long historic perspective and saying, well, things may be changing now, but when you take the long perspective there is a lot of precedent which does actually tend to favour the government and parliament and the powers they exercise.

I have an ancestor who was dragged before Samuel Marsden in the uprising at Castle Hill and the court records say that he was accused of I think sedition. No evidence was produced but he was sentenced to 500 lashes, and that was not unusual, I mean that was the experience of several people at that time. It appears that it is nevertheless, in perhaps slightly more civilised terms, the experience for a lot of people

since. I say "more civilised" in that we no longer give 500 lashes.

**CHAIRMAN:** You say the common law is case law based largely on precedent, which is certainly a true statement. However, if there were to be a bill of rights and if the items in the bill of rights are justiciable, as clearly they would be, would it not be true to say that judges would still decide individual cases upon their own facts? How satisfactory is that, in your view, to advancing human rights generally?

**Reverend Dr WANSBROUGH:** Well, people have a human right to a fair trial which I assume means that judges should judge the case on the basis of the facts. The point in the example I just gave was that no evidence was produced. That was not a fair trial, it would seem from the historic evidence.

**CHAIRMAN:** You are not alleging, though, that such an event would happen now in the courts over the road?

**Reverend Dr WANSBROUGH:** No, I am not. I do not have the expertise to do that. It has been suggested to me from my reading that there are certainly situations where prisoners and accused suggest that perhaps their human rights are not adequately taken into account. There are the issues about legal aid, the adequacy of representation, whether people have a right to be legally represented, things that most people on the street probably think are rights that they have but certainly the right to legal representation has not always been upheld by the court.

**The Hon. J. HATZISTERGOS:** The problem with putting these things into rights - I mean I notice, for example, the right to legal representation. The High Court decided in Dietrich's case that there was a right to legal representation of some kind in cases of serious criminal matters. That, however, has had significant impact in terms of resource that the State is required to direct towards that area and in effect it is a court imposed direction on the executive to provide resources in this area if a trial is to proceed and what some would say is that that is not an appropriate thing for the court to do, that resources are really matters for governments as opposed to courts to get themselves involved in. One is not arguing about the appropriateness or otherwise of providing legal representation but one is arguing about whether it is appropriate to involve the judiciary in that process.

**Reverend Dr WANSBROUGH:** I think this comes back to what I said in my opening statement about the way we hope a bill of rights would be used as in actually formulating policy including some benchmarks in the first place so that there is perhaps a different way of handling that sort of question. There have been some problems with court decisions on legal aid in that, if you have a limited legal aid budget and you have a court decide one person is entitled to the exact representation they want, all the resources get shifted to that person and away from other people, which creates a problem, so there needs to be a policy mechanism that says how do we work out what is reasonable.

**The Hon. J. HATZISTERGOS:** But who works that out?

**Reverend Dr WANSBROUGH:** Well, I would have thought that is the responsibility of Parliament, but the Parliament is more likely to do it if it acknowledges that human right and evaluates its policy against that, so that it says, well, how do we use available resources in a way consistent with the human rights of accused?

**The Hon. J. F. RYAN:** Could I, just for contrast, take you back and give you a sample of a submission we have that also comes from a Christian organisation that might have a different perspective to you and perhaps ask you to comment on it, because I suspect we will not be in a position to do so, but I thought it was an interesting thought in any event. They have said here:

"Human rights of themselves possess no intrinsic ethical or moral content whatsoever. On what reasonable grounds then should we agree to have an amoral set of rights replace a duty to others as the very basis and standard for law?"

Would you accept the proposition that the declaration of human rights is an amoral position?

**The Hon. P. BREEN:** I think, Chairman, it should be said that that submission comes from the New South Wales Council of Churches.

**The Hon. J. F. RYAN:** Yes, I said it was another Christian organisation.

**CHAIRMAN:** I am conscious that Dr Wansbrough does not want to be put in the position of justifying another body's document.

**The Hon. J. F. RYAN:** That is a view that I must say my experience shows is common in some of the more conservative Christian churches. One of the difficulties about a bill of rights is that it is necessarily a political instrument which does not necessarily have a relationship to the values that you have outlined ought to be included. How do we solve that dilemma, or is there a dilemma to solve?

**Reverend Dr WANSBROUGH:** We believe that it does have an ethical content, and in fact that the churches at the time these covenants were being formulated did play an active part in suggesting what some of that content should be. I am not sure how they say they do not have ethical content. I do not know what they mean by "ethical content" if human rights are not ethical.

I would have thought it is fairly obvious that they are, and that for example the Catholic - I cannot speak on behalf of the Catholic Church or any of the other churches I refer to; that is my interpretation of their teaching. It seems to me that the Catholic social teaching in the fifty or sixty years before these covenants came into being was actually arguing that ethics lead in this direction, that one of the outcomes of Christian understanding of ethics was that we needed to encourage society to in some way formulate a public morality, which is the human rights instruments.

If I might take an example from the Anglican Church, the Lambeth Conference in 1948, prior to the finalisation of the Universal Declaration of Human Rights, apparently spent substantial time discussing human rights, and H.V. Evatt invited Bishop Ernest Bergman to be on the Australian delegation to discuss where those rights were formulated.

**The Hon. JANELLE SAFFIN:** And Jessie Street.

**Reverend Dr WANSBROUGH:** Yes, I gather there was a Catholic person as well on that delegation. So I am not sure what morality is if it is not the sorts of basic standards that are within human rights. That is why, as I have already said, I think there is substantial material in the Bible, in its moral teachings, that also points in the direction of human rights.

Archbishop William Temple in his little book in 1942 on Christianity and social order, came up with six basic principles, which were about things like education and reasonable working conditions and things like that, which have been picked up, in slightly different wording, more substantial in length, but there is a clear consistency between what he was getting at as appropriate for England, and what was picked up in the United Nations documents.

**The Hon. J. F. RYAN:** Perhaps the area of difference is not that the universal statement of rights is a amoral document in the sense that it does not contain ethics. I think the concern might be that because it is a political construct, given how political constructs can be made and broken - for example, there is an entirely different political construct in Fiji this morning than there was some time ago - if you construct a morality by using politics, how can you be sure that the benchmarks are ones which will last and be indivisible, and be ones that can stand for all time and stand for all people?

**Reverend Dr WANSBROUGH:** Some of those questions are perhaps a matter more of political philosophy than Christianity. I think it should be said that there are conservative people in Australia, who may not necessarily call themselves Christians, who would also hold that view. It is not exclusively a Christian view.

I attended a meeting on a bill of rights during the debate back in the eighties, and Peter Bailey and I spoke in favour of a bill of rights, and other people spoke against, and it was quite overwhelming, the fear and the hatred that came from the audiences in this particular country town. I have never figured out exactly what was the source of the fear and the hatred, but it seems to me that some people then used their Christianity to justify those feelings and those attitudes.

Obviously all instruments are limited - human rights instruments only work when there is a certain level of good will to make them work. They have moral force at the international level, but we cannot be forced to obey them. We can be advised when our laws do not fit them, but no-one else can actually force us to do the right thing. So they only have moral force.

But of course among Christians there are perhaps two different views of the world. One has a total emphasis on the sinfulness of human kind, and therefore perhaps takes a fairly pessimistic view of the secular work and the secular government. The other view recognises the sinfulness of human kind but also recognises that we are people made in God's image and that we have some potential for good.

I would actually argue that the Biblical view is that we are a mixture of good and evil, and that we can actually choose to pursue good, and that that is what things like the human rights instruments assist us to do.

**The Hon. J. F. RYAN:** Perhaps if I might move along. One of the other comments made that I thought was useful to run by you, just for a separate comment - I do not think this is a view that is particularly unique to churches, it is certainly something I have heard said among the community about a bill of rights. It says here "The introduction of a rights based system will inevitably lead to a proliferation of rights as groups clamour for rights suitable for their particular interests. The United States experience supports this conclusion. Until that process is substantially complete, those with rights will have an advantage over those without".

Perhaps in a more legal context, the Queensland Parliament came up with something fairly similar to that where it says "The costs of enforcing a bill of rights, the cost to society of establishing machinery for dealing with challenges brought under a bill of rights, and the cost to society arising from decisions of the courts in relation to such challenges" and it went on to say that that was prohibitive, and worked against the usefulness of introducing a bill of rights.

Would you like to comment on that perspective?

**Reverend Dr WANSBROUGH:** Our submission is that a bill of rights be based on the two international covenants, so it not be simply individuals trying to get governments to grant the rights that they wish, but there is some basis beyond that for the content in the bill of rights.

With regard to the second part of the question about the costs, I have only looked very briefly at the Queensland submission, and my recollection is that they referred to the Canadian experience where a large number of the court cases, the majority of the court cases, related to civil rights, so they were in one particular area of the policy.

I would have thought, if they are human rights they are rights that we have. The best way to deal with that is to find policy mechanisms that ensure those rights, so that we do not need the cost of remedial action. The costs they were talking about appear to be for remedial action. If there are some adequate policy mechanisms, and appropriate benchmarks for assessing what is happening, then I would have thought the costs should be limited and would then be minimised.

There is a clear limit to what sort of rights people can claim in the courts, because they are based on the international covenant, so we are not talking about ambit claims for groups in society that want to create their own rights.

**The Hon. J. F. RYAN:** Just a final question from me: do you have any concerns that a bill of rights might erode the sovereignty of Parliament in that one of the things that might happen is that some sensitive political questions could become decided by judges rather than by elected politicians, and there might well be a point where Parliament and the instrument of democracy becomes less relevant, and in fact people just attach as many possible parts of their case to whatever the rights are within the bill of rights for that particular State.

**Reverend Dr WANSBROUGH:** The constitution gives Parliament the power to make laws for peace, welfare and good government. That does not seem to be some sort of absolutely sovereignty.

**The Hon. J. HATZISTERGOS:** The courts have held that it virtually does though.

**Reverend Dr WANSBROUGH:** From a Christian point of view we would believe that governments should consider themselves accountable both to the people and from our point of view to God, at least to something beyond Parliament itself in terms of ethics and concern for people. So we would say that that sovereignty, from a Christian perspective, is never absolute.

From the human rights covenants it seems that it is not absolute either. It recognises the authority of governments to make decisions, but within the context of human rights, which as I said at the beginning, are not granted by governments, but should be respected by governments. Our human rights we have by virtue of being human. The churches would expect governments, given that the Australian government has signed those covenants, ratified them, would expect that to be taken into account by Parliament.

If the national government has signed those instruments and has said it will be accountable for these things, I find it hard to imagine that any Parliament would like to suggest to its citizens that it would be something more important than their human rights.

**The Hon. JANELLE SAFFIN:** I would like to put a question which goes back to the human responsibilities, where Mr Chairman was asking questions about that. Are you aware of the Draft Declaration of Human Responsibilities?

**Reverend Dr WANSBROUGH:** I have heard of it, but I have not examined it.

**The Hon. JANELLE SAFFIN:** I will not ask the question then, there is no point.

**The Hon. P. BREEN:** On this question of the moral basis for human rights, there is a distinction I think between the Christian or religious perspective, which is that human beings are created in the image of God, and what some people call secular humanism and I think that may be the difference that the other submission refers to when it says that there is no moral basis for human rights. Do you think that that is possible?

**Reverend Dr WANSBROUGH:** I do not know how to account for the conservative view. The viewpoint that... Part of the way the churches have in the past dealt with the interface between Christian organisations and secular society is to talk about what are called middle axioms. In other words, we have our theological principles which have implications that follow from them which we then express in what are called middle axioms which are common ground between Christians and other people. This is the approach picked up by so many accounts of churches; it is the approach picked up in my thesis as part of what I advocate the churches should be doing together, to express things in terms of middle axioms.

Churches have always expressed some of their material on ethics and social justice to all people of good will, so we have always recognised that we need to phrase some of what we say in terms that are acceptable to other people and we also need to read what other people say or write in terms of middle axioms and find common ground with people in secular societies, so the churches, through their agencies, work for example with other parts of the community sector. Many of the churches work with the New South Wales Government in specific areas because we see there being common ground where particular members of Parliament or Cabinet Ministers or whoever may come at a decision about policy on different grounds to us, but we are on common ground with regard to what is in the best interests of particular groups in society, the care of children perhaps and various other things. We cooperate. So there is, in the tradition of Christian social ethics, a way of recognising common ground with other groups rather than dismissing it with a label like secular humanism.

**The Hon. P. BREEN:** Would the Uniting Church, though, agree with the proposition that human beings are to be valued for themselves irrespective of any supernatural issues?

**Reverend Dr WANSBROUGH:** Yes. I mean if you go to authors such as John Rawls or Jurgen Habermas, they talk about the need for public justifiability of government policy and they talk about how groups in society, such as religious groups but also other groups, will have their own comprehensive theories of the world and will come to conclusions about what is appropriate in public policy by their own paths, but in the end in society people have to be able to talk to one another and explain to one other on grounds that people of different beliefs and competence and experience can understand. I think that that is consistent with the approach that churches have taken with middle axioms and finding common ground with government over the years and with other organisations over the years.

**The Hon. P. BREEN:** I made the observation over the weekend that Hansie Cronje from South Africa was said to have taken his eyes off Jesus and I thought at the time that there are ways in which we talk to each other that cannot be contaminated, if you like, by our spiritual beliefs and in order to accommodate secularism there needs to be a common language and perhaps it is better to regard human rights not as moral issues. Do you agree with that?

**Reverend Dr WANSBROUGH:** Well, I would have thought that human rights are part of the common language and that is part of their value, that they are the common language about morality, so I would not dismiss them as morality just because they are the common language. It is interesting that when you talk to Christians in Asia where Christians are often a minority they actually think that a secular society is quite important, particularly if the alternative is, say, a Hindu society or a Muslim society. They have come to realise that if the human rights of all are to be respected then you do need a common language that is not tied to a particular religion, that civil society is extremely important and the secular state is extremely important in enabling people to have the right to freedom of religion. It seems to me sometimes Christians in Australia take a very narrow view of these questions when they do not consider those other ways in which Christians experience the world elsewhere.

**The Hon. P. BREEN:** You were speaking about different kinds of rights and I do not know whether you said that the right to a fair trial was equal to the right to education, but certainly you used the two rights in the same sentence and I wondered if you had a view about whether the right to a fair trial is the same as the right to education?

**Reverend Dr WANSBROUGH:** They are both human rights and they are both of fundamental importance at the time in your life when they are relevant. I have experienced my right to education. I would like to think that, if I was ever accused of a crime - which I hope will never happen - I will equally experience my right to a fair trial. I am not sure how you play one off against the other.

**The Hon. JANELLE SAFFIN:** They are indivisible.

**CHAIRMAN:** Well, it is not really a question of playing it off, is it? One is essentially a civil or political right and the other is an economic or social right. Would you agree?

**Reverend Dr WANSBROUGH:** Yes, and the International Covenant on Economic, Social and Cultural Rights recognises that the extent of people's enjoyment of their economic, social and cultural rights depends to some extent on the resources available in a particular nation, so how one experiences the right to education in one of the least developed nations is different from the way one should experience that right in Australia but in each case the government has a responsibility to provide the best education that it can for its citizens given their wealth and resources.

**The Hon. P. BREEN:** Do you think that the right to a fair trial has a greater

level of acceptance than, say, the right to education? If we had to distinguish between different rights and we only had room for ten, would you put the right to a fair trial above the right to education?

**Reverend Dr WANSBROUGH:** I do not think I would want to talk about it in quite that way. You may decide that a bill of rights should only include civil and political rights or you may include both civil and political rights and economic, social and cultural rights. There are some slight differences between the two covenants and the way they express the responsibility of government and it is appropriate that governments recognise those differences in the way they are expressed, so you could argue that only one set of rights goes in a bill of rights. It seems to us that that is not adequate as a way of protecting the human rights of citizens, particularly given the range of responsibilities of the New South Wales Government.

**The Hon. P. BREEN:** If you were to introduce the word "access" and instead of saying the right to education refer to the right of access to education, do you see that as one way of perhaps getting education in the limited number of rights that might be available in a bill of rights?

**Reverend Dr WANSBROUGH:** I am not sure how the word "access" changes the nature of the right.

**The Hon. P. BREEN:** No, I am not sure either, but it makes it more acceptable politically, for example.

**Reverend Dr WANSBROUGH:** Well, I am not sure that all people in New South Wales actually understand what the human rights instruments are about, but I suspect that if you approached almost anyone and said to them, "Do you believe that you should have the right to the best of level of education of which you are capable", most of them would say yes. Our concern as an agency is that education is fine for the majority of people, we have good education systems, but, for example, our agency, Burnside, which deals with children with various sorts of problems and families with problems, has to work with young people who no longer fit within the normal education system. They may have been expelled from their local high school or whatever and they actually need alternative forms of education if they are to experience their right and if they are ever to get their lives back together again. It is actually in the interests not only of their own human rights but also of society to provide them with the sort of education that they need in order to be able to function effectively in our society and that is one of the areas where the human right to education is at risk in New South Wales. We do not at this stage have adequate alternative education systems and we rely very heavily on the work of the community sector in that area.

**The Hon. J. F. RYAN:** Does that not exactly get to the point that I suppose I raised as a question earlier, that to some extent people will then say that what a bill of rights is about is getting specific minorities access to resources but the overwhelming view of the community is that they should not have it and some people might take the view that people who do not cooperate within the education system have in some sense

surrendered their right. If they had access to an open education system, we should not be transferring resources across to them, because they are available in the mainstream education system and every time you take something out of the mainstream education system there is less for the kids who cooperate. There is obviously a lot more emotion when you talk about children in the education system than there might be with others, but it becomes particularly apposite with prisoners where we politicians have been questioned about the resources spent upon a prisoner in prison rehabilitation and how that might stop you from doing other things in the community such as running hospitals or providing education for children or facilities for people with disabilities. That is, I think, in essence, the fear that some people have about a bill of rights, that the bill of rights is actually used to get rights for people who are marginal and who some people might argue are marginal because they have made the decision to be marginal.

**Reverend Dr WANSBROUGH:** I am sure if my colleagues from Burnside were here they would argue very strongly against that sort of judgmental attitude against children. They deal with children sometimes who have been abused physically, sometimes who have been abused sexually, children whose parents have lacked adequate parenting skills. There are all sorts of reasons why children have the sorts of problems that mean they cannot function well within the normal education system, and they are human beings who have right to fulfil their potential as human beings.

In our experience kids do not just choose to be irresponsible; they have some terrible experiences in life that make it very difficult for them to learn how to be responsible, and part of our programs are designed to help them learn responsibility. But depriving them of appropriate forms of education hardly seems to be a way of helping them learn responsibility.

With regard to prisoners, it seems to me there is a lot of very shortsighted discussion about prison policy in prison systems, and churches in documents like "Prison a Last Resort", and a later New South Wales document "Prison Not Yet a Last Resort" have argued that it is in the best interests of society to find ways of equipping prisoners, when they leave prison, to function usefully and effectively in society.

Again it is a matter of human rights, but it is also a matter of common sense for the rest of society. Often far too narrow a view is taken of that sort of thing in the public debate.

**The Hon. J. F. RYAN:** The only thing I would like to add to that is that sometimes people presume when answering questions which are asked of witnesses - I want to make it absolutely clear that I am playing the Devil's Advocate here, and I do not need to be quoted later as supporting not giving resources in prisons, or to kids in disadvantaged circumstances.

**Reverend Dr WANSBROUGH:** Yes, I did assume you were trying to seek clarification of a position.

**CHAIRMAN:** We will have to finish in a moment as the other witnesses have

arrived. However, can I just ask are there any further question?

**The Hon. J. HATZISTERGOS:** I was just interested, in reading your submissions, that you indicated that responsibilities, with one exception, should not be in the bill of rights because of a number of reasons which you have given, one of which is the plethora of legislation which deals with those responsibilities, another being that the source of those responsibilities cannot be clear in the same way they would be in the bill of rights which you advocate, based on the international instruments, and thirdly it would give the impression that government responsibility for human rights is conditional rather than absolute.

What I was wondering is, cannot the same objections to the inclusion of responsibilities in bills of rights be also raised against bills of rights themselves, in the sense that many of the human rights are protected in legislative form already. You acknowledge that rights are not isolated, that they have little meaning unless they evolve respect for one another's bills of rights, that they do have some conditions placed upon them, and also because the content of the rights can be as much a matter of personal and cultural opinion when you come to actually apply a particular right.

So why is it that you advocate that we should have this bill of rights dealing in the way you have suggested with rights themselves, leaving aside responsibilities, and why should not both be dealt with by way of legislation?

**Reverend Dr WANSBROUGH:** The rights in the international covenants have been recognised across cultural boundaries, across national boundaries. Over 140 countries have ratified each of those two instruments. So there is a wide spread range of acceptance of those international covenants. There was considerable debate in the Vienna Convention on Human Rights, but in the end it was reaffirmed that those rights are universal and indivisible.

So there is that substantial basis for saying that these are not merely a particular cultural perspective on human rights, even though they may arise partly out of particular cultures. I can only reiterate that it is not clear how we would arrive at that sort of international agreement on responsibilities, apart from those responsibilities that are recognised in the covenants as implicit in human rights. I mean, what other responsibilities are we talking about as perhaps appropriate?

**CHAIRMAN:** Mr Hatzistergos might have been suggesting to you, inferentially perhaps, that there are rights, for example for people with disabilities, that are subject to three New South Wales statutes and two Federal statutes, and there possibly are ways other than a bill of rights, identified as such, to give effect to various individual rights.

**Reverend Dr WANSBROUGH:** Yes, and we value those forms of anti-discrimination legislation and other legislation, but we still face the difficulty that it is almost impossible to find legislation that clearly states that all people in Australia, or all people in New South Wales, have the full range of rights in the international human rights covenants, particularly economic, social and cultural rights.

The only place where that covenant gets mentioned, for example in the Human Rights and Equal Opportunities Commission Act in the Commonwealth, is with regard to the rights of Aboriginal and Torres Strait Islander people. So that whole covenant is very inadequately incorporated into specific legislation.

**The Hon. J. HATZISTERGOS:** But isn't it the situation that people will always argue that? If you are dealing with legislation you can address, in various ways, specific case scenarios that might arise, and balance up human rights and form a policy view as to what the content of the protection that you are providing is going to be. Formulating in a broad sense, as it seems to me do the international conventions, certain human rights and divorcing them from the reality of the context in which they are going to be applied, seems to me to be a situation where not a lot of thought goes into it, and in the end you are abdicating responsibility for making those sorts of decisions to, in effect, the courts.

**Reverend Dr WANSBROUGH:** I think I have already dealt with that by saying that we would see a bill of rights as only one of the mechanisms that is needed, and that other mechanisms include things, like an effective Scrutiny of Bills Committee that would keep Parliament taking responsibility there for reviewing legislation to see that it actually conforms, so that is done before it ever gets to the courts.

**The Hon. J. HATZISTERGOS:** I have no problem with a Scrutineer Bills Committee, but you are also taking it a step further and saying that ultimately the responsibility -- If you lose for example the political process in terms of being able to lobby for your particular protections, you can then have a Scrutineer Bills Committee go to the legislation, you can then have a second go at the court system.

The difference is that the court system is not elected to be able to formulate those policy decisions in the same way that the legislators are. Some might argue that the legislators are still quite ineffective, notwithstanding the fact that they are elected, but they probably have a greater basis for making those policy decisions than the courts. How do you respond to that?

**Reverend Dr WANSBROUGH:** Australia actually, in ratifying these covenants, does have a responsibility to ensure that people have access to remedies when their rights are ignored or abused. That is the fact of the covenants that we ratified. What we are really looking at is what are the mechanisms for making that real, not whether or not we should do it.

**(The Witness withdrew)**

**(Short adjournment)**

**WAYNE FRANCIS MAGEE**, Minister of Religion and Public Affairs Director, New South Wales Council of Churches, Post Office Box 321, Beverly Hills, and

**ROSS RICHARD CLIFFORD**, Principal of Morling Theological College, 120 Herring Road, Eastwood, sworn:

**CHAIRMAN:** Reverend Magee, did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Reverend MAGEE:** Yes, I did.

**CHAIRMAN:** Are you conversant with the terms of reference for this inquiry?

**Reverend MAGEE:** Yes, I am.

**CHAIRMAN:** Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

**Reverend MAGEE:** Experience is basically secondhand experience from the legal representation that we had to help compile our submission and subsequent to that the compilation of the submission was up to me in my capacity as Public Affairs Director. My professional background is as a journalist, not a lawyer.

**CHAIRMAN:** The New South Wales Council of Churches has made a written submission to the Committee. Is it your wish that that submission be included as part of your sworn evidence?

**Reverend MAGEE:** Yes, it is.

**CHAIRMAN:** Reverend Clifford, in what capacity are you appearing before the Committee?

**Reverend CLIFFORD:** As a member of the executive of the New South Wales Council of Churches and past President of the New South Wales Council of Churches.

**CHAIRMAN:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Reverend CLIFFORD:** Yes.

**CHAIRMAN:** Are you conversant with the terms of reference for this inquiry?

**Reverend CLIFFORD:** Yes.

**CHAIRMAN:** Could you please briefly outline your qualifications and experience as are relevant to the terms of reference for this inquiry?

**Reverend CLIFFORD:** Apart from being the former President of the New South Wales Council of Churches and Principal of the Morling Theological College, I lecture in ethics, a number of ethics boards, and am a former lawyer, have done First Amendment study in the United States.

**CHAIRMAN:** As I mentioned, the New South Wales Council of Churches has made a written submission. Is it your wish that that be included as part of your sworn evidence?

**Reverend CLIFFORD:** Yes.

**CHAIRMAN:** I would invite you, in turn, to make a brief opening submission to the Committee, if you wish.

**Reverend MAGEE:** The New South Wales Council of Churches, in making its submission to this inquiry, has put forward a number of points on specific issues endeavouring to delineate between rights based and duty based law and individual responsibilities and obligations as distinct from rights. We have also, throughout the document and in covering correspondence, highlighted the fact that within the council's representation of seven constituent churches and some 40-plus delegates representing those denominations, as one can imagine, there are certain areas regarding the introduction of a New South Wales bill of rights which attract differing points of view among our members.

In keeping with the spirit of this inquiry our submission not only tries to address some specifics but, as one would expect, seeking a consensus among so many members, poses a number of questions which we understand from the terms of reference of the inquiry the Committee is also willing to receive.

In speaking to our submissions I must highlight the fact that there has been considerable input from legal professionals. I do not profess to be one; however, I will endeavour to elaborate on points in the submission as raised by the Committee to the best of my ability.

May I say at the outset that the New South Wales Council of Churches welcomes the inquiry, congratulates the Committee on its initiative and in particular the terms of reference for this inquiry. We praise the Government in addressing such an important and complex issue and appreciate the Government's openness in seeking such widespread input from the general community, charitable organisations and the Christian church. If one was to proffer a generalisation on the church's interest in human rights in these opening remarks I would certainly place on the record that we support the freedom of all people to grow to their full potential just as God has created them to do so and in that achievement to be able to walk in the liberty and dignity of Christ.

Our main concerns within a bill of rights would be in the areas of conflict

between existing legal structures for State and Federal law as opposed to international conventions which we, as a nation, are already signatory to. We also have concerns regarding the provision of adequate funds to administer proceedings resulting from the establishment of a bill of rights for New South Wales. We would also address laws that could be enacted for specific events, for example the Sydney 2000 Olympic Games, which could violate those basic qualified rights of all persons.

I thank you for this opportunity to appear before the Committee and I am willing to respond to questions. My colleague, Mr Clifford, will address the history and reactions in relation to groups similar to our own and he has some remarks.

**Reverend CLIFFORD:** I thought it might be useful to give my own perspective on why groups like the New South Wales Council of Churches, which would be seen as evangelical and conservative at times, would not respond favourably to the suggestion of a bill of rights. The few points I want to outline do not necessarily represent my own point of view but I think indicate why church groups like my own would have severe reservations.

I think the first point, and it has already been mentioned by Reverend Magee, the conservative evangelical certainly tend to come more from a duty base rather than a rights base. They see the biblical instruction more an area of denial and giving of love rather than statements of rights and you will find that normally evangelicals make that response to any suggestion of a bill of rights, that they are more interested in duties.

Secondly, I think groups like ours often see the rights movement as part of an international ideology that is humanistic and secular and they will suggest that the laws of this country, for example, are established on Christian common law principles via people like Blackstone and Greenleaf and will see that the human rights movement as such often has an allegiance to more humanistic and secular approaches to law and life and so they see that our own law is overturned by something which is not as Christian as what they perceive their law as being. I think that is a very major issue for a lot of Christian groups.

I think also, thirdly, there is a genuine concern over the bill of rights industry in America where its First Amendment with respect to Congress not passing a law respecting the establishment of religion or prohibiting the free exercise of one has turned America into a church state nightmare and actually it is an industry of church state issues that we do not have in this country and that actually comes basically from the First Amendment, so any question of a bill of rights that makes statements about the establishment of religion or prohibiting the exercise of one many fear will lead us into the American scene of the First Amendment industry.

Now of course, at the moment, whilst we might have similar provisions in our own Federal constitution, it has never reached the state of what has happened in America with the First Amendment and I guess most of you would be aware of the concerns that they would have that there is not tax sponsored education, prayer in schools, bussing, no allowance of Bible studies or whatever in an education system and, of course, certainly no scripture. All of those areas are seen as a result of the First

Amendment clauses.

**The Hon. P. BREEN:** Excuse me for interrupting, could you just say what the First Amendment is, for the record?

**Reverend CLIFFORD:** Well, do you want me to read it?

**The Hon. P. BREEN:** Just for the record so that we can refer to it.

**Reverend CLIFFORD:** I think I have the Constitution.

**The Hon. P. BREEN:** Well, perhaps I can short-circuit the problem and just ask you whether the First Amendment is about freedom of religion?

**Reverend CLIFFORD:** Yes, it is freedom of religion. I will put it this way: The First Amendment is with respect to Congress not passing a law respecting an establishment of religion or prohibiting the free exercise of one. That is the First Amendment. It also has other clauses about freedom of speech and basically that is where American law is in this industry of First Amendment material. Of course, it separates America from Australia and England and other places and, of course, I was just reading a report the other day that, although the American Supreme Court overruled it, there were numerous cases operating in lower courts about whether schools could now have a public holiday on Good Friday because Good Friday is a religious day and how could they have a public holiday for schools on a religious day. Although the Supreme Court overruled that and in the end allowed them to have a public holiday on Good Friday, the industry, of course, is just rife with cases to get to that stage and lawyers and schools acting and not acting, so in a large way I think this church state nightmare that takes place in America is founded in their First Amendment. Of course, in another Amendment it is all right to carry guns.

So there is a real fear I think amongst certainly churches that I would be part of in this State that any bill of rights will take us down that same path where certain groups will decide that it is not appropriate to have scripture in schools; it is not appropriate to have a chaplain in schools; it is not appropriate to have religious holidays; it is not appropriate to have government funding, and of course education is not divorced from State issues, and so I think that is one considerable area that any bill of rights would have to determine as to what extent Australia is going to be free from the First Amendment industry in America. Of course, they think that is wonderful, but I think most of us back here would think that that confusion that has created an industry, a legal industry, is a nightmare that our State does not want to envisage. So I think that is one of the major concerns.

I think another concern would be that many would feel that, say, the English move to a bill of rights is politically motivated rather than any particular ideal. Of course, England has been the most appealed nation to the European Commission, the Court of Human Rights, and as a consequence of their cultural change they have made political movements that way rather than out of any particular ideal. I think also many

in our churches would have a concern that, in the end, human dignity and human rights is not so much about a bill of rights but it is about the attitude of a nation, and I remember Tolstoy saying words to the effect that everyone is trying to change humanity but no one is trying to change hearts and I guess many churches would feel that human dignity and human worth will not come from a bill of rights but will come from changed hearts and the emphasis is not an appropriate one.

I would also say that many fear that if there is a bill of rights it will not be a bill of rights that is based on some sort of higher sense of the law or some sort of idealistic understanding, it will be based on pragmatism. I was given before I came here a statement by a Mr Williams, I believe, who had been here and had given evidence and I might just read a couple of statements that he made. Whilst agreeing with a lot of what he said, I think this would be a fear for many. For example, he says we should not be entrenching or protecting such things as a right to life where there is a very broad community debate over what that would mean or things like equality, which I think is just too broad. Well, I think the American Declaration of Independence says these truths would be self-evident: All men are created equal and women are endowed with certain unalienable rights, life, liberty and the pursuit of happiness. I cannot understand how you could even suggest having a bill of rights where you do not talk about right of life and right of equality simply because it is too hard to do so. Why bother? He also says we ought to look at things that have a greater resonance with the community. Well, five million New South Wales people can be wrong, and they have been wrong in the past. If we are going to have a bill of rights because it has community acceptance, and resonates with the majority view of the community, and so they are the matters that we make in our bill of rights, then that sort of pragmatic view of a bill of rights I do not think brings great dignity to the matter of worth and human dignity.

Certainly human rights must be more than what is pragmatic and what is a heart-felt community basic sense of aspirations. It is not done by a popular vote, it is done on a much higher principle. I think many would fear that a bill of rights would basically become a lower common denominator of community aspirations, rather than a bill of rights that actually does seek to represent some sort of higher understanding of a law upon which all law is judged.

So they would be the sorts of reasons I think that many in our churches would be concerned, from its rights base rather than duty based, particularly the American industry, the pragmatic approach that no doubt many fear would take place if a bill of rights was passed, rather than the higher ideal of life, liberty and the pursuit of happiness, etcetera., and the whole process of actually getting people or motivating people to change their aspirations.

Let me suggest that there are benefits to a bill of rights that I quickly mention, and I did mention to the Executive when our submission was being prepared. One benefit, of course, is the very obvious benefit of what is happening now. You might be aware that the churches and others are in great debate with SOCOG about what their freedoms are in this city during the Olympics. Let me tell you, no such debate took place in Atlanta.

I have got copies of letters here that were sent by groups like the American Centre for Law and Justice saying "We will be on the street corner handing out tracts and distribution and doing things, and you try to stop us under the First Amendment". Now of course, the way that SOCOG has handled the rights of minority groups and churches in this State, let me suggest, could not have happened if there had been a bill of rights.

The way they have closed off the city, the way they have determined where distribution points can take place, the way they are actually telling Chaplains in the Olympic Village about what material they can hand out and not hand out, whether they were going to be allowed to have Bibles or not have Bibles, let me suggest would never take place with a First Amendment Bill of Rights.

So that is one benefit. Another benefit of course is in the European Court. Just recently a colleague of mine by the name of Dr John Warwick Montgomery appeared for three servicemen who had been dismissed by the Greek government for proselytising in their service outfits etcetera, and he took the case to the European Court of Human Rights, and whilst that court has never said at this stage - I think it has not been strong enough to actually censor a national government - what it did do though is restore those men to their place in the National Services of Greece, and also gave them compensation for what had been taking place.

So here were men exercising what we would see as their right to freedom of expression, and they were dismissed by the Army or the Airforce equivalent in Greece, and the European court restored them with compensation, only because there was freedom of religious expression in that European Human Rights.

So I would think that they are some of the positive things that I would certainly be pointing out to our churches in a bill of rights if it did come in, but I guess against that they would weigh the industry, and they would think that when they weighed the two, then they are more fearful than positive.

Can I just conclude by saying I would think that the Council would want to be convinced about a number of things, if the Council's considerations were relevant. We would not want to enter a church/state debacle on First Amendment issues, as seen in the United States - a new industry. We would certainly want to see core values in a bill of rights express more than pragmatism and what five million New South Wales people believe to be right.

Perhaps we would even suggest that a list of duties be included as in the American Declaration of the Rights and Duties of Man. Of course that American Declaration of the Rights and Duties of Man has had a mixed reception in America, but it does show what is possible in including a rights of duty. I guess in the end we would want to be convinced that out of all of this, our world is a better place. Thank you.

**CHAIRMAN:** Thank you very much. In commencing the questioning period,

could I indicate that any question that might be addressed to either of you may be responded by either or both of you, other than the named person, if it is directed to a named person, as you may choose.

Can I commence by asking, regarding a statement in the Council of Church's submission that I find rather startling if I may say so, at 7.3 it is said "Human rights of themselves possess no intrinsic ethic or moral content whatsoever". Could I ask for an explanation of that statement, and before you respond to it, I ask you whether freedom of religion, the question we have just been discussing in the United States context, could be said to have no ethical or moral content whatever?

**Reverend CLIFFORD:** I am not responsible for that clause. I would assume that what is being said there is, as I have said, they do not in themselves have a moral position. They are like the pragmatism that I have just read. It does not mean that good might not come out of it, but they are not actually based on some higher principle, which I think is different from the United Nations Declaration of Human Rights, which was based very much - one of the founders of that was Rene Cassin, who said he based it on the Ten Commandments - but are like a lot of the modern human rights industries more about pragmatism, as I read here, what the five million New South Wales people think is right, than in any sense of what is a moral higher idealism.

**CHAIRMAN:** Speaking of moral higher idealism, Members of Parliament receive a lot of circulated material from all sorts of organisations. On Friday I received a publication from an organisation calling itself The Voice of the Martyrs. Now they complain, and rightly so in my view, that in certain countries around the world - the People's Republic of China would be one example, where house churches are suppressed - the Copts are said to be persecuted in Egypt by Islamic authorities, many other examples could be given. Am I not entitled to believe that freedom of religion is a higher ideal, that does indeed have a moral, ethical content?

**Reverend CLIFFORD:** That depends upon your view of human rights. Under a third generation right, perhaps not. Under a first and second generation right, perhaps so. Do I need to explain first, second, third generation human rights? First generation of human rights of course is civil liberties, second generation of human rights is economic liberties, third generation human rights is national liberties.

Of course that is the conflict of countries and others supporting their countries, like China or whatever, who would say that suppression is much better for the sake of the nation, so human rights is not an individual thing, it is a collective thing. We are coming from the first generation of human rights, and we talk more about our own religious individual freedoms. So you have got a battle here over human rights, but it is what you define human rights as being. Is it a state thing or is it an individual thing?

So that is what we are saying: human rights legislation and a bill of rights, if it is just going to be pragmatic and not make moral statements, as to whether it is a first, second, or third generation right, or how does it relate to first, second or third generation rights - I think you are not debating whether here something is moral or

amoral, you are debating a different view of human rights as between China and Australia.

**CHAIRMAN:** Do you really think that human rights are divisible? Am I not entitled to believe that human beings, wherever they might be in the world, of whatever political system, do have a right to express and uphold their own beliefs, religious or otherwise?

**Reverend CLIFFORD:** Yes, I would certainly support that, but what I am saying to you is that to suggest that another nation does not support that - they are not supporting it because of their own understanding of human rights. That is what we are saying, in the end it is not about a document, it is about what is your moral perspective on human rights, what is your ideology.

To draw a bill of rights without asking those major questions - who are we, what are we seeking to achieve, how does a bill of rights right the first, second and third generation rights, how does this operate, and is it a higher law or is it simply a pragmatic thing about what New South Wales thinks is right - is an amoral task unless it takes those moral sorts of considerations.

That sort of debate is going to involve New South Wales, I would suggest, in a fair length of time as to what is a moral base of human rights. The illustration you have given me is two people operating on a human rights base, but one coming from a first generation and another coming from the third generation understanding of rights.

**CHAIRMAN:** Could it not be that if there is a reference point within the Chinese political system, supposing they had, for sake of argument, ratified the international covenant on civil and individual rights --

**The Hon. JANELLE SAFFIN** They have, just recently.

**CHAIRMAN:** That being the case, clearly their ratification is more honoured in the breach than the observance. However, if a standard is there, even in the Chinese context, could it not be argued that a Christian group such as the one depicted on the cover of this publication, might well be assisted in their freedom to hold their own views?

**Reverend CLIFFORD:** I am not quite sure how that applies to us. I mean, we have that now.

**CHAIRMAN:** We do, that is true. However, I just take freedom of religion as an example of a human right, and you will recall if you go back a moment that I posed my question on the basis of a sentence in your own submission, saying that human rights of themselves possess no intrinsic ethical or moral content whatever.

**Reverend CLIFFORD:** But I am suggesting to you that you are talking about the consequences, and I am talking to you about the actual human rights document in

itself.

**CHAIRMAN:** Okay. The next thing I would put to you is the sentence on page 7 as follows, "The whole debate is surprising in the context of a long standing controversy as to whether human rights even exist". What do you have to say in support of that? Do you believe they do exist?

**Reverend MAGEE:** On that particular issue, just let me get my notes, if I may. We look at the situation that we already, as has just been stated, have certain rights within this State, within the legislation within the law within this State, and when we look at the aspect of different aspects of rights, we have freedom. We already have an experience in this State - laws. We have freedoms that we do not have to go to government to ask "Can I do this, can I go there, can I participate in certain activity which is lawful?".

Do we therefore have to go to government and have a document stating that we have to get government's permission to have a right to do what we already have? We are saying there is a situation that with the introduction of a Bill of this nature within our jurisdiction, within New South Wales, which we are looking at and addressing specifically, a lot of things that would be embodied within a bill of rights we indeed already have, and looking at it in that context, we are saying that really they are freedoms we have; they exist, we enjoy them, and we do not have to go and have governments endorse them. As it is, we enjoy them now. That is basically what we are saying.

**CHAIRMAN:** If I could come to something that the Reverend Clifford was saying in his opening remarks, he criticised what he described as the bill of rights industry in the United States. One of the most prominent writers on whether there ought or ought not to be a bill of rights is Father Frank Brennan, who is an Australian, and who has served in the United States, I think also as an Associate, as it happens, to a Justice of the Supreme Court of the United States.

He is a firm critic of an entrenched bill of rights, and he identifies the mischief or evil that you and Reverend Clifford do regarding how the bill of rights jurisprudence has developed in the United States. However, while he is a stern critic of an entrenched Bill of Constitutional Rights, he is, or appears to be - we intend to have him here as a witness - he appears to be a staunch supporter of a statutory bill of rights as opposed to a constitutionally entrenched bill of rights.

Would that make any difference to your attitude, if there were a statutory bill of rights that the Parliament itself could override as it chose?

**Reverend CLIFFORD:** Let me also indicate, as I said at the beginning, I was representing I think how our churches respond to such issues. I personally can see some benefit to a bill of rights even though I find myself caught up in this positive-negative sort of discussion on the industry that has happened in the States. I guess a statutory bill of rights would interest me, but if it means that, as a statutory bill of rights, it is basically a pragmatic thing and so therefore, to be achieved, the basic foundational

principles of human rights, the moral principles of human rights, are excluded then I would really think we have achieved not much at all.

**CHAIRMAN:** I think it is fair to say that in the Council of Churches' submission approval is given to duty based law and suspicion is cast on rights based law. Would you agree that that is a fair presentation of an element of your submission?

**Reverend CLIFFORD:** Yes.

**CHAIRMAN:** Could I put it to you that in New South Wales and in the Commonwealth of Australia there are many hundreds of statutes, perhaps even thousands but certainly hundreds, which impose all sorts of obligations on people who are residents of Australia or New South Wales, and not only impose obligations but impose penalties in default of those obligations being carried out, and I am sure you will appreciate what I am saying, whether it is legislation dealing with safety in the workplace or driving safely on the roads, there are innumerable examples where those duties are breached, a penalty attaches to that breach, so am I not entitled to say that the law very adequately and extensively deals with the obligations of citizens and residents of the State?

**Reverend CLIFFORD:** I guess responsibly it also adequately deals with the rights of citizens of the State as it is now as well, so why pick out one aspect? It certainly has racial discrimination legislation; it is certainly under international covenants that have been ratified and municipal law that has taken place on the basis of those ratifications; it has also satisfactory protection of rights as well as duties, so why pick out one to highlight in a bill as against the other? What we are saying is, if you were going to do one, then why not do the other and make statements of duties as well as statements of rights? The Christian position I think, or those who hold this would say that the Christian position is more about serving and giving and my responsibility to my neighbour than who I am and my rights in the world. Now I would simply say I believe there are rights, being in the image of God, et cetera, but they would certainly see rights in a statement of duties and if there are duties in the law today, there are also rights in the law today, why elevate one?

**CHAIRMAN:** Well, I am simply suggesting to you that the law encompasses both at the moment, rights and duties; however, a bill of rights, if it were to exist in this State, would be but one part of the law of the State. If, for example, this legislature were to enact a statutory bill of rights that would be but one statute alongside many others, many of which impose, as I say, obligations.

**Reverend CLIFFORD:** But if a bill of rights, as we are saying, is not a moral thing, if it is moral then if we are going to have some moral statements in this then is it not justifiable to say that what we put against rights is duties? If we are going to have some sort of moral document about who we are as citizens, then is it not appropriate that duties and rights go hand in hand rather than elevating one over another? I mean if we are talking about this being more than just a statement - because of your criticism of the statement about them being amoral - and let's make this moral, then I do not think

any of us would want to see a citizen talking about rights without talking about duties. That is a moral statement.

**CHAIRMAN:** Yes, it certainly is a moral statement. However, I am simply postulating to you that within the whole body of the law there are rights and there are duties and what is intrinsically wrong, if at all, with, within that total content, a bill of rights setting out as one would expect rights and other statutes setting out obligations?

**Reverend CLIFFORD:** Well, I do not think there is anything wrong, as such, but if we are going to change it and do it - and it has been done in the human rights movements in the past that duties have gone with other obligations as in the American Declaration, I mean why should we not do that as well? I mean if this is a statement I guess of human rights as what can I stand on, what can I really take my status on in the sense of morality and not pragmatism, then I would suggest that duties and rights balance each other, otherwise the question of morality, whether this is a moral document is a question.

**The Hon. J. F. RYAN:** Aren't human rights statements usually statements which essentially define where the individual stands in relation to governments and if you had a series of duties presumably they would be duties towards governments and they might well be abused?

**Reverend CLIFFORD:** Well, I think they are duties to each other as citizens, et cetera. For example, I could read the American duties, the American Declaration of what our duties are, I just do not think - I mean they are duties to each other and I think a bill of rights is not only in respect of governments, it is with respect to who we are. Of course, the American industry with respect to the bill of rights is the First Amendment, it is citizen versus citizen, I mean atheist versus Christian, supporters of State aid against non-supporters of State aid. The government often in the American First Amendment situation does not get involved at all.

**CHAIRMAN:** On page 3 of your submission you draw a distinction between what you describe as fundamental rights and qualified rights and then one sees that qualified rights are further divided into rights of all persons and rights of citizens only. Could you explain the distinctions and their significance?

**Reverend MAGEE:** Well, in highlighting the differences of the distinctions between fundamental and qualified rights we see that most would without question support fundamental rights as stated in our submission, the right to life of all living human beings, freedom from inhumane treatment for all, protection of the law for all, as fundamental rights. We would expect that fundamental rights are rights freely granted, expected, not granted simply because of a sense of obligation, and I would hope that that would be international.

In relation to what we describe as qualified rights, we saw those two areas for all persons and then confined to citizens only. We are saying not all people currently resident in Australia, New South Wales, would have the same rights. Rights are qualified

for citizen and non-citizen in some circumstances. Most people in New South Wales would support State laws which in some cases appear to contradict international convention.

For example, and I must highlight the fact that in our submission the numbers are incorrect but I will qualify that as I go, item 1.3.1 in our submission, Liberty of All Persons, we describe as a qualified right of all persons under international convention requirements, but recently refugees from the Balkans have not experienced total liberty while being a guest in this nation. Item 1.3.2, Freedom from Forced Labour, prisoners incarcerated in our prison systems do have specific duties and requirements to undertake during their incarceration and if they do not abide by those labour conditions there is also a loss of privileges. At item 1.3.3 we mention freedom from arbitrary search and entry. The New South Wales police do have powers to search suspects for drugs on the street and most people in this State would support this power but some would claim that that contravenes international convention and also perhaps civil liberties, so there are anomalies.

**The Hon. JANELLE SAFFIN:** Could I just comment there: The International Covenant on Civil and Political Rights which actually gives some of those rights you have just talked about actually has a clause in it that talks about situations where some of those rights can be abrogated within certain circumstances, so those conventions and instruments themselves do contain some of those exemptions or outs, so to speak. I just wanted to clarify that as a legal perspective.

**Reverend MAGEE:** Yes, well, we would have concerns if there were not those areas where the anomalies could be addressed. If there was a contradiction, for example, between an international convention, perhaps Federal law, perhaps the Federal Government had been signatory to a convention, and the State law. In fact we also mention, just highlighting the point, that if there were rights applicable internationally under an international convention and there were changes that we saw in State law, what is upheld? These are questions that were raised by some of our constituents. What is the overriding factor? If there are areas within the convention that circumvent those anomalies and do allow for exceptions then fine. I was thinking of something like the Franklin River business where we had a State standing on its guns and then we had the Federal jurisdiction coming in over the top of that and also drawing on an international convention, so there is obviously delineation between all of these areas, but we would have concerns that in trying to administer something like this at a State level if there were differences even from State to State and Territories within the eight States and Territories of this nation and Federal law and State law--

**The Hon. JANELLE SAFFIN:** But we live in a Federation.

**Reverend MAGEE:** We do.

**The Hon. JANELLE SAFFIN:** So does the Council of Churches take a view on the States' rights? Is that implicit in your submission?

**Reverend MAGEE:** No, not specifically on States' rights. What we are saying, we are raising concerns that, within the administration of a bill of rights if it was so introduced, it would not conflict with those pieces of legislation which are already in place so that at least it could be administered in an easy manner and also so that those conflicts did not arise where it became a legal nightmare through courts between different conventions which could - well, really the funding alone would be also another position that we would be concerned about for the State Government.

**CHAIRMAN:** The Committee is very interested to understand public opposition that does exist to a bill of rights. I can say that the Committee has received some correspondence predominantly from country areas of the State expressing, without giving very many reasons, generalised opposition and raising fears about a bill of rights. Is part of the opposition to a bill of rights based on some form of nationalism that people prefer a locally developed law to an internationally agreed standard?

**Reverend CLIFFORD:** I think that would be true and probably for the New South Wales Council of Churches, in my dealings with them and watching the process, rather than "opposition", "concern" I think would be better terminology, but I would certainly suggest, yes, the nationalist concern is one and probably from New South Wales Council of Churches, watching the members, it is a concern that for many we have a system that seems to have some sort of heritage based on Christian antecedents and the concern is that a bill of rights and other such process will bring in much more of a secular humanist approach to law and undermine what has been a very strong, if you like, God-given heritage to law in this country, so I think that would be a fair comment and they would be concerned about what would happen and does happen in United Nations and with respect to covenants. Now what bearing that has on a State statutory bill as against a Federal bill is another issue, but you are dealing with the same fear, I mean they are responding to exactly the same argument.

Lyn Buzzard and Samuel Ericsson are two of the best known evangelical lawyers in America, set up the Christian Legal Society and whatever, and with respect to, say, the bill of rights with respect to religion, they just say this: "These examples illustrate the long road we have travelled" - they are talking about what has been happening in the courts with respect to the First Amendment - "from a concern by the authors of the bill of rights that the language not result in hostility to religion to a time when religious belief seems too often to be a handicap". So what they are saying is you might start with the right intent, as the founders of the bill of rights did in America, but 200 years on it has become a nightmare and has been a tool used against religion rather than a tool used to help and assist religious expression.

How can we guarantee that we will not end up in exactly the same boat and rather than the bill of rights being an aid the bill of rights becomes a tool that hinders religious belief rather than protecting it? I think that is one of the real fears, apart from the international perspective and the secular humanist perspective, I mean how do we guarantee that the system will not end up being what America became when it never intended to start that way?

**CHAIRMAN:** I understand what you are saying there. However, I just want to try to get to grips with a particular stream within Christian thought. You appreciate that there are other Christians who hold a different view. We had a witness this morning who certainly did, and she produced her doctorate thesis which cites documents issued by the Anglican Church, the Catholic Church, and the Orthodox churches and others, as being generally supportive of human rights statements.

Could I just ask you to identify why it is that especially conservative evangelicals within Christianity are so suspicious and mistrustful of human rights and international organisations, particularly given that, as you are aware, Australia has ratified the international conventions in question?

**Reverend CLIFFORD:** I am just trying to commentate here, I am not expressing my reasons for it, but you cannot avoid the issue that for some it is related to American Evangelicalism, fears of anti-Christ, clubs of Rome, conspiracies.

**The Hon. JANELLE SAFFIN:** Illuminati theories?

**Reverend CLIFFORD:** Yes, I mean Daniels, prophecies - and you have only to look at America for example, that the recent publications on that, and in Australia, are international best sellers. You are talking about millions and millions of copies. This is the sweeping movement in the States, and it is also a sweeping movement in Australia.

I think that is the more extreme fringe. The more balanced fringe would say "We are not going along with all of that, but we are still concerned why a communist or a more humanist or secular nation, why their view of law and human rights should play a part in our understanding of law and human rights, when ours have a much more foundational Christian base to it".

So you have got that secondary response, but you have also got the first response, that of the fear response. I am not saying that is where the Council of Churches is coming from, but I am saying that is why amongst conservative Evangelicals there tend to be a great fear about that sort of process. So guys like Hal Lindsay and others, whatever --

One of the most interesting books on that area, I just mention, is John Warwick Montgomery, "Human Rights and Human Dignity", who has just retired as a Professor of Law and Jurisprudence at Luton University, and is the Fellow who won the case in the European court. He is an American and he is now in England. His area is law and human rights, as well as philosophy. He partly critiques that response, because he is an American evangelical himself, and challenges the evangelicals to be free of that sort of concern, and to understand the base of and the importance of human rights and human dignity, which I would be saying as well.

I am totally committed to human rights. I do believe there is such a thing as human rights. I think human rights are inalienable, I think human rights should be

something that people can make a stand on. I will be saying that to the Council of Churches as well, but I also want to know that if we did anything, I was not taking people down this path.

I want to know why not duties, and I really want to know that this is more than pragmatism, and is actually a moral statement where we are prepared to state the issues about life, liberty and the pursuit of happiness. Because if not, I do not know why we bother, and that is what I would be saying.

I think any one of us in my group who is going to have a chance with the sort of constituents that I deal with, I have to be able to tell them that this is bigger picture stuff than political pragmatism.

**The Hon. J. F. RYAN:** Can I put to you what has been put to the Committee. You say what might be better produced with the bill of rights? A number of witnesses before the Committee have identified a range of inadequacies in the current protection of human rights in Australia, including but not limited to the ability of the Commonwealth Parliament to make racially discriminatory laws, as found in the Hindmarsh Island case; imprisonment of Albert Langer in 1996 in relation to the Commonwealth Electoral Act; restrictions on benefits available to newly arrived migrants; conditions experienced by outworkers; social disadvantages experienced by indigenous Australians, and reference is made to the Toomelah community and others; the conditions experienced by people with disabilities living in institutions, and the infliction of experimental forms of treatment in Chelmsford Hospital.

The point being made is that because of these sorts of violations of human right - and there might even be controversy as to whether all of them are - but there is said that Australia is not immune from restrictions on human rights, and if we have a bill of rights that those sorts of things would not take place.

Isn't that in fact the sort of product that might be produced by a bill of rights, which would give it some benefit and therefore answer the question that you were saying we needed to answer?

**Reverend CLIFFORD:** I think probably I could respond in part by saying no legal system is perfect, and I guess I could go to America with a bill of rights and then list the things that happened under an American bill of rights, which if removed would make it a better place, like freedom to carry a gun. Why does that happen? A bill of rights?

Like the First Amendment, freedom of speech and religious freedom, and so in America you have got an absurd system where you cannot get evidence into a court of law where it has been illegally obtained, and people walk free. You have only got to watch The Practice or any other program in the United States. Why? Because of their bill of rights.

Now a lot of that stuff was not intended, but it has come out as the end result of

the bill of rights. So I think in weighing a scale, you could certainly talk about why Australia would be a better place with a bill of rights, but you could also look at countries that have a bill of rights and actually ask if they could start again, would they go down that same pathway.

In the end, I think the obligation is that those who want change should really establish that the advantages far outweigh the disadvantages. They are going to have to tell us what is going to happen in church/state issues if a bill of rights is passed based on similar provisions in our constitution that has made an American industry out of state and church and education issues.

**The Hon. J. F. RYAN:** Let us just imagine, and I do not think it is beyond our imagination, that Australia might have a bill of rights which makes no reference to the issue of religion, but only refers to other rights with regard to say social and political rights which most of us would consider to be common and everyday, so that we are only in the area of the social and political rights question.

Would you not see that it is possible to avoid going down what might be called the legitimate problem that you say exists in the United States, and still solve those very fundamental human rights questions such as why a person should go to goal for refusing to vote, for refusing to put something on a ballot paper?

**Reverend CLIFFORD:** Yes, I certainly think it is an interesting proposal. I don't know what the ramifications would be to have a bill of rights that excluded religious expression. I do not know how that would be perceived. I do not know of anywhere else where that has happened, and I do not know if excluding it would be perceived as something in itself.

Bear in mind that even if that is possible, what are we going to do, exclude those who somehow might be disadvantaged by a bill of rights? I am not quite sure whether I am comfortable with that or uncomfortable with it, but I certainly hear your point. I do not know how I would respond to that.

**The Hon. J. F. RYAN:** In your opening submission you said that one impact of having a Bill of Right is that there would be legal outcomes delivered by the judiciary which were not as Christian as our own law. Other than the ones that you have referred to that have occurred in the United States, where in fact the freedom of religion has become in some instances what you might call freedom from religion altogether, were you thinking of any others other than that?

**Reverend CLIFFORD:** Once again, you have got to realise that it is in the context. Many would see that First Amendment and bill of rights issues in America have been used in an ongoing debate about the role of law and of judges in shaping law or creating law. So for example Roe versus Wade was an issue where the First Amendment was a bill of rights of claims, the rights of the woman in the abortion case. I am not going into the wrongs or rights of that, but that was used in Roe versus Wade, and I guess the fear is that with --

I am not disputing that judges - I quite like the creativity that judges are allowed, but with another bill of rights or another document in front of them, that they will creatively continue to make laws, and they have done in America constantly by relying on the so-called bill of rights in their ten amendments, including cases like Roe versus Wade.

**The Hon. J. F. RYAN:** In the submission given just prior to your arrival this morning I think the person giving evidence took a point of view that said that it is not unusual to find Christians supporting something such as a bill of rights, given that the history of the church and state relations is full of examples where the State has either been judged - for example by Christ himself for failing to adhere to certain responsibilities towards the naked and the thirsty and the poor - or alternatively to the Sir Thomas Moore example of where the person had to choose between duty to the State and duty to religion, or whether you be a Christian practicing as a minority in say a Hindu State, and so on.

It has been a long part of the Judeo-Christian tradition that there has been a body of rules, if you like, to which government behaviour and human behaviour has been benchmarked. So to some extent it is almost a Christian perspective, that a bill of rights is almost part of a Christian tradition, and therefore there is a sense in a Christian nation like Australia having a bill of rights because it accords with that strong tradition.

**Reverend CLIFFORD:** Okay, I think in response to that, I would not disagree with that heritage, and as I said, people like Rene Cassin involved with the United Nations Declaration of Human Rights which he felt was very much based on the Ten Commandments, but I guess the response to that would be that of course it is that Christian commitment to the balance of rights and duties, and that Christian commitment has been the foundation of English and Australian law, as to people like Blackstone.

The danger of a bill of rights is that rather than increasing it will diminish - because it will be a document of pragmatism, it will not be a document of ideal - and as I have read, the bill of rights movement in the States, which started as an aid to that process and that ideal, has actually been turned around now to be against that.

In America, for example, not only is there no prayers involved in schools, not only is there no government support of church based education - Reagan could not even get up his tax credits - not only can't you run Bible studies out of school hours on school grounds, you cannot even get support, as I understand, where you can bus the kids to school, and this all begins with the First Amendment right, or freedom of expression with respect of religion, non establishment and the freedom of exercise.

Now I am sure sitting around here that there are --

**The Hon. J. F. RYAN:** There are I think five people who are recognised as Christians, who originally came off the Mayflower.

**Reverend CLIFFORD:** That is part of it, yes, but the Founding Fathers did not perceive that is where it would end up, and I guess the response would be, with that English, with that British, with that Christian heritage - which I sometimes question - but with that Christian heritage in our base of law we have got to where we are, and with a very strong human rights sense of dignity in our law. Rather than necessarily enhancing this, this might be counterproductive to who we are, as a people with that strong heritage.

So the obligation is on those who want change. I think that is a fair comment, that the obligation is on those who want change to indicate that this will produce a better rights society where all groups, including those seeking religious expression, are protected and do not find themselves into a new industry in twenty or thirty years time, where we say "We told you so".

**The Hon. P. BREEN:** That argument that you are using, about the right to freedom of religion, and the way that it has been turned around in the First Amendment by the judges in America, could not that argument also apply to slavery? Slavery used to be something that was supported by Thomas Jefferson, for example, who had 3,000 slaves, and then as the law developed they found that slaves were also human beings and the judges reinterpreted the particular provision that relates to slavery. Could it not be said that that is what is happening to the interpretation of the right of freedom of religion?

**Reverend CLIFFORD:** I am not quite sure whether judges did reinterpret it. It certainly took a long time to do, if they did.

**The Hon. P. BREEN:** About slavery you mean?

**Reverend CLIFFORD:** Yes.

**The Hon. P. BREEN:** Well, slaves were originally regarded as property rights.

**Reverend CLIFFORD:** I thought it was more political than judicial. I could be wrong.

**The Hon. P. BREEN:** But is the analogy a fair one, about the law developing according to the perceptions of the community?

**Reverend CLIFFORD:** Yes, law does develop according to the perceptions of the community and I have no problem with that and I have no problem with the way the judiciary plays a role. I think they do have a place, but I think we need to learn from our heritage and others involved in this whole human rights perspective and ask the question, if we were going to have a statement with respect to rights and with respect to the rights of religious expression, what are the possible ramifications of that? I do not know, but to not actually project that and ask questions to try and determine the end result of that I think would be a dangerous exercise and I think that is what many in our

circle are saying: Show us where this would end up if we had a bill of rights with those sorts of clauses? It is not going to happen because some academic comes in here and says it is going not to. What is the likely consequence in 50 or 60 years? Having said that, I do see a great deal of benefit, on the other side, of a bill of rights with respect to freedom. I would like to tell SOCOG what to do with its suggestions on where people can march in the streets of Sydney during the Olympics.

**The Hon. P. BREEN:** The question of duties and responsibilities is a difficult one and it seems to me that rights relate to an agreement or understanding between the Government and the citizens. If you introduce duties and responsibilities, that then relates to relationships between citizens, as you pointed out exists in the American First Amendment. My understanding - and I might be wrong about this - is that a statutory bill of rights, and I am referring to Canada, New Zealand and other countries including the United Kingdom since the beginning of this year, has statutory rights which regulate rights of the Government and citizens and is specifically intended to deal with relationships between citizens and government.

**Reverend CLIFFORD:** It might be with respect to citizen and government but, in the end, it will be citizen versus citizen: The person who decides whether I should be getting State aid and is actually initiating that. As to whether the Government can provide State aid it might be government against government, but in the end it is citizen against citizen.

**The Hon. P. BREEN:** But do you not think that would be in terms of your rights to access to justice and due process and those types of things? They are strictly, as I understand it, relationships of government services.

**Reverend CLIFFORD:** But are you going to limit the right to due process or will it relate to what happens to me when I am being disciplined by the New South Wales Baptist Union? That will be citizen versus citizen.

**The Hon. P. BREEN:** Well, I put it to you that that would not be contemplated in a statutory bill of rights given that the bill of rights relates to government and the people, not churches and the people.

**Reverend CLIFFORD:** But how are you going to make that demarcation, that a court in its evolving role in legislation is not going to take that and use it in another sense?

**The Hon. P. BREEN:** Well, the English Human Rights Act --

**Reverend CLIFFORD:** How much heritage has it got?

**The Hon. P. BREEN:** Well, six months.

**Reverend CLIFFORD:** Thank you. It might be that in six years' time we can have this conversation again. I mean could you ever imagine the Federal Government

using the external affairs power to be able to turn over Franklin Dam? Who could have projected that within a period of time? The external affairs power is used to ratify conventions. I think it is wonderful, but who would have ever projected that? You cannot tell me how courts are going to interpret a bill of rights.

**The Hon. J. F. RYAN:** But is that not something that could be applied to every Act of Parliament?

**Reverend CLIFFORD:** Of course.

**The Hon. JANELLE SAFFIN:** If we thought that with every Act of Parliament we would never do anything. When you suggested that it would require a great deal of research, I was thinking what research would satisfy your people? Maybe I am wrong, but I get the feeling none. I look at the situation of the American legal system as opposed to ours and they are quite different, and if you have a look at the European system there are significant differences - you even mentioned that yourself - so the argument that we could end up like the First Amendment situation, yes, we might, but we well may not and, given our legal historical position, evidence suggests that we will not quite go that way, so there is a strong argument to say that we will not.

**Reverend CLIFFORD:** Let me respond that I am responding to the first question and you answered that yourself, because we made that limitation, why are we worried? I am just saying that the law, over a period of time, does not stay that way. I know that the law does not stay the same no matter what limitations you put in. That is the point I am making, with which you agree.

**The Hon. JANELLE SAFFIN:** But you are making the point that we should not do something because almost implicit in everything you have said is that we are going to end up like the First Amendment situation. That is the fear you have expressed throughout your evidence.

**Reverend CLIFFORD:** That is a fear I have expressed, yes, that is one of them, but that is a fear you are particularly interested in.

**The Hon. JANELLE SAFFIN:** No, I am not, you have referred to it.

**Reverend CLIFFORD:** Because I am answering questions on that. I listed about seven or eight fears that we would have of which that is one. In my opening I listed seven or eight fears of which that was one. Some of the concerns I have not been addressed at all, but that one was. Now I understand the difference in the systems and I agree with you, but many in my culture, whilst being very committed to human rights, feel that Australia is, whilst by no means perfect, as good a model as is operating out there. Those who want to bring in a bill of rights and suggest we are a better place as a consequence of that have the onus to establish that that is so and answer what has been perceived as disadvantages from bills of rights in other civilised countries.

**The Hon. J. HATZISTERGOS:** Is that your strongest argument, that if you

do have a document, a legislative instrument that articulates those rights, in effect your freedom, which at the moment is acknowledged, freedom of the citizen, freedom of organisations and so on, is always acknowledged unless it is the subject of some other constraint and becomes in the end government-authorised?

**Reverend CLIFFORD:** That is certainly part of it.

**Reverend MAGEE:** That has been echoed by some constituents of ours and I picked up what the Chair said earlier and asked that question, and most certainly that is a question that has been raised, not by all but it was raised, and they feel if there was legislation put in place it could limit the freedom that they already have, depending on how it was structured and which way it went, how the law evolved over a period of time, and that is the case. We have seen some lenient decisions and some more harsh, and particularly with magistrates' and judges' interpretation of law, so perhaps the fear that has been echoed is because of the evolution of law and all law over a period of time.

**The Hon. P. BREEN:** In your submission you have said at the beginning of it, Specific Rights, "Fundamental rights are something that we all expect and they do already exist in New South Wales". It is on page 2 at the very top of your submission. "Fundamental rights are something that we all expect and they do already exist in New South Wales", the right to life, freedom from inhumane treatment and protection of the law. Can you explain to the Committee how those rights are already protected under New South Wales law?

**Reverend MAGEE:** Well, the right to life of the individual.

**The Hon. P. BREEN:** How is that protected under New South Wales law?

**Reverend MAGEE:** Well, I cannot take someone's life.

**The Hon. P. BREEN:** Why can we not pass a law that overrides that right, if it exists?

**Reverend CLIFFORD:** If it is only a statutory bill of rights, why can I not change that to make it different?

**The Hon. P. BREEN:** Exactly, but the question I ask is: How are they not protected already under common law?

**Reverend MAGEE:** Through civil or criminal acts law exists in this State to protect - I cannot go out and take someone's life, and the other one of inhumane treatment, there are pieces of legislation in place that prevent me from being abusive, even emotionally abusive, not just physically abusive. These types of things. And also the protection of the law, that is my right.

**The Hon. J. F. RYAN:** The Parliament at the moment is debating a bill as to the discipline of children by parents and children might escape human rights because

they might not be protected there. There is case law which exists which gives a variety of different outcomes and some might argue with a right against inhumane treatment that establishing a bill of rights would ensure that.

**Reverend CLIFFORD:** I think that would be wonderful, but you can expect the abortion industry to take on a different face.

**The Hon. P. BREEN:** What if we pass a law to allow euthanasia? That is surely contrary to right to life. You would be in a position where you would have to admit that the right to life does not exist.

**Reverend MAGEE:** That is part of the evolution of law too.

**Reverend CLIFFORD:** Yes, and I would say to you that if there was a statement in the bill of rights that included the right to life - and I think it would be a very bold Parliament that did it - you are going to have a different industry going on in relation to abortion, euthanasia, all sort of things.

**The Hon. P. BREEN:** In relation to the sentence on page 6 of your submission, "Human rights of themselves possess no intrinsic ethical or moral content whatsoever", I accept, Mr Clifford, that you were not responsible for that statement, but evidence we have heard earlier today indicates that human rights is actually a language that bridges the gap and I gave the example of Hansie Cronje when he took bribes and he has said, although they have tried to suppress it apparently, "I took my eyes off Jesus". There is a sense in which that type of language is inappropriate in the context of State law, whereas had a statement been made in relation to human rights or perhaps, put another way, if you make a statement that everybody recognises, surely if you use human rights language it is more acceptable across the board than either State language on its own or church language on its own. Do you agree with that?

**Reverend CLIFFORD:** I am sorry, you have lost me with the Hansie Cronje illustration.

**The Hon. P. BREEN:** Okay, so the reaction to Hansie Cronje's statement by the South African Cricket Board was to attempt to suppress what he said.

**The Hon. JANELLE SAFFIN:** Why did they do that?

**The Hon. P. BREEN:** The implication is that they did not think that that was an appropriate response to an allegation that he had broken State law. They believed that that response was one that might be all right in the context of church law, but in the context of State law it was an inappropriate and embarrassing statement.

Now do you think that the State and the church would both be better served if we had more common language, such as the language of human rights law?

**Reverend CLIFFORD:** I must admit I am still a bit awash with the illustration. I mean, Hansie certainly - if you want me to address why in certain regions it would not be acceptable, it certainly is something different maybe, in a spiritual context and a secular context. But if this is going to be a language that is a language that we can turn to and find a foundation that is some sort of bridge between State and church, then it does have to be a moral statement.

**The Hon. P. BREEN:** Indeed, which is completely contrary to the statement in your submission. That is the point that I am making.

**Reverend CLIFFORD:** But we are also looking at submissions that are not moral, but pragmatic. So it cannot be a pragmatic statement. The paper I was given by Mr Williams is an ideal of how to proceed where human rights is purely a pragmatic issue - and let's not get into the areas of controversy like right to life, and right of equality - we must leave those aside and find the things that five million New South Wales people will agree on.

That has no relationship with the language of the church. It might be the language of State and government, but it is not the language of compromise of the church. If you want to have a bill of rights that expresses our language then it has to be a bill of rights that is more than pragmatic, and more than useful for the State. It must have a higher base in principle than that, and that of course is the foundation of all decent human rights and bill of rights in the image of God.

It must include things like right to life, it must include things like right to equality. If it doesn't include that, as I say, why bother? If it is only a statutory piece of legislation, as you said, if this can be turned over, that can be turned over. Does the bill of rights live on the whim of the government? Or is it a statement that is owned by the churches and the people, that is beyond the whim of the government. If this is serious business, let's do it seriously.

**The Hon. J. F. RYAN:** Can I just go back a bit. I guess the worst thing possible in your argument is that I don't think you could ever come up with a body of language that would ever satisfy your criterion that we do not know what its outcome would be. Doesn't that apply to the statutory laws that might apply to the bill of rights?

**Reverend CLIFFORD:** Of course, and I agree with that. All I am saying on behalf of the Council of Churches is that of course it is a real world and we all live in there, and to take a Biblical principle, we are all fallen. But having said that, there is a need to project what possible outcomes could be, and work those through, and to try to minimise those things as best as possible, and work out how that operates in the future.

I do not think anyone is expecting something that is always going to be proved to be ideal, but not to understand that law does move on an evolutionary basis, and suggest that if we pass something now it will not be interpreted in twenty years differently, and to not take that fact into mind and say therefore what are we going to do in this document, what are we trying to say in this document, and what are the

safeguards to try to ensure that this does fundamentally represent what we sought to do, even though we know that it needs to have flexibility in interpretation as we go along.

I think that is all I am saying. I do not think anyone here is asking for this Parliament to come up with something that is in any way ideal. And I am not saying all of us. My own process is I am very committed to human rights and very committed to human dignity. My own fear of a bill of rights is much more limited than the fear perhaps that constitutes that of the constituents that I am representing.

But I am one who has to sell such an idea to them, and I do understand the fears, and I think it is appropriate for me to suggest what those fears are, to perhaps give you some idea of what the concerns are. I think we have tried to do that as objectively as possible, and to be fair to them, but as I say, I can see many other benefits.

**CHAIRMAN:** I will conclude the hearing this morning. Thank you very much indeed, both of you, for your assistance to the Committee, it is very much appreciated.

**(The Committee adjourned at 1.05 p.m.)**