REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO CRIMES AMENDMENT (CHILD PROTECTION—EXCESSIVE PUNISHMENT) BILL

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At Sydney on Monday 14 August 2000

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. R. D. Dyer (Chair)

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

GRAHAM VERNON VIMPANI
Newcastle, John Hunter Children's Hospital, New Lambton Heights, sworn and examined:

CHAIR:

Prof. VIMPANI: As Professor of Paediatrics and Child Health and in my capacity as a

CHAIR: Did you receive a summons issued under my hand in accordance with the

Prof. VIMPANI: I did.

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

Prof. VIMPANI:

CHAIR: Can you briefly outline your qualifications and experience as they are relevant to

Prof. VIMPANI: I hold a Bachelor of Medicine, Bachelor of Surgery, Doctor of Philosophy

Australasian Faculty of Public Health Medicine. I have been a consultant paediatrician since 1971, and have worked particularly in the area of child protection in the last 15 years, since 1985. I am also

parenting and optimal child development.

CHAIR:
submission be included as part of your sworn evidence?

Prof. VIMPANI:

CHAIR: If you should consider at any stage during your evidence that in the public interest

Committee, the Committee will be willing to accede to your request.

Prof. VIMPANI:

CHAIR: I now invite you to make a brief oral statement in support of your submission.

I hoped that my written statement would stand on its own. I would certainly support this bill. I believe that it is in the best interests of children to remove the defence

within legislation, it is important that it needs to be accompanied by a major educational program targeted at the community generally and parents in particular, providing them with information about

its positive sense of providing guidance and encouragement to children to promote their optimum development.

promoting good behaviours as well as extinguishing those behaviours which are unhelpful either for the child or the child's relationship to other children or other members of the community. On the basis

proposes, in banning corporal punishment completely by parents, the experience from that country, where the introduction of their legislation was accompanied by a major educational program, is that

generally have declined significantly. Whereas they once started off at the same level in terms of

attitudes as parents in the United States of America, attitudes towards the use of corporal punishment have shifted significantly in Sweden.

For example, in 1965 in Sweden public support for corporal punishment was 53 per cent. According to this article, which I have given to the officials supporting the Committee, that has now declined to 11 per cent. It is worth noting that the Swedish legislation has not been incorporated within the penal code, as this legislation will be. It is within what is termed a parent's code, which in fact carries no criminal penalty. It needs to be recognised that the primary purpose of the Swedish legislation was to educate, rather than to necessarily coerce. I hope that, even though this proposed legislation is within that criminal code, that its primary purpose nevertheless will be to educate parents as to more effective means of disciplining children.

The evidence is strong to indicate that corporal punishment of children is not a particularly effective means of discipline. It may have immediate effects as a result of the shock that a young child experiences on being disciplined, but in fact it does not necessarily promote desirable or effective behaviours, and using it as a strategy to eliminate undesirable behaviour without at the same time having a strategy to stimulate more desirable behaviour is generally considered to be not very effective. The most critical part of discipline involves helping children learn behaviours that meet parental expectations, are effective in promoting positive social relationships and help them to develop a sense of self discipline that leads to positive self esteem.

Behaviours that parents value and want to encourage need to be identified by the parents and understood by their children. Many of these behaviours emerge as part of normal child development, and parents need to recognise the importance of providing positive reinforcement for these good behaviours. Other behaviours need to be taught, such as turn taking, empathy and principled behaviour around things like lying and stealing. Although there may be immediate rewards for doing those things, some principles need to be inculcated within the value system of children. It is much easier to stop undesired behaviours than to develop new, more effective behaviours, and in this respect good modelling by parents is important.

Any educational program associated with this bill's passage needs to make known the consequences of spanking and its relative undesirability as a strategy. I refer the Committee particularly to a report of the Committee on Psychosocial Aspects of Child and Family Health of the American Academy of Pediatrics, which was published in the journal *Paediatrics* in April 1998. Again, I am happy to leave this with the Committee. From that committee's perspective, I think it would go much further than what this bill is proposing at this stage.

I shall summarise the main adverse effect of using corporal punishment: certainly, spanking children under the age of 18 months increases the chances of physical injury to the child. A child of this age, in my view and in the view of the committee of the American Academy of Paediatrics, is unlikely to understand the connection between the behaviour and the punishment. Although spanking may result in a reaction of shock and immediate cessation of the undesired behaviour, repeated and spanking may cause agitated, aggressive behaviour in the child that may lead to a physical altercation between the parent and child. Spanking also models aggressive behaviour as a solution to conflict, and it has been associated with increased aggression in preschool children and schoolchildren.

In fact, there is evidence from a number of studies, both within Australia and North America—both Canada and the United States of America—that spanking has been associated with higher rates of physical aggression in children, more substance misuse, and an increased risk of crime and violence, particularly when it is used with older children and adolescents. Spanking and threats of spanking also affect parent-child relationships, making discipline substantially more difficult when physical punishment is no longer an option, such as is the case with adolescents. Spanking is no more effective as a long-term strategy than other approaches, and reliance on it makes other discipline strategies more difficult to use. For example, time out and positive reinforcement are more difficult to implement if spanking has been used previously as the primary method.

A pattern of spanking may be sustained or increased, as it may provide parents with some relief from their own anger. In doing this they may be more likely to use it again in the future. The more children are spanked the more anger they report as adults and the more likely they are to use spanking for their own children, more likely to approve hitting a spouse and more likely to experience

marital conflict as adults. I see the bill as a first step in the process of educating parents about the importance of considering alternative means of discipline for children. It really emphasises the form of corporal punishment that is most dangerous to a young child and to children generally, and that is any punishment that involves blows to the head and that is also of sufficient severity to leave sustained marks or cause other injuries to extremities.

CHAIR: You mentioned some journal articles during the course of your oral remarks. Would you like to tender those as part of your sworn evidence?

Prof. VIMPANI: Yes, I would like to tender those.

CHAIR: Shortly before the hearing began I mentioned to you that as recently as this morning I had received a letter from the Paediatrics and Child Health Division of the Royal Australasian College of Physicians signed by Dr Ion Alexander, registrar, which, in summary, makes a clear statement that paediatricians in general do not endorse the view that the application of physical force to any child is a suitable method of punishment. The letter goes on to conclude that, despite this reservation, it is the view of the division that the clear intent of Mr Corbett's bill to provide better protection for children should receive the support of this Committee. Would you like to make any comment on the views expressed by the Paediatrics and Child Health Division?

Prof. VIMPANI: Yes. Those views are similar to the views I expressed earlier, and that is that the bill is a very helpful and, I believe, necessary first step in promoting awareness within the community about more effective ways of disciplining children, other than the use of corporal punishment. What is increasingly being recognised is that as well as the immediate physical harm that may result from physical punishment, particularly if it gets out of control, there is very strong evidence that coercive parenting, which includes the frequent use of physical punishment, is associated with a number of adverse consequences later on in the child's life. Children who have been subjected to coercive parenting styles are more at risk of conduct disorder, which, in turn, predisposes them to greater risk of antisocial personality disorder. The reality is that these patterns of discipline are often transmitted from one generation to the next, and a think we have an opportunity, through this legislation, to start to try to break that cycle.

CHAIR: This Committee understands that New South Wales Health has guidelines identifying what forms of child punishment are either appropriate or inappropriate. Are you able to outline, in general terms, the content of those guidelines, and how they are used within the health system?

Prof. VIMPANI: I will have to take this one on notice, if I may, because the only reference to these guidelines were in Mr Corbett's second reading speech. Despite my inquiries as late as this morning to New South Wales Health no-one can actually locate the guidelines from which he was quoting. The only thing that I thought they may be extracted from is the personal health record blue book, which contains some general advice on discipline for parents. But the way in which they are worded makes me think that is probably not the source. With your permission, I will try to ascertain that and provide further evidence to the Committee.

CHAIR: You will be aware that in the bill drafted by Mr Corbett there is a prohibition on the use of sticks or other similar wooden objects to discipline the child. Some previous witnesses before the Committee and people who have approached the Committee by written submissions have some attachment to the use of, what is described as, the wooden spoon that is commonly found in kitchens. Is it possible to indicate to the Committee whether anything is known medically about the seriousness of using, or the incidence of injuries that might have been caused by a wooden spoon? Or, to put the question another way, is it possible to distinguish between the wooden spoon and rulers, sticks or other wooden objects?

Prof. VIMPANI: I have not been able to find any data in the literature looking at injuries sustained from the use of wooden spoons, maybe because in the American literature these things are referred to as paddles rather than spoons. One thing that can be said in their favour, if anything, is that compared to a small branch, part of a tree or a ruler they are relatively lightweight. I am not sure why they, rather than an open hand, would be preferred, unless it is to reduce the pain to the person administering the discipline.

CHAIR: Is anything known medically about the seriousness or the incidence of injuries caused by the use of an open hand to the neck or to the face? Why should the prohibition on the application of force to the head or neck be made absolute, as is provided in Mr Corbett's bill, and as I think you argue in favour of your submission?

Prof. VIMPANI: I would certainly support that because we need to recognise that there are several injuries that are likely to result from a significant blow to the head. One is superficial bruising from the blow itself. But the other consequence is that the head is highly mobile on the neck. The head actually moves faster than the internal brain material. What happens is that the brain comes into collision with the bony lining, the bony structure, the skeleton of the head and, as a result of that, the brain itself can be bruised. As well as that, there may also be what are called shearing effects where nerve fibres can be sheared. We see an extreme example of what happens with repeated blows to the head in boxers, who may suffer concussion in the immediate event but often years down the track sustain other brain disorders.

The other thing, of course, is that the immediate shearing in a young adult can cause bleeding around the brain. We see examples of this kind of thing in the shaken baby syndrome, which is where there is sustained movement of the head backwards and forwards. One severe strike to a child's head, if given with sufficient force, would certainly be enough to cause bruising on that part of the brain that came in contact with the bone as a result of the brain not moving as fast as the rest of the head at the time of the injury.

CHAIR: Would you give the Committee an expression of view as to whether the bill should include upper and lower age limits beyond which physical punishment should be prohibited? For example, is there any value in setting an absolute community standard that no child under one year of age should be physically punished or alternatively, or in addition, no child under one, two or three years of age, as the case may be, should be hit with a stick, belt or other object? Taking an upper limit, should a standard be set that no child over 16 years of age should be physically punished? Do you have any view regarding age limit matters?

Prof. VIMPANI: Yes, I do have some views. I would certainly support the view of the American Academy of Paediatrics that 18 months is probably a more reasonable lower limit below which it should not be permissible for a parent to administer physical punishment. The irony is that for children over school age, school staff are prohibited from using physical punishment on their pupils. It would be somewhat ironic if parents were permitted to do something that is not allowed within the school system. I go back to my point that, from the evidence, it is not to a demonstrably effective form of disciplining children.

There is strong data—unfortunately retrospective data from adults—pointing towards the fact that over 50 per cent of adults with a history of depression, suicide or alcohol abuse report being subjected to corporal punishment as adolescents. The use of corporal punishment in adolescence is totally inappropriate. If reasonable chastisement is to be used at all on children it should only be within the age limits from 18 months to 10 or 11 years. As I said, I would question its effectiveness even within those age bands.

The Hon. P. J. BREEN: Professor Vimpani, would you advise the Committee whether the bill, if enacted, would assist you in your work as a paediatrician and also workers in the area of child health generally?

Prof. VIMPANI: I think it would because it would give people who work in child health an opportunity to talk about more effective means of disciplining toddlers and children. That is why the passage of the bill should be accompanied by a significant educational strategy. It will provide paediatricians and child health nurses, for example, with opportunities to discuss with parents alternative means of discipline, besides hitting their children, to extinguish inappropriate behaviour. These kinds of discipline—setting limits, time out and withdrawal of privileges—are incorporated within the triple-P program of Professor Matt Sanders in Queensland.

It also provides an opportunity to inform parents that there is no evidence that coercive discipline works, that the evidence points much more towards coercive discipline as being a risk factor

for the very kinds of things that it is trying to prevent: behaviour problems, conduct disorder and anti-social behaviour later on. As I said, there is strong evidence from numerous sources that point towards

Survey of Children and Young People, as well as American data. It would certainly provide opportunities to inform parents about both the risks of coercive discipline and alternative ways to deal

The Hon. P. J. BREEN: On that question of educative strategy, in your preliminary remarks

which contains no criminal penalty. Would you explain further the distinction between the proposed legislation as it stands coming within the Crimes Act rather than an educative framework, such as the

about promoting the bill.

Prof. VIMPANI:
Crimes Act will be perceived as anti-parent's rights rather than pro-child. The message I would hope we would be getting across is pro-child; that the Parliament is trying to encourage effective skilling of

introduced the way it has within the Crimes Act. But it is very important in the promotion of the bill that the message gets across that you are trying to promote an increasing level of awareness within the

Certainly, with the introduction of the Swedish legislation, a survey of parents as to how they would propose to discipline their children shows a greatly reduced preference for physical discipline

particularly older children, about the consequences of their behaviour. I would question whether the stick approach is the most appropriate and effective way of educating parents about alternative and

The Hon. P. J. BREEN: By the stick approach, do you mean the amendment to the Crimes

Prof. VIMPANI: Presumably the legislation would provide an offence that what the parents

some penalty would be associated. Obviously, it would be up to magistrates and courts to decide how severe such a penalty might be. The important message to get across with this bill is that corporal

means of discipline. It is providing parents with alternative skills. It is important that parents do not see this bill as disempowering them, but as a process of enhancing their skills and their understanding

The Hon. P. J. BREEN: One possible way to reduce the perception that it is an assault on

in disciplining their children, rather than expressing it, as it is at the moment, in negative terms. Do you agree that that would assist?

No, I think that would be disastrous because it would be legislative approval for parents to use prescribed forms of physical discipline when the evidence we have is that

something that was ineffective, as best evidence would seem to suggest. You would end up with policy incoherence. You would have legislation, such as immunisation and the use of child restraints

"This legislation says that it is okay for you to use an open hand to discipline your child", you are saying that it is okay to use a form of discipline for which there is no support in terms of scientific

The Hon. P. J. BREEN: That probably answers my next and final question as well. In your

pinching children's sternomastoid muscle. Would you explain this reference and its relevance to the bill? Also, in the same context, the Chairman mentioned the perception of the wooden spoon as being

an appropriate form of discipline. I know people in the community who would regard the use of the wooden spoon as part of a parent's disciplinary role and others would argue that a rolled-up newspaper, for example, might also be an appropriate form of discipline. Would you comment on those issues?

Prof. VIMPANI: Dr James Dobson, of course, is the author of a book called *Dare to Discipline*, which has been around the traps for some 30 years. It would be fair to say that his ideas of discipline have a lot of support amongst conservative Christian groups, certainly in America and also in this country. He advocates finding the sternomastoid muscle in the neck and giving it a squeeze as a way of disciplining children. I do not go along with that, because there are a number of other structures in the neck that might be grabbed hold of by mistake, which could cause significant damage. As to other implements such as wooden spoons or rolled-up newspapers, I suppose the viciousness of the blow depends how tightly a newspaper is rolled. I guess it also depends how wet the newspaper is.

CHAIR: There might be a problem with size: for example, Saturday's edition of the *Sydney Morning Herald*.

The Hon. P. J. BREEN: I hate to make this comparison, but people who discipline animals believe that if they place an object such as a rolled-up newspaper between them and the animal it somehow removes the discipline from the person administering it and creates the perception that the newspaper is to be feared, not the person using it. Do you have any comments about that view? Does that have any bearing on disciplining children?

Prof. VIMPANI: I do not know. My only experience of corporal punishment at school left me with a fear of the person administering it rather than the implement used.

The Hon. J. F. RYAN: You have largely argued the case against corporal punishment by saying that it is not effective. You have extensive paediatric experience. Do you believe that minor forms of corporal punishment are damaging to children?

Prof. VIMPANI: There is always a risk that corporal punishment will get out of control. That can happen when it is administered in anger. The other evidence is that, to be effective, the level of pain that must be inflicted to achieve a result must be escalated through repeated administration. In light of that escalation, where does one then draw the line between reasonable chastisement and abuse? It can become a very grey area.

The Hon. J. F. RYAN: This bill does not prohibit all forms of corporal punishment.

Prof. VIMPANI: I recognise that.

The Hon. J. F. RYAN: Do you think it is well within the bounds of what might be damaging? It proscribes things that might be within the bounds of what is damaging.

Prof. VIMPANI: Yes, it proscribes the most damaging components of corporal punishment.

The Hon. J. F. RYAN: Referring to an earlier question from the Hon. P. J. Breen about using an implement, parents have made submissions saying that they do not use the implement but simply wave it around or produce it, which has a "desist" effect—I think that is what it was called when I was teaching. Simply introducing the implement into the room has an impact that parents have used to guide children. They are concerned that a bill such as this will prohibit that practice.

Prof. VIMPANI: Children may be deterred as effectively from misbehaviour by strategies such as the withdrawal of privileges. I do not think one necessarily needs to introduce the threat of a physical implement to achieve the kind of change in behaviour that you are talking about.

CHAIR: Some opponents of the bill who favour the use of corporal punishment in one form or another have argued to the Committee that the sorts of psychological methods to which you are referring, such as time out or the withdrawal of privileges, are more damaging to children

psychologically than the alternative—namely, corporal punishment. Do you have any comments about that?

Prof. VIMPANI: I do not know of any evidence in support of that view.

The Hon. J. F. RYAN: Some parents might overuse the withdrawal of privileges. The withdrawal of privileges are as prone to abuse as corporal punishment, are they not?

Prof. VIMPANI: Yes.

The Hon. J. F. RYAN: For example, a parent might decline to feed a child as a withdrawal of privilege.

Prof. VIMPANI: That would not be commonly regarded as a privilege: it is a right.

The Hon. J. HATZISTERGOS: It depends on the type of food.

The Hon. J. F. RYAN: I am running the argument as it is put to us. Submissions have made reference to opinion polls relating to what parents think. One such poll conducted by Reark Research for the Federal Department of Human Services and Health found that 41 per cent of people surveyed agreed with the statement: "Parents have the right to discipline children in any way they see fit". The survey found that this group of parents tended to be those with lower educational levels and lower socioeconomic status than those favouring more restricted methods of discipline. This carried over to many of the other findings regarding attitudes to discipline. Could it be said that this bill is an attempt to impose middle-class values on working-class parents?

Prof. VIMPANI: I noticed that question in the draft document that was forwarded to me. Interestingly, corporal punishment is not used in the United States in the same way as in Australia: it is certainly not confined to lower socioeconomic groups of parents. In fact, 25 per cent of American two-parent middle-class families use physical discipline. Discipline is associated with the use of an object occasionally in 35 per cent of cases in that group, considerable pain at times was caused in 12 per cent of cases and marks were inflicted in 5 per cent of cases. We are talking about middle-class families: the practice occurs not just within lower socioeconomic groups.

The kinds of changes that we are considering promoting through this bill, which are based on evidence showing the lack of effectiveness of corporal punishment and the fact that other means of discipline are more effective, I do not believe are so much middle-class values as evidence-based values. I refer to the Swedish data that shows that across all groups there has been a decline in the acceptability of the use of corporal punishment as a means of discipline. Interestingly, in Sweden older adults rather than young people are more likely to continue to support the use of corporate punishment.

The Hon. J. F. RYAN: The Centre for Independent Studies made a submission to the Committee last week, which said that, compared with family types in the Australian population, a relatively high proportion of substantiations of child abuse involve children living in female-headed one-parent families and in two-parent step or blended families; whereas a relatively low proportion of substantiations involve children living in two-parent natural families. The submission then went on to give some figures. The ultimate point was that other issues that are more important than the state of the law might have an impact on preventing people from using corporal punishment excessively.

Prof. VIMPANI: I refer you to some of the Canadian longitudinal study data as well as the Western Australian child health survey data of Zubrick and Sillburn. It shows that, even when one controls the social class and one-parent status, the practice of coercive discipline continues to exist as a strong predictor of children's worsening behavioural problems. It is not a coincidence regarding coercive parenting patterns in lower socioeconomic group households or other households where there are additional needs, such as a single-parent families. Even when those things are taken into account, there is still the effect of parenting style over and above anything else.

The Hon. J. HATZISTERGOS: I am not sure whether this question was asked of you before. Can you expand on your argument by incorporating the proposed legislation in the Crimes Act? It is being set in a criminal context rather than an educative framework.

Prof. VIMPANI: Yes, I did refer to that.

The Hon. J. HATZISTERGOS: Can you expand on that point?

Prof. VIMPANI: Only to say that the purpose of this legislation is twofold: first, to prevent harm to children; and, secondly, to provide an opportunity to inform parents about more effective means of discipline. The Swedish legislation is within the parents code rather than within the criminal code and its introduction was associated with a major educational campaign around the issue of effective parenting. As I said earlier, my concern about where it is proposed to place this legislation at present is that it will be construed by some as being anti-parent rather than pro-child. We must get across the important message that this is very much pro-child legislation.

The Hon. J. F. RYAN: You made that point earlier, but I am not sure that I understand the specific legal difference between the parents code and putting something in the Crimes Act. Does that mean the legislation would have different legal status?

Prof. VIMPANI: Yes. One of the articles that I will leave with the Committee expands on that point.

CHAIR: The difficulty that the Committee faces with regard to the matter you have just raised it that we are considering the Hon. A. G. Corbett's bill that, if it were to be passed by the legislature, would raise statutory defences to a charge of assault under the Crimes Act. We are dealing with a matter in an admittedly legalistic way. However, Dr Cashmore appeared before the Committee last week and, in her evidence, laid great stress—as you have done this morning—on the importance of mounting an educational campaign at the same time as this legislation comes into effect, if it does.

Prof. VIMPANI: I would certainly support that view. I recognise that there are reasons why the legislation is where it is. Perhaps in an ideal world it might be somewhere else. However, I think it can still serve a very positive purpose by being passed within the current context, provided it is accompanied by a significant community information campaign.

The Hon. J. F. RYAN: This Committee could recommend that we not pass this bill but draft another one. Do you believe that is a more desirable way to go? Should we establish a code to which, as I now understand, no criminal sanctions would apply? Is that approach more desirable than one involving amendments to the criminal law?

Prof. VIMPANI: That is a possible alternative, but one would need to have a fuller grasp of the Swedish context before embarking upon that course. The legislation would be effective in its current form provided that we address the concerns that I have expressed about its being viewed as being anti-parent and the need for a broader educational campaign to be associated with it.

The Hon. J. HATZISTERGOS: At the moment the bill proposes to redefine the law on lawful correction as a defence to assault. Assuming that we do what you suggest, and that is in the context of some other legislation, where does the defence of lawful correction stand? Should we abolish it as a defence under the Crimes Act and deal with some other prohibitions in some other legislation against parents? I do not think you can evade the criminal context, because at the moment it exists as a common law defence to a charge of assault. Somehow you are going to have to deal with that defence, either by abolishing it, and you will still be seen as anti-parent, or resurrecting some other legislation that deals with the matters you have raised.

Prof. VIMPANI: There is no reason why both could not be proceeded with, but this bill be dealt with in the way suggested at the present time. However, it may be necessary to revisit this issue with a fuller understanding of the effectiveness of the Swedish legislation within a different code, within a parent's code, when it has been looked at.

The Hon. J. HATZISTERGOS: This document you have given us, "Evaluating the success of Sweden's corporal punishment ban", is a private evaluation?

Prof. VIMPANI: Published.

The Hon. J. HATZISTERGOS: But has it been done on behalf of the Government or the authorities?

Prof. VIMPANI: No, it was not done by the Government.

The Hon. J. HATZISTERGOS: I notice it was done by someone in Manitoba, Canada.

Prof. VIMPANI: Winnipeg, yes.

The Hon. J. HATZISTERGOS: Do you know whether any evaluation has been done by the Swedes themselves?

Prof. VIMPANI: I think the earlier article that I had faxed to the Committee included some government reports as well. Amongst the references in that article by Palmerus in the *Journal of Infant and Child Development* are some government reports.

(The witness withdrew)

(Short adjournment)

FRANCES AGNES BARDETTA, Preschool teacher and President of the Association of Child Care Centres of New South Wales, 569 Old Northern Road, Castle Hill, and

IAN PETER WESTON, Regulatory consultant and adviser to the Association of Child Care Centres of New South Wales, 18 Clyde Street, Parkside, South Australia, sworn and examined:

CHAIR: Mrs Bardetta, did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act 1901?

Mrs BARDETTA: I did.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mrs BARDETTA: I am.

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

Mrs BARDETTA: I have been teaching since 1962, and in early childhood services since 1976.

CHAIR: You have made a written submission. Is it your wish that such submission be included as part of your sworn evidence?

Mrs BARDETTA: Thank you.

CHAIR: Mr Weston, did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act 1901?

Mr WESTON: I have.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr WESTON: I am.

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

Mr WESTON: I hold a degree in law. I have practised in the public and private areas for approximately 15 years. In addition to that, I have spent about the past five years as a regulatory analyst, consultant and adviser.

CHAIR: You have made a written submission. Is it your wish that that submission be included as part of your sworn evidence?

Mr WESTON: Perhaps by way of further clarification of my role, I assisted the association in the preparation of that submission, and I suppose it is by virtue of that involvement that I find myself invited to assist the Committee this morning.

CHAIR: That being the case, are you happy to have the submission included as part of your sworn evidence?

Mr WESTON: Indeed, yes.

CHAIR: If either of you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. Mrs Bardetta, do you wish to make a brief opening statement to the Committee?

Mrs BARDETTA: Yes, thank you. Firstly, I would like to say that the association has given

definitive nature as to the words used. I noticed particularly this morning that we were swapping between the concept of punishment, discipline and force. It is our concern with the use of the words

has not been clarified just what that degree is we are somewhat concerned, with today's society being as litigious as it is.

child abuse, you find some of our younger, less experienced people can become extremely concerned about things that would normally, to the more experienced eye, pass. In other words, when a parent is

degree of force and place him in that car, some of our younger, less experienced people may consider that something you need to report, and that concerns me, simply because it could very quickly destroy

the younger, less experienced staff may think it is something they need to report.

A prime example of that happened just some years ago. We had a little girl who was

report this, we must report this." My concern was that this child was actually ill and that the bruising was from simply sitting on the seat. It was borne out that the child did have leukaemia. It is that sort of

that could lead us into trouble when they think, "I must report that." This family, of course, when finding out what the true problem was, needed every bit of support it could, but had that matter been

I fully, absolutely, completely and utterly support the concept of no corporal punishment—none—whether it be with a stick or an open hand. I find that parents may start but the anger and

from, we believe there was an attempt by the writers to include us in the exception in that we can use a degree of physical force to gain control and protect a child, perhaps from himself, and other children

spelled out there. I could be wrong, but I would like to leave that to Mr Weston.

The Hon. P. J. BREEN:
are not mentioned in the bill, is that the problem?

Mrs BARDETTA:
think when you say the parent passes on to a carer, I think you were thinking more in terms of home care. I do not think you were actually referring to us.

Mr Weston, would you like to make some preliminary observations to the Committee?

Just by way of introduction, we have had the opportunity since formulating and lodging this submission to do at least two things: to be much better informed by other work that

issues and some of the arguments for and against, and, in addition to that, we have had the opportunity to speak with the secretariat. We have come to understand the point that Mrs Bardetta was making

we have asked for in our submission the way the bill is formulated. In other words, to the extent that providers of services in child care centres need access to some sort of codified defence of lawful

legislation.

Our concern, however, about those sort of things is that, first, we agree that they are needed;

those defences or protections are actually not yet available. To illustrate the point—it seems that the bill has been prepared on the basis that the protections set out in section 158 and section 157 of the

Children and Young Persons (Care and Protection) Act are actually available to deal with the sort of practical issues we have raised in our submission. However, it seems that the architects of the bill have not really understood that the sort of authorised carers described in that section of that Act do not actually pick up and include the services provided by licensed child care services. As a result, the sort of protections and defences that are properly contained in section 157 of that Act, which is effectively what we are asking for in our submission, are not yet available to the people who deliver licensed child care services.

If we are right about all that, then I say again that the sort of things we are asking for, and the reasons why we are asking for them, are that it looks like the architects have prepared the legislation on the basis that those things were available, but it seems to us that they are not quite there yet. Just on that point, I have taken the liberty of preparing —as a way of helping the Committee understand what it is we are asking for and why we think that those things are needed—suggested amendments to either the Children and Young Persons (Care and Protection) Act or the Crimes Act or both. It is not entirely clear to us where the sorts of things that we believe ought to exist need to be placed. It rather looks at first blush that such a provision would be more properly placed in the Children's and Young Persons Care and Protection Act. But, if that was what the committee decided was the appropriate location, there will need to be some sort of cross-referencing between an amendment to the Crimes Act and the provisions that we believe need to go into the relevant part of the Children and Young Persons (Care and Protection) Act.

The Hon. P. J. BREEN: There is provision in the Children and Young Persons (Care Protection) Act in section 157 (c) for regulations. Would you see the regulations as an appropriate way to deal with that?

Mr WESTON: Yes, although I guess the first point that we are trying to make is that it is the equivalent of section 157 (c) which has to be there first.

The Hon. P. J. BREEN: In this bill that we are looking at today?

Mr WESTON: Yes, either in this bill or their needs to be adequate provision in the right part of the Children and Young Persons (Care and Protection) Act section 157 (c). Section 157 (c) needs to be there. To summarise what we are asking the Committee to do in respect of the children's services providers, I could put it this way: please give to children's services the same protection as out-of-home care services in section 157 (c).

CHAIR: Have you finished your preliminary remarks?

Mr WESTON: Yes, that is so.

CHAIR: Mr Weston and Mrs Bardetta, it seems to me to be clearly the case that the main concern expressed in your submission relates to the possible consequences of Mr Corbett's bill, if enacted, for child care workers in terms of possibly restricting their ability to use physical force in the management and control of children under their care. The Committee understands that the licensed conditions of child care centres already prohibit the use of physical force for the punishment of children.

Mrs BARDETTA: Yes.

CHAIR: That is the case for primary and secondary education as well, for that matter. Could I draw your attention to not only section 157 (1) (c) of the Children and Young Persons (Care and Protection) Act 1998, to which Hon. P. J. Breen has just made reference, but also to section 158 of that same piece of legislation which I understand is in the course of being proclaimed in various parts. It is provided in very specific terms in section 158:

> In circumstances to which this section applies, the person having parental responsibility or the authorised carer:
>
> (a) may restrain the child or young person, but only on a temporary basis and only to the extent necessary to prevent injury to any person or loss of or damaged when the property ...

Subparagraph (b) makes further provision regarding seizing or taking from the child or young person various things such as a weapon or alcohol. I hope that is not the sort of situation that you encounter in

the power of restraint, albeit on a temporary basis, does that not address the concerns that you are raising in your submission?

I think I could answer that at two levels. Mrs Bardetta's answer is more important than mine because it is from a sort of technically legal point of view, but I will introduce

to make about provision 158 is that it does not apply to the provision of services in a licensed child care service. The next point we would make is that it needs to.

You say that this provision does not relate to a child care service?

Mr WESTON:

CHAIR: It refers to an authorised carer.

You need to go back to the definition of out-of-home care which is in section 135 of the Children and Young Persons (Care and Protection) Act. If I have understood it correctly,

sort of care services provided in a licensed child care centre. The provisions for licensed child care centres are actually set out in the chapter 12 of the Children and Young Persons (Care and Protection)

protections contained in sections 158 and section 157 need to be either in the Crimes Act or in the Children and Young Persons (Care and Protection) Act, but in the relevant place so as to be applicable

The Hon. J. F. RYAN: Are you saying that this is a problem not created by this bill but is a

Mr WESTON: No, not quite. We are saying that we sense that the bill has not yet managed

CHAIR: If that is the case, is not what Hon. J. F. Ryan suggests correct, namely, that the

argument do not apply to licensed child caring other than out-of-home care—that is, the power of physical restraint of a child or young person to which I have made reference?

It would be a problem because the effect of the bill would be to exclude the common law defences from service providers. It seems to me that at least those services providers in

it were. I have forgotten the precise terminology that is used in the bill but there is a linkage. If I can just go on and explain because I can see that I am confusing you here a bit.

I will intervene for a moment because I just want to make this absolutely clear. Are you saying that there is no provision within the statute to which I am referring related to the physical

restraint of a child within out-of-home care. Are you saying that there is a gap?

Mr WESTON:
absence of section 157 or section 158 or some sort of ongoing common law protection, there would be a gap.

But are you saying that there is a gap? Is there a provision or is there not a provision—I do not know the answer to this question, quite frankly—within the Children and Young

of a child in a child care centre as distinct from other forms of out-of-home care?

Mr WESTON: The short answer to your question in the short context in which we are discussing this is, yes, there is a gap. There is no equivalent provision in the relevant part of the Children and Young Persons (Care and Protection) Act.

The Hon. J. F. RYAN: At the moment, you are relying solely on the common law when you do things of that nature; is that what you are saying?

Mr WESTON: Well, it gets even more muddy. There are regulations made under what is called the current care and protection Act which make it quite clear that physical punishment is simply outlawed. But this brings us to a terminological difficulty. The bill as drafted does not use the terminology "physical punishment". It uses the terminology "application of physical force". Because the bill as drafted excludes, in my view, child care providers from any ability to make use of the defence of lawful correction which they presently, as I understand it, have under the common law, the net effect is that the wording of the bill will exclude child care providers from being able to use or have access to those defences of lawful correction under the common law, hence the need for there to be some mechanism in the bill to put those defences back in place in order to avoid the practical problems which would otherwise arise.

CHAIR: Surely the position is this, with respect: Why do you need defences of lawful correction if there is a statutory power of physical restraint of the child or young person? The position that this Committee is in is one of inquiring into Mr Corbett's bill which is intended to raise certain statutory defences regarding the doctrine of lawful correction. That in turn arises because there is an offence of a sort in the Crimes Act which in an appropriate case might be a charge preferred against a parent in relation to a child arising out of what would otherwise be lawful correction of a child. Mr Corbett's bill provides that certain things may not happen as part of lawful correction. I am having very great difficulty understanding your argument that lawful correction relates in any way to the functions of the child care centre, given that corporal punishment is not available anyway as punishment and, further, that for out-of-home care at least, there clearly is a statutory provision providing for the use of appropriate physical force—not as punishment, but to prevent some dangerous situation occurring.

Mr WESTON: Yes.

CHAIR: Why is the law in that regard insufficient—that is the first question. The second question is: I really am at an entire loss to understand how lawful correction or defences to a charge of assaulting in any way relate to child care.

Mr WESTON: It comes down, I think, sir—in answer to the difficulty you are having—to what you understand by the words "physical force" on the one hand and "physical punishment" on the other hand. The danger as I perceive it is that there will be circumstances where a service provider needs to apply some degree of physical force. If the bill proceeds as worded and it becomes the case that any application of physical force is to be regarded as an assault, then it creates the definition of difficulty in that no-one quite knows where to draw the line.

CHAIR: Under section 157 and section 158 to which I have been referring, clearly it is contemplated that physical force be used in certain circumstances.

Mr WESTON: Yes, sir, and that is why we said before that if 157 and 158 applied to child-care centres then the sort of concerns that we have brought to the table would by and large be addressed. Then we say, however, that 157 and 158, as I understand at the moment, do not apply to the provision of services in a child-care centre. If they did then by and large the problems that we are worried about would be significantly addressed.

CHAIR: Quite frankly, I do not know whether they do refer to child-care centres. That is a matter that the Committee will have to research. The Commissioner for Children and Young People, Ms Gillian Calvert, will appear before the Committee next week. We will raise this matter with her as a matter of priority. In fact, I would regard it as appropriate if we sent her a copy of your evidence so that her office can be forewarned that the Committee will be asking about this matter.

Mr WESTON: We encourage the Committee to do that. We do not pretend to be the font of all knowledge on this and we have not had an enormous amount of time to do the research needed. But as I understand it the definition of "out-of-home care" concentrates on something called a residential care and control service. The key word there is "residential". It is meant to distinguish that sort of service from a centre-based service.

CHAIR: I understand what you are saying. In the event that there is a gap in this legislation, namely, the Children and Young Persons (Care and Protection) Act 1998, it would be a matter of rectifying that legislation and would not have a great deal to do with Mr Corbett's bill at all.

Mr WESTON: Correct. As I said before, sir, that seems by and large to address almost entirely the concerns that we have, which in a sense are technical and do not go to the substance of the bill itself.

The Hon. P. J. BREEN: It looks to me on a quick reading of section 139 of the Children and Young persons (Care and Protection) Act, which refers again to accredited or designated agencies, that you would come under the umbrella of the Act by virtue of that provision, as a designated agency. Is that not correct?

Mr WESTON: Sir, there is no doubt that we are under the umbrella of the Act. Clearly, when the Act is proclaimed child-care centres will be pursuant to part 12 thereof and clearly under the umbrella.

The Hon. P. J. BREEN: Out-of-home care as I understand it in section 135 refers to residential care, which is not designated care of the kind you are referring to. It is residential care as in "Joey's friend's mother's house". Is that not what it means?

Mr WESTON: I do not know what a designated agency actually is, bearing in mind that this Act is yet to be proclaimed and it has been on the books now since late 1998. In other words, it may be that a designated agency does somehow incorporate—

The Hon. P. J. BREEN: I think that is the intention of the legislation. It seems fairly clear just reading it that that is what is intended.

Mr WESTON: I believe that it does not but—

The Hon. J. HATZISTERGOS: Out-of-home care does not include daily care and control of a child given by a person in the person's capacity as a licensed provider of children's services.

Mr WESTON: Yes, that is 135 (2). That makes it quite clear that a licensed child-care service is not an out-of-home care service.

The Hon. J. HATZISTERGOS: Then 139 says that a designated agency means an organisation that arranges the provision of out-of-home care.

Mr WESTON: There is the answer quite clearly: we are clearly not a designated agency either.

The Hon. J. HATZISTERGOS: Covered by 139, you would not be covered by the Act.

Mr WESTON: Under neither of those two provisions would 157 and 158 be picked up.

The Hon. J. HATZISTERGOS: They do not apply to you?

Mr WESTON: No, I think that is probably correct, which takes us back to the start. It seems to me at least that the sort of protections provided, particularly in 157 (1) (c) and 158, do accommodate our primary concerns.

The Hon. J. HATZISTERGOS: Why was the decision taken to exclude you from the operation of this legislation at the time?

Mrs BARDETTA: I do not think it was never intended to.

The Hon. J. HATZISTERGOS: It looks as though it is fairly deliberate, just reading the wording of the legislation.

Mr WESTON: I can only guess as well but I think the word "exclusion" is probably a bit too strong. I suspect that because of the existence of the centre-based regulations that the Chairman and I have already referred to, which makes it clear that no form of physical punishment is within the contemplation of the law on the one hand, I think that—

The Hon. J. HATZISTERGOS: I think this is addressing a different issue. It is not addressing the question of punishment; it is addressing the issue of care, is it not?

Mr WESTON: No, I think that the architects of the bill were trying to spread more broadly the rule that physical punishment is not to be regarded as appropriate child—

The Hon. J. HATZISTERGOS: Are you saying that 157 and 158 are designed to deal with punishment? I do not think so.

Mr WESTON: They incorporate the sort of protections that need to be incorporated into legislation if you are going to have a provision which the bill contains.

The Hon. J. HATZISTERGOS: Yes, but are you aware of the reason for a decision being taken for those responsibilities in 157 and 158 being left out?

Mr WESTON: I think there are two reasons to explain that. One is the one I just started to provide in relation to the understanding of how the regulations work on the one hand and, secondly, I think there has been an assumption or understanding that the provisions of 157 and 158 already do apply to child-care centres. I mean they do fit the broad description, do they not, of home care. So it is at least possible that people have not properly understood the technical operations of the law and have assumed that the sort of—

The Hon. J. HATZISTERGOS: Unless it was intended to proclaim you as unauthorised carers under regulations?

Mr WESTON: No, I cannot conceive that that was any positive intention. I think there has just been a slight misunderstanding of how the law already operates.

The Hon. J. F. RYAN: If the proposed bill from Mr Corbett were not passed you do not appear to have anything that gives you those rights in any event, except at common law.

The Hon. P. J. BREEN: But you will not lose your common law rights if this bill is passed, will you?

Mrs BARDETTA: I think you do.

Mr WESTON: Yes, these providers would lose those common law rights because they are excluded from the definition of people in the place of parents. It becomes a relevant issue because—

The Hon. J. F. RYAN: Are not licensed child-care providers people who could be described as expressly authorised by a parent of a child to use physical force to discipline, manage all control the child? I imagine that was what Mr Corbett meant by that expression: anyone who the parent authorised. I imagine any parent delivering a child to a licensed child-care centre authorises the child-care centre to use physical force to at least manage, if not discipline, the child.

Mrs BARDETTA: We would like it to be so.

Mr WESTON: I would accept that that is arguable but I think it is evident—I think I am right when I say—from other parts of the second reading speech that the pretty plain intention is not to

include people such as child-care providers within that group of people who are entitled to use the defence of lawful correction as that is formulated under the bill as drafted.

The Hon. J. F. RYAN: I suppose the difficulty occurs that you do not have any defence for lawful correction. If you were included in this bill you would have a defence that was never intended to be given to you for lawful correction, because I think what you are referring to is not correction; it is management of a child. At worst you are going to be lifting the child up and putting the child in another place.

Mr WESTON: If I have understood the question correctly, that is in a sense why the equivalent of 157 (3) is needed.

The Hon. J. HATZISTERGOS: And the express authorisation does not apply to you in any event because the bill requires express authorisation only in the case of step-parent, de facto spouse or a person who is a relative of the parent of the child. You do not fit any of those descriptions.

Mr WESTON: Hence the exclusion.

The Hon. J. HATZISTERGOS: So even if express authorisation applied, it would not apply to you.

Mr WESTON: Yes. It is not as if the association is suggesting that providers need some access to the defence of lawful correction, except in one important respect. If assault becomes the application of physical force and the application of physical force is not defined to make it clear where to draw the line, then all sorts of practical problems emerge. In the light of those sort of practical problems it becomes important for providers to continue to have access to the sort of defences that the common law currently gives them, and which would be provided to them under an appropriately located equivalent to 157 and 158.

CHAIR: The Committee does understand your concerns. We will seek appropriate evidence and if necessary appropriate legal advice and will get to the bottom of the problem that you are raising.

Mr WESTON: Thank you, sir. May I leave with the Committee a suggested amendment to either the child protection legislation or the Crimes Act which in our view picks up and deals with the issues that we have been discussing with you this morning. It offers our solution, as it were.

CHAIR: Thank you very much.

(The witnesses withdrew)

(Short adjournment)

JOHN FREDERICK STUART NORTH, Solicitor, President of the Law Society of New South Wales, 170 Phillip Street, Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr NORTH: As the President of the Law Society of New South Wales.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1991?

Mr NORTH: Yes.

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

Mr NORTH: Yes.

CHAIR: Can you briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Mr NORTH: As President of the Law Society I have taken note of the criminal law committee's position statement on this matter, and as a solicitor I have practised quite extensively in child care proceedings and in criminal matters that have involved defences of lawful chastisement over the past 18 years.

CHAIR: The Law Society has made a written submission to this inquiry. Is it your wish that that submission be included as part of your sworn evidence?

Mr NORTH: Yes, it is.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request.

Mr NORTH: Thank you.

CHAIR: I now invite you to make a brief opening statement in support of the Law Society's submission.

Mr NORTH: It should be noted that the Law Society's view is that the defence of reasonable chastisement to a charge of assault should no longer have a place in the criminal law. The Law Society does not regard that it is appropriate to perpetrate on a child what would in fact be an unlawful act if it was done to an adult. However, the submission also takes note of the actual draft bill that is under review and has, therefore, put submissions forward, which I will not go over in length, that say that the bill would indeed clarify the current law by effecting the transfer of the common law principles relating to the physical punishment of children. It would also help to act as a useful guide to both parents and law enforcers as to what is reasonable in the context of physical discipline, and, most importantly, provide protection for children from excessive physical punishment, violence and abuse.

The Law Society believes that Australia has clear international obligations and that those obligations include legislation that should protect children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of parents, legal guardians or any other person who has care of the child, and to ensure that no child is subject to torture or other cruel, inhuman or degrading treatment or punishment. In essence, the Law Society has come to the view that changing social attitudes have reached a point where no longer is it necessary for teachers and others to employ corporal punishment to control our children, and we have reached a stage where this bill may well help the public to understand how far one can go in being able to control children.

CHAIR: There appears to be a comparative absence or very little presence at least of reported cases on lawful correction or reasonable chastisement. That being the case, is it reasonable to assume that there are very few prosecutions of parents in relation to their disciplining of children?

Mr NORTH: I think from personal experience, actual cases over 18 years that I have been involved with, where a parent or someone in loco parentis is charged, would only number half a dozen. But in the child care field there are a host of matters under the child protection legislation that have serious accusations not only of physical abuse but also of sexual abuse, and that is a field that unfortunately has a large number of cases.

CHAIR: Professor Patrick Parkinson appeared before this Committee last week. As you may be aware, he was substantially in charge of drafting that new child protection legislation. He sees that new legislation as being one part and Mr Corbett's bill as being another part of a total picture, as it were. Can you express a view as to whether you think the drafting of the Corbett bill is appropriate?

Mr NORTH: I think I agree, having been involved in both child care and protection and also defending clients on criminal charges, that they are separate matters. Often you will get a criminal charge arising out of a child care matter. It is probably correct for the professor to say that we should not confuse the two because there is nothing to stop both matters proceeding in tandem, namely, the child care and protection proceedings, which are essentially for the protection of the child, and a criminal charge that will satisfy society's need to see that crimes do not go unpunished. In that context this bill, although we are taking an even wider stance as a Law Society, we think this bill would help to clarify in the minds of parents and others in loco parentis the extent to which they can go to discipline or control a child. So we think that although the wording may not be perfect, it does to that extent help members of the public understand this very important issue.

CHAIR: I put some drafting matters to Professor Parkinson and to Dr Judy Cashmore last week when they appeared before the Committee. One of the matters I put to them related to the circumstances in which the application of physical force is not reasonable when a defence of lawful correction is raised. There are three categories in Mr Corbett's bill: first, when the force is applied by the use of a stick, belt or other object, other than an open hand; secondly, when the force is applied to any part of the head or neck of the child; and, thirdly, when the force is applied to any part of the body of the child in such a way as to cause or threaten to cause harm to that child that lasts for more than a short period.

What would be your view if the first two categories were deleted and we were then left with the provision, in this form, that the application of physical force is not reasonable if the force is applied to any part of the body of a child in such a way as to cause or threaten to cause harm to the child that lasts for more than a short period? In other words, can I ask you whether perhaps one might say the harm suffered is more important than the means by which the harm is delivered. Before you answer, can I say that in essence the response I received from the other two witnesses was that they placed great store on the educative value of the provision as drafted. However, you are here as President of the Law Society and we are interested in your view.

Mr NORTH: The Law Society took the view that 2 (a) and 2 (b) are better left in because they show people what is not prima facie allowed. If you look at it in the reverse and delete 2 (a) and 2 (b) you have in fact probably defeated the object of the legislation. You would merely be putting the previous common law situation, perhaps with different words, but it is very difficult to see what the use or the utility of the legislation would be.

CHAIR: There is another matter that I put to those same two witnesses I have just mentioned and which I would like to put to you. Some critics of the bill argue that the bill would create uncertainty for parents as to what physical punishment they are able to use. They would go on from that to say that the bill diminishes their authority. Supposing we forget about this essentially negative drafting and, instead, specified in positive terms what the parent is entitled to do, namely, smack below the head and neck with an open hand, what would be your view in regard to positive drafting like that?

Mr NORTH: The Law Society would say, given its standpoint, that that was not positive drafting because it does not believe that we should have this defence of lawful chastisement in any

event. The Law Society feels that the effect of having 2 (a) and 2 (b), although it is in the negative, would make every parent or person in the place of a parent think twice before he or she picked up any object with which to chastise a child. Some of the reasoning behind that is that quite often in these situations a lot of chastisement is the result of the parent losing his or her temper and not in the cold light of a day performing what could be seen to be lawful chastisement of a child. Therefore, if a law says that you do not use sticks, belts and other objects, we believe that that will have a good educative effect on the population.

CHAIR: This may or may not be a legal question. In regard to the application of physical force not being reasonable, if the force is applied by the use of a stick, belt or other object, some submissions to the Committee and expressions of view by witnesses would suggest that some people have some sort of reverence for the use of the wooden spoon, which is sometimes found in kitchens. Do you think there is any legitimacy attaching to the use of a wooden spoon, which clearly would be another object within the meaning of the provision I have just outlined?

Mr NORTH: No. We have to take the stance that if we are going to prohibit the use of objects other than the hand then we have to be strong and resolute, and not allow the wooden spoon. My mother and others might well disagree, but the whole purpose is to try to show parents that there are better ways to deal with children than to inflict what, in any other circumstances, would be an assault.

CHAIR: Would I be correct in assuming that the Law Society really views this provision as being important in terms not only of the administration of the criminal law but essentially as an educative tool for parents on how they deal with their children, so far as corrections are concerned?

Mr NORTH: That is right. At the moment if someone feels free in the heat of anger to pick up the nearest object and administer punishment to a child knowing that he or she might be able to escape any sort of sanction, then we really are opening up some children to severe injury. There are some difficulties in here with the use of the words "trivial" or "negligible", and I think someone has mentioned in the material the question of whether a tap on the leg with a ruler would involve the criminal law. As this is drafted it is possible that a tap with a ruler would involve the criminal law, which is perhaps unfortunate, but if everyone knows that objects are ruled out then it is much more unlikely that that will occur in the future.

CHAIR: Section 61AA (ii) (c) refers to "the force is applied to any part of the body of a child in such a way as to cause or threaten to cause harm to the child that lasts for more than a short period". I ask you to turn your attention to the words "or threaten to cause". Do you think those words add anything useful to the drafting of this provision?

Mr NORTH: It is true to say that it may make the section harder to understand, but we have mentioned the reasoning behind it on page three of our submission under the heading "Developments in Australian law", and it seems to come from the Model Criminal Code Officers Committee, which did a report in 1998 and used the words at (a) "causing or threatening to cause harm to a child that lasts for more than a short period of time". The object is to take into account things wider than mere physical chastisement, and it is easy to think of examples that would be very debilitating to a child, such as someone who was quite claustrophobic being threatened with being locked away under the stairs for three or four days, or something. There are a lot of possibilities that you can see. I should not try to second think Mr Corbett, but I think the object is to take it just beyond the physical, and to try to identify with those model criminal code matters as well as to make sure that it fits well with the international conventions.

CHAIR: I would like to refer to a remark made at the end of the submission of the Law Society which says, "While it [that is the bill] falls short of the level of protection that is preferred by the Law Society its enactment will address the position advanced by the Model Criminal Code Officers Committee." What level of protection would be preferred by the Law Society?

Mr NORTH: The removal of the defence of lawful chastisement from being a defence to a charge of assault.

CHAIR: In practical terms, does it follow as a logical consequence that you are saying that smacking with an open hand would also be prohibited?

Mr NORTH: I think that is a logical conclusion.

The Hon. J. F. RYAN: One of the arguments used in defence of the bill relates to the fact that it clarifies the law in that case law and the common law has resulted in decisions that are not very consistent. You cite two cases on the last page of your submission that seem to go in that direction, even though that is not your point for citing them. You have cited them for the purpose of saying that the courts are moving in the same direction as the proposal contained in the law, but I notice in the Tasmanian case you have cited that the father appears to have been convicted for an assault only because there was the complicating factor that he had no reason to strike other siblings.

You could almost read that the judge said that to smack a child whenever he is disobedient may not be ill treatment, but to do so three times a day for no matter what his behaviour may well be so. That would almost seem to give an argument that so long as you have reasonable cause, regularly hitting a child with a stick is not unlawful. However, it is interesting to note that in the Western Australian case the person was convicted for using a ruler. Am I correct in reading the cases? They seem to come to completely different conclusions with regard to the use of implements.

Mr NORTH: I think you are right. What they were trying to get at in one was that it is not an acceptable mode of behaviour to hit a child at every point in the day when the child appears to be doing something that is wrong. It is the difficulty with reconciling the cases that has led the Law Society, although it takes an even wider view than this bill, to say that we should at least proscribe the use of implements altogether because it is such a difficult area.

If you have ever been involved in the cases as I have, quite a lot of them arise, and these are the actual lawful chastisement cases in which I have been involved, out of what is now called contact visits—in the old days access—where a child has returned home after an access visit and the mother or the father complains to the police about marks or complaints made by the child whilst on an access visit. Therefore that is a fertile area for complaint, and that complaint is also one of the real areas of complaint that go into the child protection area as well. If we can at least make people think that they do not resort to the use of objects at any stage when looking after a child, some great public benefit could result.

The Hon. J. F. RYAN: Some might argue that if a law like this were to be used by people who are involved in, what has to be said are, contentious and difficult family law problems, having a law of that nature only adds to the problem and people would make complaints that would not necessarily have attracted the attention of the public authorities about people smacking. I can imagine it would not be hard for an argument to be put to this Committee by a non-custodial father that it is an open invitation to custodial mothers to bring cases of assault against non-custodial fathers almost to the point of being trivial and vexatious.

Mr NORTH: It is possible. It depends when you try to codify something whether you will achieve the object you are after. If the public know that they do not use objects, the non-custodial parent will know that he or she is not to use objects during contact visits. Unless the child goes home to mother or father and says, "Whilst on this visit an object was used", it is unlikely that they will be able to make the complaint. That does not say that they will not make the complaint about the excessive use of a hand, but if people know they do not use objects may be we will achieve the object we are after here.

The Hon. J. F. RYAN: The Committee had access to a survey by Reark Research, which said that 41 per cent agreed with the statement that parents have the right to discipline children in any way they see fit. If that is the case, that it is a widely held view by the public—not 50 per cent, but close to half—that parents have the right to discipline in anyway they see fit, would it be fair to argue that if the law is framed in a manner that is too far out of public expectation in an area such as this, we are likely to criminalise people who were not expected to fall within the reins of the criminal law?

Mr NORTH: I am always a little suspicious of surveys that say that sort of thing. I believe that most people, when asked whether it would be better to chastise kids without the use of objects,

be greatly out of step with modern life. When we were young to get the cane or the strap, depending on what school you went to, was an everyday situation. Now it is not in force in any school in the

polls. I will leave it at that.

The Hon. P. J. BREEN:

that the *Daily Telegraph*

I think it should be an issue. He says it is a reflection of the community's attitude, and that the community, as parents, believe they have certain rights in relation to disciplining their children and

problem?

Mr NORTH:

involving the use of corporal violence is an assault. This bill is an attempt to make sure that that assault is not effected by the use of implements, other than a hand. That is not a trivial thing in

particularly young children, as result of excessive violence it would not be hard for the Parliament to argue that what it was doing was a very important thing.

You have raised the question of assault a couple of times. You have used the words "or any other circumstances, which would amount to an assault". The Chairman has

way as to cause or threaten to cause harm". What would you think about replacing that section with the words "if force is applied which, in any other circumstances, would amount to an assault." Would

like.

Mr NORTH:

difficulties, of course, for anyone looking at proposed subsection 2 (c) of section 61AA is, as the Chairman raised, "or threaten to cause". In law an assault does not necessarily involve a physical

If you would allow me, I might take that and have a look at it and get back to you, Mr Breen, because it is an interesting question.

Also in the same context is whether, from your experience, there is a difference between lawful correction and reasonable chastisement or is that the same common law

its place.

Mr NORTH:

which looked at this is happy that that has not occurred as a result of the drafting of this bill. But if there is anything further we can add to that we will do so.

One of the criticisms of this bill, which, coincidentally, comes from people in the Christian denominations, is in relation to proposed subsection 2 (c) of

> the force is applied to any part of the body of the child in such a way as to cause, or threaten to cause, harm to the child that lasts for more than a short period.

if it is harm for a short period and that the bill does not distinguish between harm, which should never occur to a child, and pain which, it might be argued, is in a different position. Is that something that

opinion as to whether it is preferable for the bill to address the issue of pain as opposed to the issue of harm?

That is a good question, Mr Hatzistergos. I think what the Law Society has directed its mind to is that this bill, through some careful use of wording, is trying to go further than

and were looked at by the model criminal code officers meeting. It encompasses more than just the infliction of pain; it fits in with international covenants and treaties, that is, degrading and other treatment or psychological or mental trauma that are not just the mere infliction of pain. I think the use of "harm" there must be deliberate.

The Hon. J. F. RYAN: You have said that the use of objects ought to be proscribed altogether in law. I will go through an argument with you, which we are likely to hear this afternoon from the New South Wales Council of Churches and others, that it might be better to use a ruler than an open hand. Essentially they argue:

> Some psychologists and parents believe that a child can be subject to a greater threat of physical violence when hit with a strong open hand of an adult who is invariably acting to an impulse to discipline and usually at a time when the disciplinarian's emotions or anger are heightened.

They say it is preferable to use a ruler with limited pressure because:

> In that circumstance the disciplinarian must pause to retrieve the ruler and therefore have the opportunity to react in a timeframe which allows the emotions to level and for anger to dissipate.

In some households it may not be used at all. Their argument is that the open hand is potentially a more dangerous implement than a ruler or a stick. Would you like to react to that?

Mr NORTH: You do not want to encourage people to act in the heat of the moment. Obviously, from our experience at the Law Society and from my own personal experience, a lot of these cases that get before the court are because people have not reacted rationally and have acted in the heat of the moment. But I do not think that you can cure one evil by substituting another, such as the use of an object, because the object is far more likely to cause serious harm than an open hand.

CHAIR: Mr North, when I was asking questions before I adverted to the fact that there was little in the way of reported cases in this area of the law. You have indicated to the Committee that you have some personal experience of this type of case involving, one would assume, charges of assault on children. Without clearly identifying names or anything of that sort, are you able to tell the Committee from your own experience of a typical factual situation in which a charge of assault is brought against a carer or a parent? Would the usual case involve the use of an object?

Mr NORTH: Yes, Mr Chairman, the cases I have done that involve lawful chastisement have all involved the use of sticks or straps and all of them have resulted in at least some actual bodily harm in the way of bruising and/or cuts, so that there was material on which the police could proceed with the charge. None of them have been the result of the use of an open hand on any part of the body. Some of the child care cases, particularly with young children, have involved just hands, fists and shaking, but they resulted in the child care cases that I was talking about before.

CHAIR: I am not trying to trivialise the matter by any means. Have any of the cases involved a wooden spoon?

Mr NORTH: No.

CHAIR: I want to ask you a couple of questions dealing with drafting matters. The definition of the term "person acting for a parent" in proposed subsection (5) (a) (ii) of section 61AA states:

> is expressly authorised by a parent of the child to use physical force to discipline, manage or control the child

The Committee believes, unless we are advised otherwise, that this may be a significant change to the common law position where there is an implied delegation from parents to those in lawful charge of children to apply moderate and reasonable physical punishment. Is there an alternative to this wording which could achieve the same effect? I ask the question because a number of submissions have raised some concern about the requirement for expressed authorisation.

Mr NORTH: The Law Society did not look for an alternative to the use of the word "express" because the Law Society's view, of course, was that this lawful chastisement should go. But

we could give you some assistance in that regard.

CHAIR:
you a question I also put to Professor Vimpani, our first witness today. I put the question to him on the basis that he is a paediatrician, and, clearly, I will put it to you on a different basis. Should the bill

For example, should there be provision that no child under one, two or three years of age should be hit with anything? According to my recollection, Professor Vimpani responded that, desirably, no child

Society have any view regarding lower or upper age limits for physical correction?

Mr NORTH:
territory if you start doing that in this case and that you should leave it to the operation of the section as a whole and to the behaviour of people in regard to children, no matter what age they are. As soon

look silly.

CHAIR:

(The witness withdrew)

(Luncheon adjournment)

MARION SMITH, Convenor, Social Issues Committee, Presbyterian Women's Association, New South Wales, 40 Makinson Street, Gladesville,

STEPHEN JOHN LONGHURST, Vice President, Federation of Parents and Friends Associations of Catholic Schools Archdiocese of Sydney, 14 Glyn Street, Punchbowl,

LYNETTE MIDDLETON, Salvation Army Officer and Executive Member of the New South Wales Council of Churches, PO Box A435, Sydney South, 1232, and

NEVILLE JOHN POLLARD, State Director of Education for Christian Community Schools Ltd, 27 Bagdad Street, Regents Park, 2143, sworn and examined.

CHAIR: Did you each receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901 and are you all conversant with the terms of reference of this inquiry?

Mrs SMITH: Yes.

Mr LONGHURST: Yes.

Mrs MIDDLETON: Yes.

Mr POLLARD: Yes.

CHAIR: Mrs Smith, could you outline briefly your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Mrs SMITH: Apart from being a registered nurse of some experience, I am a mother of four adult children and grandmother of six grandsons. I have reasonable experience in community work and I have been convenor of the Social Issues Committee for the past 12 years.

CHAIR: As you will be aware, the Presbyterian Women's Association has made a written submission to the Committee. It is your wish that that submission be included as part of your sworn evidence?

Mrs SMITH: Yes.

CHAIR: Mr Longhurst, could you outline briefly your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Mr LONGHURST: I have been a member of the Federation of Parents and Friends Associations of Catholic Schools for three or four years and I am currently Vice President. I have been on the executive of my son's Parents and Friends Association for about six or seven years. My son is now 18 years old—he is currently doing the Higher School Certificate—and I have brought him up.

CHAIR: As you will be aware, the Federation of Parents and Friends Associations of Catholic Schools has made a written submission to the Committee. Do you wish that submission to be included as part of your sworn evidence?

Mr LONGHURST: Yes.

CHAIR: Major Middleton, could you outline briefly your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Mrs MIDDLETON: I have been a Salvation Army officer for 31 years. I have held positions within the Salvation Army in a vocational training centre for girls who are committed to care and control by the courts. I am a mother of two: I have a 24-year-old and a 15-year-old. I am a former

school teacher and I am currently chairman of the Social Issues Council for the Salvation Army—a

CHAIR: You will be aware that the New South Wales Council of Churches has made a

Army Response". It is your wish that that submission be included as part of your sworn evidence?

Mrs MIDDLETON:

CHAIR: Mr Pollard, could you outline briefly your qualifications and experience as they are

Mr POLLARD: Academically, I am a Justice of the Peace and I have a Bachelor of Arts and

believes education should occur in partnership with the home, the church and the school. Therefore, we have a particular interest in education in the home and we believe the bill that we will discuss this

assuming my present position, I had 33 years' experience as a secondary school teacher. For the last 11 years I have been principal of Christian Community High School.

As you will be aware, Christian Community Schools Ltd has made a written submission to this inquiry. It is your wish that that submission be included as part of your sworn

Mr POLLARD: Yes.

If any of you should consider at any stage during your evidence that, in the public interest, certain evidence or documents you may wish to present should be heard or seen only by the

brief oral submission to the Committee not exceeding 10 minutes in each case. I invite Mrs Smith to start.

We are interested in this legislation because we believe it could encroach very much on the behaviour of parents—particularly those parents who take notice of the law—in

thinking of the many children in society who are not abused and who are looked after well. I had a stick in my home and the children knew that if they stepped too far out of line mum would get it. That

aged about eight or nine and it was no longer necessary. It is a great help to be able to discipline your children as you see fit in the privacy of your own home, and I do not think anyone was damaged at

I feel that this is more law than we need—we already have laws to cover this area—and the majority of members of the Social Issues Committee agree. As I indicated in my submission, there

the majority and did not have personal experience of managing a number of children. We are concerned that perhaps we are making criminal laws about matters that perhaps should not be handled

CHAIR: Thank you. Mr Longhurst?

Thank you for the opportunity for the Federation of Parents and Friends Associations of Catholic Schools to make this submission and for me to appear before the Committee

federation supports the object of the bill to limit the use of excessive physical force on a child. The types of force that are excluded by the bill are those that are considered appropriate to be excluded.

this would invite criminal proceedings against a parent and appears to be a case of a parent's being guilty until proven innocent.

If a child is disciplined in accordance with the terms of the bill, the possibility of criminal proceedings should not occur. The bill should state clearly that it is lawful to discipline a child within the terms of the bill. Any other process would make parents fearful of unwarranted legal and/or criminal action being taken against them and would distress the whole family. This could potentially result in a breakdown of discipline within some families, with resulting consequences.

CHAIR: Thank you. Major Middleton?

Mrs MIDDLETON: On behalf of the New South Wales Council of Churches, I thank you for this opportunity to appear before the Committee. The New South Wales Council of Churches recognises the effort being made, through the introduction of this bill, to address the excessive punishment of children within our society that constitutes abuse. We believe that, while the law may be strong in its ability to admonish and bring punitive action to bear on inappropriate behaviour, it is much weaker in its ability to change behaviour. Behavioural change requires education and rehabilitation and, from our perspective, the grace of God.

We strongly support the call on government in the second reading of this bill to make a commitment to funding a community education program to teach parents and carers positive alternatives to the use of harsh physical discipline on children. The New South Wales Council of Churches fully agrees with a non-violence-towards-children stance and supports action to support children against abuse, be it physical, emotional or sexual. We acknowledge the significant differences between the 2000 and the 1997 bill that have sought to address the perceived shortcomings of the 1997 bill, but we reaffirm our position that this bill, in seeking to define appropriate discipline is too prescriptive and able to be interpreted so subjectively that more problems could be created than solved. A law that uses as its criteria for punitive action a focus on the degree of harm sustained by children by any means in any circumstances must surely better serve our children.

While there is a sense that this bill is a formal recognition at law of parents' rights to administer corporal punishment, I refer the Committee to the extract from the Australian Law Reform Commission report No. 57 on page 4 of briefing paper number 9/2000 that acknowledges the gradual reduction of parental absolute rights and the growing autonomy of children and the assumption of the protective role by the law. Our concern lies in the inherent potential in legislation such as the bill being proposed for a continuing erosion of the rights of parents in favour of the advancement of the autonomy of children and the power of the State. The church's strong emphasis on the sanctity of the family rejects any such trends in legislation. The New South Wales Council of Churches believes that the flexibility contained in the current legislation adequately secures the protection of our children while demanding accountability of parents and all others in positions of responsibility over them.

CHAIR: Thank you. Mr Pollard?

Mr POLLARD: I would also like to thank the Committee for the opportunity to appear this afternoon and present my views and the views of Christian Community Schools Ltd. I might say at the beginning as a school organisation we do not support the harsh disciplining of children. We never have and we never will. But we believe that any instances of harsh discipline may be dealt with under existing laws, so we believe there is no necessity at all for this particular bill to be passed into an Act. We do not support this bill and we are strongly of the opinion that it should not be passed. That is why I am here this afternoon, to express my concern and the concern of the organisation I am representing. The particular reason we do not support the bill is that we do not support any bill that diminishes the role of parenthood, as this is part of our Judeo-Christian ethic which underpins our society. We are very strong on that, as the foundation of our society is based on the Judeo-Christian ethic, which sees the tremendously important role of parents in the upbringing of children.

I am not concerned necessarily that whenever things pertaining to the Bible are mentioned we quote the verse from Proverbs: "Spare the rod and spoil the child." That is in the Bible and I support that, however I think it would be better if, in our understanding that the Bible is the basis of our Judeo-Christian ethic, that we look at other passages—and I simply mention one passage this afternoon, Ephesians 6:4, which the apostle Paul wrote. He said, "Fathers, do not exasperate your children; instead, bring them up in the training and instruction of the Lord." While I agree with the statement "Spare the rod and spoil the child", I think that comes across quite emotionally many times and we would be better to concentrate on the statement that fathers are not to exasperate their children—that

is a clear biblical injunction—but are to bring them up in the training and instruction of the law. The

which the Bible supports. But that passage says fathers should not exasperate their children, so there is a caveat on that. So, we say this bill severely cuts across our biblical heritage and we are very

We are also concerned, and I guess it is my experience of being the principal of quite a large school for 11 years, that children may develop the culture of dobbing; that kids will talk and say, "Last

are not allowed to give the stick." In our culture today children are encouraged to have their rights—we do not seem to worry too much about responsibilities—and we could see this as a very severe

That does not promote healthy family living and we are very concerned about that.

I notice the document that we received talks about changes in public standards. My reading

be brought in to reflect those changes. To me and to my organisation that is of great concern. Yes, standards are changing but the world is not getting better. If we could argue that the changes in public

there is no evidence of that. So, I challenge this document's statement saying that standards have changed and therefore we ought to change the standards of disciplining children. The world is not

driving and we are actually bringing in the speed limit. We have cut it back to 50 kilometres an hour. To me, that is a helpful way to go. It would surprise me and concern me if we decided that because

senses, that is what this bill is doing in another forum.

The bill is unworkable in its definitions. I was rather surprised how strongly the writer of this

is some debate in this document as to whether the bill covers both assault and battery. If a much more legal person than I, who writes a document with some imprimatur, cannot understand whether the

amazing that that was written in this document. The bill talks about hurting for short time and discussions like that. That is unworkable. Even this person says courts of law would find it difficult to

We also believe that discipline given straight after the misdemeanour has occurred is the most appropriate discipline to give. The survey at the end of this document says that many parents feel

without food. If this bill does get into law I believe many parents will say, "We cannot give kids corporal discipline any more, we now have no other option than to take drastic action like

frustration, particularly if the children are constantly saying, "Mum, I will dob you in if you give me the stick or if you give me a big smack." That is inappropriate. That is totally undermining the family.

briefly mention this from the situation of a principal. I have lived through the situation where the principal is now no longer able to give corporal discipline to children. As a principal, I can quote two

that Act was passed than ever I did beforehand, because I wanted to maintain the discipline of my school. I was very concerned in doing that, that kids would be left at home, unattended, and could get

Secondly, since this schools disciplinary bill became law, detentions at my school were used much more than I ever used them before, although I only used corporal discipline on maybe five or six

were subject to violence. The point I have tried to make is that if discipline is given in a loving fashion straight after the offence has occurred the child understands what he has done and what he has been

until the weekend and rather than having to be denied food. So, I encourage this meeting to very much take my understanding that the Christian Community School does not support this bill.

CHAIR: Thank you very much. In commencing the questioning period, could I indicate that a question from me or from one of my colleagues may be addressed to a named witness. That does not preclude one or other of you also responding to the question, if you choose. Although it is unusual, I think I should give some preliminary explanation as well, so there is absolutely no misunderstanding about the state of the law at the moment or what the Committee is inquiring into.

The Hon. A. G. Corbett's bill is an intended amendment to the Crimes Act of this State. I must point out that the Crimes Act prescribes that certain offences will be created, including, for example, assault and battery and a range of other offences going right up the scale to rape and murder. However, regarding assault, an assault charge can be brought in all sorts of circumstances, including in regard to the relationship or interaction between parents and children but it is not limited to that by any means and it might be that a brawl outside licensed premises gives rise to an assault charge. However, in regard to the matter we are considering, if an assault charge is brought arising out of the discipline of a child by a parent, a defence of what is known as lawful correction or sometimes, alternatively, reasonable chastisement can be raised. A defence can be raised.

In essence, the common law—that is, judge-made law—provides that the use of physical force against the child must be reasonable having regard to the age, the health, the maturity or other characteristics of the child, the nature of the alleged misbehaviour that might have occurred and any other circumstances that the court considers to be relevant. The Hon. A. G. Corbett's bill does not create an offence of assault at all—that exists at the moment—but it deals only with the circumstances in which the defence of lawful correction can be raised. It provides—and I am shortening this—in essence that the application of the physical force either by a parent or by the carer of the child is not reasonable in certain defined circumstances, which are: the force is applied by the use of a stick, belt or other object other than an open hand; the force is applied to any part of the head or neck of the child; or the force is applied to any part of the body in such a way as to cause, or threaten to cause, harm to the child lasting longer than a short period.

I entered into that brief explanation of what the bill is about because I was particularly concerned, especially in the submission of the Federation of Parents and Friends Associations of Catholic Schools in the Archdiocese of Sydney, about the following statement:

> However, the concept of a parent having to use the defence of lawful correction in a criminal proceeding is considered to be inappropriate.

I appreciate that the submission is not drawn as a legal document but I just want to indicate that, whether you consider it inappropriate or not, the law currently provides for a defence of lawful correction. What the Hon. A. G. Corbett's bill does is further define that defence and raise some additional matters that could be pleaded by way of defence, should such a charge be brought. I thought it was important to clarify that.

Mr Pollard, your organisation's submission on page 3, in reference to comments in the Hon. A. G. Corbett's second reading speech that the bill does not criminalise a smack with an open hand, states:

> We accept that these provisions would be suitable to an infants-age child, but we do not accept the appropriateness of such discipline for a serious misdemeanour by a child of upper primary school or lower secondary age.

That is material that is contained in your own submission.

Mr POLLARD: Yes, that is correct.

CHAIR: Could I ask you what you consider to be the appropriate upper and lower age limits beyond which corporal punishment should not be used or is perhaps inappropriate?

Mr POLLARD: It depends on the development of the child. I will make a subsequent statement but at the moment I would not want to say at this age that one should start or at this age one should stop because each child is different. Indeed, I make it quite clear that there are some children

children for whom that is not appropriate at all, but I would think that somewhere in the junior secondary years, maybe 13 or 14, or probably somewhere around that age or maturity, corporal

In terms of the bottom end, I think that once a little child starts walking and is liable to face dangers from radiators and doors that might fly open and knock them over, then I think that there is

on the hand if the child has done something two or three times which would lead to danger and which would lead to correction. So I guess, in answer to your question, I would say somewhere from when a

of the child.

CHAIR:
Graham Vimpani, who is a paediatrician from the University of Newcastle. He was asked by me whether the bill should include upper and lower limits beyond which physical punishment should be

whether there should be a provision in the bill setting a lower limit in particular. His response in essence was that he thought not because when one tries to define something, it can become difficult in

the law should make any particular provision regarding limiting an age below which or above which corporal punishment should not be administered?

I think we would have to rely on expert evidence in that field. I think, obviously, the upper limit would be 18 years of age or when a person is deemed to be an adult in law.

child has reason and can reason out things and understand, that would be an appropriate age but it is rather difficult to say exactly.

I apologise for the fact that I am putting essentially legal questions to you but you must appreciate that we are inquiring into the particular provisions of the bill rather than conducting a

drafted, so we have to give attention to its actual drafting. There is a provision in the bill which would effectively limit the range of persons who can rely on the defence of reasonable chastisement—the

definition in the bill, family members are included and non-family members are excluded.

Could I put it to you that it is possible to argue that that provision actually strengthens the

example, in primary and secondary education and in preschool child care, it is no longer lawful to administer corporal punishment. In addition, at common law, the defence is more widely available.

Mrs SMITH: One view which we put in our submission was that perhaps it should be

children. With the way things are at the moment, children end up with a whole range of people looking after them and they all have different standards for this, that and the other. It becomes very

the biological parents, it would be a better guide for the courts and it would also be a better guide for people who abuse children.

came from. It seems to me that a large percentage of the abuse of children stems from these other people who are in loco parentis at various times with children who are not their own. We felt that if

know what the Committee would think of that.

CHAIR:
take on a moral basis, the fact is that there are many children in society who are cared for by de facto parents, by which I mean—

Mrs SMITH: Well, then, it could be limited.

CHAIR: —other than biological parents. The child protection statistics tend to indicate that trouble occurs to a disproportionate extent on the part of de facto fathers in particular. However, the difficulty arises in that the law must deal with realities and if the child is living in a household where, for the sake of argument, there has been a biological mother and a non-biological father present—

The Hon. P. J. BREEN: All fathers are biological.

CHAIR: Yes—a male parent, then, in the household who is not the biological father, nonetheless, that person is capable of inflicting damage on the child.

Mrs SMITH: That is right, so the law could say that these people are not entitled. It does not mean that they will not be able to discipline the child, but they will not be able to use force. That is one alternative answer.

CHAIR: The definition contained in the Hon. A. G. Corbett's bill provides that a person acting for a parent means that step-parent of a child, a de facto spouse of a parent of the child, or a relative by law or marriage of the parent of the child. They are the categories that the bill defines.

Mrs SMITH: Yes.

CHAIR: Before I go any further, I must correct something I said earlier for which I apologise. It was not Professor Vimpani who said that there should be no lower age limit. Another witness preferred not to have any age limit and that was the President of the Law Society. However, what Professor Vimpani said was that 18 months of age would be the appropriate lower limit. Essentially, just distilling that down very simply, the reason for that would be that a child of such tender years would be unlikely to understand the connection between the behaviour and punishment.

Mrs SMITH: That is right.

CHAIR: Would you generally agree with that?

Mrs SMITH: Yes.

Mr LONGHURST: Yes.

Mr POLLARD: Could I just go back to the previous point? It would be our position that the parents should be able to pass that on to anyone they wish. In other words, if the parents had to go away for quite a while and they entrusted their child to a home for good food and shelter, love and care, I cannot see why that family could not be entrusted also with corporal discipline of children. I mean, that is the contention at the moment in relation to why parents cannot pass that over to schools to deal with their children, and that is a matter of concern to us.

CHAIR: Thank you. Another provision of the bill requires any family member able to use the defence to have been expressly authorised by a parent to use physical force. That is a significant change to the existing common law position where there is an implied delegation from parents to those in lawful charge of children to apply moderate and reasonable physical punishment. I would think it could be argued that that provision actually strengthens the authority of parents because no-one can rely on the defence unless they have been expressly authorised by a parent. Do you have any comment to make on that?

Mr LONGHURST: I think that the categories set out in the bill are appropriate.

CHAIR: I do not want to spend a lot of time on "spare the rod, spoil the child". I think it was Mr pollard who raised it in his initial remarks. It is a saying that is raised from time to time when the question of corporal punishment is being debated. I want to put to you a quote from a witness that appeared before the committee last week, Professor Patrick Parkinson, who is professor of law at the University of Sydney. The quote is this:

I am an evangelical Christian who believes that the Bible is inspired by God: Timothy 2, 3: 16-17. I agree with the Revd Fred Nile that the *Bible* does not teach that children should be hit with sticks. The saying "spare the rod and

discipline. The Book of Proverbs is full of metaphors and memorable sayings. Nothing in the gives instruction

Bible

doubt that any honourable member would disagree. We see too often the consequences of ineffective and

I invite any or all of you to give your view regarding that. It is not compulsory.

I agree entirely.

I support his interpretation. "Spare the rod, spoil the child" I believe is

Mr LONGHURST:

CHAIR:

Mr POLLARD: *Bible*

corporal discipline on their children. So I would not like this afternoon for us to decide that sparing

Bible

and instruction, as I read from Ephesians 6:4. That does not preclude the use of corporal discipline.

While we are on the subject of biblical exegesis, we might at least

Bible

children?

No.

Would you like to comment on some comments from a Dr Ross

number of submissions and letters received in relation to the bill have expressed concern about use of

Proverbs as an authority for the use of an object for the punishment of children. They quoted the

is your response to the following remarks on Christian parenting from author Dr Ross Campbell?

many today are dogmatically calling for children to be punished, calling it discipline. Most perplexing

They quote three verses from the book of Proverbs—13:24; 23:13 and 29:15. They neglect to

forgiveness, nurturing, guidance, kindness, affection and giving, as though a child has little or no right

rod referred to in the Scripture was used almost exclusively for guiding the sheep, not beating them.

them from going in the wrong direction and then gently nudge them towards the right direction. If the

"Thy rod and thy staff they comfort me."

reasonable interpretation of the use of the term "rod" in the scripture?

It is not a rod of punishment, is it? It is not a rod of discipline, it is a rod of

Bible,

and another. You can turn it around to suit your own means. But the fact remains that discipline is

their children and to know what is required. I find that parents do know their children. They say, "Oh

he will need to be made to." Unless you get children to do as they are told at a young age you have no

them into law it makes it very difficult. We have already got "reasonable" in the Crimes Act. We have

already got most of the things there. It just seems that the more words you use the more problems you get in law.

Mrs MIDDLETON: In respect of the reference to the scripture which deals with love, compassion, understanding, forgiveness et cetera, it is true that the Christian message is one of love and compassion, understanding and sensitivity to the needs of one another. To do this properly requires strength. And to properly love a child in a way that will nurture that child into a stable adult life requires strength to be shown in the love and understanding and compassion and everything else that is placed upon that child in its nurturing. We know the expression tough love and we have all had to use it at times in the bringing up of our children. The reference to Psalm 23 "thy rod and thy staff they comfort me" draws to my attention the root of the word comfort. It simply means to come with strength. A rod can guide. If we are speaking about it for discipline then that is coming with strength to our children to guide them and discipline them so that they can develop into responsible citizens and adult members of our community.

Mr POLLARD: I am very pleased that the concept of love and compassion has been mentioned this afternoon. I refer the Committee to Micah 6:8, which says, "… what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God". There are two strands of this. Scripture requires us to keep justice and compassion in tension. For sinful people, as we all are, that is fairly difficult because some people err on the side of justice and corporal discipline. That is what we are here for this afternoon. Other people err on the side of compassion, so their children hardly ever get disciplined because it is too difficult. Those children often grow up not knowing the bounds of the law. Our society needs to put in tension justice and compassion. My view is that in this bill will be too much on the side of compassion. We have just heard a speaker talking about tough justice. That is indeed right at certain times but that will not be available to parents. So I think we have to keep justice and compassion in tension.

The Hon. J. F. RYAN: Mr Pollard, you use the terms "discipline" and "corporal punishment" as if they are almost synonymous, they mean the same thing. Am I correctly interpreting your comments?

Mr POLLARD: No, you are not. I am deliberately using the term corporal discipline because discipline is a growth. Discipline is a discipling. Discipline is the concept of Ephesians 6:4, training and instruction. I will not use the term corporal punishment because corporal punishment seems to take on the connotation of hit, hit, hit. I have got my vengeance. My temper is now settled because I have got back at the little blighter. Good. Don't do it again. That to me is inappropriate. Every use of corporal punishment—I use your term there—would be a discipline thing. But we have talked about this afternoon desiring to steer a child in the right ways of the Lord. So I use that deliberately.

The Hon. J. F. RYAN: Is there any reasonable punishment that you can think of that this law would prohibit? The bill does permit corporal punishment in a number of reasonable circumstances. In examining the bill my own interpretation is that there is no reasonable thing that a parent might do that it prevents. One of you said that there will be people who will believe that you cannot give children corporal discipline any more. The bill makes it clear that it is permissible, even with a stick, to hit a child for the purposes of discipline. It does not actually prohibit corporal punishment.

Mrs MIDDLETON: One of our objections to the bill is not so much what it prohibits but what it does not prohibit and allowing some acts of abuse therefore to escape examination.

The Hon. J. F. RYAN: But there would be other areas of the law which prohibit most of the other things that you are concerned about. The Chairman explained that this is a defence. Essentially, it means that this is the reason that parents are not dragged into the courts every day for disciplining their children. This is a reason they would not be arrested. You are allowed to exercise reasonable chastisement of your children. This simply states a law which has been available in the common law for decades. I suspect that most of you could not, as indeed I could not, quote any of the cases which outline the common law. This just makes it available in the statute law that anybody can get access to and understand. To the best of my knowledge there is nothing that the bill prohibits that a reasonable parent would want to do. If there is, what is it that the bill prohibits?

Mr POLLARD: Section 61 (2) says:

The application of physical force is not reasonable if … the force is applied by the use of a stick, a belt or other object ...

The Hon. J. F. RYAN: There are further words.

CHAIR: Mr Pollard, there is reference to "other than an open hand or other than in a manner that could reasonably be considered trivial or negligible in all the circumstances.

Mrs SMITH: Why not say a light stick?

The Hon. J. F. RYAN: Because the law does not recognise use of words such as "light".

Mrs MIDDLETON: It uses words such as "short" and "a brief period" that are undefined.

The Hon. J. F. RYAN: The law is full of those expressions everywhere. You cannot argue that we cannot pass a law that does not include words like "reasonable—

Mrs MIDDLETON: Excessive, reasonable, trivial, negligible.

The Hon. J. F. RYAN: The whole criminal law is full of expressions such as that.

Mrs SMITH: That is why this is unnecessary. It is just adding—

Mr POLLARD: Let us take the part that you have just read, "other than in a manner that could reasonably be considered trivial or negligible". That is not discipline. What do you do with a 13-year-old boy who has deliberately and wilfully done something? Do you give him a little smack on the hand for fear that the discipline you give will not be considered trivial or negligible? Those two words in my opinion make a laughing stock of the whole concept of discipline.

The Hon. J. HATZISTERGOS: We just heard Mrs Smith tell us that at nine years old she stopped administering corporal punishment.

Mrs SMITH: But that was my children. Everyone's children are not the same.

The Hon. J. HATZISTERGOS: My knowledge of these sorts of things is that in many cases the corporal discipline, punishment, or whatever you want to call it has very little impact. What do you do? Do you keep belting these kids, one after the other? They do one thing wrong and then go to the next thing—do you keep having a go at them? You are not having much success, are you?

CHAIR: Before you respond to Mr Hatzistergos' question, can you give consideration to other forms of punishment that are certainly not in anyway prevented by the legislation, such as the withdrawal of privileges?

Mrs SMITH: All those things are available and parents use them now. That is in all those surveys and things. All children are different. Families are different. Some children do need to be disciplined for longer.

The Hon. J. F. RYAN: Can I get back to the point I raised in the first place? The only thing that is saying that this bill prevents smacking or corporal punishment is submissions such as yours. The bill itself does not prevent corporal punishment.

Mr POLLARD: We argue that it would by using terms which would be considered "trivial" or "negligible".

The Hon. J. HATZISTERGOS: But that is only in relation to the use of objects.

The Hon. J. F. RYAN: Mr Pollard, do you think there are occasions when it is appropriate to use a stick in a fashion which would not be something other than "trivial" or "negligible" against a child?

Mr POLLARD: In giving a student who might be 12, 13 or 14 years old—and I have already said this afternoon that I think that is the upper limit—if that discipline is to be effective and the parents are to be seen to be disciplining their child, the way that discipline is given must be effective. I am not talking about bashing; I want you to understand that and I said that right at the beginning. If you are going to administer corporal discipline it needs to be effective. I guess I will now be taken out of context, but it needs to be given so that the child understands that what he has done and the discipline that he has received is an appropriate discipline.

The Hon. J. F. RYAN: What would it have to do to that child in order to do that?

Mr POLLARD: I think it would need to hurt him but not cause any long-term problems whatsoever.

The Hon. J. F. RYAN: Is that not what the bill states?

Mr POLLARD: That will be a matter of interpretation for the courts. That is our concern; that is the problem.

The Hon. J. F. RYAN: But the courts would exercise all of that consideration that you have just suggested. But the one thing the courts would not have without this bill is that they would have absolutely no guidance. As a result, we were told this morning about two different cases that had entirely different outcomes because none of this has been specified in New South Wales. In Tasmania a father was convicted for using a whip on a child. He was convicted not because he had used it but because the court did not think he had a good enough reason. In Western Australia there was no problem with him having a good enough reason, but he was convicted for using a ruler. That is where the law is exactly the same as it is here in New South Wales, to the extent that there are no guidelines. At least here we would have some guidelines.

Mr POLLARD: With respect, these are not guidelines. We will still have the same problem. The courts will still decide that. If a father comes up before the court and the court is to debate trivial or negligible, I put it to you that that will not help what Mr Corbett is trying to do.

The Hon. J. F. RYAN: But the point is that a parent who had had no law would have arrived at the court with no guidance as to what the outcome might have been. If this bill is passed, at least parents will know that should they choose to use a stick the court may become involved. At the moment they would have no idea, would they?

Mr POLLARD: That is an intrusion—

The Hon. J. F. RYAN: —which the courts have already exercised.

Mr POLLARD: So why do we need a law to do it further?

The Hon. J. F. RYAN: I guess to inform parents that there is a chance that they may go to court.

Mr POLLARD: That is my question, and it is a very important question. If parents know that already, why do we need another Act?

The Hon. J. F. RYAN: The point I am making is that they do not. At the moment they operate in a context of no knowledge. One argument for having the bill is that it would at least alert parents to the fact that whether or not they used a stick was an issue which the court would consider. At the moment there is no way that they would know whether that would be a matter of consideration unless they took the trouble to read a very extensive and difficult to understand regime of case law.

Mr POLLARD: I do not accept that.

Mr Ryan, why is it necessary to have a law to inform parents and we need to bring in a law to inform people? In the briefing paper we were given, the last point on the operate "as something like a standard by which parental practice may be guided". If we are looking for does that have to be a law?

In the normal way this works, we ask you the questions, rather than which you can respond. I think the advocates of this bill would say that one reason the law is needed create new law; it would clarify the existing law so that people would know about it; otherwise, spanking his child with a ruler. It is quite possible that in New South Wales exactly the same thing matter of the judge making a decision at the time, but everybody would be in the dark as to what the

Mr Pollard, in your submission you referred to a report in the of 7 May 2000 teacher because he smacked his daughter while at the dentist because she would not submit to Flynn probably would not have been convicted because he would have had, at all the various points, of the cases that Mr Hannaford used to demonstrate the lack of clarity in the law—that if this law

Mr POLLARD:

"trivial" and "negligible" are there I would interpret "trivial" or "negligible" almost to be nothing cannot support that because I do not like the words "trivial" and "negligible".

Just as there might be children who, as you say, might abuse or number of parents do in fact smack their children too hard and in fact do physically punish their anyone else might need to establish a standard which is clear for them?

Our speaker here has quite correctly and rightly said that you do not need

The Hon. J. F. RYAN:

Parliament would be inadequate. For example, some time ago we did not have laws which specifically State in the home. Most of our domestic violence laws do exactly that. I think that most people partner was committing a crime. That perception was not common some years ago, and it was a be clearly understood by everybody over time if this law were passed and that on behalf of children

Mr POLLARD:

Mr LONGHURST:

became more widely known and cases came up it would filter through to those parents who do abuse

CHAIR: I am a former Minister for Community Services and I would hesitate to show any of you some of the files I have had to read over the years as to how some parents—and I stress the word "some"—treat some children. I simply want to make it clear that we as public officials, members of Parliament, have to take into account not only responsible parents. No doubt all of you are that, and the people you represent may well be as well. However, there are plenty of people out there who are anything but responsible and who do dreadful things to their children. That is one reason the Legislature must give regard to circumstances that are very far from being the norm.

Mr POLLARD: We would argue that that is there already.

The Hon. J. F. RYAN: Where?

Mr POLLARD: In the Crimes Act.

The Hon. J. F. RYAN: It is not in the Crimes Act.

Mrs SMITH: We have laws against child abuse. We already have child protection legislation that people should not be beating their children. Everyone knows that.

CHAIR: We have both. We have provisions in the Crimes Act and we have what is known as the Children (Care and Protection) Act, which is about to be replaced. That deals with what would commonly be called child protection. However, there are two parts of the whole in a sense, although they are dealing with different matters in some respects. As I said at the very beginning when I gave my little explanation about the state of the law at the moment, anyone in given circumstances can be charged with assault—I am referring now to parents—and in those circumstances they have a common law right to raise the defence of lawful correction or reasonable chastisement, to use the alternative expression. Mr Corbett's bill is seeking to fill out, flesh out, what reasonable chastisement means.

Mrs SMITH: Do you think that would help in the matter of people who obviously do not take much notice of the law at the moment anyway?

The Hon. J. HATZISTERGOS: In itself, probably not, but combined with an education campaign publicising the aims and objectives of the legislation it is argued that it probably will.

Mrs SMITH: I tend to think that Lyn's point about an education campaign is fine but once the press get hold of this sort of legislation it will be widely known, particularly among young people, that parents are not allowed to smack or to in anyway deal with their children.

The Hon. J. F. RYAN: That is not what the law says.

Mrs SMITH: I know that it is not what it is meant to be, and I agree that its purpose is very good. All I am thinking of is the end result of that.

The Hon. J. F. RYAN: Have not young people for all time questioned the authority of parents?

Mrs SMITH: They have.

The Hon. J. F. RYAN: Is it that new that young people would question any sort of imposition on them of their parents? How does the law make that age-old relationship between them?

Mrs SMITH: The law means that they can actually say that to them, as they do to the police now. One of our neighbours had a party and young people invaded it and made a terrible mess. The police came and they could not touch those kids. The kids simply laughed and ran off, saying, "You can't touch us". The police are not allowed to touch children any more, whereas in an earlier time they would have been able to deal with them physically. It would have saved a lot of trouble.

The Hon. J. F. RYAN:
the child said to his or her parent, "You can't hurt me" the parent would then be able to say, "No,

Mr POLLARD:

The Hon. J. F. RYAN:

Mr POLLARD:

The Hon. J. F. RYAN:

Mr POLLARD:

The Hon. J. HATZISTERGOS:

The Hon. P. J. BREEN:

The Hon. J. F. RYAN:

Mr POLLARD:

The Hon. J. HATZISTERGOS:
says that you can.

But one thing that must be made absolutely clear is that the proposed legislation the head or above the neck.

One of our concerns about the bill pertains to the abusers in society, could, because of the phrase "trivial and negligible in the circumstance" through the skill of a person

The Hon. J. F. RYAN:
his or her child will be able to raise the defence, "I thought the law was that I could use the stick, so I credibly by a court?

I think it is probably possible that we could have a very skilful debate

The Hon. J. HATZISTERGOS:
outcome.

We would hope not, certainly.

There is no doubt about the outcome.

The law is such at the moment that abusers of children are quite child in the head, for example, would say, the police intervened, "I am lawfully correcting the child," qualified in the way we are suggesting, the police would have a much greater opportunity to approach crime. Here is the section of the Crimes Act." The reality is that this bill would protect children from

Mrs MIDDLETON:
wonder about the relativity of this bill. What would be considered a trivial act of punishment for a

given circumstance in one culture and community would be considered, perhaps, in another culture and community—and we have all cultures are in our society today—excessive punishment for that particular circumstance. If someone is before the court and that has to be debated, could this be debated from cultural base?

The Hon. J. F. RYAN: The only reason the word "trivial " would enter into the debate at all is if a stick or object were used. That is the only time the word "trivial" would be raised in debate. It is only with reference to an object, any object, but the outcome has to be no worse, I imagine, than what you could do with an open hand, which is really what the legislation is trying to say.

Mr POLLARD: For a 13-year-old boy?

The Hon. J. F. RYAN: Yes, that is right. I would not hit a 13-year-old boy to the point of bruising or hurting him, no.

The Hon. J. HATZISTERGOS: I would not hit a 13-year-old boy.

Mr POLLARD: I would not want to, either.

The Hon. J. F. RYAN: I would not do it.

Mr POLLARD: I would not want to, either. I do not agree with bruising him either. I will be honest about that. I said that right at the beginning. But I am very worried that the words "trivial" and "negligible" are saying that the child will laugh if someone attempts to discipline him.

The Hon. J. F. RYAN: Would you agree that to hit a 13-year-old boy sufficient to cause him pain you would have to apply pretty reasonable force?

Mrs MIDDLETON: With an open hand?

The Hon. J. F. RYAN: No, with an object. The word "trivial" is only relevant when an object is used. I imagine that the law quite sensibly takes the view that it will finally get to a point that it will cause you more harm than it will the child if you use it too heavily. You can do anything with an open hand as long as you do not touch them on the face. From the neck down you can do what you like with an open hand.

The Hon. J. HATZISTERGOS: As long as there is no lasting injury.

Mrs MIDDLETON: Is that the reading of it?

The Hon. J. F. RYAN: I am not sure that I could think of circumstances in which a reasonable parent would want to cause a 13-year-old boy pain with an object.

Mr POLLARD: If you administer corporal discipline it has to be for a reason. If he does not feel pain for at least some time, whether it be five, 10, 15 minutes or whatever, the whole exercise of giving him corporal discipline is not effective. What I am concerned about, and I have said this a lot of times this afternoon, is what is trivial. Is trivial giving a light cane to a child and causing him pain for 10 minutes, but without any bruising? Is that trivial? But if it causes him pain for 20 minutes or if it only causes him pain for five minutes, what is trivial?

The Hon. J. HATZISTERGOS: One thing I cannot understand in your submission is that you started off talking about your background as a teacher, and you told us you felt that in your circumstances as a teacher it was preferable to administer corporal discipline because the other options had other consequences, for example the child catching the train and being subjected to violence as a consequence of a detention, or suspending the child so that the child stays at home unsupervised. We have moved on from that school environment. We now have a law that deals with corporal punishment, or corporal discipline in schools.

We are dealing with the circumstances of parents administering some form of discipline at home. It would appear to me that the sorts of problems you identified in your opening statement just

that might be invoked for the purposes of discipline. Would you address your mind to those for five minutes and tell me, as a person who has some experience in this area, whether those other options

administering them as a teacher?

Mr POLLARD:
immediately. You did not address that issue. Yes, there are other methods of discipline, and I will not deny them. I agree with that, and I state my point again that there are some children for whom

parents who look for other ways of disciplining may be particularly vicious in giving corporal punishment to the kids, so there is a fair chance that they will give other forms of discipline with quite

One of things I am concerned about is the frustration of these types of parents, and I am talking about the parents the Chairman mentioned from his DOCS days, who will say, "I cannot give

locked up in solitary confinement in his home." Parents will not say, "I am a real abuser with corporal punishment so therefore I will not be able to have that." But the parents will be very nice in saying,

with 1.5 per cent of parents then they are going to be equally vicious, if I can use that term, in making the kids go without food for a lengthy time.

But that will be picked up by the care and protection legislation, will it not?

Well, it may not.

The Hon. J. F. RYAN:
negligible in all the circumstances". Surely, in the unlikely event that parents are likely to find themselves in court under the circumstances you describe they would clearly be able to argue that

have to prove that what they did was not negligible in all of the circumstances. We must remember that it is not a parent having to prove the other way around; the State would have to prove the

it is not something that could be regarded in the normal context of the criminal law as anything other than negligible because it ended.

That is what we are concerned about.

The Hon. J. F. RYAN:
it says is, "the force is applied to any part of the body of the child in such a way as to cause or threaten to cause harm to the child that lasts for more than a short period." I think we could say anything under

prove the other way round.

Mr POLLARD:

The Hon. J. F. RYAN: Because that is an assumption of the whole law that arises from

The Hon. P. J. BREEN: We have to give the judges something to do as well.

If parents are charged with some form of disciplinary misdemeanour, what is the consequence if they are found guilty? Is there a penalty attached?

There can be. They have committed an assault. It would probably arise from the police arriving at a house that was obviously domestically in conflict and arresting

did was reasonable in all of the circumstances. It is covered by the law." And a parent would be off.

Mrs SMITH: If that were not the case, would that parent be removed from the child, from the house, or what would be the consequence?

The Hon. J. HATZISTERGOS: That is not part of this legislation.

The Hon. J. F. RYAN: The criminal law can only impose penalties from fines all the way up to gaol.

The Hon. P. J. BREEN: The parent could go to gaol if the child were injured.

Mrs SMITH: If it were that bad, yes.

The Hon. J. HATZISTERGOS: Or if it were a repeat offence.

Mrs SMITH: But I am just thinking what the consequence would be because sometimes removing the parent from the household is a worse penalty than whatever the parent may have done. These are the sorts of things we are seeing with the stolen children: children who were in danger were removed and, as a consequence, they feel hard done by because they feel they should have been left there.

The Hon. J. F. RYAN: To think that Parliament should not pass on law simply because somebody might be misrepresented?

Mrs SMITH: Possibly not.

The Hon. J. F. RYAN: Is that something we should take into consideration. Under what circumstances should we worry about passing a law because it might be misrepresented?

Mrs MIDDLETON: The amount of potential it has to be misrepresented should be considered.

The Hon. P. J. BREEN: That is one of the arguments that has been raised by Reverend the Hon. F. J. Nile, that the *Daily Telegraph* will call this the smacking bill and we will all be vilified as a result, and the Parliament will be made a fool of. I think that is a reasonable argument, and it needs to be taken into account. But at the end of the day the Parliament still has an obligation to pass laws that are consistent with what society demands. If society demands that children are entitled to better protection than they have at the moment then we have to look at different ways of doing it.

Mr LONGHURST: That is where defence of lawful correction comes into it, and that is where there is a problem with it. The Chairman alluded to my statements earlier. The point I was trying to make is that in circumstances where police are called to domestic incidents and they determine that it was within the bounds of the law but the child says, "No, I want them charged", or whatever, then you could have a situation in which a parent has to go through all the hoops, go to the magistrate then raise this defence.

The Hon. J. HATZISTERGOS: But that currently exists.

Mr LONGHURST: Maybe so, but they should not happen. If a police officer determines that what happened was lawful and within the bounds of the bill no further action should be taken.

The Hon. J. HATZISTERGOS: But the point is that at the moment there is very little to guide the police officers as to whether the defence of lawful correction has any merit so as to know whether to lay a charge.

Mr LONGHURST: I am happy with the bounds that are set out in the bill. What it says there makes it clear for everyone what can occur.

But if, as police have often determined, that has happened, no further action should be taken. When a person raises a defence of lawful correction, it appears that, whatever happens, the matter has

to go to the magistrate. A person has to raise a defence and go through the hoops. The magistrate then says "You are within the bounds of the Act. Everything is okay." It should not get to that situation. It is like driving in a street and a police officer pulls you over. You say "I was under 60 kilometres an hour." The police officer says "That is fine, but you have to go to a magistrate and raise a defence of lawful driving." You do not want to go through all that. If a police officer determines that you are under 60 kilometres an hour, then that is it. You should not have to go through all of that, the way it is framed.

CHAIR: It is inherent in the office of constable that he or she may or may not proceed in a particular matter.

Mr LONGHURST: I understand.

The Hon. J. HATZISTERGOS: There is what is called a prosecution discretion, which has to take into account all of the circumstances. It is not the case that if you jaywalk you will automatically be arrested and prosecuted.

Mr LONGHURST: The way the defence is termed, it gives the impression that you have to go through the hoops. I think it should be framed in better terminology to make it clear that what happens within the parameters of the bill is lawful. If the action goes outside that, then further action is taken.

The Hon. J. HATZISTERGOS: Some material has been given to us by previous witnesses that relate to the success of Sweden's corporal punishment ban. Sweden banned corporal punishment altogether, much more radical than what has been proposed in this bill. It has been evaluated by persons both in an outside of Sweden as being successful in accomplishing the goals, to the extent that the ban now has significant public support. At the time that it was put into law the support for it was barely marginal.

The Hon. P. J. BREEN: It was 53 per cent.

The Hon. J. HATZISTERGOS: Now it has dropped to 11 per cent of people who do not support the legislation. So it has a high degree of public acceptance and has been evaluated as being a success. Are you aware of any studies about the administration of corporal punishment in this State or in any other jurisdiction that has laws similar to this State that would indicate that administering corporal punishment has therapeutic effects of the type that Mr Pollard has been championing?

Mrs SMITH: I do not think that there has been any study; I have not heard of any. There is the fact that so many young people seem to be suspended from school and they wander around and there is no other alternative discipline.

The Hon. J. HATZISTERGOS: A number of factors go to a suspension.

Mrs SMITH: Yes, but there were not as many suspensions when there was some form of discipline available to the headmaster. I do not believe that every teacher should be able to do it, but I do not see why someone who makes a cool decision that a child needs to be taught a lesson cannot give him a cut. The fact that someone is able to do that is sometimes a restraining factor on some of the young people getting out of hand. It has a deterrent effect as well. When young people, particularly bullies, know that nobody can touch them, they just say "So what? Nobody can touch me."

The Hon. J. HATZISTERGOS: Is there any evidence of which you are aware that the administration of corporal punishment, when it was able to be administered in a school environment or anywhere else, had greater success than other forms of discipline? As I understand it, you are putting a case against this proposed bill, to the extent that some of you are arguing that the rights to corporal punishment should be expanded. If that is case, do you have any evidence that can demonstrate to me that it is a successful strategy in dealing with young people who misbehave?

Mr LONGHURST: I am not against the bill. I have spoken in favour of the bounds of the bill. I have a problem with the defence of lawful correction.

The Hon. P. J. BREEN: The defence of lawful correction is already there. I do not understand your submission. It seems to be inconsistent. On the one hand, you support the bill, and, on the other, you say that you do not approve lawful correction. But lawful correction is already the law.

Mr LONGHURST: Maybe you misunderstand. The way it appears, if someone is reading it, if a child still insists that his parent be charged, even though a police officer may have determined that what took place was within the bounds of the bill, it may still have to go further and the parent and family dragged unnecessarily through a process. At the end of the day, they get to a magistrate and say "I did this, this and this"—

The Hon. J. HATZISTERGOS: On how many occasions has that arisen that you are aware of? My understanding is that there has never been a case since about the 1890s.

Mr LONGHURST: We are dealing with a new bill and it will be widely distributed.

The Hon. P. J. BREEN: I cannot see police officers taking any notice of what children tell them, frankly. No police officer I know would.

Mr LONGHURST: My concerns would be addressed if the bill, or the Act when it comes in, would clearly state if the action taken were within the parameters set out in the bill it is a lawful act. Currently it does not appear to say that. That is the problem I have. It is a sort of roundabout you can have the defence if you get in strife.

The Hon. J. HATZISTERGOS: The difficulties that have been identified to this Committee are quite the opposite, that is, it is exceedingly difficult to get children to dob in their parents. An example was given by a professor of law from the University of Sydney. He and his wife had a foster child, a small girl, in their care over a weekend. She was happy and content with them. In the evening when the wife went to give the child a bath, there were welt marks all over her body which would indicate that she had been struck by an object, a radiator cord or something of that nature. When the child was asked who had done that to her, how did she get those marks, her response was "My little brother", who was only two.

Mr LONGHURST: I do not think any of us have any problems with what you are saying. It is clear.

The Hon. J. HATZISTERGOS: I am saying that is an example of something that is manifest: even if young children are hit by their parents, they still love them and are reluctant to dob them in.

Mr LONGHURST: If the actions as defined in the bill are lawful, and I think that is what we are all saying, then let us say so in the bill. If it is lawful to do this, this and this, state it.

The Hon. P. J. BREEN: Is that not what we are doing?

Mr LONGHURST: No.

CHAIR: You are saying that you would prefer the language in the bill to be cast in positive terms rather than in negative terms.

Mr LONGHURST: Yes, rather than have a defence.

The Hon. J. HATZISTERGOS: I understand that. I struggle with this because I am a father of three children. No one has never been able to demonstrate to me that chastising a child has positive impacts.

Mr POLLARD: I am sorry, I believe that it does. I have anecdotal evidence of that, having been around the traps for 33 years.

The Hon. J. HATZISTERGOS: You have succeeded, have you? You have turned people

Mr POLLARD: I could turn the question around the other way. Since corporal discipline in

schools? I put it to you, sir, that we do not. I put it to you that we are hearing of more and more and more and more difficulties that are happening within our schools. I heard the same thing on the radio a

The Hon. P. J. BREEN: How do you attribute all these terrible things that are happening to

Mr POLLARD: I am not saying that. I am saying it is the removal of what I and my

three times this afternoon—in case you think I am a basher, and I am not—that this type of discipline is not appropriate to all students. But, in the context we are talking about, the bill is taking away a

discipline. I had one student who shook me by the hand, mentioned his name and thanked me for giving it to him.

I could say the same thing. I got a great deal of corporal discipline when I was at school, and people could say "That is why he is such a good fellow." Equally, I was at

in gaol. We were all administered the same amount of corporal discipline and there is no evidence, certainly no anecdotal evidence, that any of us were the better for it. The evidence that we heard this

effects of that intended. It alienates the child, pushes them away from you and causes animosity.

Mr POLLARD:

Mrs MIDDLETON: I am not here as a proponent of corporal punishment, but I do believe

of discipline a child responds to. I have two daughters. One I could smack once on the hand and she would never do whatever she was doing again. The other I could smack a dozen times on the hand and

Some respond to corporal discipline, some do not. Some require other forms of discipline. Our focus should be on the harm done to the child. That should be the criteria by which we determine whether

should be the determining factor as to whether abuse—

The Hon. J. HATZISTERGOS:

Mrs MIDDLETON: Yes, but you are focusing on how the abuse is enacted, whether it be by

child by any means, whether it be corporal punishment, deprivation or whatever. Whatever degree of harm is sustained by a child, that should be the determining factor of whether someone is guilty of

Mrs SMITH: Something along those lines was said in our submission.

Mr Longhurst, you are saying in regard to proposed section 61AA (2) that instead of the matter being expressed negatively—"the application of physical force is not reasonable if", and

permissible and remain silent beyond that?

Mr LONGHURST:
correction. It implies that the parent has to mount a defence to justify his or her actions. I know technically in law that may be a concept that has been around since the ark, but that heading causes

CHAIR: I am not sure whether it has been around since the ark, but it has been around a very long time and it is part of the common law of England which applies in this country.

Mr LONGHURST: Maybe we are stuck with it.

The Hon. P. J. BREEN: We could expand it and explain what it is, if that would assist people and there were consensus. However, it would be unusual to do that in legislation.

Mr LONGHURST: Yes. It goes to terminology that we are perhaps stuck with. But if, as Mr Dyer suggested, we can treat it by putting it in positive terms—the application of physical force is reasonable if—I think that would go a fair way to addressing it.

CHAIR: I understand what you are saying.

Mr POLLARD: Could I ask a question?

CHAIR: Yes.

Mr POLLARD: Is there any Act of Parliament at the moment that can stop parents calling their children all the names under the sun, giving them verbal abuse from the moment they get home from school until they go to bed? Is there any Act of Parliament that would stop a parent doing that?

CHAIR: I am a lawyer and I charge for giving legal advice.

Mr POLLARD: My point is that I believe disciplining a child by giving that child a smack using a light cane or something like that and restoring that student to the community and to the home in a loving environment has to be a far better method of discipline than parents verbally abusing their children from daylight to day's end. I know of parents who do that. If we are to be reasonable, we must address of the issue of grinding a child into the ground with verbal abuse. This afternoon we are discussing whether corporal discipline should be used and presumably Parliament does not mind if parents verbally abuse their children and call them "dogs" and "useless individuals".

The Hon. J. HATZISTERGOS: The Parliament has not asked us to look at that. There is a bill before the House that has been referred to this Committee.

Mr POLLARD: I thought that would be the answer.

CHAIR: I will give you advice, and I will not charge for it. Section 227 of the Children and Young Persons (Care and Protection) Act 1998, which is about to be proclaimed, provides among other matters, that:

> A person who intentionally takes action that has resulted in or appears likely to result in … a child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged—

is guilty of an offence. A penalty is then prescribed for that offence. Consistent verbal abuse could result in emotional or psychological harm and I would be the last person ever to defend conduct such as that. The simple answer to your question is: Yes, that is an offence—and so it should be. However, as the Hon. J. Hatzistergos has said, we are inquiring into the Hon. A. G. Corbett's bill. That is our remit from the upper House: to consider that legislation and report back.

Mr POLLARD: I understand that. My point is that we must keep the issue in context.

The Hon. P. J. BREEN: The Crimes Act prohibits unseemly language and abuse of various kinds and that provision could be used by a police officer against parents on behalf of a child. It applies equally that the assault provision in the Crimes Act, which is the provision we are considering, could also be used to protect children who are the victims of unfair and damaging treatment. This inquiry is concentrating on the question of assault and of protecting children in that area. It may be that, after the new legislation is in place, the question of abusing children and of treatment causing them to suffer psychological effects might be the subject of further inquiries. However, we must deal

look at all these areas.

CHAIR:
the submissions that have been made on behalf of the organisations that you represent. It is very much appreciated.