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 21 August 2000

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. R. D. Dyer (Chairman)

The Hon. P.J. Breen
The Hon. J. F. Ryan
The Hon. A. G. Corbett

ALICE ERH-SOON TAY, President, Human Rights and Equal Opportunity Commission, 133 Castlereagh Street, Sydney, and

DAVID VERE ROBINSON, Senior Policy Adviser, Human Rights and Equal Opportunity Commission, 133 Castlereagh Street, Sydney, affirmed and examined:

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

Professor TAY: Yes.

Mr ROBINSON: Yes.

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

Professor TAY: Yes.

Mr ROBINSON: Yes.

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

Professor TAY: I am the President and Chief Executive Officer of the Human Rights and Equal Opportunity Commission. I spent a lot of time previous to taking up that position as an academic who has written and taught human rights laws. In my capacity as president I have general charge of work done in the commission including work on the rights of children.

CHAIR: The Human Rights and Equal Opportunity Commission has provided a written submission to this Committee. Is it your wish that that submission be included as part of your sworn evidence?

Professor TAY: Yes.

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

Mr ROBINSON: I have been working for a number of years in the policy area of the Human Rights and Equal Opportunity Commission, the rights of children is my main focus area.

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

Mr ROBINSON: 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 would be willing to accede to your request. I invite either or both of you, as you may choose, to make a short oral submission.

Professor TAY: May I begin, and my colleague will take on whatever is left out by me that he feels should be presented to the Committee?

CHAIR: Certainly.

Professor TAY: I appreciate the opportunity to appear before the inquiry into the Crimes Amendment (Child Protection—Excessive Punishment) Bill. In human rights terms, this is an important proposal and it is therefore of great interest to the Human Rights and Equal Opportunity Commission. My colleague, the former Human Rights Commissioner, Chris Sidoti, wrote to the Committee expressing his strong support for the legislation. I share his views. The legislation, if

enacted, will be an important step forward in the protection of children in New South Wales. It protects the child's right to safety and physical integrity while recognising the rights of parents with respect to the guidance and discipline of their children.

Before commenting on the substance of the bill I shall briefly explain the role of our commission and its work in areas that are relevant to this inquiry. The commission's responsibilities in relation to children derive from the United Nations Convention on the Rights of the Child. The convention was attached to the Human Rights and Equal Opportunity Commission Act 1986 through a declaration by the Federal Attorney-General in 1992. This declaration gave the commission the mandate to include the provisions of the convention in the exercise of its functions. The commission's functions under the Act are wide and they include examining legislation or proposed legislation for its consistency with human rights; investigating Acts or practices that may be inconsistent with, or contrary to, any human right; promoting and understanding acceptance and public discussion of human rights in Australia; undertaking research and education programs for the purpose of promoting human rights.

In the exercise of those functions the commission has established a strong record of experience on issues affecting children, including child protection. One of our most significant projects in recent years was a national inquiry into children and the legal process undertaken jointly with the Australian Law Reform Commission. Many of the recommendations of the inquiry were aimed at strengthening the legal protection for children who have experienced, or are at risk of experiencing, physical or emotional abuse. In conducting that inquiry the commission undertook consultations with children, parents, teachers, child-protection workers, government departments and community organisations in every State and Territory.

The report of the inquiry entitled "Seen and Heard. Priority for Children in the Legal Process" was tabled in Federal Parliament in November 1997. I have a copy with me, which I will table for this inquiry. While it does not deal directly with parental discipline, it demonstrates to this Committee the experience and credibility in the area of child protection.

Document tabled.

The commission is not an expert on the medical, psychological and sociological issues associated with physical punishment of children. Other organisations have greater expertise in those areas and, no doubt, will be able to provide the Committee with relevant research and statistical data. As I see it, the role of our commission in this process is to provide the human rights perspective, in particular to highlight those aspects of Australia's international human rights obligations that have a bearing on the proposed legislation. In 1990 Australia ratified be United Nations Convention on the Rights of the Child. The convention is the most widely accepted of all human rights treaties having been ratified by almost every country in the world. I have with me a copy of that convention, which I would like to table for the inquiry.

Document tabled.

In ratifying the convention, Australia undertook to implement those provisions through legislation and other necessary measures. The requirements in the convention do not apply only to Commonwealth Government activity, they are relevant to all levels of government within Australia's Federal structure; State and Territory departments were fully consulted prior to ratification. The decision to ratify had the unanimous support of all Australian governments, including New South Wales. The Convention on the Rights of the Child emphasises that children, because of their vulnerability, need special care and protection. It contains a number of provisions that are relevant to parental discipline and protection of children's physical integrity. The preamble to the convention states:

> [T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.

Similar requirements are found in the substantive provisions of the convention. Article 3.1 deals with the best interests of the child, and states:

> In all actions concerning children … the best interests of the child shall be a primary consideration.

Article 37(a) states:

> No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

The convention specifically includes legislation among the tools for governments to deal with this issue. Article 19.1 states:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment.

The Crimes Amendment (Child Protection—Excessive Punishment) Bill, if enacted, will be an important step in the implementation of these provisions in New South Wales. It will provide additional protection for children by clarifying the defence of lawful correction that is currently available in cases of child assault in which the punishment is considered "reasonable in all the circumstances". I welcome the proposal to remove the defence where the child being punished is being hit above the shoulders or with any instrument other than an open hand, except where the force applied is trivial or negligible or where the punishment results in harm.

At present neither existing case law nor relevant statutes, regulations or policies provide sufficient guidance on the legal limits of physical punishment in the defence of lawful correction. Mr Corbett, in his second reading speech to the bill, highlighted the urgent need for clearer definition as to the scope of the term "reasonable in all the circumstances". The confusion and varying interpretations giving to this and comparable terms, such as "reasonable chastisement", have left the line between reasonable discipline and physical abuse dangerously unclear. A submission to the 1998 inquiry by the, of Parliament into the Convention on the Rights of the Child stated:

> In Australia, parents are legally allowed to physically assault their children in the name of parental discipline. Whilst Australian laws continue to allow fully grown adults to physically assault babies, infants, toddlers, school children and teenagers, the nation is unable to consistently implement the UN Convention on the Rights of the Child.

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The bill is also consistent with the provisions in the Convention of the Rights of the Child that emphasises the importance of parental guidance. The role of parents and families is a fundamental premise of the convention. Article 18 provides:

> States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

The bill gives added protection to children while respecting the need for parents to apply appropriate levels of guidance and discipline. It should be recognised that the bill does not prohibit all forms of physical discipline. It also makes it clear that the trivial use of an implement will not invoke criminal sanctions. Parental guidance is fundamental to the healthy development of children. The bill, as currently drafted, does not compromise that. Far from being threatening to parents, this legislation will assist them. It will give them greater clarity and certainty regarding the legal requirements in this area. In any legislation dealing with children and families cultural appropriateness is very important. This bill acknowledges the parenting arrangements in indigenous communities.

Among indigenous peoples the extended family often plays a significant role in the upbringing of children. The bill does not restrict itself to the narrow western concept of parents but applies also to those recognised by indigenous communities as appropriate persons to exercise special responsibilities in relation to the child. This is also consistent with the Convention on the Rights of the Child. Article 5 of the convention provides:

> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Consideration might also be given to a more general provision that would accommodate the broad spectrum of cultural groups that exist in New South Wales. The Federal Government is required to submit regular reports to the United Nations Committee on the Rights of the Child on its progress in implementing the convention. It is a requirement that the reports detail both our achievements and our

difficulties in implementing the convention. I hope that our next report is able to list the Crimes Amendment (Child Protection—Excessive Punishment) Act as one of the achievements. That would be to the great credit of the New South Wales Parliament.

The proposed legislation is not far reaching by international standards. Some countries have, in fact, gone considerably further. The most notable examples are in Scandinavia. Sweden prohibited parents using physical punishment in 1979 and Norway in 1980. In supporting this legislation I have been speaking to you about international human rights standards. However, if we examine the standards in the Convention on the Rights of the Child we see that they are, in essence, no more than basic values of decency and commonsense embraced by most Australian families and the Australian community. This is reinforced by the support expressed for the bill by a range of organisations in Australia including the New South Wales Branch of the Australian Medical Association, the Division of Paediatrics of the Royal Australian College of Physicians, the Australian College of General Practitioners, the New South Wales Commission for Children and Young People, and the Community Services Commission.

Finally, it must be emphasised that laws are of little value unless members of the community are aware of them and understand their application. For this reason I strongly support the proposal for a community education campaign to accompany the legislative reform. Physical abuse, in the imposition of discipline and in other contexts, is a serious problem that afflicts many children throughout Australia. Vulnerable children need stronger and clearer safeguards against such abuse than is provided by the words "reasonable in all of the circumstances". This bill provides that safeguards. It deserves a unanimous support of the Parliament and all concerned citizens in New South Wales.

CHAIR: Mr Robinson, do you want to make a brief statement?

Mr ROBINSON: No, I have no statement to make but I am happy to answer any questions.

CHAIR: Any question, even though addressed to a named witness, may be responded to by either or both of you as you choose. Another submission made to this Committee by the National Children's and Youth Law Centre refers to the fact that in its view the United Nations Committee on the Rights of the Child has recommended the prohibition of physical punishment. The submission states:

> That the Committee recommends that physical punishment of children in families be prohibited in light of the provisions laid down in articles 3 and 19 of the [United Nations] Convention.

The submission continues:

> The position of the Australian Government is that the Convention does not prohibit physical punishment *per se*, but it prohibits torture or other cruel, inhuman or degrading treatment or punishment.

What is your perception of the position of the Australian Government? In effect, is your submission that the bill of the Hon. A. G. Corbett is a worthwhile progression toward an ultimate objective?

Mr ROBINSON: The Convention on the Rights of the Child does not give an explicit or literal statement on whether physical punishment of children should be abolished completely. It refers in more general terms to parental discipline and so forth. The Committee on the Rights of the Child has expressed a view that a complete prohibition of physical punishment would be consistent with the convention and that obviously carries a great deal of weight. The essential point of the Human Rights and Equal Opportunity Commission is that this legislation is an improvement on the current situation. It is a step in the right direction. It provides children with an additional level of protection that they do not currently have.

Professor TAY: I will make two points in answer to whether this bill should be seen as a step in the progression to a total abolition of physical punishment. First, no law should seek to impose that which cannot be reasonably accepted by the community or reasonably supervised by any part of the community for their observance. Second, in relation to whether it should be seen as a progression, this is something that I myself would not want to decide now. A bill such as this makes very good proposals and sets out a very appropriate situation, consistent with our international obligations and

social and community expectations, it should be given a chance to work itself out to see how it does or does not help parents and people in a parenting position and that any future development should be based upon the evidence of the experience of this bill as an Act.

CHAIR: A submission made to the Committee by the Commissioner of the New South Wales Commission for Children and Young People states:

> The Human Rights Committee [that is, the United Nations Committee] stated in 1982 and repeated in 1992 that the ban on inhuman or degrading treatment or punishment extends to corporal punishment as a disciplinary measure emphasising that children were entitled to no lesser protection than adults. Australia is a party to ICCPR and a complaint could be made to the [United Nations] Human Rights Committee under the optional protocol to ICCPR. While the UN Committee's decision is not binding on Australia it would have significant persuasive influence.

Could you comment on that passage and give the Committee your perception of what is being said there regarding the Human Rights Committees statement in 1982 and 1992 that the punishment on inhumane or degrading treatment extends to corporal punishment?

Mr ROBINSON: Certain levels of corporal punishment may well fall within that particular provision that was quoted and may well sustain a complaint to the Human Rights Committee. Our view would be that the level of force envisaged as being allowable under the proposed legislation being looked at today is of a minimal nature and would most likely not fall within that type of complaint.

The Hon. P. J. BREEN: Are there any outstanding complaints of which you are aware to the Human Rights Committee in Geneva?

Mr ROBINSON: No, I am not aware of any outstanding complaints to the committee about that at all.

The Hon. P. J. BREEN: Professor Tay, you mentioned the reference in the bill to a special provision for Aboriginal and Torres Strait Islanders. In mentioning that you suggested that it might be worthwhile to extend that provision to include the rights of other cultural groups in relation to children. What kind of provisions do you have in mind?

Professor TAY: What I have very much in mind is the fact that several of the immigration groups that have come to Australia in recent years come from communities where there is a long tradition of extended family relations in which the role of the grandparents—not just the grandfather but the grandmother as well—would override that of parents on the traditional basis of respect for age, experience and perhaps a wider perception of family harmony and family cohesion, and that would be one of the sort of situations of which I am thinking.

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I must say that that statement is made for the purpose of reminding ourselves that there might be communities with similar sorts of practices as Aborigines have for which we have not made provisions nor seriously considered that we might want to consider in the years to come in the course of our practice and experience with this bill. So that I am not actually making a well thought through proposal, but just simply keeping the door open. There are complex problems with regard to families coming from traditions of the sort that I have spoken about, and one of the complexities is when they come here most of them come without their extended families, most of them would be without the support of grandparents who might otherwise take a very much more direct role in the upbringing and disciplining of the younger people in the family.

The Hon. P. J. BREEN: Do you have in mind a general statement? This is a general statement about recognising particularly the rights of Aboriginal people. Perhaps a provision could be included recognising general cultural rights for people generally.

Professor TAY: I have no doubt that specifically singling out Aborigines and indigenous people is the right thing to do, because at least we know enough about Aborigines and indigenous peoples' family structures to know that this provision is important and will help to protect the child and achieve a balance between protection of the child and the right or duty to discipline a child. I am not quite sure that at this stage we should expand this provision to include communities whose cultural practices we have not actually looked into for the purpose of this legislation.

CHAIR: Would you like to comment to the Committee as to what measures in your view could be established to measure the impact of Mr Corbett's bill, if enacted, on reducing excessive punishment in New South Wales?

Professor TAY: I think my colleague is ready to answer that, but I might want to add a footnote to what he says.

Mr ROBINSON: We feel very strongly that the implementation of the legislation should be accompanied by an ongoing process of monitoring and evaluation of its impact. There should also be a review of its operation undertaken after a specific period. A number of organisations could play a valuable role in this process—organisations that have a particular knowledge and expertise and also a research capacity with respect to these issues. Perhaps the New South Wales Bureau of Crime Statistics and Research could play a useful role in that, as could organisations such as the New South Wales Commission for Children and Young People. As part of this, of course, it is very important that appropriate resources be allocated to enable that evaluation and review process to occur effectively.

Professor TAY: May I say that, as a social scientist, I find that the most difficult part of one's work comes at the end, and that is the evaluative aspect. There are no scientific markers by which one can easily and quickly assess how successful a project or program is. The most one can do is assessing through, as my colleague mentioned, various institutional works in terms of amassing and sorting out statistics of police complaints, of court activities, et cetera. But this is in fact a very superficial or a tip of the iceberg form of assessment. I think we should not judge the success or failure of a particular project or program such as this bill entails by figures and so on that we can cull within a reasonable period of time.

We should expect to let this process go on for some time whilst building around the process support mechanisms—like education, like publicity as another form of education, and so on. In this sort of thing my commission certainly will be playing its role. But, quite frankly, it might be years before we can say it is working extremely well. Nor can we relate the provisions of this bill to any specific rise and fall of incidents, or even of a particular incident, especially in a negative way, such as: Because I was not beaten by my parents, I am now a happy adult. For one thing, it takes a long time, and, second, there is no proof that there is that connection. There are other reasons for one being a happy, normal and mentally stable human being.

(**The witnesses withdrew**)

LOUIS ANTHONY SHETZER, Director and Principal Solicitor, National Children's and Youth Law Centre, University of New South Wales, Randwick, affirmed and examined:

CHAIR: Mr Shetzer, in what capacity are you appearing before the Committee?

Mr SHETZER: As Director of the National Children's and Youth Law Centre.

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

Mr SHETZER: I did.

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

Mr SHETZER: Yes, I am.

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

Mr SHETZER: I am a solicitor admitted to practise in the Supreme Courts of New South Wales, Victoria and the Northern Territory. I am Director and Principal Solicitor of the National Children's and Youth Law Centre, which, as I said, is Australia's only national community legal centre specifically addressing the human rights of children and young people on a national basis. I have in excess of 10 years post admission experience in working in relation to the legal issues of children and young people.

CHAIR: The organisation of which you are Director, the National Children's and Youth Law Centre, has made a written submission to this inquiry. Is it your wish that that submission be included as part of your sworn evidence?

Mr SHETZER: 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 SHETZER: Thank you.

CHAIR: Could I now invite you to make a brief oral submission to the Committee.

Mr SHETZER: I do not propose to elaborate in too much detail on the content of the submission that is before the Committee. I will draw the attention of the Committee to certain key issues in the submission. Firstly, by way of background and outline of the National Children's and Youth Law Centre, might I repeat that it is Australia's only national community legal centre seeking specifically to address the human rights of children and young people. It uses as its base for its mandate the United Nations Convention on the Rights of the Child. It has made submissions in over 100 inquiries at all levels of Parliament and before all State and Territory governments over the past seven years, and has handled more than 8,000 direct inquiries from children and young people nationally. Specifically, I have outlined in the submission what the centre regards as the key articles in the Convention on the Rights of the Child. For the purposes of my oral submission, I would like to invite the Committee's attention directly to article 37(a) of the United Nations Convention on the Rights of the Child:

> State parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment ...

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The reason I take the Committee's direct attention to that particular article is its direct relationship to a similar article that appeared in the European Convention on Human Rights. That direct relevance for this inquiry is related to A's case, to which I shall shortly turn. One of the issues before the Committee

in relation to this inquiry has been the ambiguity of common law covering lawful correction as a defence to excessive punishment. There is obvious concern, certainly from the National Children's and Youth Law Centre's perspective, that where excessive or abusive punishment is practised there have been inadequate responses to deal with those situations.

From the centre's perspective the common law position as it exists in Australia does not accord with Australia's obligations under the United Nations Convention on the Rights of the Child. We submit that clause 61AA of the Crimes Amendment (Child Protection—Excessive Punishment) Bill goes some way to deal with those situations. In particular, the modes of physical punishment that are articulated in subclause (2) are clearly in contravention of Australia's obligations under the United Nations Convention on the Rights of the Child. We submit that the punishments that have been directly itemised can be seen to not be in the best interests of the child, given the level of physical force and harm involved; they cannot be classified as appropriate direction and guidance, given the level of physical force and harm involved; they entail physical and mental violence on the child as well as injury and maltreatment; and they involve treatment that is cruel, degrading and inconsistent with the child's dignity.

I draw the Committee's attention to the example of the European Court of Human Rights as a guide on this issue. In A's case in 1998 the European Court of Human Rights found the successful use of the common law defence of reasonable chastisement in a case where an adult male beat his stepson with a garden cane contravened article 3 of the European Convention on Human Rights. The court found in that example that the common law as it existed in the United Kingdom failed to protect A from the severe beatings and, accordingly, the United Kingdom was in breach of article 3 of the convention. That article states:

> That no-one shall be subjected to torture or to in human and degrading treatment.

Australia is not a party to the European Convention on Human Rights, but article 3 is almost identical to the wording of article 37A of the convention on the rights of the child, to which Australia is a ratified party. To clearly articulate what constitutes reasonable chastisement or lawful correction, or in fact to clearly indicate what does not constitute it, goes some way to addressing the lack of protection afforded to children under the present common law regime.

There is one issue in the legislation I draw the Committee's attention to that I believe has been overlooked. Certainly we overlooked it in our submission—that is the wording of subclause (5) and the definition of a person acting for a parent of a child. Whilst there is concern from the centre to expand the defence to include a wide range of people in the community, I argue that this particular subclause does not afford protection to a person who is under the age of 18 and is acting under the delegated authority of a parent. It would include people such as an older sibling in the family, a cousin, aunt, uncle or other family member. I suggest they are not included within the ambit of that defence. Indeed, if we are looking at a juvenile justice system that seeks to divert children and young people from the criminal courts, in effect that discrimination against children and young people in terms of the manifestation of that defence should be removed from that definition.

The Hon. P. J. BREEN: Are you suggesting that people under 18 years of age who are siblings ought to have the power to discipline children?

Mr SHETZER: We are saying that there is an anomaly in the wording of that defence; that it provides a protection for adults over the age of 18 in that situation but not children and young people. That would contravene the principles of diversion and minimalisation of contact with the criminal justice system for children and young people. There are weighing issues, issues that need to be balanced, and we say that what is clearly a lawful defence for anyone over the age of 18 should be a lawful defence also for anyone under the age of 18 in that position.

The Hon. P. J. BREEN: It may be that the intention of the bill was not to allow siblings under 18 to have the authority to chastise children.

Mr SHETZER: The intention of that bill would then have what we would suggest is a discriminatory effect on children and young people in another aspect also. It is trying to work out that balance also of setting up a disciplinary regime that seeks to protect children and young people but also a criminal code that would not be channelling children and young people into the criminal justice

system. So, we would seek an expansion of that definition of person acting for a parent or child to include children and young people. That would be an appropriate balance in that situation. I just raised that as an issue that may not have been brought to the attention of the Committee for this inquiry.

CHAIR: I am a little surprised by those statements. Though I had nothing to do with the drafting of the bill, I assume that the Hon. A. G. Corbett would have taken careful advice. It seems to me that the definition of "person acting for a parent" is probably tightly drawn so as to intentionally exclude some classes of person. By way of illustration, the definition does not include, for example, teachers in child care centres or teachers in primary or secondary education. However, it includes a person of or above the age of 18 who is a step-parent of a child, a de facto spouse of a parent of a child or a relative by blood or marriage of a parent of a child, and in each case is expressly authorised by the parent of a child to use physical force to discipline, manage or control the child. Are you urging the Committee that on the ground of non-discrimination siblings of a child who are under 18 years of age should also be within that proposed statutory definition?

Mr SHETZER: Yes, I would urge that they be included within that definition also on the basis of the principles of diversion from the juvenile justice system.

CHAIR: In your submission you make this statement:

> The common law is a confusing and ambiguous guide to parents, welfare workers and law enforcers in ascertaining what constitutes appropriate punishment and what are the limits of lawful correction.

I personally agree with that statement, but could you briefly tell the Committee what you mean?

Mr SHETZER: Firstly, accessibility to the general public for the principles within the common law is not as readily accessible as, for instance, being able to access clear definitions that are within statute. So, in terms of its accessibility to the general public and its use of plain English, the common law as a vehicle for conveying key messages to the general public is quite a confusing vehicle. In addition, I see the benefits of this legislation actually giving clear signposts and guidance to the general community as to what are inappropriate methods of child discipline that are not included in the common law other than by a case-by-case example.

CHAIR: It occurs to me that a parent or parents in a given case could themselves be under the age of 18 years.

Mr SHETZER: Yes.

CHAIR: Therefore, would you argue that the definition should be expanded in that respect also having regard to what you have already said about children who are siblings?

Mr SHETZER: Definitely. Clearly, it was something that came to our attention last week. Certainly the example of a parent who is also under the age of 18 would be caught by that definition. This anomaly in the drafting seemed to not consider those particular people, particularly parents under the age of 18.

CHAIR: I find that submission rather surprising in that it widens the class of persons who can discipline a child.

Mr SHETZER: It is an extraordinary tension that we have to grapple with at the national centre; the rights of young people are often competing with the rights of other young people and trying to strike that balance. Certainly, we are not wanting to have an encompassing widening of the availability of that defence, and I am aware of that tension, yet I am aware also of other issues that confront us as a national children human rights centre: of issues of wanting to promote criminal law practices that seeks to divert children and young people away from the criminal justice system. We are wanting also to ensure that children and young people are not discriminated against vis-a-vis their rights in relation to adults in terms of access to defences. So, there are competing interests that obviously we have to deal with in terms of our own practices and services. That tension that the centre faces internally, I draw that to the Committee's attention because there are competing interests of children and young people in relation to this bill also.

CHAIR: I will put the matter you raise to the next witness, Ms Gillian Calvert, who is the New South Wales Commissioner for Children and Young People, for her response.

Mr SHETZER: I believe it is just an important issue that needs to be considered also.

The Hon. P. J. BREEN: I am not quite clear about it. The principal reason you gave for suggesting that siblings who are under 18 years would be persons acting for a parent is that it acts as a form of diversion from the criminal justice system. What do you mean by that?

Mr SHETZER: Essentially we are looking at an offence for which children and young people would be liable to have committed in that situation where adults or someone over the age of 18 would not face a criminal offence and would have a lawful defence to such a charge. What we are seeing is that children and young people would not have such a defence and, therefore, would be subject to the procedures that exist within the juvenile justice system whereas we are looking for also at implementing other procedures within the juvenile justice system that seek to divert young people away from courts, from contact with police and from detention. There is that conflict that appears to exist.

The Hon. P. J. BREEN: As a matter of public relations this bill will be difficult enough to sell. Reverend the Hon. F. J. Nile has raised one issue along the lines that the *Daily Telegraph* will have a party with it and use it to denigrate people like politicians who support it and your law centre also. It seems that we ought to be minimising the opportunities for ridicule and that the issue of children under the age of 18 having the authority of adults to discipline siblings seems to be stretching the friendship.

Mr SHETZER: I understand that and certainly as a strong supporter of the principles and the general wording of the bill I have found great tension with this anomaly, but also as a children and young person's human rights lawyer I feel I have to point out where there seems to be a discriminatory impact in the legislation.

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The Hon. P. J. BREEN: Would you have the same objection if the age in the bill as it stands was reduced from 18 to 16, so that a person acting for the parent of a child meant a person of or above the age of 16?

Mr SHETZER: No, I would not have an objection with that. The criminal law and various aspects of the legal system acknowledge differing age developments in terms of acquiring maturity, and 16 is a very common age group at which the law recognises other aspects of maturity. I think 16 may be an appropriate age.

The Hon. P. J. BREEN: What is the age generally in the criminal law so far as it applies to children? Is it 16 or is it 18?

Mr SHETZER: It varies. The age of criminal responsibility varies between 10 and 18. Between 10 and 14, as the Committee may well be aware, as it has been the subject of another inquiry during the year, there is an additional requirement that the prosecution must prove additional knowledge and intent on the part of the young person as to whether or not they committed a criminal offence. There is effective full criminal responsibility between 14 and 18, but that is still subject to the jurisdiction of the Children's Court. Over the age of 18 there is full criminal responsibility and jurisdiction in the adult magistrates court, but one may still be subject to orders that may send a young person to a juvenile detention facility. So, it does vary, but I think the age of 16 for this legislation would be consistent with those varying age responsibility limits that exist in a number of areas of the legal system, not just the criminal justice system. The age at which young persons can obtain employment; the age at which young persons can obtain licences; the age at which young persons can get married, have sexual relations, all varies between 10 and 18, depending on the issue.

The Hon. P. J. BREEN: On another matter, you mentioned the United Nations Convention on the Rights of the Child and you pointed out that Article 37 said that no child shall be subjected to torture or other cruel, inhuman or degrading treatment. You made a very good point of the experience in the United Kingdom in 1998, where that country was held to be in breach of the European convention in *A v The United Kingdom*. In the course of explaining the UK experience you mentioned

that the defence of reasonable chastisement was ruled against in British law. Was that defence in the British common law of reasonable chastisement the same defence that we have in our legal system which, I think, is called lawful correction?

Mr SHETZER: My understanding is that the wording is substantially similar and that the inheritance of British law and its influence in Australia essentially makes it substantially the same.

CHAIR: If I might just come back once more to the submission you are making regarding the definition of a person acting for a parent.

Mr SHETZER: I dare say I have thrown a spanner in the works with that.

CHAIR: You might have. I am trying to clear the spanner away from the works as best I can, however I might have made an error myself. It seems to me that the error I made was in the question I asked you relating to a parent being under the age of 18 years. I now note in the definition provision of the Hon. A. G. Corbett's bill that there are separate definitions of parent and a person acting for a parent. It does seem to me that the definition of parent is not limited to any particular age. So, in that event a parent under 18 years of age presumably would not be under the disability you are referring to regarding siblings of a child who themselves are under 18 years of age. Do you see the definition of parent?

Mr SHETZER: Yes, I see that.

CHAIR: Do you agree with what I am saying?

Mr SHETZER: Yes, I would agree with that, and that the situation of a step-parent would still be questionable in that definition. De facto spouse would also not be included, a de facto spouse under the age of 18. De facto spouse means one of two adult persons, so the definition of adult would preclude a de facto spouse under the age of 18, as would a step-parent and the situation of a sibling. From common experience we are all aware of older siblings being in the role of a babysitter or a child carer within a family context.

CHAIR: You probably heard me put questions to the previous witnesses, Professor Tay and Mr Robinson, from HREOC, about the United Nations Convention on the Rights of the Child.

Mr SHETZER: Yes.

CHAIR: I put quotes to them from both your submission and from Ms Calvert's submission to this Committee. Referring to the submission made by Ms Calvert, reference there is made to Article 19 of the United Nations Convention on the Rights of the Child requiring Australia to take all legislative measures to protect the child from all forms of the physical or mental violence. She goes on to say that:

> The UN Committee on the Rights of the Child has consistently stated that parental rights of corporal punishment breach the Convention and Article 19, and has urged many countries to revoke laws which permit parents, carers, teachers and others to use corporal punishment …

A little later the submission states:

> The Committee has recommended legal change to abolish corporal punishment in its concluding observations on the first reports submitted by nearly all countries that are parties to the Convention including Australia.

Would it be your view that Australia is at present in breach of the UN convention and will still be when the Corbett bill is enacted, if it is, but that notwithstanding that you would see the Corbett bill as an important progression towards an ultimate objective?

Mr SHETZER: As an important step, yes. I would see that Australia would still be in breach given the very clear comments that have come from the committee on the rights of the child in its various concluding observation reports, and I believe my submission clearly articulates that. I am also aware that given the realities at this point in time it would be difficult to immediately move to that all-encompassing prohibition. I would agree with the comments of Professor Tay—I was in the hearing room when she made those comments—that enacting laws that do not have widespread community

support and are exceptionally difficult to police and enforce and result in a situation where it is bad law. Until there is a situation where, in conjunction with extensive community education campaigns of appropriate disciplinary practices, it would be exceptionally difficult to enact laws that would place Australia in a situation where it is complying with the convention. I support the bill in that it is an important progression towards that stage, in conjunction with other programs such as community education campaigns as to appropriate disciplinary vehicles, but I would see it as exceptionally difficult to move to that step at this stage. I would endorse Professor Tay's comments in that regard.

CHAIR: You will be aware that some elements in society, including some individuals and groups who have made submissions to this Committee, are critical of the Hon. A. G. Corbett's bill. They see it as an undue interference with the rights of parents and they possibly question the efficacy of other alternative forms of punishment. You have just made passing reference to other forms of punishment. Could you indicate to the Committee what you believe to be appropriate substitutes for smacking or other forms of corporal punishment?

Mr SHETZER: I think time-out procedures. Not being a parent, it is difficult to put me in that situation. I am a children's rights advocate. I am aware of the pressures that parents will often face and that these are decisions that are often made under great pressure from a variety of sources. But I think time-out procedures, using notions of restorative justice that we see in other aspects of the legal system—forms of mediation, forms of discussion, forms of information, where children are made aware of the consequences of their behaviour—are far more constructive for children to learn appropriate methods of behaviour rather than to resort to physical violence.

CHAIR: When you referred to time-out, you would not, I take it, favour a measure such as securing a child in a dark cupboard or something of that sort?

Mr SHETZER: Not any form of unlawful imprisonment, not in any way. But a sense being in a separate space to the parent at that time so children are in a situation where they can think about and contemplate that situation. That does not mean locking the child in a cupboard or even in a room but in a separate space away from the parent, whether they be in another room, in another part of house or flat or outside, but basically a time-out for the child, rather than interaction with the parent in that context.

CHAIR: Some previous witnesses to the Committee in connection with this inquiry, such as Professor Patrick Parkinson and Dr Judy Cashmore, have laid considerable stress on the importance of an education campaign, information campaign, to promote the purposes of the bill, if it is enacted. What importance would you place on that, that is an education campaign?

Mr SHETZER: Absolutely essential. I think the surveys that have been conducted in other countries that the centre submission refers to indicate that where details of particular methods of punishment are given to the general community there is widespread community concern about certain methods of punishment on young people and children that are seen to be lasting, that are seen to be unreasonable—punishment that involves striking a child about the head or the use of an implement. I think the use of a public education campaign about appropriate vehicles and methods of punishment would be absolutely essential in conjunction with this legislation. So that firstly it is not just being perceived, as you have said the *Daily Telegraph* might say, as the anti-smacking bill but a bill that is seeking to minimise levels of child abuse and child maltreatment but, secondly, as an instructive and educational facility for parents to learn about appropriate discipline methods and assistance in general parenting skills. The centre has always been of the view that wherever the general community can be given guidance and assistance in appropriate parenting skills, that is certainly to the benefit of children and young people generally.

CHAIR: As I have mentioned to you already, our next witness this morning will be the Commissioner for Children and Young People in New South Wales, Ms Calvert. I will be questioning her about the matter I am going to put you a little later, however one matter she does put to the Committee is that we do have the opportunity to consider the reasonable chastisement rule and its appropriateness in the twenty-first century. She suggests that it is time for the rule to be subjected to close scrutiny and it cannot be in the best interests of children to maintain the rule. That goes well beyond the Corbett bill, however do you have a view on what she is putting there?

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Mr SHETZER: We need to be thinking of ways to progress this issue further. I certainly do have concerns about the issue of lawful correction and reasonable chastisement. This legislation is a particular vehicle which is seeking to provide not just some protection to children from extreme forms of abuse and maltreatment but also guidance to parents as well. However, I think there is a wider issue, and that is the issue of our treatment of children and young people in a family situation, and the appropriateness of physical forms of discipline. I would certainly endorse that there is a need for a wider review, inquiry and progression to look at that issue in a much broader context. As I have said, I see this legislation as a progression in a much wider debate, a wider issue.

The Hon. P. J. BREEN: Can you explain how you see us still being in breach of the United Nations convention even if this bill were enacted?

Mr SHETZER: By referring to the comments made by the Committee on the Rights of the Child in terms of its recommendation of the total prohibition of physical punishment and to the report it handed down in January 1995 on that particular point, it was actually recommending that all forms of physical punishment within the family constitute a breach of the convention in itself. So the fact that this legislation only deals with certain forms of physical punishment and in fact still provides a lawful defence to other aspects of physical punishment, Australia would still be in breach.

The Hon. P. J. BREEN: Was that report handed down in the context of a particular decision or was it a general report? If it was a general the report did it apply to all State parties?

Mr SHETZER: The way the Committee on the Rights of the Child works is that, unlike the Human Rights Committee, it does not receive individual complaints from individual complainants. There is only provision under the Convention on the Rights of the Child for ratifying State parties to submit periodic reports to the convention to the committee, and the committee then considers those periodic reports and provides what it calls concluding observations on the State's performance. Those particular concluding observations were made in relation to Australia's periodic report in 1995. The committee has also made similar concluding observations in relation to other State's parties. I do not have access to those particular dates at this point in time, but they were particular observations in relation to the Australian Government's periodic report.

The Hon. P. J. BREEN: I think there are 19 outstanding matters with the United Nations Human Rights Committee at the moment. Do you know if any of those relate to issues connected with child punishment?

Mr SHETZER: We are talking specifically in relation to complaints made under the first optional protocol to the committee, is that right?

The Hon. P. J. BREEN: Yes.

Mr SHETZER: Individual complaints?

The Hon. P. J. BREEN: Yes.

Mr SHETZER: I am not aware as to whether any one of those particularly relate to the use of parental discipline. A different human rights convention applies in relation to that committee, the International Covenant on Civil and Political Rights. There is no provision under the Convention on the Rights of the Child to make a first optional complaint to the Human Rights Committee.

The Hon. P. J. BREEN: But there is provision in the International Covenant on Civil and Political Rights that covers cruel and—

Mr SHETZER: It would be cruel and unusual punishment. I am not aware of any particular individual complaints involving a young person.

The Hon. P. J. BREEN: Theoretically, though, on the basis of the decision in the United Kingdom, it would be possible to bring a complaint to the United Nations Human Rights Committee.

Mr SHETZER: Theoretically. From Australia's perspective it is an extraordinarily difficult process. You have to the exhaust all forms of domestic legal remedies in Australia first before submitting such a complaint, but theoretically it would be possible.

The Hon. P. J. BREEN: From a practical point of view, individuals can submit their own complaint to the committee in Geneva without the intervention of a lawyer, and exhausting local remedies in the context of child abuse may amount to simply not being able to get the police to bring a prosecution.

Mr SHETZER: Individuals can only submit to the Committee on the Rights of the Child in the context of the periodic report and putting in non-government reports, alternate reports. That can be done in the context of that committee system. However, for individuals to put in a complaint to the Human Rights Committee under the first optional protocol, they must have first exhausted all the domestic remedies, and that is not in easy hurdle to overcome.

The Hon. P. J. BREEN: In the case of *A v the United Kingdom* a complaint was made on the basis of the information of a brother's reporting.

Mr SHETZER: It was to the European Court of Human Rights, not the Human Rights Committee in Geneva. It was a different forum with its own different standing rules as to when it can and cannot receive particular complaints.

The Hon. P. J. BREEN: But in terms of making a complaint, if a sibling wanted to complain about the treatment of his or her brother or sister, he or she could simply say that so and so was beaten; the police would not bring any action against the parent or the person responsible and, therefore, we have exhausted all local remedies.

Mr SHETZER: I would have to give that some further thought. My first reaction is that it would not be as simple as that, whether it be a question of making formal complaints about the policing process, whether or not the complaint is subsequently acted upon, whether you then have to explore administrative legal remedies to force a complaint to be acted upon or perhaps declaratory relief in the Supreme Court. It is not an easy threshold to overcome. It would be something that I think the national centre would be very interested to look further into.

The Hon. P. J. BREEN: But you have had no experience of it and the centre has had no experience of it?

Mr SHETZER: Not in relation to the issue of physical discipline. We have looked at the options of pursuing complaints to the Human Rights Committee in relation to other issues but not in relation to the issue of parental discipline, no.

CHAIR: Thank you very much for your evidence and your submission.

Mr SHETZER: My only concluding comment would be that the suggestion of lowering the age—because this matter only came to my attention late last week about this section—I believe that lowering the age to 16 would be an appropriate way to deal with that and a way that would not diminish the sentiment and philosophy of the legislation. I would like to stress that point particularly because I would be extremely disappointed if, for that reason alone, the legislation were to be scuttled. I think the legislation is certainly a strong piece of legislation on this issue.

The Hon. P. J. BREEN: Do you agree with us that it may well be scuttled if we were to lower the age from 18 to 16?

Mr SHETZER: I do not agree that that would necessarily scuttle it. I am not a politician; I am a lawyer, so that would be more your area of expertise as to the political realities of that. I think it would be a worthwhile amendment to make to lower it to 16 to overcome that discriminatory aspect.

(The witness withdrew)

(Short adjournment)

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GILLIAN ELIZABETH CALVERT, Commissioner, New South Wales Commission for Children and Young People, Level 2, 407 Elizabeth Street, Surry Hills, affirmed and examined:

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

Ms CALVERT: As the Commissioner for Children and Young People.

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

Ms CALVERT: Yes.

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

Ms CALVERT: Yes.

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

Ms CALVERT: I have a Bachelor of Arts degree, a Bachelor of Social Work degree and a Master of Business Administration degree, all of which are relevant to the terms of reference for this inquiry. My over 20 years work in child and family services as a family therapist, working with children and young people who are troubled, and my time as a researcher, a lecturer and a policy adviser and now as Commissioner of Children and Young People give me experience that is relevant to the terms of reference for this inquiry.

CHAIR: The Commission has made a detailed written submission to the Committee. Is it your wish that your submission be included as part of your sworn evidence?

Ms CALVERT: Yes.

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. I invite you to make a brief oral submission in regard to the submission you have made to the Committee.

Ms CALVERT: We are pleased to have an opportunity to make a submission on the Crimes Amendment (Child Protection—Excessive Punishment) Bill 2000. The bill is a welcome piece of legislation, both for the children and for the parents and carers of children in New South Wales. Over the past 50 years there has been a shift in attitude, understanding and knowledge about children and young people and the way in which parents can guide and discipline them as they grow up. Alongside this increase in knowledge and change of attitude, there have been a number of changes to legislation, particularly in the area of child protection. As a result, there is some confusion amongst parents as to their rights, responsibilities and obligations in relation to the raising of their children.

The Crimes Amendment (Child Protection—Excessive Punishment) Bill goes a considerable way to clarifying for parents the extent of their rights and obligations as to physical punishment. As such, I think it will be welcomed by the majority of parents. At the same time, the bill affords increased protections for children that perhaps are not currently available to them. The law is unclear as to the limits for punishment. On numerous occasions parents have, in a sense, used a defence—perhaps not in courts of law but certainly within their own minds—that they were using reasonable chastisement whereas a reasonable person may say that it was excessive punishment. As a result of that justification or rationale, children have been both emotionally and physically hurt.

The bill affords increased protections to children which we as adults accept as our right. The value of the bill is that it is both helpful to parents and protective of children. Any legislation which achieves those twin aims is good legislation and something the Parliament should seriously consider

putting into law. In my submission I make a number of points about physical punishment, corporal punishment and child protection. I refer the Committee to those points and I will leave it at that.

CHAIR: You would be aware that the Committee is inquiring into the terms of the Hon. A. G. Corbett's bill rather than embarking on a generalised inquiry into methods of child correction. I say that because I more or less apologise for the fact that many of the questions I and possibly other Committee members will ask will be of a technical-legal character about the drafting of the bill. First of all, it has been mentioned to you in informal conversation prior to the commencement of the hearing that our previous witness, Mr Schetzer from the National Children and Youth Law Centre, made submissions to us about the definition of a person acting for a parent. He seems to be of the view that parental permission may have a discriminatory effect for a sibling of a child who has been subjected to punishment where that sibling is under 18 years of age. I told Mr Shetzer that I was surpised by his submission. However, could I ask for your response to that? If you feel unable to respond immediately, I invite you to take the question on notice.

Ms CALVERT: I will take the question on notice, although in passing I would say that it is probably not only in relation to siblings. If you think about indigenous families, then probably cousins would be in a similar position. I will take that question on notice.

CHAIR: In paragraph 86 of your submission you say that this Committee has the opportunity to consider the reasonable chastisement rule and its appropriateness in the 21st century. In paragraph 90 you go on to say that it is timely for the reasonable chastisement rule to be subjected to close scrutiny, and that it cannot be in the best interests of children to maintain the reasonable chastisement rule for numerous reasons that are then set out, referencing back to earlier sections of your submission. At the moment the Committee is charged with considering the Hon. A. G. Corbett's bill. If we were to follow your suggestion, at least immediately, it would involve overthrowing the bill and bringing in another one. Am I correct in my understanding that your Commission supports the bill at least as an appropriate progression toward reform of the law regarding child punishment?

Ms CALVERT: Yes, I support the bill as a progression. We have made a couple of suggestions for changes to the bill, but I do not know that we would want to necessarily have the bill abandoned. We think it is an important progression, but I would suggest that it is more than that. It is a reasonable progression that takes account of all the current attitudes that the community holds towards parents' right to discipline their children and the community's concern for the safety and protection of children.

CHAIR: At paragraph 83 of the Commission submission you make the point that the Corbett bill applies only to the criminal law. You say that extending the bill to civil as well as criminal law could be achieved by an amendment to the Children and Young Persons (Care and Protection) Act 1988 or, alternatively, by a statement in the Corbett bill to the following effect:

> Except as provided in the bill, the common law rule which allows parents and carers to use reasonable force by way of correction of a child is hereby abolished.

Do you seriously put the submission that the Corbett bill should be amended in that fashion or that we would be better advised to leave it as it stands, given the series of consultations that, no doubt, the Hon. A. G. Corbett has conducted in a lengthy gestation period?

Ms CALVERT: We want the Committee to consider the implications in civil law as well as criminal law, so we put this forward as an option. We do not see that it would in anyway delay the implementation of the excessive punishment bill. We put it forward as an alternative for you to consider. The aim that we are trying to achieve or that we would like the Committee to look at is that you consider extending the provisions of the bill to civil law as well as criminal law.

The Hon. P. J. BREEN: The Committee put this question to the Law Society. Section 61AA (2) of the bill states "The application of physical force is not reasonable if" and then sets out paragraphs (a), (b) and (c). We suggested that the Law Society consider whether paragraph (c) should be amended to say "the force is applied to any part of the body of the child in such a way as to constitute an assault." That would be one way of extending the provisions of the bill to provide greater protection to children. It might not go as far as extending it to civil law, as you suggest, but it would extend its effect in the criminal law jurisdiction and—if I am reading it correctly—would enable

children to draw on this provision in a greater number of circumstances. Would you consider, on notice if you wish, whether that might be an appropriate amendment to the bill?

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Ms CALVERT: I will take that question on notice.

CHAIR: In your submission regarding clause 61 AA (2) (b) you say that in the latest version of the Corbett bill the qualification "other than in a manner that could reasonably be considered trivial or negligible in all the circumstances" has been added to the provision I mentioned. Further, you say that it is extremely unlikely that parents would be prosecuted for a trivial or negligible action and that the addition of those words to the otherwise clear criteria seems unnecessary and detracts from the otherwise clear wording. Finally, you say that those words introduce a subjective element which was previously absent and muddies the messages being given to children, parents and the courts. Would you comment on that?

Ms CALVERT: One of the strengths of the bill is that it clearly defines, for parents, what is considered excessive punishment in very concrete, practical terms that they can apply in everyday settings. That is something that parents have really wanted. The introduction of the words "could reasonably be considered trivial or negligible" introduces a subjective element. What some people consider reasonable chastisement, other people consider excessive punishment. We have slipped back a bit by the insertion of those words to a subjective element that earlier drafts did not contain.

My second point is that if the punishment is trivial or negligible it is highly unlikely that police would lay charges of assault. Of course, that would have to happen before that defence could be activated. Police would have already exercised discretion and, if you like, excluded trivial or negligible matters so that it is unnecessary to have it in the bill, particularly when it muddies the water in what was previously a very clear set of guidelines for parents is to what they could or could not do and therefore have protection under the law.

CHAIR: I assume it may well have been put there by way of compromise to allay concerns of people who may otherwise be opposed to the bill.

Ms CALVERT: That is one possible explanation. That is partly because people do not understand that before this bill comes into force there has to be a prior charge of assault; you have to reach the threshold of assault and be charged. People fail to appreciate that distinction and, therefore, are reading the intention of the bill as if it were the first point of contact between a parent and the legal system. One advantage of a community education campaign would be to explain to parents and others that one must reach the threshold that would lead to the laying of an assault charge against one.

The Hon. P. J. BREEN: On the other hand, from a public relations point of view it would be easier for the Parliament, in trying to sell this legislation, to be able to say that that exception covers such things as a rolled-up newspaper, a slipper, or anything that is unlikely to injure a child?

Ms CALVERT: That is one explanation. The other is that it opens a gateway for people to apply definitions to trivial and negligible that might go the other way. In the past that happened with physical punishment of children; acts that damaged and hurt the child have been defended on the basis that they were reasonable chastisement. That is the difficulty in introducing a subjective element, because we all have different views as to what is reasonable, trivial and negligible. I agree second point.

The Hon. P. J. BREEN: You are worried that trivial and negligible might be equated to the current defence of reasonable chastisement?

Ms CALVERT: I am not sure that it would be equated to the same level as a reasonable chastisement, because trivial and negligible implies something that reasonable chastisement does not.—or the other way round. The advantage of the bill is its clarity in setting out what is reasonable chastisement and what is not. The bill leaves very little room for confusion, which is to the advantage of people who are caring for children. I certainly would not say that the bill should not proceed on the basis that the words "trivial and negligible" were included in it, I am trying to point out something.

CHAIR: At the bottom of page 26 of your submission, regarding the definition of a person acting for a parent in the Aboriginal and Torres Strait Islander [ATSI] communities, you say that the current wording in Mr Corbett's bill would allow a non-ATSI person, for example a youth worker, to use physical discipline on ATSI children if he or she could show that that person was recognised by the ATSI community as having special responsibilities for a child. What is the commission's view regarding that matter? What change do you argue for?

Ms CALVERT: The kinship relationships in ATSI families are different from the kinship arrangements that exist in non-indigenous families; they have a different relationship with their aunts, uncles and cousins than I would have coming from a non-indigenous family. Those different relationships allow for people to chastise and discipline children in a way that we may not accept in a non-indigenous family. We proposed a form of words for the Committee's consideration that would recognise that different relationships that exist, and different authority relationships that exist, between children and adults within the ATSI communities.

CHAIR: Last week witnesses appear before the Committee on behalf of the Association of Child Care Centres, which you would be aware covers the private non-community sector child-care providers. They raised concerns with the Committee regarding possible unintended consequences of the bill. In particular, their concerns related to the definition of persons able to exercise the defence of lawful correction and drew the attention of the Committee to sections 157 and 158 of the Children and Young Persons (Care and Protection) Act 1998. Summarising the matter that Act permits the use of reasonable force or restraint, for example to keep a child from harm or preventing another child from being harmed by a child. However, the witnesses said that those statutory provisions relate to out-of-home care only and not to licensed, formal child care in a preschool or child-care centre.

It is correct that the provisions of sections 157 and 158 do not apply to child-care workers in formal child-care? If your answer is yes, is that a deliberate exclusion from the legislation? If so, why is that so?

Ms CALVERT: In my view the bill narrows the class of persons who can use corporal punishment, and would exclude child-care workers, teachers, babysitters and other temporary carers. I do not consider inappropriate that professionals who are working with children and persons outside the child's household or kinship relationships should have the power to use corporal punishment. People who work in child-care centres deal with large numbers of children; the ratio is 1:5 for under-three-year-olds and 1:10 for three- to five-year-olds. As such, they are often under stress. In addition, they do not have the parent-child relationship with children in their care that would mediate their being given equivalent parental powers.

Teachers are not permitted to use corporal punishment, as the Committee would be aware. Nor are child-care workers under the existing centre and home-based child-care regulations. Sections 157 and 158 of the Children and Young Persons (Care and Protection) Act apply to authorised carers of children and young people in out-of-home care. The precise meaning of "authorised carers" depends on regulations which have not yet been promulgated. My understanding is that it is not intended that those sections apply to child-care workers. My advice is that those sections do not bestow on authorised carers are right to use corporal punishment to correct behaviour of children in their care. Section 158 of the Act deals with restraining children in out-of-home care to prevent harm to themselves or to other persons or property.

Different common law rules apply to force used to restrain a person from harming himself or others, and they apply to restraining adults as well as children. The bill does not attempt to change the current legal of position in relation to restraint. The defence of lawful correction applies only to children and the intent of the lawful correction is to change the child behaviour, not to protect the child or others from physical harm. I do consider any changes to the 1998 Act are needed in relation to corporal punishment.

CHAIR: As I understood the submission given last week to this Committee by the Association of Child Care Centres, it was not seeking the right to inflict corporal punishment but appeared to be seeking the same provision made by sections 157 and 158 as applies to out-of-home care. That should be applied to child-care centres, using that generic description. Section 158 (1) of the Children and Young Persons Care and Protection Act 1998 states, in part, if, in the opinion of a

person having parental responsibility under this Act for a child or young person, or the authorised carer of a child or young person, that child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person, or might cause of the loss of or damage to any property.

I am not putting to you any suggestion that teachers in child care should have the right of corporal punishment. I am concerned, and the association appeared to be concerned, about a child in their care acting dangerously towards another child. Would they have the right to touch that child to the extent of restraining a child from doing so? It is not hard to envisage a situation in which a young child, arguably autistic or suffering some other disability, were about to strike and potentially seriously injure another child, I cannot understand why they do not have the benefit of section 158.

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It is quite understandable and satisfactory if you wish to take the matter on notice and come back to the Committee.

Ms CALVERT: Yes, I will take that on notice because it refers to another bill.

CHAIR: I apologise, in advance, for raising a series of difficult matters but the Teachers Federation made a late submission to this Committee last Friday and I will summarise what it said. The federation expressed concern about the restricted definition of person acting for a parent in the bill of the Hon. A. G. Corbett. The submission of the Teachers Federation outlines two recent cases of teachers having been prosecuted for allegedly assaulting students in circumstances, I might add, in which the actions of the teachers appear to have been quite restrained and reasonable. I am aware also that the teachers successfully relied upon the defence of lawful correction or, at least, the judicial officers presiding saw it as being appropriate to rely on that particular defence in favour of the teachers. The teachers in question were not convicted. The submission of the Teachers Federation pointed out that they would have automatically faced disciplinary proceedings. The federation pointed out that under part seven of the Commission for Children and Young People Act those people would be recorded on the data base of the commission for employment screening. Has the commission determined how it will define relevant disciplinary proceedings in regulations under the Act for the purpose of part seven of the Commission for Children and Young People Act?

Ms CALVERT: Yes we have, and I would be happy to provide a copy to the Committee.

CHAIR: Is it appropriate for teachers who have been the subject of disciplinary proceedings as a result of what could, in a given case, be a frivolous or vexatious complaint to be the subject of employment screening under part seven even when the complaint itself has been dismissed or defeated in relevant court proceedings?

Ms CALVERT: If it were a disciplinary matter then the regulations exclude the passing onto the commission of frivolous or vexatious or false complaints. However, if a charge has been laid under part seven of the Commission for Children and Young People Act that record will be provided to us in the conducting of employment screening. We are still yet to determine which criminal charges will be used in the making of a risk assessment of that person's suitability. That part of our system is not yet complete. It has not yet been finally decided.

CHAIR: The final paragraph of the submission of the Teachers Federation states:

> This level of scrutiny provides a sound base to protect children from assault and child abuse.

There they refer to the screening process established under the Commission for Children and Young People Act 1988. The submissions continues:

> To deny teachers the right to a defence of lawful correction could result in a situation where teachers may feel that they cannot take any physical action to take control of situations when students are acting in a provocative and abusive manner and threaten or actually assault other students or teachers. This would be extremely detrimental to both the teaching and learning environment and adversely affect the majority of students.

The Teachers Federation is a responsible body in society. The Committee has to have regard to what it puts to it. Would you comment now or subsequently on what the Teachers Federation has put to the Committee regarding the unavailability to it of the defence of lawful correction, bearing in mind, of

cause, you quite obviously say I would imagine that corporal punishment itself is not available in schools?

Ms CALVERT: I will take that on notice because again I would want to go back to the education legislation governing teacher behaviour in preparing my answer, and I do not have that with me at the moment.

CHAIR: Without forcing you to make any further response, would you consider very seriously though, that it is not unknown in today's education environment for students to be disruptive by which I do not restrict myself to verbal disruption but physical disruption—throwing things at teachers and so on or threatening or actually harming another student? Could you carefully consider what the Teachers Federation has put, not in regard to restoring corporal punishment but analogous to what I put to you in childcare, considering the position of teachers protecting another student or themselves from actual harm?

Ms CALVERT: Yes, I will consider that matter.

The Hon. A. G. CORBETT: In my question and answer sheets I looked at the issue that has been raised. In the Education Reform Act 1996 there is a provision that allows teachers to use force in order to protect themselves or any other students or property.

CHAIR: That is a matter the Committee would be anxious to research. It has not had an opportunity to do so given that this omission came into me on Friday afternoon last. However, it does seem surprising to me that the Teachers Federation, in making the submission would, for whatever reason, fail to mention the statutory provision to which the Hon. A. G. Corbett is now referring.

The Hon. A. G. CORBETT: Yes.

Ms CALVERT: Yes, I wish to take the question on notice because I want to have a look at the education legislation to see what protections are afforded under that Act.

The Hon. J. F. RYAN: Some people who have opposed this bill have said to the Committee that legislation such as the Children and Young Persons (Care and Protection) Act 1988 has adequate provisions which prevent the sorts of things that this bill aims to prohibit, that is, it makes reference to child abuse including assault, ill-treatment or neglect of a child, assault, including sexual assault, of the child or child abuse. Are those laws adequate protection if this bill is not passed?

Ms CALVERT: I will make my reference to the Children and Young Persons (Care and Protection) Act 1998 because it is probably better to look forward than back. There is provision in that Act under section 23 (c) that:

> (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

The difficulty is that nowhere else is there a clear setting out of what constitutes ‘physically abused or ill-treated’. That has been the cause of confusion for parents. On the one hand they are conscientious and do not wish to place their children in their care at risk of harm. When one turns to this legislation one really does not get the sort of assistance that is needed to help, in concrete, practical, every day terms, to get guidance as to the precise meaning of ‘physically abused or ill-treated’. The excessive punishment bill provides a clear explanation as to what we would now mean by, or would help certainly guide parents regarding what we would mean by, what behaviours would fall outside of the notion of physically abused or ill-treated.

The Hon. J. F. RYAN: Does the current interpretation of, at least, the child care and protection Act and I guess the future interpretation of the unproclaimed section of the Act to which you just referred, cover this field in any event?

Ms CALVERT: I would draw on my experience of having talked to parents who have in my opinion—and that has been later upheld by a court action—physically abused their children. They have maintained that they, in fact, were engaged in lawful correction. There is grounds for quite a difference of views about what it is meant in concrete, precise terms by ‘physically abused or ill-

treated' and that the standard I might apply is a standard that other parents do not apply. Unless we have some clear setting out of what we mean by that then I think parents will always be in a sense exposed to a somewhat different interpretation but I think more importantly children themselves are not protected.

The Hon. J. F. RYAN: Have people escaped prosecution because in some respects the existing law is reasonably broadly cast and this provision appears to be much more narrowly cast? Someone said to the Committee in this morning that the line between reasonable discipline and child abuse is dangerously unclear. Do you accept that view?

Ms CALVERT: The line is shifting historically. In my submission I provided research which shows that what was acceptable behaviour say, 50 years ago, has in fact decreased—specifically thrashings and beltings. Fewer people use thrashings and beltings as a way of physically disciplining their children now than their parents and grandparents did. The line is shifting and the Excessive Punishment bill reflects that shifting line.

The Hon. J. F. RYAN: Last week in evidence to the Committee somebody referred to the circumstance of a parent being driven to inflict pain and discomfort—but not injury—on a child in order to make a point. Is that parent committing an act of child abuse if they inflict pain on the child without injury? I think they were referring to a description unlike the administration of corporal punishment in schools that was previously allowed, for example, giving the child a cane—not that I know many parents that do that—but certainly using implements such as a shoe or a wooden spoon on the buttocks to the point that it caused pain but not what we would call injury? Would that fit into the definition of what we currently understand to be child abuse? Does a punishment of that nature fit into the definition that is provided within the provisions of this bill as being contrary to the law?

CHAIR: The witness was referring to transitory pain of very short duration.

The Hon. J. F. RYAN: Yes, although I do not think insignificant.

Ms CALVERT: One of the questions I would have is what is the age of the child? For example, I would be concerned if the child were two weeks old and was hit with a sand shoe.

The Hon. J. F. RYAN: They were talking about an older child, I imagine, close to high school age or in high school.

Ms CALVERT: My view would be that that would fall outside the definition of child abuse under the current legislation and also in future legislation. As an act by itself, everything else being equal, that would not be considered child abuse. That is not to say the child or young person would not experience it as an humiliating and degrading event. Nor is it to say that certainly I, or somebody who has worked extensively with children and parents, would not want to discuss with the adult a more effective, long-lasting and positive way to respond to the behaviour of the child or young person.

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The Hon. J. F. RYAN: I think you would probably describe that as a thrashing or a belting. Do you think thrashings and beltings would be prohibited if this bill were passed into law?

Ms CALVERT: In the research, thrashings and beltings were terms that participants in the research used. I am assuming they were referring to repeated physical force, either with an instrument or with their hands, which left significant marks and inflicted significant levels of pain. If you think about the word "thrashing", that generally implies an instrument, like a cane. If you think of the word "belting", it implies the use of a belt. So, yes, those things are seen as excessive punishment under the Excessive Punishment Bill.

The Hon. J. F. RYAN: There might be some parents who otherwise are quite loving and have good relationships with their children but who may, in certain circumstances, have felt compelled to apply say five or six belts of the sandshoe to the buttocks or behind the legs. This bill affects the criminal law, and although parents might be doing something that you and I believe to be inappropriate, nevertheless I might not want legislation to criminalise them for those acts. I think the general question is: Will this bill have unintended consequences for parents who would otherwise be regarded as perfectly reasonable and good parents?

Ms CALVERT: My belief is that it will not because first of all, there is the threshold of being charged with assault. The police have discretion on what they will charge with assault and what they will not. The police may have regard to a wide range of factors in laying a charge. The police, if they do get over the threshold, then have access to the legal process. I do not think it will result in the criminalisation of a whole range of parents whom otherwise we would not want to criminalise—because, first of all, of having to get over the threshold of assault.

The Hon. J. F. RYAN: Many of the opponents of the bill have presented the likelihood of criminal prosecution arising as a result of a complaint by a child. I suspect a more likely source of a charge arising is a non-custodial parent complaining about another parent. Do you think a bill like this will have an unbeneficial or a beneficial effect on complaints that are regularly laid with police by various non-custodial parents about treatment of children while they are either on access visits or in the custody of the main custodial parent?

Ms CALVERT: I think, in the context of family breakdown, there are some parents who will use any piece of legislation against the other parent. If we were to exclude or not proceed with legislation on that basis, I think the Parliament would be placing children at a serious disadvantage. I think, regardless of what legislation is or is not passed, people who are of that mind will behave in that way. If a child or young person lodges against their parent or parents a complaint of assault, then the police should respond to that complainant in the same way that they would to anybody who would make a complaint of assault.

The Hon. J. F. RYAN: An earlier witness before the Committee argued against the bill partly on the grounds that stupid or cruel parents who abuse their children will not be influenced by this legislation, while it will be a source of concern for conscientious, non-abusive parents who may be using corporal punishment in a way that is responsible and does not cause harm to children. What is your response to that argument?

Ms CALVERT: There is other legislation that covers parents who are cruel and, in a sense, are abusing their children. We cannot treat this bill separately from a whole raft of legislation that currently exists. So those parents who are cruel to their children, regardless of whether the Excessive Punishment Bill exists or not, would in fact be covered by the Children and Young Persons (Care and Protection) Act, and that is legislation that one would bring to bear in relation to those parents.

However, I think the Excessive Punishment Bill gives clarification for those parents who are uncertain as to what is reasonable chastisement and what is not, and gives them the opportunity to understand that they are in fact not engaging in the same behaviours as those at the more extreme end of the spectrum. At the moment, in a sense, it is either seen as child abuse or it is not. I think this bill defines that middle ground to clarify when parents are using excessive punishment and when they are not, and it gives them an opportunity to correct their behaviour, so that they do not continue down the slippery slide towards child abuse, which would be captured by the Children and Young Persons (Care and Protection) Act.

The other thing I would say is that if the aim is to change the behaviour of those towards the extreme end, then the more that one can shift the rest of the community away from that behaviour, the more likely it is that they will be dragged closer towards more reasonable behaviour. So I would see the bill as clarifying for people what is reasonable punishment and what is not and that potentially having a beneficial effect in pulling back some at the more extreme end.

The Hon. J. F. RYAN: One other person who argued against the bill said that much of what you have said would be beneficial in terms of educating parents could be equally, or in fact better, achieved by a public education program run by the government as to what constituted effective punishment. Would you see that as a better alternative to this bill? For example, in Sweden, as I understand it, the law does not prohibit spanking; it establishes a code, which seems to have no impact on criminal prosecution. Would it be a better approach for New South Wales to have a code in respect of which the government might conduct a public relations campaign, rather than involving parents in the complexities of the criminal law?

Ms CALVERT: I do not think it is a question of Parliament making its intentions known verses a community education campaign. I think you need both if the measure is to be successful. If one were to undertake a community education campaign without clearly setting out what Parliament provides is or is not acceptable behaviour, then that would not be as effective because most of our time would be spent debating again what is reasonable versus what is not reasonable. Certainly, from my point of view, I think both parts are required: Parliament to make its intentions known, and a community education campaign to let parents know about Parliament's intentions.

I would probably take on notice the question of whether a code is preferable to the Child Protection (Excessive Punishment) Bill as a way of changing people's behaviour. However, I would say that, regardless of Parliament's passing a code and making its intentions known, we would still be required to look at the relationship of that code to the defence of reasonable chastisement. So I do not think we avoid the difficulties by establishing a code, because we would still need to look at how those two pieces of legislation interacted with each other.

The second thing I would say is that I still think there is difficulty with the defence of reasonable chastisement not being codified in some way in legislation, because that allows for subjective interpretation by parents, police and the courts. Whilst some discretion is important, the current discretion is far too wide, resulting in confusion for parents and lack of protection for children.

The Hon. J. F. RYAN: My final question relates to the question of academic research. Your submission says that the broad thrust of evidence is that the use of harsh or frequent corporal punishment on children increases their aggressiveness and poses a risk of enduring psychological and physical harm. An as yet unpublished submission to the Committee by Reverend the Hon. F. J. Nile refers to other psychological studies which he summarised in this way:

> Most of the empirical studies were methodologically flawed by grouping the impact of abuse with spanking. The best studies demonstrated beneficial, not detrimental, effects of spanking in certain situations. Clearly, there is insufficient evidence to condemn parental spanking and adequate evidence to justify its proper use.

In addition, Reverend the Hon. F. J. Nile refers to researchers at the Centre for Family Research in Iowa State University who studied 332 families to examine the impact of corporal punishment and the quality of parental involvement on three adolescents outcomes—aggressiveness, delinquency and psychological wellbeing. He said the research had concluded that corporal punishment was not adversely related to any of those outcomes, and that the study proves the point that the quality of parenting is the chief determinant on favourable or unfavourable outcomes, adding that remarkably childhood aggressiveness has been more closely linked to the maternal permissiveness and negative criticism than to abusive physical discipline. Speaking as someone who is not an academic in this field, is it fair to say that there is heated debate within academic circles on the issue of where spanking lies in terms of beneficial or harmful parenting, or is this particular submission quoting not respected authorities, or is the evidence overwhelmingly the other way, that it is harmful?

Ms CALVERT: I think there is broad consensus among the academics and professionals that physical punishment is not the most effective form of correcting or disciplining a child and that there are a range of other much more effective ways of doing that. So I think it is safe to say that that is a widely held view amongst child development academics and professionals. The research that we are referring to was a study undertaken by the National Child Protection Council, which reviewed the literature and research literature of the time. That was conducted in the late- to mid-1990s. That was a research task undertaken by a well respected academic. The conclusion that that literature review reached was the conclusion that we have included in our summary. So I would be confident that it reflects the body of knowledge and the current state of research into the matter of corporal punishment and its impact on children. Could I go on to say that that same research goes on to say that physically hitting children does not lead to long-term emotional consequences. The research is referring to prolonged use of corporal punishment as a primary strategy of parents in trying to correct and develop their children's behaviour.

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The Hon. A. G. CORBETT: The bill will not come into effect until 12 months from the date of assent, if it is passed by Parliament. You have written to me and also published in the commission's newsletter stating that your office is willing to help to undertake the education process. I am not sure whether you have mentioned that in your submission, but would you tell the Committee a little about what you believe your office could do?

Ms CALVERT: There are two things we could do in conjunction with some other communication strategies that are currently under way in New South Wales. The first is that we could give people information about legislative provisions and explain to them in simple terms what was and was not excessive punishment, and that there was, first of all, the crossing of the threshold for being charged with common assault. So, in a sense we could give people information, which is something the commission would be a good position to do.

However, to back that up we need also to provide parents with alternatives. If somebody has been relying on excessive physical punishment as a way of managing their relationship with their children, we cannot just tell them not to do it. We need also to say "and here are some alternatives". The two strategies that are currently under way on which we would rely to continue that education would be, first, the Families First strategy, which of course has a communication component and quite a lot of activity around parent support and development, and, second, the parenting campaign that is being led by the Department of Community Services, for which it has received additional funding under the Government's response to the Drug Summit.

There are also other activities under mental health funding for the development of positive parenting programs. We would be using those sorts of things in a sense to guide parents and give parents alternatives to use to replace the use of excessive punishment. Therefore, I guess we would do two things: the first is that we would take the lead in relation to information to the community and the second is that we would then work with those other agencies and funded strategies to provide alternatives and point parents in the direction of alternatives to excessive physical punishment.

The Hon. A. G. CORBETT: Does the commission have a good budgetary allocation to undertake this community education program?

Ms CALVERT: I would be in a better position to answer that once I saw the final provisions of the legislation and what form it took, and once I had discussions with the other agencies about their current strategies around parenting.

CHAIR: Two previous witnesses, Professor Parkinson and Dr Judy Cashmore, both considered a communication strategy or educational campaign as being quite crucial. They placed much emphasis on that.

Ms CALVERT: I would support that. As I said in response to questions by the Hon. J. F. Ryan, I do not see that you can have the sort of legislative changes this Committee is currently considering without a strong community education campaign. You cannot have a strong community education campaign without Parliament's intentions being known. Clearly that requires some financing and resourcing and I would be discussing that with the other agencies and then with government if and once Parliament makes its intentions known. I support the essential need for a community education program.

The Hon. P. J. BREEN: You refer in your submission to the provision for recognising the rights of Aboriginal and Torres Strait Islanders and extended families to discipline children. You made a sensible observation that the wider community should be limited to people in their cultural group. Earlier today Professor Alice Tay suggested there are other groups and communities in the population for which it may be appropriate to recognise their cultural rights also in relation to the discipline of children. Do you have a view about that?

Ms CALVERT: I believe the kinship structures in indigenous communities are significantly different to the kinship structures in non-indigenous communities. In non-indigenous communities there probably is a variation; whether or not they are to such an extent that you would want to recognise that in legislation, I would probably want first to talk with some of those communities to make a decision about that. The Committee may want to consider, if it is an issue, providing a regulatory power to actually allow for other communities to be added after there have been further discussions with those communities. I also would have to bow to Professor Tay's greater knowledge in this area.

The Hon. P. J. BREEN: Professor Tay made the point that although she recognised it might be an issue with some people she did not consider it was appropriate to extend the legislation. She made the important point that we know more about the rights and practices in the indigenous community than we do about other communities. I just wondered if you had a view about that.

Ms CALVERT: As I said, I am much clearer that kinship relationships in the indigenous community are significantly different. The fact that I am not as aware of other communities that would have similar sorts of alternative kinship arrangements probably leads me to conclude tentatively that they probably are not that significantly different that you would want to separate them out in the legislation.

The Hon. P. J. BREEN: One argument put by opponents of the bill, including Reverend the Hon. F. J. Nile when he spoke about it in the Parliament, is that newspapers, for example the *Daily Telegraph*, might use the appellation that it is a no smacking bill in order to denigrate the Parliament and other supporters of the idea that children need protection of this kind. He suggested also that it might undermine the confidence of a substantial number of parents who use some form of physical discipline. How can the message of the bill be put in such a way as to avoid it being misunderstood by the media and by the community generally? Can we do anything with the words of the legislation or through some other form to prevent that kind of misunderstanding and denigration?

Ms CALVERT: When the bill was tabled this last time, its most recent tabling if you like, we saw a shift in the way the media responded to it than in previous times. I believe the media understood that this was a bill that was reasonable in that it recognised parents' obligations but also moved to protect children. The use of the words "child protection—excessive punishment" in the title certainly goes some way to explaining the intent of the bill and therefore helping the media to understand. I believe also the support of such a wide range of community leaders goes a significant way to assisting the media to understand.

Certainly, if Parliament could reach consensus on the bill, that would also go a significant way to helping and reassuring the community that this was a reasonable and sensible bill. I believe the media have greater understanding and knowledge of the issues than perhaps they had five years ago. I believe also that is being reflected in the reporting we are seeing. I have some recollection also that the *Sunday Telegraph* published an editorial supporting the legislation.

The Hon. A. G. CORBETT: It was the *Sun-Herald*.

Ms CALVERT: I believe that points to the media not necessarily having a negative response.

CHAIR: The Committee is concerned with the drafting of the bill and I direct your attention to the drafting of clause 61AA (2). If we were to delete paragraphs (a) and (b) and not (c) what would remain would be as follows:

> The application of physical force is not reasonable if:
>
> (c) 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 put that to you on the basis that possibly the harm suffered is more important than the means by which the punishment is delivered. This question was put to other witnesses, such as Professor Parkinson, who preferred to leave the drafting as it is as they felt the legislation, apart from anything else, has an important educative role. Perhaps I am leading you in telling you their response, but what is your view if paragraphs (a) and (b) were deleted and only paragraph (c) remained?

Ms CALVERT: One of my concerns is that parents sometimes will use forms of physical punishment that they think will not harm the child but in fact do harm the child. They do not appreciate or have a knowledge or awareness of the impact that a hit to the head of a small baby on the development of the child's ear and hearing, and the brain. Because it is not immediately obvious the parent will not connect their behaviour of hitting the child on the head with later damage and harm caused to the child. There are some difficulties with just relying on paragraph (c) from that point of view. Also, the strength of the bill is that it sets out for parents in concrete, practical and everyday

terms what we mean by harm to the child and excessive punishment. Paragraph (c) by itself means that we are doing away with what I believe is one of the strengths of the bill, which is that it is understandable by parents in everyday practical ways.

CHAIR: You will be aware that the Hon. A. G. Corbett's bill as presently drafted provides, amongst other things, as follows:

> That the application of physical force is not reasonable if:
>
> (a) the force is applied by the use of a stick, belt or other object ...

Some people who have provided submissions to the Committee appear to have some reverence for an object called a wooden spoon. Do you believe there is any particular reason a wooden spoon should be excepted in the provisions of the bill or can a wooden spoon be used in such a way that could cause harm or injury to a child?

Ms CALVERT: Any instrument that is used to hit a child can result in harm to the child. For example, the child might move and get poked in the eye from the end of the wooden spoon. Because of the nature of the physical punishment—the child is distressed, the child might be trying to get away from being hit, the parent may well be angry and it might be in a confined space—whenever you introduce an implement into that sort of setting there is potential for harm. There are few wooden spoons, or a lot less wooden spoons, in kitchens these days than there were, say, 30 years ago. I do not know why we would want to exempt a wooden spoon as opposed to a plastic spoon. You might need to consider that also. The use of a stick, belt or other object covers a range of objects that someone might use.

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The Hon. P. J. BREEN: In relation to your suggestion that the Committee might consider deleting item (c), which refers to the force applied:

> to any part of the body of a child in such a way as to cause, or threaten to cause, harm …

It is my recollection, and I am not sure whether it was Professor Parkinson or some other witness, but certainly the suggestion was made to the Committee that the witness would prefer to see item (c) deleted rather than having it left in and the other two deleted. The witness thought that item (c) was helpful, and it is for that reason that I have suggested that item (c) might be amended to refer to the question of assault generally. Would you have any comments about that? Do you think item (c) could be deleted altogether?

Ms CALVERT: I will take that on notice and consider it as part of thinking about your previous question.

The Hon. A. G. CORBETT: Mr Chair, may I ask a point of clarification here. I think the evidence given on point (c) referred to the threat of harm. It was that aspect, I think, they were talking about deleting, not the whole section.

The Hon. J. F. RYAN: Item (c) says:

> to any part of the body of a child in such a way as to cause, or threaten to cause, harm …

I must say, some submissions have suggested that the very threat of causing harm can be misconstrued to be more than the bill may have intended.

Ms CALVERT: May have intended.

CHAIR: Yes, my recollection is that particular attention has been directed by some previous witnesses to the concept of threatening to cause.

The Hon. A. G. CORBETT: Can I put on the record at this point that I did approach Parliamentary Counsel about those words "threaten to … harm", and in discussion with Parliamentary Counsel it was recommended that should the bill go back to Parliament and be debated that that phrase would be amended and taken out, because it is confusing, and because it was not Parliamentary Counsel's intention anyway to have that there.

CHAIR: So why is it there?

The Hon. A. G. CORBETT: It was based on the model criminal code. I cannot be precise about the reasons but it was an error from Parliamentary Counsel's point of view when they looked back at it and examined it.

CHAIR: Can I put one final matter to you, Ms Calvert. That is whether the bill should arguably include upper and lower age limits beyond which physical punishment should be prohibited. Is there any value in setting an absolute community standard, for example, no child under one should be physically punished or no child under age one, two or three, as the case may be, should be hit with a belt, stick or other object, or perhaps that no child over 16 should be physically punished? Before you respond, can I say that I did put this to Professor Graham Vimpani of the University of Newcastle, a prominent paediatrician, and he said to the Committee that he would certainly support the view of the American Academy of Paediatrics that 18 months is probably a reasonable lower limit below which it should not be permissible for a parent to administer physical punishment. Would you like to express any view regarding the matter I am putting to you about an upper or lower age limit for the infliction of physical punishment?

Ms CALVERT: I think is important to separate the question of physical punishment from the use of excessive physical punishment and that this bill is looking at the use of excessive physical punishment, not the use of physical punishment, as a way of disciplining children. The question then becomes for me does any form of physical punishment by definition become excessive if it is applied to children of a certain age? I guess certainly the notion of hitting an infant on the head would be an excessive physical punishment given the vulnerability of the infant. On the other hand, is tapping or hitting an infant on the hand or an eight months old on the hand an excessive physical punishment? The answer probably is that it is probably not excessive in the context of assault; I think is probably useless and ineffective in the context of affecting the child's behaviour and assisting the child to grow and develop.

So, I think that in looking at applying age constraints in respect of this bill in the context of common assaults, I am actually not sure that it advances us any further. It would be unlikely that a parent would be charged with assault for hitting a child on the hand—for hitting a one year old or a two year old on the hand—and introducing that into the bill would, I think, open up a whole range of issues that I do not know the community is ready to deal with and ready to face, despite what my views as commissioner might be and what my knowledge of child development tells me is a fairly ineffective way of raising children.

CHAIR: Thank you for your evidence and for the very detailed submission. They are very much appreciated.

Ms CALVERT: Thank you for the opportunity. It is an extremely important piece of legislation that Parliament is considering. It is extremely important, because it goes to what for me is the critical issue, which is how do we as adults raise and develop children so that they have good lives now but also grow up into people who make worthwhile contributions to the community.

CHAIR: I respectfully remind you that at least three questions have been taken on notice, including the concerns expressed by the Teachers Federation and the private child care centres. The Committee will be taking evidence all day next Thursday, however we will conclude taking evidence then, so as soon as conveniently after then if we could have your views so we could start preparing our report.

Ms CALVERT: Yes.

(The witness withdrew.)

(Luncheon adjournment)

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REVEREND THE HON. FREDERICK JOHN NILE, Member of the New South Wales Parliament, Parliament House, Macquarie Street, Sydney, before the Committee:

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

Reverend the Hon. F. J. NILE: As a member of the Legislative Council, the honorary National President of the Christian Democratic Party and a concerned parent.

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

Reverend the Hon. F. J. NILE: Yes.

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

Reverend the Hon. F. J. NILE: I have been involved with issues relating to legislation dealing with the issue of smacking or legislation relating to child abuse—physical and sexual abuse, and so on—for many years and I have organised a number of conferences on that issue as well, with international speakers.

CHAIR: I simply note for the record that you have made a written submission. If you should consider at any stage of 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. I invite you to make a brief opening statement to the Committee in support of your submission.

Reverend the Hon. F. J. NILE: I thank the members of the Committee for the opportunity to appear before the Committee to make this opening statement and to answer any questions you wish to raise. There are a number of points I would like to make in this openings statement in addition to my submission and speeches in the New South Wales Legislative Council relating to the issue of the rights of parents particularly to carry out corporal discipline of their children. The first point is that we have strong child protection laws in this State. Mr Corbett has argued the need for this bill by quoting a father bashing his child with a baseball bat. Clearly, such child abuse is against the law under our strong current child protection laws.

The second point is the "no smacking bill". I have deliberately used this description because I am referring to the objective of the mover, Mr Corbett, who has made it very clear that he is totally opposed to corporal discipline or smacking by parents at any time for any reason. His position was very clear over his total opposition to corporal discipline in both State and Catholic schools and the new Christian Protestant schools. He will not accept any compromise, even the use of a simple paddle in Christian schools with the written authorisation of parents. The objective of this bill is to put in place so many qualifications, such as the length of pain from the smack, to include even the threat to smack.

The objective is to stop all smacking by parents and that would be achieved by this bill, if it became law, because parents would be worried that they might be charged by the police so they would never smack their disobedient or rebellious child, no matter what the child did wrong. The third point is education, not legislation. I sincerely believe that heavy-handed smacking by parents can be resolved by education, not legislation. A classic example occurred with parents who would shake their small child or baby, which could cause mental or brain damage. The New South Wales Government rightly conducted an impressive education campaign with media advertisements, et cetera, which was commended by Mr Corbett. There was no call by anyone, including Mr Corbett, for a new anti-shaking bill.

The fourth point is the unintended consequences of the new law. I have quoted the case of the Scottish teacher who smacked his daughter. He was suspended from teaching and is facing criminal charges. In spite of good intentions by Mr Corbett, the mover, the same situation could occur in New

South Wales with this proposed new law. For example, it depends on how police interpret it. How do teachers interpret it? How do judges interpret it? Schoolteachers already have a legal obligation to report any cases of sexual or physical child abuse by parents or other persons. Conscientious school teachers may ask their class each morning: Have any children been smacked last night? They then feel obliged to report it.

The fifth point is the defence provision. Much has been made of the defence provision in the bill for parents to use when they are charged and are before the court. Good parents should not be harassed by a draconian law; neither should they have to defend themselves in court or to pay for expensive legal representation. This defence provision is no defence for good responsible parents who must not confuse loving discipline with child abuse. Finally, I urge the Committee to recommend the bill not be proceeded with in the Legislative Council as it has not been passed by the second reading of the Council.

I understand that the Committee is attempting to find ways to improve the bill. I call that tinkering with the edges of the bill. I see no point in trying to do that to make it workable and more acceptable to parents. I believe the bill should be rejected. I attach to this opening statement a submission I requested after I received documentation from the committee, including a number of legal opinions by various professors. Over this weekend I have had time only to contact one former Professor of Law at Macquarie University, Professor L. J. Mark Cooray, LLB(Cey) Phd(Camb) Phd (Col), for his comment on some of the terminology used in the bill. I would table that before the Committee. I have only just received it. It is just his legal opinion of some of the terminology and its interpretation in the bill. Professor Cooray's address is 6 Rodney Ave, Beecroft, New South Wales 2119, Australia. That is on the top of his submission. Is it possible to table that?

CHAIR: Yes.

The Hon. J. F. RYAN: I move that the Committee receive the legal opinion of Professor Cooray.

CHAIR: Mr Ryan has moved that that document be tabled. Is there any opposition? I declare that carried.

Document tabled.

CHAIR: Have you concluded your initial presentation?

Reverend the Hon. F. J. NILE: Yes.

CHAIR: May I get a theological matter dealt with first? You commenced your submission with the heading "Spare the rod?". One of our first witnesses in connection with this current inquiry was Professor Patrick Parkinson of the University of Sydney. I questioned him about the well-known saying from the Book of Proverbs, "Spare the rod and spoil the child", and I asked him to comment on what that might mean. If you bear with me for a moment, I shall read you his response. He said:

> I am an evangelical Christian who believes that the Bible is inspired by God (2 Tim 3:16-17). I agree with Rev. Fred Nile that the Bible does not teach that children should be hit with sticks. The saying "spare the rod and spoil the child" comes from the book of Proverbs (Prov 13:24, 22:15). The rod is a metaphor for firm discipline. The book of Proverbs is full of metaphors and memorable sayings. Nothing in the Bible gives instruction to parents about how children should be disciplined. Rather, the Bible disagrees. We see too often the consequences of ineffective and inconsistent discipline.
>
> I agree also with Rev Fred Nile that for Christians, smacking ought to be a last resort. In my view, all Bible-believing Christians should support the bill. Christians should support legislation which is socially responsible, and which is a measured and appropriate law designed to protect children. The bill does not prevent parents from smacking, but it does aim to clarify the limits of what is reasonable and to try to prevent the kind of serious injuries that children too often suffer when parents are out of control with anger, and do not know their own strength.

First, can you comment on Professor Parkinson's understanding of the well-known saying, "Spare the rod and spoil the child" in a biblical sense? What do you say it means? Do you differ from him in any respect?

Reverend the Hon. F. J. NILE: My understanding of the word "rod" is that it is certainly not referring to any lump of four by two. It is referring, in the biblical interpretations I have seen, to a branch or you could even say a twig. The modern equivalent would be a wooden spoon. Obviously, in those days parents were living in open countryside so a twig or a stick would be available, whereas with modern parents a spoon would be the equivalent and not a twig or a stick. So that proverb in no way is encouraging people to be bashing a child with a large instrument. There is some confusion, even in what the professor said, between the rod and the staff. The staff had a hook and was used by shepherds to pull sheep in certain directions, and they often carried a small stick which they would use to prod the sheep in a certain direction.

My belief would be the way parents interpret that is that it may not even in their mind mean that they have to use an instrument at all; they can use a smack on the child when required, and even the threat of a smack. The point is that if you do not exercise in some children—it may be there are perfect children who never need to be disciplined, but it does seem that there are a certain number of children, like an unruly horse that must be trained, who need discipline more than others and that is where the smacking comes in. If you do not do that, if you do not apply any discipline to that child, you spoil the child. And I have made this statement before and it may be perhaps a bit strong. The discipline may then take place in that child when they are an adult in Long Bay gaol because they have never at any point had to back off from something which they wanted to do which was bad, naughty, misbehaving. They thought they could do what they liked all their life and finally they come into a confrontation situation with the law, with the police, and find they are in more serious trouble. That is where the spoil the child point comes from.

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The Hon. P. J. BREEN: Professor Parkinson suggested that "rod" was simply a metaphor for discipline.

Reverend the Hon. F. J. NILE: Yes, I am saying that.

The Hon. P. J. BREEN: That it is not actually a physical implement.

Reverend the Hon. F. J. NILE: But a parent can interpret it and say, "At some point I have to smack the child, or use a wooden spoon." That is how it is taught usually in the church.

The Hon. P. J. BREEN: You say that nothing turns on whether "rod" means a physical implement or is a metaphor.

Reverend the Hon. F. J. NILE: No. The emphasis is that there may be times when a child needs to be disciplined, and that could include smacking or a wooden spoon. Some people have argued that a wooden spoon is more desirable than, for argument's sake, a wharf labourer with a heavy calloused hand smacking a small child. That could be more damaging than using a wooden spoon. I note that the Hon. A. G. Corbett is opposed to any physical object being used. As we know, a trained boxer can face criminal charges if he uses his fists in a fight because they become a weapon.

CHAIR: As you would be aware, the Hon. A. G. Corbett's bill provides that the application of physical force is not reasonable if the force is applied by the use of a stick, belt or other object. Some other witnesses have referred with approval, if I could put it that way, to the use of a wooden spoon. How does one distinguish a wooden spoon from other implements? Is there some characteristic, such as its lightness, or other aspect that you believe makes it more appropriate than another object for administering punishment?

Reverend the Hon. F. J. NILE: It is clear that the bill would prohibit the use of a wooden spoon.

The Hon. P. J. BREEN: Why do you say that? It does not actually say that.

Reverend the Hon. F. J. NILE: Yes, it does. It talks about using any objects, and a wooden spoon is an object.

The Hon. P. J. BREEN: It is qualified by the words "other than in a manner that could be reasonably be considered trivial or negligible". Could one not use a wooden spoon in a trivial or negligible way?

Reverend the Hon. F. J. NILE: That is how most parents use it. When I have explained this bill to parents and said that, in our view, legal interpretation would prohibit the use of a wooden spoon, most parents, particularly mothers, usually break out laughing because most mothers use or threaten to use a wooden spoon. The answer to your question, Mr Chairman, is that a wooden spoon is readily available, a domestic item in the kitchen. So it is not a frightening implement, such as a leather belt, which I understand some parents have used. Certainly I would not support the use of leather belt or other item which could injure a child. The wooden spoon would come within that category, or the feather duster—not the feathered end but the other end, which basically gets back to the cane situation as it used to apply in schools. I was smacked in school until I worked out that I had to behave myself, which meant that I had to stop speaking all the time. I talked a lot, as I am doing now, and the teacher would give me six of the best.

CHAIR: We will not smack you for talking.

Reverend the Hon. F. J. NILE: Finally I woke up to myself and I stopped talking in the class. I started concentrating on what the teacher was saying and my marks began to improve. Some children are like that. I was not a bad child, but I was a child who needed to be trained. Parents use the wooden spoon or the threat of it—or something light like it—to help guide children in the right direction.

The Hon. J. F. RYAN: Do you think this bill prohibits the use of the wooden spoon? As I read it, most usages of the wooden spoon, except where it might be used in a repetitive and forceful manner and cause injury, are not prohibited by this bill. Do you think that it prohibits the use of the wooden spoon? I do not think we have received any opinions from anyone which would suggest that the does so.

Reverend the Hon. F. J. NILE: I do not know of anything in the bill that exempts the use of the wooden spoon.

CHAIR: The only part of the bill that could arguably exempt the use of the wooden spoon would be that referred to by the Hon. P. J. Breen within clause 61AA (2) (a): "other than in a manner that could reasonably be considered trivial or negligible in all the circumstances."

Reverend the Hon. F. J. NILE: We are back to that defence aspect. Where I am referring to the wooden spoon is: "The application of physical force is not reasonable if force is applied by the use of a stick, belt or any other object."

The Hon. J. F. RYAN: It is qualified by: "other than in a manner that could reasonably be considered trivial or negligible in all the circumstances". You cannot take half the sentence. The bill does say that it can be used provided the effect is negligible in all the circumstances. By any plain English understanding, that would seem to me to read to include the use of a wooden spoon or feather duster provided it was not used to injure the child. Do you read that differently?

Reverend the Hon. F. J. NILE: I do.

The Hon. J. F. RYAN: Why? Why would you read it to mean other than the plain English understanding?

Reverend the Hon. F. J. NILE: With the phrase "could reasonably be considered trivial or negligible in all the circumstances", we are getting back to where that would be a matter that has to be argued in the court.

The Hon. J. F. RYAN: Is that not what happens in court now?

Reverend the Hon. F. J. NILE: I am trying to prevent parents who use the wooden spoon from going to court to explain that in their opinion the use was trivial in all the circumstances.

The Hon. J. F. RYAN: The Committee has a report of a case in Tasmania where the parent was convicted of an assault for the use of a ruler. The law in Tasmania is not any different to the law in New South Wales. It would seem that already in New South Wales the use of an object can be prohibited depending on the circumstances.

Reverend the Hon. F. J. NILE: That is the point of my submission. I believe it is covered by the law in this State. If an object is used, even a wooden spoon or a ruler, in such a way as to cause abuse of a child, than the same thing would apply as in Tasmania. Do you suggest that Tasmania has a law that we do not have in this State? In fact, the laws in New South Wales are stronger.

The Hon. J. F. RYAN: The only way of knowing the exact outcome of a court case in New South Wales is for parents or any group that educates parents to go through a complex review of case law, which is not easily accessible. Is there not some benefit in having the impact of the case law described in a way which is readily accessible in an Act of Parliament?

Reverend the Hon. F. J. NILE: I do not think this clarifies it. That is the whole point. The language of the bill would only confuse parents. As I said in my opening statement, the bill would frighten parents from using any implement or object, particularly a wooden spoon or hand smack, to discipline their child.

The Hon. J. F. RYAN: Why should it frighten the parent if it does not make that activity, which I accept is common and prevalent, illegal. A simple explanation of the act would indicate that the bill does not make the use of the wooden spoon illegal. Every use of the wooden spoon I know of could easily be described as negligible in all the circumstances. No-one is going to be charged with using a wooden stone as a result of the passage of this bill. No-one would be charged, would they?

Reverend the Hon. F. J. NILE: The point I am making is if what you are saying is so absolutely clear, why is it not clear in the bill? If you felt that that was what the bill meant, then it could actually say "Prohibits the use of a stick, belt or other object. However, in other circumstances a spoon or a ruler would be acceptable." The bill does not say that. You are interpreting the bill. As I said earlier about tinkering with the bill, this is the third or fourth version. The Hon. A. G. Corbett, who moved this bill, is trying to get, in particular, Government support for the bill by adding qualification after qualification, which I do not think changes the thrust of the bill.

CHAIR: I will put the matter that the Hon. J. F. Ryan is putting to you in a different way. At the moment, as you are no doubt aware, it is possible and it does occur from time to time that a parent is charged with assault arising out of punishment of a child. The common law provides now for a defence of lawful correction, sometimes alternatively described as reasonable chastisement. A court, in applying that defence of lawful correction or reasonable chastisement, whichever term one chooses to adopt, has to determine the matter on the basis of not only the facts of the individual case but also previous case law. That case law deals with such matters as are set out in clause 61AA (1) (b) of the Hon. A. G. Corbett's bill which states: "the application of that physical force was reasonable having regard to the age, health, maturity or other characteristics of the child, the nature of the alleged misbehaviour or other circumstances." They are traditionally the standard matters a court would take into account.

The Hon. A. G. Corbett's bill then goes on to specify negatively the circumstances in which the application of physical force is not reasonable. Whether that is a perfect or imperfect statement of what the law should provide, it is an attempt to define the circumstances in which the application of physical force is not reasonable. I do not understand why you would say that that makes it less clear for a parent. Parents would not commonly go to the law books to find out what courts had determined in regard to these matters. If it is at least set out in the statutory provision and there is an educational campaign to explain it, arguably it could be said the position becomes clearer. Why do you say it is less clear? Is that because of the terms used here?

Reverend the Hon. F. J. NILE: Definitely. The bill again supports my case in the paragraph you quoted in clause 61AA (1) (b). That basically is the current situation, as you have just said. So why do we need the bill? That is the current situation. All we need to do is have an education campaign for parents or classes for parenting to bring parents up to date. I was trying to check in the

bill the wording because the explanatory note on page 2 says "the application of force to any part of the body of the child in such a way to cause, or threaten to cause". It is hard to identify that in the bill. Clause 61AA (2) (c) says, "or threaten to cause", which seems to include the case where the parent has not even used the wooden spoon.

The Hon. P. J. BREEN: We heard evidence this morning that that was a drafting error and the words "threaten to cause" will not be in the final bill.

Reverend the Hon. F. J. NILE: I do not think it is a drafting error. It is clearly the intention of the mover from all the explanations and speeches he has made.

The Hon. J. F. RYAN: He gave evidence otherwise.

Reverend the Hon. F. J. NILE: I have raised it in the House in previous debates and it has never been qualified in the debate.

CHAIR: Arguably, the Committee might decide to recommend the deletion of those words.

Reverend the Hon. F. J. NILE: As I said, I call that tinkering around the edges and trying to make a bill that has already been modified acceptable. It still has problems and you are quoting another problem.

The Hon. J. F. RYAN: I will put to you what Ms Calvert, the Commissioner for Children and Young People, said this morning in answer to the question you just answered. The argument you put is that the current law already covers the situation, so there is no need for any further clarification of existing law. She said that nowhere in the statutory law is it made clear the difference in meaning between physical abuse or ill treatment and reasonable discipline and that this bill at least provides for parents some practical and clear demonstration of the difference between those two concepts.

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Given that the Children's Commissioner has said that nowhere in law is this made clear in a way in which parents can understand, do you think there is some value in having a statement from the Parliament as to the exact difference and meaning between physical abuse and ill-treatment and reasonable correction—which is what this bill attempts to achieve? Do you think it would be useful to have that? Evidence this morning was that the difference between reasonable discipline and child abuse is dangerously unclear. So two respected people who interpret the law in this fashion every day have said that the existing law, although it covers the case, it is not state clearly the difference between those two concepts. They said that that concept would be useful, do you agree with that?

Reverend the Hon. F. J. NILE: No I do not. To say that a normal parent would not know the difference between loving discipline and ill treatment—that is what they are arguing—is ridiculous. Parents would understand the difference between ill treatment and loving discipline. If necessary the difference should be stated in the child protection area of legislation not in what I call the no-smacking bill.

CHAIR: A matter that the Committee has to take into account is that the Legislature cannot act on the assumption that all parents are loving parents, to use your expression. Some parents are not, as we both know.

Reverend the Hon. F. J. NILE: Yes.

CHAIR: Is it not perhaps reasonable that the Legislature has to worry about parents who go over the edge, hit a child in anger rather than what you describe as a means of correction? Should the Legislature restrict, or alternatively define, what is reasonable?

Reverend the Hon. F. J. NILE: That is the pathway along which Mr Corbett wants to go. The disadvantages outweigh what you think is an advantage. If there is a need, look at the child protection legislation, which indicates that ill treatment is covered by the law. Other matters are not regarded as ill treatment. Mr Ryan suggested a statement. I am not against a parliamentary statement in principle from the Minister for Community Services or the Minister for Education and Training, which would be the basis of the education campaign, as to the difference between loving discipline

and ill treatment, if necessary. Although I understand Mr Corbett's sincerity, in his mind he understands how the bill will operate, I am worried that you would be setting up machinery.

I have been dealing with these sorts of issues since I was ordained as a minister in 1965. I know that they are genuine cases of child abuse, and I am strongly opposed to that. I have also dealt with cases in which bureaucracy, some public servant, some social worker, interprets a complaint that could happen under this bill. For instance, the neighbours could say that they heard a mother smacking a child last night. That complaint is forwarded to the Department of Community Services [DOCS]; I have been a mediator in such cases. In some cases DOCS has physically taken a child from school while the parent is at home waiting for that child. Eventually the authorities arrive at the home and advise the parents of the report of an alleged child abuse.

In some cases bureaucracy is sensible but not so in others. For example, teachers have a lot of pressure on them under the mandatory reporting of physical or sexual abuse of a child. If this bill were passed that would be another protocol for the responsibility of teachers to report cases of children being smacked excessively, or other ill treatment. Teachers may feel that they have the responsibility to find out what happened and would thus set in motion the laws which often, in my opinion, will hurt good parents. I would like tough laws for parents who let their kids run riot on the streets at night. I would prefer legislation to punish those parents. This bill seems to attack the very parents that we should encourage to act responsibly in nurturing and training their children to be responsible citizens.

CHAIR: In the earlier part of your answer you put your response in a child protection context. The legislation exists for the care and protection of children, and will continue to exist and people can make complaints under that legislation if they believe that a child has been abused in one respect or another. However, the Corbett bill essentially deals with the relationship between parent and child in a lawful correction context. It is intended to deal with the situation in which a parent may be proceeded against under the criminal law for the offence of assault of a child. It seeks to define the defence of lawful correction.

I see that as being distinct from the child protection law. Most of the witnesses who appeared before the committee, including Professor Parkinson who is an expert in children's law at the University of Sydney, see these two as part of the whole; child protection law on one side and this law on the other. No matter whether the Corbett bill is enacted or not, we will still have the capacity of parents to be proceeded against under the Crimes Act in various circumstances if it is believed that a child has been assaulted. The Corbett bill does not create that offence, it seeks to define the defence of lawful correction.

Reverend the Hon. F. J. NILE: You used the term "assaulted". There should be a proceeding against a parent who has assaulted a child; different from smacking a child. That is my point. If you interpret assault to be smacking with a feather duster or a wooden spoon you bring those parents under the ambit of the criminal law. That is what I am worried about. Schedule 1(2) amends the Crimes Act 1900 to make it clear that the proposed section 61 AA will apply to all offences and all courts. You are elevating the smack into the realms of criminal law. You said earlier that assaults are adequately covered by the criminal law. Mr Corbett and others may have evidence that people think that giving a little smack to the bottom of a child is ill treatment; but I do not think there are many of those cases. Mr Corbett quoted the case of the baseball bat and that is covered by the criminal law.

CHAIR: No-one would regarding hitting with a baseball bat as reasonable.

Reverend the Hon. F. J. NILE: Mr Corbett gave that example when sending out attachments in support of this bill. He gave three cases. I strongly agree with him that that sort of thing should be stopped. This bill is not directed at those sorts of incidents.

The Hon. A. G. CORBETT: Mr Chairman, Reverend the Hon. F. J. Nile is getting confused. I did not give any examples in any attachments for this bill.

Reverend the Hon. F. J. NILE: There was a single sheet, it may have been for the previous version. Mr Corbett was using those arguments as the need for this kind of legislation. I can table the document.

The Hon. P. J. BREEN: A witness this morning gave evidence about that. The Commissioner for Children and Young People said that there are cases in which the use of a stockwhip have been held reasonable, but a cudgel or baseball bat have been held to be unreasonable.

Reverend the Hon. F. J. NILE: I understand that to be the case. If Mr Corbett originally thought that that was another argument in favour of his bill, my response is that that is covered by existing law.

CHAIR: Mr Corbett's bill has gone through a number of drafts and the statement to which you referred may well have been made in connection with an earlier draft. Mr Corbett appears to be saying it does not attach or have relevance to the current bill.

Reverend the Hon. F. J. NILE: I have not had any statements from him drawing attention to that. I accept it can do it, if he did withdraw it or say is no longer relevant I may have missed it.

The Hon. J. F. RYAN: Mr Nile, you have distinguished between an assault on what you call loving discipline. Could you outline what you think the law is? Where would you draw the line between lawful correction and assault on a child?

Reverend the Hon. F. J. NILE: I was referring to the Chairman's explanation of the child protection law. I thought it was adequate. If the parent did not smack the child but in fact punched the child, left bruises or burnt the child with cigarette butts, that is ill treatment and is covered by existing law.

The Hon. J. F. RYAN: Where would you draw the line between assault and punishment?

Reverend the Hon. F. J. NILE: Corporal discipline?

The Hon. J. F. RYAN: Yes, where would you draw the line?

Reverend the Hon. F. J. NILE: I just gave examples. The bill has grey areas and talks about time, harm to the child that lasts for more than a short period. This gets back to one of the earlier terms used in one version of the bill about a tingling feeling. Now we have the vague reference of something lasting for more than a short period. Obviously a parent who is smacking the child expects the smack to be felt, and it would leave a tingling feeling for a few moments. The child would not be bruised or have weals on his legs.

The Hon. J. F. RYAN: Our existing law uses only the words "abuse" or "assault", there is no definition available. Where would you draw the line and how would you adequately do that? At least the bill attempts to draw a line.

Reverend the Hon. F. J. NILE: I cannot understand why there is a need for it. The law has been adequate. Could you give me examples of the parent using a wooden spoon which were called assaults? I will investigate the case mentioned about the ruler being used in Tasmania.

The Hon. P. J. BREEN: According to evidence given this morning there have been cases in which kicking or punching a child has been accepted as reasonable.

Reverend the Hon. F. J. NILE: I do not accept that as reasonable.

The Hon. P. J. BREEN: But that was the defence that was available.

Reverend the Hon. F. J. NILE: Yes, that could have been at the discretion of the judge, who hears all the circumstances. It is up to his discretion. I would not accept that, it may be that the kick was of the light variety and may have been less hurtful than the smack. I assume in those cases that is what the judge has taken into consideration; the intention and the effect. Those cases are being dealt with within the law, at court. We are not throwing a rope around every parent that smacks their child.

The Hon. P. J. BREEN: Professor Parkinson gave an example of someone he had in foster care who had marks across his back and backside which were consistent with being hit by an electrical cord. He made the point that the person who inflicted that kind of punishment on a child would clearly be a person who did not understand that that was against the law. But because the law is not clear and because there is the defence of reasonable chastisement, it would be quite futile to bring a prosecution against the person who did that to a child under the existing law. However, if the law were clarified in a way that showed that that kind of infliction, punishment or discipline is inappropriate and cruel, in the way that this bill seeks to do, that would not only assist the child but also educate the parent.

Reverend the Hon. F. J. NILE: That is the point I made in my opening statement. We need and education campaign, not legislation. Some parents do not understand that. Maybe without getting into an ethnic multicultural debate, there may be other cultures which think that that is acceptable. Perhaps in Australia's multicultural society DOCS or the Minister should make it clear that using an electrical cord on a child that would leave weal marks is unacceptable in our Australian society, that it is against the law.

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The Hon. P. J. BREEN: Is not legislation part of education?

Reverend the Hon. F. J. NILE: The Hon. P. J. Breen just said a moment ago that Professor Law said it was. He said he could proceed against that person who he thought was an innocent parent who does not know that.

The Hon. J. F. RYAN: And therefore it is not against the law because you would need to have a guilty intent, which is the point made by the Hon. P. J. Breen.

The Hon. P. J. BREEN: Yes.

The Hon. J. F. RYAN: Nowhere in the law could you be aware of that. How would you have the requisite guilty intent?

Reverend the Hon. F. J. NILE: I suppose if you have done it in court you would argue that you didn't know. Most parents would know—unless they are very exceptional or stupid—that using an electrical cord and leaving marks on a child as if it had been through a concentration camp could hardly be called loving discipline. Parents would be educated. That is the whole point. I am not questioning that there are parents who do not understand their parental responsibility and role. Parents do need educating but a heavy-handed piece of legislation, such as this bill, is needed to do it.

CHAIR: One aspect of your submission with which I genuinely have difficulty is at the beginning, at the top of the first page, where you say:

> I believe the application of the bill equals a no-smacking bill.

My understanding of the term "smacking" has always involved the use of a hand to a child's bottom, for example. However, your submission continues:

> The bill prohibits the application of force "by the use of a stick, belt or other object (other than an open hand or other than in a manner that could reasonably be considered trivial or negligible in all the circumstances)".

Your submission further states:

> The intention of the bill is to prohibit smacking, but one of the provisions within it states:
>
> > … the application of force
>
> which I interpret as smacking—

I do not understand the application of force by a belt or a stick to come within the ordinary meaning of smacking, especially if it is to any part of the head of the child. I would have thought that smacking is, as I described earlier, on the bottom, with a hand. Do you have a different understanding of smacking from mine?

Reverend the Hon. F. J. NILE: No, but I am interpreting new section 61AA on page three of the bill. In fact, this whole new section is under defence of lawful correction. I am talking about a parent that has been charged by the police, is in court and has already had to get a lawyer or legal advice which costs them money arising from the application of physical force to a child. The new section is then qualified to indicate that you would have no problem with this new law if you never smacked your child. The new section gives the message "Smack your child and you could be in trouble", because that is how the bill will be interpreted.

The Hon. J. F. RYAN: Do you read the bill as indicating that the use of an open hand on any part of the body other than the neck or the head is expressly provided for as being legal? I agree that there may be some doubt on the use of a stick, belt or other object but the one thing that is absolutely clear is that the use of an open hand, other than on the neck or the head of a child, is absolutely permitted. There is no way in which that use of an open hand on a child would ever get a parent into any difficulty with this bill at all.

Reverend the Hon. F. J. NILE: What is the reason for inclusion of new section 61AA (2)(c)? That provision states, in part:

> … 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.

The parent has to work it out.

The Hon. J. F. RYAN: Clearly that provision says "or". It is defined in (b), and (c) cannot be used to get around the definition. It is either (b) or (c)—so (b) is enough. Anything that falls within the definition of (b) which is applied to any part of the head or the neck of the child other than in a manner which could be reasonably considered trivial. The previous clause refers to an open hand. One paragraph of the bill cannot be used to prove that another the other when another part of the bill contradicts it. The one comment that any legal professional looking at this bill would make is that the use of an open hand on any other part other than the head or neck of a child is absolutely legal. Interestingly, in the case to which you referred as being an example of unintended consequence—that of the famous Scottish schoolteacher—the person would not be convicted under this law because he used an open hand.

Reverend the Hon. F. J. NILE: And maybe in Scotland when they drafted the bill they thought he would not be convicted either.

The Hon. J. F. RYAN: The bill did not apply in Scotland at the time when he was charged before the bill came into existence. In fact, the bill came into existence after that case had been determined by case law.

CHAIR: That bill is not yet law.

The Hon. J. F. RYAN: No, it is not law, which means the case has been determined prior to the law coming into existence. The bill addresses the very instance that you described as an unintended consequence, and gives a clear bill of health to any parent who uses an open hand. In that instance, in which an open hand was used on the girl's bottom, such use was absolutely legal. They would not have been convicted at all or been in any danger of conviction.

Reverend the Hon. F. J. NILE: Why in new section 61AA (2)(c) do we find the wording "harm to the child lasts for more than a short period"? I took that to mean that in a legal setting it becomes part of the interpretation of (b) even though it has the word "or".

The Hon. J. F. RYAN: No, because it says "or".

Reverend the Hon. F. J. NILE: If a parent smacks a child on the bottom for more than a short period, the smacking would be against the law.

The Hon. J. F. RYAN: That would apply if the word "or " was "and"', but it is not.

Reverend the Hon. F. J. NILE: That invites the interpretation that it is a qualification of the smacking. It is not simply saying that smacking is all right, but that smacking is all right only if it lasts for more than a short period.

The Hon. J. F. RYAN: I put to you that you are deliberately attempting to interpret this bill in a fashion which is intended to scare people because you are making it say things which it does not say?

Reverend the Hon. F. J. NILE: I believe I am. In my opening remarks I did not indicate that that was the original objective of the mover. The mover has had to qualify it and water it down, so to speak. I still think, even though it is a better bill than the earlier ones, it still has these dangers in interpretation by other people—not by the Hon. J. F. Ryan or even by me, but by other people such as a police officer or a schoolteacher.

CHAIR: In relation to the drafting of subsection (2), which sets out the circumstances in which the application of physical force is not reasonable, for the sake of argument suppose we delete (a) and (b) and leave only (c) in the drafting of the bill. The consequence of that would be that we would not be concentrating on how the force was applied or how the harm might have been caused. One would be concentrating only on the consequence—the harm that might have ensued. The subsection would read:

> The application of physical force is not reasonable if 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.

Those words would be deleted. Do you follow me?

Reverend the Hon. F. J. NILE: Yes.

CHAIR: In your view would that be preferable drafting?

Reverend the Hon. F. J. NILE: The very fact that you have suggested it reinforces the argument that I had with the Hon. J. F. Ryan that (c) is still a critical section in this bill because it uses the subjective phrase "that lasts for more than a short period". That is the point I am making. Parents will not know what the law means by "a short period". Will the child have pain that last for more than a minute? If it lasts more than a minute, will the parent be brought before a court, sentenced and put in Long Bay gaol? If it lasts for 50 seconds the parent will be all right.

CHAIR: I understand what you are saying but you are not answering directly the question I asked. Would you prefer the provision to be drafted in such a way as to delete reference to sticks, belts or other objects in relation to force applied to any part of the head or neck of the child, the drafting being restricted to physical force not being reasonable if it were applied to a child in such a way as to cause harm that lasts for more than a short period? There would be a more generalised provision focusing on the harm rather than how the harm comes about?

Reverend the Hon. F. J. NILE: That would be an improvement but, as I said earlier, I do not think the Committee should spend its time tinkering with the bill. The bill should be rejected. If you make that point I would argue that (c), with the phrase "harm to the child lasting more than a short period", virtually restates the law, given that ill-treatment of a child is covered by the criminal law already. What contribution are you making to the criminal law if you do that? That may be what you recommend. It seems to be clearly restating the existing law by including the word "ill-treatment" on that line, but I understand that is the purpose of the bill.

CHAIR: A concern has been expressed by some who oppose the bill that they perceive it could be a stepping stone or a staging post toward the ultimate banning of smacking?

Reverend the Hon. F. J. NILE: I agree 100 per cent.

CHAIR: Smacking as I define it.

Reverend the Hon. F. J. NILE: I agree with you. That is implied in the bill.

The Hon. J. F. RYAN: I do not think the Chair was saying that.

CHAIR: I have not quite finished the question.

Reverend the Hon. F. J. NILE: I agree with you anyway. That is implied in the bill already. You are right. If the Hon. A. G. Corbett thought anyone were in any doubt, there would be a second bill that would make this one obsolete.

The Hon. J. F. RYAN: You are verballing the chairman.

Reverend the Hon. F. J. NILE: I support the opinion that the chairman was quoting.

CHAIR: Would you be more likely to support the bill if it contained safeguards to make that step harder, that is, the step towards the ultimate objective that some people have in mind, that is, the banning of smacking? If this bill perhaps made it harder to reach that objective, would you be happier?

Reverend the Hon. F. J. NILE: I certainly would be in favour if there was a provision to ensure that smacking will not be prohibited or that the bill, if passed, will not prohibit smacking. Perhaps I have not made the point that one must remember that this bill was introduced in the context of a worldwide movement to stop smacking. There is a movement in every country to stop smacking children. In my mind this bill reflects that point of view. Perhaps it is a stepping stone.

CHAIR: Is the answer to my question that if the bill raised some impediment toward the ultimate objective of banning smacking being reached you would be somewhat happier?

Reverend the Hon. F. J. NILE: I am very careful not to make any statement that could be used as implying support in any way for the bill. The whole basis of the bill and the message that would go out to the community if it were passed, in spite of a qualification like that, would be so confusing to parents who are struggling already to carry out their role responsibly in our society.

CHAIR: You say that the bill is part of a worldwide movement to ban smacking, but the Committee has the task of inquiring into the precise, actual provisions of the bill. The committee is charged by reference made by the House to investigate the detailed provisions of the bill and report back to the House as to what the Committee thinks about those detailed drafting matters.

Reverend the Hon. F. J. NILE: Yes, I understand that. That is my concern. As you know, the bill, even with all of the explanations by the Hon. A. G. Corbett, is still regarded as a no-smacking bill. I regard it as a no-smacking bill and that is why I will not support it being passed, even without amendment.

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CHAIR: The media might possibly regard it as a no-smacking bill because that is what you call it.

Reverend the Hon. F. J. NILE: The media also use that language themselves.

The Hon. J. F. RYAN: The *Sun-Herald* tabloid press on Sunday carried an editorial endorsing the bill. So it must only be some sections of the media.

Reverend the Hon. F. J. NILE: I could get the cuttings for you, and from overseas.

The Hon. A. G. CORBETT: I was about to ask you whether you could draw my attention to any informed media reports that have described this as an anti-smacking bill, because I have not come across any such reports, and I have done a number of interviews. Although initially people have asked me whether it is an anti-smacking bill, I have then clarified the issue. So I would welcome any media reports or publications that actually describe it as an anti-smacking bill, because I am not aware of it.

Reverend the Hon. F. J. NILE: I will look it up. I think the point you have made, though, is a valid one. Obviously, as someone who is opposed to the bill, I am concerned that there have been

many favourable media reports in recent times following your explanation to them. That only causes me more concern because I do not think they fully understand it. But I accept your explanation.

The Hon. P. J. BREEN: Gillian Calvert was asked by the Committee this morning whether or not she had a perception about media reports on the bill. She said that although earlier drafts of the bill had received adverse attention from the media, she felt the current bill was quite well accepted and that there seems to be already, in her words, an education process going on and that the media, in any event, seem now to have a more favourable view of the bill than they had before.

Reverend the Hon. F. J. NILE: Yes, I accept that. I have just been saying that Mr Corbett has been explaining it.

The Hon. A. G. CORBETT: Yes. We have a letter of recommendation.

Reverend the Hon. F. J. NILE: Most Muslims or people from the Arabic community that I speak with do not believe that. They say that Muslims smack their children, and they cannot understand the bill. To me, it raises the issue whether people, even after Mr Corbett has explained the bill, fully understand its application; that is, once it becomes law in this State, how will it be interpreted and enforced? That may have nothing to do with Mr Corbett, who might actually be distressed by a case that might occur in 12 months time if the bill becomes law and say, "I never intended that to happen." But it is then out of his hands and has become a function of the judicial system of this State.

The Hon. J. F. RYAN: Mr Nile, there would be pieces of legislation that you have brought into the Parliament which have been described in exactly the way you have described this bill: that it could be misinterpreted, that it is controversial, and that it ought to be amended. You have done all of that with some of your bills, some of which have been passed by the Parliament after they have been amended. Are you not really expecting a different standard of another member than you would apply to yourself?

Reverend the Hon. F. J. NILE: No. I do not think I have introduced a bill that deals, in this intimate way, with the functioning of a family unit—the interaction between parents and their children. This bill has the potential to deal with that very—

The Hon. J. F. RYAN: But you would have introduced legislation that people would regard as controversial or as having similar social impacts.

Reverend the Hon. F. J. NILE: And I have been happy about amendments that have removed any possible consequences of a bill that were against my intention. I accept that. However, I do say that that—

The Hon. J. F. RYAN: Cannot that standard be applied to Mr Corbett's bill?

Reverend the Hon. F. J. NILE: Yes. That is what I have been saying. From a reading of the bill, I believe it is open to such interpretations by police officers, zealous DOCS officers and some zealous teachers.

The Hon. J. F. RYAN: If your bills can be amended in a way that they are not misinterpreted by or are better understood and accepted by the community, cannot that occur with any other member's bill, or a bill of the Government or of the Opposition for that matter?

Reverend the Hon. F. J. NILE: Yes. I am not saying that is impossible, with the wisdom that we have within the Legislative Council or on this Committee.

CHAIR: Mr Nile, I really think we have a definitional problem about what constitutes smacking. To me, smacking is a smack on the behind. To me, smacking certainly does not include striking a child around the head. The Corbett bill does characterise the latter as impermissible and the former as being within the limits. I admit that that is not an exhaustive statement of the bill. However, the paediatrics division of the Royal Australasian College of Physicians wrote to me a week or so ago saying that it regards any violence against a child as being not to be permitted.

Reverend the Hon. F. J. NILE: I do not think smacking is violence. That is where we differ. One could hardly call smacking violence. Violence is violence against the child, not smacking. In their minds, they are correct in using the word. In their minds, violence is that which causes physical harm or even brain damage to the child. That is violence, but that is not a parent who is smacking a child to impart discipline.

CHAIR: Do you regard a parent striking a child on the head as smacking or using violence?

Reverend the Hon. F. J. NILE: I would not support a parent smacking a child across the head, or the neck. I have never defended that. I do not think that normal parents that I am aware of smack their children across the head. I know we hear from time to time that a father has given his child a clip across the ear, as some men made to. It may depend upon the force of that action. I would be in favour of discouraging anything like that, because we have learned more and more about the sensitive nature of the brain, for instance that the shaking of the baby can cause brain damage. In boxing, a blow to the head causes damage to the brain. I see nothing wrong with having an education campaign to point out to parents, “We are not saying you cannot smack your children, but we warn you, as we do with the no shaking issue, never to hit your child around the head," or whatever way that should be termed—the head, the neck, the face or so on.

CHAIR: Mr Corbett's bill provides that that is not reasonable if that happens.

Reverend the Hon. F. J. NILE: I know that. That is what I am getting at: I do not think you need legislation to do that. I think it can be done with education. That is my point—education, not legislation.

The Hon. P. J. BREEN: The common law provision is "reasonable chastisement". You would need to educate all of the judiciary, all police officers and everybody else. I mean, "reasonable chastisement" can actually be quite abusive to children and quite damaging to them. My understanding anyway is that this bill simply tries to address that.

Reverend the Hon. F. J. NILE: Let us have an interim period of not supporting the bill or of the bill coming into operation later. But, first, let us try education. Your statement that police officers and judges do not understand it indicates a role for education through one or more departments of government.

CHAIR: Leaving aside for the moment whether the objective should be attained via legislative or educational means, do you think there is any case for age limits below which or above which a child ought not to be physically punished? For example, last week the Committee had evidence from the Professor Graham Vimpani of the University of Newcastle. He is a paediatrician who advocated to the Committee that no child under the age of 18 months should be hit. Do you think there is any case for that, as an example? Do you think there is any case for an upper age limit, that say a child above 15 or 16 or of some such age ought not to be struck? Do you think there is any argument for an age limit in regard to physical punishment?

Reverend the Hon. F. J. NILE: I accept that hitting a child under the age of 18 months could be quite damaging to the child, if it was a blow or smack with great force. I mean, you could smack a small child with a tap of the hand and say, "Don't turn the TV on," because some children are very clever with all of these things, and the parent would want to let them know that that is a no-no. I am thinking now of some grandchildren we are trying to train. But I certainly would not smack them in any way that would hurt them. But, again, I think that could be covered by education to indicate, as we have done with the no-shaking issue, that smacking with any force can possibly cause damage, because of the tenderness of the child's arm, legs, bones and so on, because they are so much more fragile at that age than when they are developed. Some parents may not understand or realise that, but that could be dealt with through education.

I would rather see parental classes for people before they get married as to what marriage is, and to advise parents what their role is in the exercise of discipline if that is necessary. Hopefully, they would have such a rapport with their children that the children will always do what the parents tell them, but it seems that some children need discipline, and once they have it often do not need it any

more. But the child who never gets the discipline that is necessary seems to be the child of the parents about whom we would say, "They are making trouble for themselves when that child gets older because the child is lacking in any sense of responsibility or discipline, even sitting at the meal table." I can think of some such cases that I have seen, as members of the Committee would probably have seen themselves. Someone might argue, "But the child that is misbehaving has been smacked every day," which would wreck my theory. But I think most times there seems to have been a lack of discipline.

The Hon. P. J. BREEN: That is an interesting point. I was thinking about that when you began. You gave the example of talking too much when you were young, and I take it that corporal discipline was used to stop you from talking.

Reverend the Hon. F. J. NILE: In my day, children in a school could be caned for talking—not for doing anything that you would regard as breaking the law, but throwing things around and so on.

The Hon. P. J. BREEN: I had the same experience when growing up of receiving quite considerable corporal discipline. But the authorities suggest, according to Gillian Calvert anyway, that the current thinking is that corporal discipline is actually more damaging than other forms of discipline. I wonder whether the benchmarks used when you and I were growing up are not now out of date. This morning, Gillian Calvert said that there is a broad consensus amongst academics and professionals that corporal punishment, or discipline, is not the most effective way of disciplining children. She said that there is such a consensus on that that it is almost impossible to argue against it.

Reverend the Hon. F. J. NILE: I do not think it is outlandish to say that it is a last resort and that there are other ways, such as denying ice cream for dessert. There are a lot of strategies that parents use. I know that, in our case, we would do all we could to avoid smacking. In my own case—and I think this is relevant to my submission because some statements made provide a contrast between the parent who smacks a child and a parent who loves a child. That, to me, is a false distinction.

The Hon. P. J. BREEN: Yes.

Reverend the Hon. F. J. NILE: Because I have had to smack my children, and I have cried while I have been smacking them because I love them so much. So I found a number of statements in some of the material submitted to the Committee to be irritating. I know that there are some parents who can be violent and hateful, but I am thinking of mainstream parents. If they have to smack their children, they do so under their code of discipline. They will say, "If you do that, I'm going to have to smack you." If they still do that, the parent will get no satisfaction from smacking the child—not that I know of.

The Hon. P. J. BREEN: Nobody here would disagree with that. The point is that under this bill—

Reverend the Hon. F. J. NILE: But some of the academics have argued that point in their submissions to the Committee, and they are the academics that you are quoting.

The Hon. P. J. BREEN: I accept what you say about distinguishing between a loving parent and one who imposes physical discipline, but this bill—

Reverend the Hon. F. J. NILE: No. I am talking about a loving parent who imposes physical discipline as still a loving parent. That is the point I was making.

The Hon. P. J. BREEN: I, for one, do not disagree with that. But this bill does not exclude that type of discipline. The bill does not exclude physical punishment. It is called the excessive punishment bill. So, clearly, one can still be a loving parent, inflict some kind of discipline, or corporal punishment, and in no way contravene the provisions of this bill.

Reverend the Hon. F. J. NILE: I agree with the statement that you quoted, that there are other ways of disciplining a child. I accept that. I think any sensible parent would use a multiplicity of

ways to discipline a child and that, hopefully, smacking would be used where children are not responding to other measures, such as depriving them of ice cream for dessert, or depriving them of an outing, or something like that.

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A particular child in some cases needs a smack. That seems to bring them to their senses: "I've done something that has upset my parents sufficiently to smack me. What have I done?" Hopefully that brings about a change of behaviour in the child.

The Hon. P. J. BREEN: The problem is that you are assuming middle-class values and educated people who understand the limits of physical punishment. The evidence the Committee heard this morning from the National Children's and Youth Law Centre was that in Europe, for example, six million children are growing up in eight European countries where there are explicit bans on physical punishment.

Reverend the Hon. F. J. NILE: That is what I said, there is a no-smacking movement across the world. This is part of it.

The Hon. P. J. BREEN: The point is that this bill does not go that far; it does not attempt to exclude physical punishment.

Reverend the Hon. F. J. NILE: It did originally. That is the point I am making. It has been modified only to meet government approval and some Liberal approval.

The Hon. P. J. BREEN: The case cited this morning by the National Children's and Youth Law Centre was interesting. In *A v The United Kingdom* a brother reported that A, who was the plaintiff, had been beaten by the stepfather with a garden cane. The man was subsequently charged with assault occasioning actual bodily harm. He relied on the common law defence of reasonable chastisement and was found not guilty by a jury. There was an appeal to the European Court of Human Rights where it was found that the British law failed to adequately provide protection for the child who had suffered severe and repeated beatings with a cane. We are in the same position in New South Wales, and Australia, where the common law defence of reasonable chastisement would protect someone who beats a child with a cane and was able to establish to the satisfaction of the court that it was reasonable chastisement.

As I understand it, this bill seeks simply to impose some kind of limitations in sensible down-to-earth language that people can read and understand so that it becomes clear that if you use physical force to inflict physical punishment on a child, there are certain limits and those limits are spelled out as being a stick, belt or other object and the other object could be used, provided it is reasonable, trivial or negligible in the circumstances. According to an overwhelming body of evidence from the best authorities we could speak to, all seem to say that this bill is a sensible and appropriate development of the law.

Reverend the Hon. F. J. NILE: I am not surprised. This is something about which academics and those other people have a philosophical view and they move in this direction. I could write their speeches for them.

The Hon. P. J. BREEN: It is across the board: the Law Society, the Bar Association—

Reverend the Hon. F. J. NILE: It applies to the legal section.

The Hon. J. F. RYAN: Are you not on your own? You have referred to those in favour of the bill as academics. Professor Kim Oates from the Children's Hospital is hardly an academic. Obviously he is an intelligent man.

Reverend the Hon. F. J. NILE: And I respect him.

The Hon. J. F. RYAN: He; Ms Calvert, who also is hardly an academic as she deals with child abuse cases every day; the Australian Medical Association; and the division of paediatrics in every hospital in the State have written to the Committee supporting this bill. We have Reverend the Hon. F. J. Nile on one side and on the other this incredibly impressive body of people who deal with

these sorts of issues every day saying this bill is a good development of the law. Are you not on your own?

Reverend the Hon. F. J. NILE: I organised A Child Care Not Child Abuse national conference in 1979, which was the International Year of the Child, at which I had most of those people as guest speakers. I know them, I know what is in their hearts and where they are coming from. As you said, they are dealing with child abuse cases all the time and that is the context for their statements. We are not talking about that child abuse at the Children's Hospital where children have been x-rayed and found to have previous breaks in limbs because the parents have been breaking them, but has never shown up until finally they come in and it is seen. Paediatricians have explained to me that they find multiple breaks in the limbs of children; that the child has been physically beaten. That is where they are coming from and that is the kind of case they are talking about. They are reading that into this bill and think it might solve and reduce those child abuse cases. I am just saying that I have more faith in the existing law. I just assumed it was working adequately.

The Hon. J. F. RYAN: These people have given evidence in probably dozens of court cases under existing law and would say to this Committee that existing law does not work.

Reverend the Hon. F. J. NILE: And are you saying in those cases of children with multiple broken bones that the people were acquitted?

The Hon. J. F. RYAN: I do not think there would be any doubt about that. I do not know. We have heard evidence of cases where children have received multiple beatings short of receiving broken bones and people have been acquitted on the basis of using what has got to be said is a pretty loose defence: "I was lawfully attempting to correct my child". Those who deal with these sorts of things all the time are giving the Committee a perspective that the current law does not work in those cases. Of course, it is a balancing act between determining what is appropriate to reinforce the authority of parents and what is appropriate to protect children. What does the New South Wales Parliament do when every single expert who deals with this issue with any level of expertise and authority tells us without equivocation that the bill is worth your support? What does the New South Wales Parliament do in that tide of opinion?

Reverend the Hon. F. J. NILE: I would have to interview them, and I am happy to do that before the Committee publishes its report, and give them the alternatives. Would you rather have a million-dollar advertising and education campaign for parents other than this bill? Obviously, because of their background, those experts would lean in favour of the bill. Why would they not? They are not worried about parents' rights or parents disciplining their children; that is not what they are concerned about.

The Hon. J. F. RYAN: I do not know that they are not concerned about it.

Reverend the Hon. F. J. NILE: But that is not their priority. They are dealing with mangled, bashed and broken babies and children who come to the hospitals. I understand that.

The Hon. J. F. RYAN: Should we not be equally concerned?

Reverend the Hon. F. J. NILE: Fred Nile and those people are not on a different track. Those experts are coming from a different context.

CHAIR: To be fair to Reverend the Hon. F. J. Nile it should be pointed out that he is not quite on his own in regard to this matter. We have heard from witnesses associated with the Centre for Independent Studies, Dr Lucy Sullivan and Mr Barry Maley, who were critical of the bill. We have had witnesses from religious organisations who, to a greater or lesser extent, have expressed some reservations.

Reverend the Hon. F. J. NILE: I do not believe the Hon. A. G. Corbett would disagree with me having done so, but I sent copies of the bill out and tried to explain to people that they should make submissions. I am not sure but submissions may still be confidential.

The Hon. J. F. RYAN: They are not confidential to us.

Reverend the Hon. F. J. NILE: No, but to me they are.

The Hon. P. J. BREEN: We have been publishing them as we have proceeded.

Reverend the Hon. F. J. NILE: I have a copy of the *Hansard*. I do not know whether the Australian Family Association has made a submission or the Christian school movement of New South Wales. All of those organisations have strong views on this issue.

The Hon. P. J. BREEN: They are all similar to your view.

Reverend the Hon. F. J. NILE: That is what I am saying. I would say all parent groups that are moderate and understand the family as a unit of society and the role of parents have reservations about this bill.

The Hon. J. F. RYAN: Are you suggesting that Ms Calvert, Professor Oates and Professor Vimpani are not moderate people?

Reverend the Hon. F. J. NILE: They are not moderate from the point of view that they are coming from the context of dealing with children's broken bodies. They would put up their hand in favour of anything that would help to reduce that. They are not looking at it from the context of other parents who are trying to do the right thing. In the Parliament you say, "What shall we do?" There are parents out there who are crying out and saying, "Help us to know what we should do to act responsibly." More and more parents are acting irresponsibly and do not discipline their children and those children run wild. Irresponsible parents is the gap in the system at the moment. Responsible parents exercise love and discipline.

The Hon. J. F. RYAN: Would you not say that parents who excessively punish their children are acting responsibly too?

Reverend the Hon. F. J. NILE: Excessively, yes. I do not believe there is any need for excessive punishment. I would hope that discipline of a child is something that should have some response. It does not have to be excessive.

The Hon. J. F. RYAN: You seem to use the words "discipline" and "hitting" almost as if they were indistinguishable. Do you accept that people can be hit without necessarily being disciplined and that people can be disciplined without being hit?

Reverend the Hon. F. J. NILE: Yes. I said earlier in answer to a question from the Hon. P. J. Breen that a parent should be taught to use all the other options and be given skills on how to handle children. Maybe in our generation those skills did not exist. I should like to tell you a story that I will never forget: My mother got very angry with me one day and picked up the broom. She tried to hit me with it and actually chased me. I thank God she missed me. She swung the broom so hard she hit the kitchen table and the broom snapped in half. I thought, "If that had hit me I might have been really damaged." I thought later that I must have done something terrible and most irritating to have got my mother, who is usually very calm and moderate, to that state of mind. So, I understand how a parent can be driven out of their minds, so to speak, by an irresponsible child.

CHAIR: After that experience perhaps you should be a supporter of the Corbett bill!

Reverend the Hon. F. J. NILE: The reality is what we are talking about. I understand that and I understand where Professor Oates and all the other child medical and academic people are coming from. It would be lovely to have an ideal society like the Garden of Eden where we all have palm trees growing and there is no smacking, no tears and no sorrow. I am sorry but that is not the reality of life. The academics would like that.

The Hon. P. J. BREEN: If it is any consolation, I was chased by my mother with the broom.

Reverend the Hon. F. J. NILE: We have many parallels!

The Hon. P. J. BREEN: We have. She caught me and she hit me with the broom and it broke and I was no worse off.

Reverend the Hon. F. J. NILE: I do not think parents chase children with brooms today. I hope not anyhow. I do not support the use of the broom. I am not talking about the soft end of the broom; I am talking about the wooden end!

The Hon. P. J. BREEN: The real question is what effect this has on a child. The evidence seems to be overwhelming that that kind of brutal treatment of a child is damaging and has long-term counterproductive effects.

Reverend the Hon. F. J. NILE: It may be and that is why I never will be absolutely dogmatic. It may be that in some cases corporal discipline has produced a rebellious child; a child who rebels against all authority. I suppose there are some children like that even though the parent has done everything they believe is right.

The Hon. P. J. BREEN: Ivan Milat is one example.

Reverend the Hon. F. J. NILE: Despite all the best intentions of the parent the child still grows up in a bad way. Without getting emotional, I have just been to Keith Enderbury's funeral where the thought of a loving parent has been in the back of my mind. What went wrong?

CHAIR: Thank you for both your submission and your evidence. It is much appreciated.

Reverend the Hon. F. J. NILE: I did mention that the bill has not passed its second reading in Parliament, so it is a bit unusual for a committee to be investigating it.

CHAIR: The House has referred the bill to the committee for inquiry and report.

Reverend the Hon. F. J. NILE: I appreciate that. It would have been much better if the House had passed it at the second reading.

CHAIR: You might recall, quite vividly I imagine, that the Police Regulation (Allegations of Misconduct) Amendment Bill was referred out to a parliamentary committee chaired by a former colleague of ours, the Hon Marie Bignold. So, there is precedent.

Reverend the Hon. F. J. NILE: I have vivid memories of that.

(The witness withdrew)

(The Committee adjourned at 3.28 p.m.)