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JOINT STANDING COMMITTEE

on

FOREIGN AFFAIRS, DEFENCE AND TRADE

Human Rights Subcommittee

**Reference: Public briefing on the work of the Human Rights and Equal Opportunity
Commission**

CANBERRA

Friday, 20 September 1996

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

(Human Rights Subcommittee)

Members:

Senator Loosley (Chairman)
Senator Teague (Deputy Chairman)

Senator Bourne	Mr Fitzgibbon
Senator Denman	Mr Gibson
Senator Harradine	Mr Hollis
Senator Reynolds	Mr Sinclair

Matters referred:

To examine and inquire into -

Australia's international efforts to promote and protect human rights.

WITNESSES

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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE
(Human Rights Subcommittee)

Human Rights and Equal Opportunity Commission
(Public Briefing)

CANBERRA

Friday, 20 September 1996

Present

Mr Nugent (Chair)

Senator Harradine

Mr Hollis

Ms Worth

The subcommittee met at 9.40 a.m.

Mr Nugent took the chair.

FITZPATRICK, Mr Kieren John, Senior Adviser to Human Rights Commissioner, Human Rights and Equal Opportunity Commission, Level 8, Piccadilly Building, 133 Castlereagh Street, Sydney, New South Wales 2000

SIDOTI, Mr Christopher Dominic, Human Rights Commissioner, Commissioner, Human Rights and Equal Opportunity Commission, Level 8, Piccadilly Building, 133 Castlereagh Street, Sydney, New South Wales 2000

WILSON, Sir Ronald, President, Human Rights and Equal Opportunity Commission, GPO Box 5218, Sydney, New South Wales 2001

CHAIR—I declare open this public seminar of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The subcommittee has asked the President of the Human Rights and Equal Opportunity Commission, Sir Ronald Wilson, and the Human Rights Commissioner, Mr Chris Sidoti to come before the subcommittee to discuss the work of the commission in the last year.

The commission is an important institution established under legislation to promote and protect the human rights of Australians. It has the responsibility of monitoring and implementing Australia's obligations under a number of UN human rights treaties to which Australia is a party and which Australia has given force to in domestic law by a number of acts of the Australian parliament, these being the Human Rights and Equal Opportunity Act 1986, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Privacy Act 1988 and the Disability Discrimination Act 1992.

On behalf of the subcommittee, I welcome Sir Ronald Wilson, President of the Human Rights and Equal Opportunity Commission, Mr Chris Sidoti, the Human Rights Commissioner and Mr Fitzpatrick who is the senior adviser. The subcommittee prefers that all evidence is given in public, but should you at any stage wish to give any evidence in private, you may ask to do so and the subcommittee will give consideration to your request.

I invite Sir Ronald to make an opening statement. Sir Ronald, as your term as the President of the Human Rights and Equal Opportunity Commission is coming to an end, perhaps in that statement it might be appropriate for you to give an overview of the work of the commission perhaps over the time in which you have been the president.

Sir Ronald Wilson—Let me on behalf of my colleagues say how much we appreciate the opportunity come and meet with the committee. As you have already indicated, I have with me Mr Chris Sidoti, the Human Rights Commissioner and Mr Kevin Fitzpatrick, our colleague from the human rights unit in the commission.

I will be brief, firstly because as you will know I am theoretically a part-time president and it would therefore be appropriate to that status that I gave full rein to my

full-time executive commissioner in the person of Mr Sidoti. My seven years as part-time president comes to an end in February of the coming year and I must say that these seven years have been the most rewarding period of my professional life. I love advocacy. I think it was the love of advocacy that led me, when the opportunity presented itself after the war, to go to university, do a law degree and then pursue all the best briefs I could get, particularly in the constitutional area.

I would have to say—and I say it with due circumspection—that my 10 years on the High Court was probably not as rewarding as my years of advocacy in the High Court, the Privy Council and elsewhere. This last seven years have been so rewarding because I have been an advocate again, but this time, in contrast to much of my earlier advocacy, I have been an advocate for the disadvantaged—Australians primarily—but not only disadvantaged Australians. That has been an enormous privilege and I am going to have withdrawal symptoms next year of a quite severe kind.

If I can just come to the point of a very brief reflection on my seven years, the dominant consideration is that the task is never over and one can readily perceive that the challenges that confront you are probably as great, if not greater, than the challenges that have marked the past years. It is presently true to say of human rights in Australia that, whilst there is much to be grateful for, there are still enormous challenges to face; challenges that are worthy of the very greatest efforts, not only of the members of the commission, but of the Australian community generally.

The biggest single problem that one faces in this regard is to develop a culture that is comfortable with human rights—an Australian culture. Many of our people have come through a period of history when it was accepted widely that the indigenous peoples of this country were somehow inferior. They were initially to be pushed aside in the interests of settlers and then later on to be treated in a very paternalistic and protective role. Then, through a genuinely motivated assimilationist mode, smooth the dying pillow for those who were not thought to have any real future, take away the children and bring them up in a western culture with deliberate efforts to wean them from any contact with their Aboriginal culture.

It is not only in relation to the indigenous people that Australia has a very deep legacy to be overcome. I often counsel myself that patience is a necessary ingredient in tackling the issues of human rights in Australia. It is not only the indigenous people. It is the continuing attitudes in many sections of the community to those who have come to make their home in this country. I am not referring so much to the British settlers, but to those who have come from other parts of Europe, and particularly in recent decades in significant numbers from Asia.

We have only to see the response that Ms Pauline Hanson's maiden speech won through the media from the community to realise that the problems of racial discrimination are still very much with us. It was a terrific achievement to get that law through the

parliament, an achievement for which credit should be given to both sides of the parliament. But, despite the fact that the law has been there now for 21 years, there is still a significant task ahead of the commission and also ahead of parliamentarians and others to emphasise and accept the importance of Australia, which is richly blessed in so many ways in its resources and its people to be a united nation for all Australians in which equality and mutual respect are the hallmarks. That is what we work for.

Speaking of the commission itself, it has doubled in my tenure, which has been a matter of very great pleasure. The appointment of the Aboriginal Social Justice Commissioner of course was one of the outcomes of the royal commission into deaths in custody. I just marvel every day at the workload that Mick Dodson is able to tackle and the degree of the quality of excellence with which he tackles it in the face of many rebuffs and many challenges.

The Disability Discrimination Act was passed in 1992 and it was a stroke of genius that led to the establishment and resourcing of disability advocacy centres around Australia. It was an initiative, as I understand it, of the Attorney-General's Department, but those advocacy centres have performed wonderfully. So in that short space of a little over three years since the act began on 1 March 1993, significant advances can be traced very largely to the efforts of the advocacy centres in bringing cases of discrimination to us.

We have seen marked advances in the move towards making public transport accessible to people with a mobile disability and making public buildings, in the course of construction, user friendly for people who have such a disability. It is user friendly in the sense of not only being able to access the building but being able to access it in every respect the same way as any person without a disability can access it.

Underlying this approach is the recognition that people with disabilities are very much a significant part of the community and are entitled to exercise their citizenship rights to the full degree that any other Australian is able to exercise them. I think that many Australians are beginning to learn that disability is a very relative thing and that there are not many of us who can lay claim to being free from a disability of one sort or another.

The Race Discrimination Commissioner has been with us, although the occupancy of the office has changed. That work has been continued and pursued with vigour. The Human Rights Commissioner, Chris, can speak for himself about that area. I do not want to speak any longer. I am here primarily to enjoy the opportunity of discussion with members of the committee and to enjoy the privilege of allowing us to come to talk about these matters that are of such vital importance to the future of this country.

CHAIR—Before we started the committee, you met the deputy chairman, Mr Hollis, and Senator Harradine. We have now been joined by Trish Worth. I have had a

note from Barry Jones, who would be well known to you, saying that he particularly wanted us to pass on his apologies to you for his inability to be here this morning. I know he tried very hard, but sometimes it does not happen.

I will very briefly take issue with you on one small matter which you have addressed. You said that those from Britain perhaps were not subjected to comment because of their heritage. I would have to say that, having responded to the speech of the member for Oxley in the House last week, I have found that a certain amount of my mail has drawn very specific attention to my origins.

Mr HOLLIS—Favourably or unfavourably?

CHAIR—Not favourably at all. Mr Sidoti, we have some questions for you, but before we go to them perhaps you could give us an opening statement.

Mr Sidoti—Again, thank you for the invitation to come to the committee. The relationship between the commission and the subcommittee has been an important one for many years. I am very pleased that so early in the reconstitution of the subcommittee, after the election, we have had this opportunity to meet you again.

It is an important relationship because, although this subcommittee is a subcommittee of a broader one dealing with foreign affairs, the Human Rights Subcommittee has tended over the years to take on a distinctive life of its own, dealing with human rights issues more generally. That is very welcome. I think I said last time that, ideally, it would be nice to have a fully-fledged joint human rights committee that has a more general mandate. But the continuation of this subcommittee at a time when parliament's resourcing has been decreased a bit is very welcome. I am pleased that we are able to be here so soon afterwards.

I will not canvass again the material that I did when I first appeared before the committee in my current role, which now goes back nine or 10 months. At this session, I would like to table an outline of the international human rights work that the commission has undertaken. I have discussed many of those issues in the past, and, rather than run through the full history of them all, I think that just to table the document would be sufficient.

The very important development that has occurred since I last appeared before the subcommittee was the meeting in Darwin in early July of the Asia-Pacific national human rights commissions for the first time. When I appeared before the subcommittee in January, I foreshadowed that this was one of our objectives for the year and that we were hopeful, but not necessarily confident, that we would see significant development in the regional cooperation amongst national human rights commissions. I was certainly extremely pleased that, in fact, we were able to hold that first regional seminar and that we then had a quite significant development with the agreement to establish the Asia-

Pacific regional forum of national human rights commissions.

This part of the world has been unique for a long time in that it is the only one without a regional human rights mechanism. The mechanism, the forum that we have established, certainly is not a substitute for the development of proper intergovernmental human rights arrangements. But, in the absence of any such arrangement here, it represents the first official structure dealing with human rights at a regional level in this part of the world. So it was a very significant development, a development that I think will continue to expand.

We have at the moment five national commissions in this region—Australia, New Zealand, India, Indonesia and the Philippines. It seems that we have a very good prospect of having another half a dozen established over the next 18 months to two years, perhaps even one or two more than that. So we are seeing a significant growth in independent commissions, which I am confident will start to have a significant impact on the human rights observances within our own countries. It does mean that we are able to cooperate now regionally to assist in the development of these commissions further.

We have already had good contact with the government of Papua New Guinea, which is due to announce the establishment of its commission. It certainly has announced the policy on it. The law, we anticipate, will go through the parliament during the next three months, and we will see a commission up and running there by early next year. The Prime Minister of Papua New Guinea has already indicated, for example, that this new commission will have a primary role in relation to human rights monitoring in Bougainville, and that is a very welcomed step forward.

Sri Lanka passed its human rights commission law in July. We anticipate that that law will commence within the next few months and that a commission there will be established. Pakistan, Nepal and Mongolia are well advanced in the development of their legislation. So we are seeing the opportunity for quite a significant degree of cooperation now within the region on these issues, and I do hope that it will continue.

Our commission was supported by the Australian government and by the United Nations Human Rights Centre in funding for the regional seminar that we held in Darwin. The Australian Minister for Foreign Affairs at that time announced a contribution to our commission for three years to assist us in providing secretariat services to the newly established forum.

We were, of course, extremely grateful for that support. But I think that even more significant than the financial commitment the government has made is the degree of political commitment that we have received in the past and that we are continuing to receive from the foreign minister, the Attorney-General and the government as a whole for this important part of our work.

It certainly represents a significant dimension of Australia's foreign policy in that we can advance human rights cooperation not on the basis of confrontation but on the basis of joint activity. It is a very fruitful way of working. Confrontation will sometimes—often—be essential. But we do not always have to confront, we can sometimes cooperate, and it is happening here. The government's support has been extremely welcome in this area.

The second meeting of our forum will be taking place in November. It has been decided to move very quickly to our second session. It will be held on 4 November to 6 November in New Delhi, the Indian commission having volunteered to be the host. Again, as we did with our first meeting, we will be encouraging the participation of countries that are moving towards the establishment of human rights commissions.

I think that one of the most significant achievements of our Darwin meeting was that the governments that were there as observers, which have not yet got commissions, were given a good deal of information and advice on how they can go about establishing effective bodies. I have been assured by them that, as a result of what they heard on that occasion, their laws will be significantly different and that the commissions will be more powerful and more independent than had been intended to be.

In addition to the countries that were present in Darwin, we have extended an invitation to Bangladesh to attend in New Delhi because the new Bangladesh government four or five weeks ago announced for the first time its intention to establish a human rights commission there.

The federal Attorney-General, Daryl Williams, was recently in Vietnam and raised with the Vietnamese Minister for Justice the developments that we are experiencing in human rights commissions and has encouraged Vietnam to cooperate in this work as well. There is a possibility that Vietnam, too, will be represented at the regional forum in New Delhi. It will be an opportunity to explore with them the possibilities of establishing some form of commission there. So I think we are seeing some quite positive signs of movement, and they will, of course, continue.

Perhaps I should mention the other country that has not been involved to date—we now hope to involve it—which is Japan. Japan has not got a human rights commission as such but, of course, it is a very important regional participant. I think it wants to play a much greater role in regional cooperation in the human rights area. Later today Kieren Fitzpatrick and I will be meeting the counsellor in the Japanese embassy here in Canberra to discuss a possible Japanese role within this work as well. That is just by way of update for the committee on where we have got in this work since I appeared before you in January and first said that we were hoping to make these sorts of gains during this 12-month period.

Senator HARRADINE—And Hong Kong?

Mr Sidoti—Hong Kong was invited to participate in Darwin and was unable to do so. At this stage we continue to have links with them. The new head of their Equal Opportunity Commission had originally foreshadowed coming to Australia at the end of this month, but has had to postpone that. I am not quite sure what the reason is. Nick Cowdrey from the International Bar Association's Human Rights Committee is in Hong Kong next week. We have arranged for him to see the head of the Hong Kong commission to have discussions with her about how they can play a broader regional role. I would certainly see it as important that the Hong Kong commission becomes tied into these sorts of regional developments now rather than seeing what happens after 1 July 1997.

CHAIR—I have just come back for this current fortnight's sitting of parliament from a delegation to India and Pakistan where we actually met the Human Rights Commissioner in India. In Pakistan we met an NGO which calls itself the Human Rights Commission and we also met the Minister for Human Rights. We also met their Senate committee for human rights. Whilst the object of this morning is not for me to give evidence on impressions, nevertheless I would have to say that I certainly noticed some differences in approach there. I had previously been in Malaysia and so on.

Can you comment and perhaps give us a bit more information on the variations you are finding between the different countries and some of the specific problems that you are finding need to be addressed as they set up their various bodies?

Mr Sidoti—There are certainly a number of different approaches being taken, but I think there is a greater degree of commonality amongst the commissions established in this part of the world than in other parts of the world. Internationally we can see a variety of models ranging from commissions that have only a complaint handling function to others that are simply broader policy advising type bodies, sometimes under very firm political control. We, I must say, do not see those sorts of semi-independent or semi-dependent commissions as meeting the international criteria that govern the establishment of independent national human rights institutions.

In this part of the world the existing commissions are established in a number of ways. Some are actually established under constitutional law. The Philippines commission is established by the constitution. The Papua New Guinea commission will be as well. The proposal is that the Papua New Guinea constitution be amended later this month or next month to incorporate the establishment of the commission and that there be a separate organic law then to deal with the machinery provisions.

Our commission, of course, is established under a normal statute. In Indonesia at this stage the commission is established by presidential decree, although one of the things that we are encouraging is that it might move towards becoming established as a statutory body by an act of the Congress of Indonesia. So the actual establishment part of it varies from place to place. All five at this stage have both complaint handling roles and human

rights policy roles, so there is that function of investigating and seeking to resolve complaints. There is also the function of undertaking broader inquiries and reporting—particularly to parliaments—on ways in which laws and policies and practices have to change to ensure greater compliance with human rights commitments. That is common to all five at the moment.

With the early laws that were being proposed in Sri Lanka and Pakistan, both had a commission that was much more dependent on political control than it was independent. I think one of the achievements that we have had already has been bringing about significant developments in the thinking of those governments. The Pakistani law, for example, was actually held up and not submitted to parliament pending our discussions in Darwin so that there could be a further review of how it should develop. At our Darwin meeting Pakistan was represented by the Deputy Attorney-General—a very senior official. From what he said to us at the time, I think we will see significant changes in their legislation.

Pakistan, I think, has also been quite positive in that the non-government organisation that you mentioned, the Human Rights Commission, has played a significant role in assisting with the preparation of the law there. I met with the chairperson of the commission, Asma Jahangir, when she was here in April and subsequently had a lot of contact with other people from the commission there. I think we will see an official body develop that is quite good. I am not quite sure whether Pakistan would be prepared to acknowledge it but they do seem to be heavily influenced by the Indian legislation in this respect. Certainly, the Indian commission has proved itself already to be quite good on the ground in the investigative work that it is undertaking.

One of the differences, though, is a significant one in the nature of the complaints that we receive and the investigations that we undertake. It is in this area that the development of our forum can be very useful. The commissions in Australia and New Zealand do not have investigations into deaths. We really do not have a situation where there is widespread torture in police and military custody and extra judicial executions and so forth, whereas for the commissions in Indonesia, the Philippines and India, this is perhaps the most important part of their work—the investigation of torture in official custody, of extra judicial execution, of disappearances. These investigations are central to their activities and there is not much that we can really do to assist them in that work from our point of view. We just do not do it.

Yet much of our cooperation to date has been bilateral cooperation. It has been between us and the Philippines or us and Indonesia. I hope that, through the development of the forum, we can actually find ways in which we can tap into resources—money—in Australia, New Zealand, in other countries, that will enable some exchanges between the other countries rather than bilaterally so that they can assist each other in this sort of work. There is probably more that Indonesia can tell the Philippines about investigating

murders than we can, and yet at the moment it is impossible to get the support for that sort of training and developmental activity to occur. Certainly, that is an important part of the need of those three countries.

CHAIR—But would that therefore be important? After your Darwin meeting, you had the Larrakeyah Declaration, which I believe called for some of the United Nations involvement.

Mr Sidoti—Yes.

CHAIR—And do you see funding coming from the United Nations to enable some of that activity to be perhaps carried out?

Mr Sidoti—We certainly do and the United Nations do provide some funding for the Darwin meeting itself. The United Nations Human Rights centre in Geneva has a fund to provide technical assistance in human rights work and the Australian government, again past and present, has provided significant contributions to that fund for technical assistance and particularly earmarked some of that money for activities in the Asia-Pacific region. So my expectation and hope is that that money will be made available for these sorts of activities. Again, the existence of the forum as a multilateral body can be a useful mechanism to access that money and then to channel it appropriately.

One difficulty with the UN is that the decision making processes perhaps leave something to be desired. It seems at times that it is as difficult for the United Nations to spend money as it is to raise it and the money is sitting there. Australia has contributed it and some parts have been sitting there for years and to get it out is almost impossible.

CHAIR—So should we not contribute as much via the UN? Should we do more directly?

Mr Sidoti—I would perhaps put it at a different level, foreshadowing that I think that, unless the UN can demonstrate a capacity to spend the money that is being contributed, then alternate channels should be found. Again, the multilateral regional forum would be an appropriate alternative approach. Now I do not say that with pleasure because I think the commitment of Australia to the United Nations human rights systems is a very important foreign policy commitment, but unless the UN can get its act together, there are other channels that are available that may have to be considered.

CHAIR—Senator Harradine, you had a question.

Senator HARRADINE—I am always in favour of decentralisation but one of the problems of decentralisation of certain UN functions, say, in this area, is that you might get differentials in the interpretation of human rights. I hope I am not straying, Mr

Chairman, but in general do you find that the basic document is the universal declaration of human rights in this particular context? Do you find attempts and where are these attempts to interpret those rights enshrined in that document in diverse manners?

Mr Sidoti—We do not find those attempts amongst the national human rights commissions in this region, but of course they exist among governments. To me, one of the prime benefits in us moving to a regional arrangement amongst the human rights commissions, as we have at the moment, is that we are dealing with bodies that accept the existing caucus of international human rights law and are prepared to operate on the basis of international human rights law.

The debate that has been taking place amongst governments in this region now for several decades about relativism in human rights is not a debate that intrudes or corrupts our forum at all. The attempts from the United Nations and others, including Australia, to support the development of an appropriate regional arrangement need very strong support, but it has been very slow going. It is difficult seeing that make much progress that would be helpful until more countries in this region sign up to the international covenants and treaties that already exist.

There is a very poor record here, of all regions in the world, of adherence to the various international covenants and treaties in human rights. So, in a sense, there is a bit of danger in pushing the inter-governmental arrangement too quickly because we may see a reduction of the international standards. Amongst our commissions, I am pleased to say, we are dealing with a body of law that we all agree with and accept and seek to implement in our own countries.

Sir Ronald Wilson—Can I just toss a comment in there. I think Senator Harradine has mentioned the universal declaration of human rights. One needs to supplement references to that document, which was adopted in 1948, by recognising that the membership of the UN at that time was very different to what it is today. I like to, for my own peace of mind, associate it with the declaration of Vienna in 1993, when one of the fundamentals in the debate that went on in Vienna was whether that 1948 declaration was appropriate to the vastly enlarged United Nations organisation of 1993 with the emergence of the Third World nations, developing nations and so on.

You will remember, Senator, the real anxiety at that conference as to whether the line could be held on the 1948 universal declaration, because there was the pressure for acknowledgment of a right to development as a pre-eminent right. This was being pushed by the developing nations. Pre-eminent in the sense that other instruments may have to give way to considerations of economic development.

The outcome of that conference, I think, was to endorse the 1948 universal declaration as still having a validity and a fundamental acceptance in the very much larger membership. The membership had trebled between those years—between 1948 and

1993—and the basic principles of universality, indivisibility and interdependence were again endorsed in 1993. That in a sense was very important as a support for the moral persuasion of the universal declaration.

Senator HARRADINE—Thank you for reminding me about that, Sir Ronald. I remember that well and your invaluable role in that as well.

Sir Ronald Wilson—It was amazing. It really was not until the last few days that the tide began to turn. I think at the opening days of that world conference there was a real anxiety that the 1948 declaration would disintegrate.

CHAIR—We were talking about regional activity. It seems to me that one of the things that is very different—that some of the countries in this region do not apply here in the same way—is the impact of religion and the practice of human rights in the countries. Having just come from Pakistan, as I mentioned, it is particularly noticeable there in the treatment of women, for example. Can you comment on that, in the sense of how that is likely to affect the progress of the arrangement that you are trying to put in place?

Mr Sidoti—It certainly has an impact. Pakistan is a good example. The institution that is proposed for Pakistan has within its current draft law specific reference to the need to focus upon particular disadvantaged groups, and they use the phrase ‘disadvantaged peoples’ rather than broader human rights language. They instance women amongst that. Women, children, religious and ethnic minorities and people of low socioeconomic status are the five groups singled out in the draft law as requiring particular attention.

Clearly for Pakistan, and for the commission in Indonesia to a lesser extent, but it is still there as well, the particular questions relating to the Islamic approach to the role of women are difficult questions. Again, the existing non-government organisation, the Human Rights Commission in Pakistan has had to tackle many of those, with the result that its chairperson receives death threats because of the protection of women from some of the traditional practices there. Without doubt, the context in which any institution there is working is going to be a very, very difficult one, much more difficult than what we are finding here.

It is also necessary to acknowledge that, within each of our countries, including Australia and New Zealand, there are particular cultures that we are up against. In this country, as Sir Ronald has already indicated, the traditional relationship between indigenous and non-indigenous peoples would go to the heart of our human rights problems and our human rights violations. So, for us, that becomes the critical issue. In other countries, it would be other critical issues that need to be addressed as ones that attract attention more than any other. The context of Pakistan will certainly make the work of the new institution there difficult, without doubt. But they are prepared to address it, as already non-government organisations there are doing so.

Mr HOLLIS—Mr Sidoti, I am interested in what you are saying about the various commissions. In our region, I know it is an issue that has been brought up many times. If you look at the constitution of many countries, many of them today embrace the universal declaration of human rights. It is in there. There are many countries—we do not have to name them—which have that as a fundamental part of their constitution, but human rights are anything but protected and respected in those countries.

It always seems to me that human rights and the protection of human rights and basic liberties are fine as long as the governments go along and accept it. It seems that you can have the best requirements in the world but, immediately a government is challenged, and unless the governments are prepared to be put, if you like, in the dock, it changes. It is the case even with our own country. We are always very proud of our record here, but if commissions and others challenge the government, often the government—as we have seen in this country—will move to change the law.

My rather rambling question is this: how confident are you that these countries, even when it is embarrassing to the government, will abide by the commission's findings? Of course, I would not be so naive as to think that everyone would abide by it, but do you think that we are making progress there? Or is it just accepted that, while everything economic, social and political in the country are going along nicely, we will all pay, if you like, lip service to these provisions of protection of human rights? It seems that immediately we have a case where there is some upheaval, be it political, social or economic, human rights are always the first casualties.

Mr Sidoti—Perhaps Sir Ronald might like to comment on that afterwards. I agree completely with the analysis that you give of the difficulties that are involved. We see it even in our own country. I probably do not need to remind members of the committee that the commission found it necessary earlier this year to take our immigration department to court because of the failure to comply with the law. No sooner had that case been won than the government, with the full support of the opposition, introduced legislation to take away the commission's power. It is a matter which I consider deeply embarrassing internationally to this country if that bill proceeds.

Senator HARRADINE—Which, thankfully, is right down on the end of the *Notice Paper* and not likely to be debated in the Senate this year.

Mr Sidoti—I was not aware of that, thank you, Senator. So it is a problem.

Sir Ronald Wilson—The other example, of course, was the Teoh legislation as well. Indonesia is a good example of progress being difficult and it is a bit like an incoming tide: you cannot perceive the growth and the development of a greater culture of human rights but, if you look at it over a period of years, you can discern that the tide has, in fact, come in.

Concerning the Human Rights Commission in Indonesia, I thought it was quite remarkable and encouraging that one of its early tasks was to examine the procedures pertaining in a trial in which the government was involved. It brought out a report which criticised the government for the unfairness of the trial. For a young commission whose formation was greeted with scepticism that it could ever be independent, I thought that was tremendous. True enough, the government, as I understand, said, 'Hey, you are not supposed to be doing that,' and there may have been a minor retreat. But it has gone on since then and there has been more than one decision by that commission which has demonstrated an independence that many people thought was unlikely.

I think we are in a transition that is going to proceed like that—some gains, then set-backs and then some more gains—but as long as the determination and the pressure to improve human rights records in any country is maintained, then over time you will all see significant progress. That is true of Australia if you go back even a decade and see the developments that have taken place in that period, or go back to 1967 and see the changes that have developed in the relationship between indigenous Australians and other Australians. There is plenty of room for encouragement. While I have the floor, I wanted to add a comment about your question. I hope you do not mind, Mr Hollis. You may not have finished.

Mr HOLLIS—No, I have finished.

Sir Ronald Wilson—I led a multi-faith delegation to Indonesia in 1992 and it was a very interesting experience. We visited a number of Islamic theological colleges and talked with Islamic scholars and philosophers, and so on. My delegation included Australian leaders from those different faiths and we came home with the conviction that further understanding and cooperation between Indonesia and Australia was not only possible, but thoroughly desirable in this particular area, because, I think, of all the predominantly Islamic countries in the world, Indonesia does stand on a philosophy of religious tolerance and there is a moderation about the presentation of religious truths, and so on, in that country. I am convinced that Australia is going to see, and have to deal with, more and more of this. We are, in fact, now a multi-faith country, and that is a very important aspect of how human rights work.

The declaration in 1981 on the elimination of religious intolerance is now annexed to the Human Rights Commission Act, enabling the Commissioner, Mr Sidoti, to receive complaints with respect to acts or practices of the Commonwealth that are alleged to be in contravention of those principles and he has powers in relation to investigation of those matters. I just wanted to make the point that we are increasingly becoming a multi-faith country and that does bring the religious tolerance issue right into our own backyard.

Mr Sidoti—Could I also just comment on Mr Hollis's question for a moment. I see three different ingredients in ensuring proper protection of human rights in any country. They are: law, institutions and culture. It is important to have law, and you have

referred to the existence of law in many constitutions but, without the institutions that will enforce that law, it is not the full answer. Human rights commissions can be one part of an institutional framework; the courts, of course, are a critical part of it. The problem in many of these countries is that there is no rule of law that even gives independent courts let alone independent commissions. Then, ultimately, you need to have the culture that will support that.

I do not think it is even a matter of saying that the three need to occur in some historical order, or even in some priority, because all three are interrelated. In Australia, I think we have a culture that is generally supportive of human rights. We have good institutions and independent courts and an independent commission but, in fact, our human rights laws here are very weak. In other countries, they have good laws in terms of constitutional protections, but no institutions and little culture that will support them. So, it is always a matter of trying to advance on all three fronts to ensure an appropriate regime that ensures protection of human rights. I agree with the President that this is always a matter not of unimpeded evolutionary linear development but rather it is a matter of peaks and troughs and two steps forward and one step back from time to time to develop those three areas of protection.

CHAIR—I might just comment briefly that I went to Pakistan four years ago, as well as just recently, and you can see the movement. It is not all right now but, four years ago, they did not even want to talk about it. Before I move the conversation into a whole new area—and I want to perhaps move us on to talk about children in a whole range of ways—whilst we are talking about the regional issues, could I just ask you to briefly comment on places like Singapore, Malaysia, Korea and the big one, China, given that the first three named are quite important. We have quite important relationships with those countries, and it would seem to me that the view there is, ‘Let’s agree that we put a different view on human rights and not let that get in the way of the relationship.’ Of course, China is a whole major quantum leap different in every respect. Could you perhaps make some comments in respect of those four countries?

Mr Sidoti—I will start with Singapore and Malaysia, particularly seeing them in the ASEAN context. At the last meeting of the ASEAN ministerial council and regional forum, the heads of the human rights commissions in the Philippines and Indonesia met with the ASEAN foreign ministers to encourage them in the development of a subregional human rights mechanism and also national commissions. Ali Alatas, the Indonesian foreign minister, was particularly interested and because they have a human rights commission there, he seemed receptive to the approaches put to him by the commissions.

Subsequent to that, the deputy chair of the Indonesian commission was invited to Malaysia to have discussions with people in Kuala Lumpur about what the Indonesian commission is doing and how it operates and whether there may be some scope for an examination of those developments in Malaysia. Subsequently, the Malaysian government has made inquiries of the New Zealand government about the way in which the human

rights commission in New Zealand operates. I am not aware of any approach to the Australian government. Perhaps that may be a reflection of past tensions in the Australian-Malaysian relationship. Certainly, I think that is a very positive development if Malaysia is starting to think in these terms now.

We have not had direct contact ourselves with Singapore and I am not aware of any interest at this stage in the Singapore government but, again in the context of a growing interest in ASEAN generally, we may see developments in Singapore as well.

The Republic of Korea has tended to wax and wane on the subject. There was interest in it a couple of years ago. The President and my predecessor, Brian Burdekin, attended a United Nations intergovernmental meeting on human rights in Seoul in 1994. There was some discussion by the Korean government before that of establishing a national commission there, but we have heard nothing since, until, as it happens by coincidence, this week we heard that there is a Korean parliamentary delegation coming to Australia next week. They have explicitly requested to meet with me when they are in Sydney to discuss what our commission is doing and what is happening regionally. This may indicate a rebirth of interest on the part of Korea in becoming involved in the activity.

China, as I flagged earlier, is something for discussion. It remains one of the most difficult problems in human rights issues in the region in terms of both their international obstruction of human rights dialogue and advancement and the internal policies of the Chinese government. I was a member of the two parliamentary delegations that went from Australia to China in 1991 and 1992. We saw in the course of those a preparedness to enter into dialogue about human rights issues. The exchanges that took place were very valuable, but nothing has occurred since then.

One matter I was going to raise with the committee was the need to re-examine the issue of how to advance the dialogue on human rights with China. The parliamentary delegation, or human rights delegations, formerly took place under the auspices of this subcommittee. The then chair of the full committee was Senator Schacht. The deputy chairs—two different people for each year—were, on the first occasion, Mr David Connolly, and, on the second, Mr Michael Mackellar. Senator Vicki Bourne was there for the Democrats. They were the three parliamentary members of the delegation.

I think it would be appropriate for this committee to perhaps re-open the question of how we now advance that dialogue. We had seen it as critical in 1991 and 1992 that China reciprocate by sending a delegation here to visit us and see what we are doing. Perhaps that was because we saw that as being an important part of the process of engaging China in a more meaningful way.

Although invitations were issued on both occasions and renewed by the foreign minister subsequently, there seems to have been no particular interest on the part of the

Chinese government in taking that issue any further. But I certainly think it timely for this subcommittee to perhaps re-look at where that dialogue might go. Perhaps there are other strategies that we need to employ. I do not know.

Mr Fitzpatrick—I want to add just one slight addition to Chris's statement. In February of this year, the fourth regional intergovernmental United Nations workshop on mechanisms for human rights in our region was held in Nepal. All the countries mentioned participated in that and agreed to an outcome which focuses on a step-by-step building block approach rather than looking at a regional mechanism, a la the European Commission or charter on human rights.

A central process of that step-by-step mechanism was focusing on national institutions. I certainly feel, given the discussion that Chris mentioned about the ASEAN countries, that the growth of national institutions in our region, with upwards of 12 within the next 18 months to two years, is booming as a growth industry. I certainly think that the countries that you have mentioned are starting to look to that and to the Asia-Pacific human rights forum, which was recently established in Darwin, and feel that it is in their interests to participate in that forum so that they have a chance to influence it now rather than continue to ignore it.

So I think we will see increasing interest from those countries. It may be interest that is premised at this stage on wishing to ensure that their view, which may be a relative issue, is injected within the proceedings. Certainly, our perspective would be engagement of this interest, which, in this first instance, is a lot better movement forward than what we have had to date, which has been an unwillingness to even discuss these issues.

CHAIR—I think I mentioned to you informally before we started the proceedings that the subcommittee is engaged in a formal inquiry which is looking at the situation in Hong Kong prior to the handover. One of the other areas that the committee has actually considered to look at for a subsequent inquiry—we have the resources to run only one inquiry at a time—was perhaps APEC. Your point about China is well made. We have made a particular note of it. We will make sure that the subcommittee does address that particular issue.

I will move our conversation on to a different area for a moment: children. There has obviously been a lot of discussion, activity and media coverage in this country recently about child abuse. In some of those overseas countries we have been talking about, child labour is a major issue and is often excused on the grounds of economic necessity and so on.

Sir Ronald, I think you in particular have been running this inquiry into Aboriginal children separated from their families. I found this morning a new publication which I had not seen before, *Speaking for ourselves: children and the legal process*. I wonder whether we could move on to those areas, and perhaps all of you could give us some updates and

views on those subjects.

Sir Ronald Wilson—Chris is leading for the Commission a joint national inquiry into children and the law, to which that publication relates, and it is associated with the Australian Law Reform Commission. Perhaps Chris might like to start with that, and then I can say some things about the national inquiry. I would also like to press the case for a children's commissioner to be attached to the human rights commission.

Mr Sidoti—The inquiry into children and the legal process is, as the President has indicated, a joint inquiry between our commission and the Australian Law Reform Commission. The terms of reference for it are very broad. One of the issues that we face as we now move into the stage of starting our detailed writing up of draft recommendations is how to actually deal with it in a way that is manageable. Clearly, we are not going to deal with every single issue relating to the relationship between children and the legal process in one report.

The inquiry commenced about 12 months ago. We produced that issues paper earlier this year, and we have just completed public hearings in all states and territories seeking submissions as a result of the issues paper. In addition, we have received something like 200 to 250 written submissions and a large number of contributions from young people. We received some 800 to 1,000 responses to a questionnaire which we distributed amongst youth organisations, youth detention centres and some schools seeking responses from young people themselves about their relationship with the law. Our timetable has us producing a draft recommendations paper, or a draft report, around about the end of February next year. At this stage, we are due to put in our final report to the Attorney-General around the middle of next year.

The submissions to the inquiry have already produced significant comments on a number of different areas in the relationship between children and the legal process. The areas where traditionally children and the law have most frequently come into contact relate to the welfare, care and protection system and children in family law and juvenile justice. We have found that there are a number of common themes that seem to crop up throughout these traditional legal categories.

One is the subject of advocacy for and by children. The ways in which children are represented in court—whether they are there as parties or as accused persons or as witnesses—certainly leaves a great deal to be desired. Without doubt, we are going to have to focus our recommendations strongly in the area of children's representation in courts, but also deal with the more general issue of advocacy within the community. The issue of the children's commissioner, which the President raised, is one of those questions. Who actually speaks for children and advocates children's causes in the community in a comprehensive way?

The area that I have had the predominant involvement in in relation to the inquiry

has related to juvenile justice issues. We have heard submissions in all states and territories which, to my mind, raise very serious concerns about the ways in which children are coming into conflict with the law. This does not just mean children who are themselves accused of offending, but more and more large numbers of children who do not commit any offence and yet seem to be involved in increasingly hostile relationships with police forces. The report that we produce is going to have to make some comments on that and indicate areas where we think reform is necessary.

But there is a consistent pattern now in many states and territories of a 'get tough' approach to children and young people. This 'get tough' approach is not only resulting in less effective ways of dealing with juvenile crime, addressing it and rehabilitating the offenders but also, it seems to me, resulting in ways that are going to exacerbate the already hostile or sceptical relationship between police and young people and may well result in a hardening of criminal offending patterns on the part of the small number of young people who do become seriously involved in the system.

I have made a number of public comments on that and will continue to do so because I think it is time for governments, at the state and territory level, to really reassess what they are doing and why they are doing it. I do not think—and I do not want to be melodramatic—it goes too far to say that some state and territory governments have seen young people as fair game in political wars. There are poll driven policies which are clearly being adopted and advocated, and there is a feeling amongst many young people that our state and territory governments have virtually declared war on them. This has current problems if young people cannot trust the police but it also has very serious long-term problems if we are developing relationships of hostility between our mainstream political and legal institutions and young people who will of necessity be the people who are running the country in 10 or 20 years time.

So I have some very great worries about the direction that juvenile justice policy is taking at the moment. I have been expressing those already but they will be dealt with more fully in the report when we are actually able to bring together all the material we have been given and make our recommendations. But because of the rate at which state and territory governments are announcing new initiatives in this area and the nature of those initiatives I felt it necessary to speak out now rather than simply waiting for another 12 months.

One of the concerns I have in relation to children as victims of crime goes to the ways in which they are being treated when they are called upon to give evidence in courts. The pattern here tends to be somewhat inconsistent around the country. Certainly there have been a number of jurisdictions where child support people are now being engaged. They can prepare children for giving evidence in court. They can support them while they are actually in the court and be there as a friend within the court system.

But in other instances children are receiving no support at all and are continuing to

be the victims of what I can only describe as systemic abuse. Having been abused usually within their own homes—usually by a relative, often a close relative—they then go into the court system and find themselves systemically abused for protracted periods of time. We received submissions, particularly in Queensland, on this subject. There was the story of a seven-year-old boy who was hostilely cross-examined for seven hours in the witness box at a committal stage and for another three to four hours at the trial stage of a criminal case—and this is a child of seven. A 14-year-old girl had to endure three days of cross-examination at the committal stage and a further three days of cross-examination at the trial stage.

These sorts of experiences have to raise questions in my mind about whether we have lost sight completely of what has happened to the victim in these cases. Certainly this is no way to be treating children. So questions are being put to us. The submissions we have received raise very hard issues. They go to the way in which the criminal process works. They go to some of the broader political and community attitudes towards young people that fundamentally, from my perspective, raise human rights issues. They are the issues we will need to address in the report.

Sir Ronald Wilson—Could I just say that I endorse everything Chris has said and I will not repeat it. The juvenile justice area is one of the most acute because, increasingly, political parties in several states and perhaps also the Commonwealth are using children for political purposes as almost a lottery of who can be toughest on juvenile offenders, out of a perception that the community is presently pre-occupied with protection of the public and concern for victims. Certainly I do not diminish the significance of those things but we do not hear very often about the principle which was widely accepted a few years ago of prison as the last resort.

Instead we are getting people suggesting the policy should be three strikes and you are out. In other words you are subjected then to indeterminate sentences or mandatory terms after three convictions. Very often, a single incident can produce three convictions or you are getting unfortunate experiments like boot camps which after a few million dollars down the drain then are seen to have failed—and the money could well have been spent on more constructive projects. It could have allowed in the case of Aboriginal children, for example, the participation of Aboriginal leaders and communities in diverting children from detention, through the justice process.

But my case for the appointment of a commissioner is that that would need to be accompanied by producing into legislative form the obligations that Australia has accepted under the Convention on the Rights of the Child. That convention had a remarkable run after its adoption. There has been no other convention that has received the overwhelming support of the members of the United Nations so quickly as that convention. It was only adopted in 1989. You remember there was a heads of government summit in New York in 1990 which at that time represented the largest gathering of heads of state ever to be convened.

There was a meeting of the world's religions for the world's children which developed a declaration and action plan to influence that summit of heads of government. And the latest figures that I have heard—and they are somewhat old now—is that the convention had been accepted by more than 170 nations out of a total membership—is it 184? It is well over 90 per cent. I think Australia, sooner or later, if the problems of its children are to be tackled, will have to face up to a legislative enactment of the federal parliament which provides for the appointment of a commissioner and charges that commissioner with the oversight of children in the family situation, in relation to juvenile justice and in relation to neglect and other forms of abuse—and generally in relation to their place in the Australian community.

Of course it has an international dimension as well but, until we do something about it ourselves, our voice must necessarily be muted in the international arena. I think the special position that CROC, the convention, has achieved in the course of a few years is a justification for a serious look at the needs of Australian children.

CHAIR—Have you put that view to the government about the establishment of a—

Sir Ronald Wilson—Yes, I did it before the last election hoping that it might be a matter of consideration in the policy statements. It was not just to the government, it was to all the major parties.

Senator HARRADINE—What specific role do you envisage the commissioner as having?

Sir Ronald Wilson—Just as the human rights commissioner has an investigative role in relation to acts or practices of the Commonwealth touching the ICCPR in particular but also the other instruments that are annexed to the Commonwealth government, the children's commissioner would have a special responsibility to focus on the needs of our children. They are the most precious resource that any country can have. We cannot afford to simply allow them to be treated in the mass, as it were, as an incident to the promotion of human rights in the general area. They deserve a special consideration because of their vulnerability and because of the obvious evidence that is available and coming forward almost every day of children being in need of special protection and care.

Senator HARRADINE—I see. It is the protection area that you are looking at specifically?

Sir Ronald Wilson—Yes, specifically.

Senator HARRADINE—Protection from—

Sir Ronald Wilson—From abuse, from—

Senator HARRADINE—The types of things Mr Sidoti was saying.

Sir Ronald Wilson—It involves the place of children in the family and it involves Aboriginal children in particular. Our national inquiry is not confined to historical events in which now middle-aged people are still suffering the effects. It involves current treatment of Aboriginal children and the way in which the state of neglect, if you like, of Aboriginal children is judged by Western standards, with insufficient regard for the special role of extended families in Aboriginal culture and without exploring, at the threshold, whether or not this child should be made a ward of the state, which is very often the first step to a situation that appears in the eyes of welfare officers to be one of neglect.

Only last week you may have seen a report of a case in which an 18-year-old child welfare worker was implementing the policy of taking children away from Aboriginal parents for adoption. It was a very poor case. As recently as 1970—there were two parents, it was not a single parent—the child was removed from the mother while she was still in hospital, within two days of birth, and it was made a ward of the state. Two years later it was the subject of an adoption application that was argued after a judge had directed that the parents should have legal representation. After five days of hearing the judge refused the adoption order and expressed no doubt that in his mind the place of that child was with its parents. That recommendation—it could not be an order because the Adoption Act did not authorise the judge to make an order—was rejected first by the director-general of the department and then confirmed by the minister after the lawyer concerned actually sought an interview with the minister. He described to the inquiry that he was given a very rough passage by the minister who said, ‘From what I’ve seen of Aboriginal living conditions, there is no way I am going to return this child.’

That is a serious abuse of human rights and if you do not have a children’s commissioner to take responsibility for monitoring that kind of situation, where do you go? The Aboriginal Social Justice Commissioner cannot do it all because he has to report three annual reports: he has to report on the Native Title Act, he has to report on the situation of indigenous people in general and children simply come into his responsibility as a part of an overriding responsibility. I am concerned about the volume of work that is already attracted to the Aboriginal Social Justice Commissioner.

I think there is ample warrant, not only with respect to Aboriginal children but also with respect to children generally. Children of non-English speaking backgrounds face special problems. Children face racism in schools to an extraordinary degree, still, in this day and age. Until we have a commissioner who can make it his or her special responsibility to take on the advocacy role for Australia’s children, they are in jeopardy.

Mr HOLLIS—I have no difficulty at all with a children’s commissioner, for the reasons you have outlined and which have been outlined before. I would only hope that any moves in this direction would be accompanied by a very full and adequate education program because, I must say, as someone who always supported the United Nations

Convention on the Rights of the Child and, indeed, organised a seminar involving people from schools in my area, in 13 years as a member of parliament I never got more correspondence on one issue and more misinformed and deliberately misleading correspondence. The campaign that was run by some of the churches and the people who are often involved in that campaign against the rights of the child was just scandalous—the misinformation and deliberate misinformation that was put out about that.

My great worry would be that it would be a re-run of that. Immediately you mention rights of a commissioner to intervene, I can see that my office—this is, of course, even more reason to go ahead with it, and I am not advocating for one moment that we do not—and my colleagues' offices would be flooded with letters, deputations and telephone calls. So I would hope that any moves in this direction would be accompanied by a good education program, not that such programs can stop the nonsense arguments that are being put up against them.

Sir Ronald Wilson—Well, it could at least tackle the misconception that somehow the convention was an attack on the rights of the parents. That was the fundamental problem, I think, that people got hooked up on. The present Attorney-General, when in opposition, was very gracious and kind enough to visit my home and explain that the opposition planned to move for the disallowance of the annexure of CROC to the Human Rights and Equal Opportunity Commission. He stressed to me the volume of correspondence that the opposition had received about this.

Unfortunately, of course, education is one of the most important tasks of the commission, and it would be an important task of the commissioner, but you have got to get your commissioner before you can tackle that educational challenge. It would certainly be a strong political controversy. The children's lobby has been gaining in strength over the years, and child abuse is now a concern that it was not five or 10 years ago when the convention was first signed. I agree that it will take a degree of courage on the part of a government to run with, but that cannot stop us from the advocacy for it.

Senator HARRADINE—The convention, of course, in its preamble, says that:

The family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community . . . the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

Would you see the commissioner as being an advocate for the types of policies that are needed for the family to be afforded that necessary protection and assistance?

The fact of life at the present moment is that there are many families where, whilst one of the spouses may wish to care for the children, they are not able to because of the economic circumstances and pressures on them. And on another area, there seems to be a breakdown in the types of protection that is needed, for example, the concerns on a

television program last night over channel 10 at 9 p.m. where children are on their own and this material is being shown on free to air. Now the department of communications, the ABA, whoever has responsibilities in this area, appear not to be undertaking them and fail to recognise that children are on their own in many cases.

Sir Ronald Wilson—The clause you have mentioned is a clear mandate to a commissioner to promote a climate in which family values are respected and children have a place in the family. There is a need for families to be resourced so as to fulfil their obligations to their children. These are clear international obligations which Australia has accepted. The commissioner would be the watchdog to encourage the government and all Australians to recognise the importance of these values and to work towards their full expression.

Senator HARRADINE—I had hoped that the commissioner would have more success—if the commission was established—than those who are directly charged with the obligation, such as the ABA and the various other organisations.

Sir Ronald Wilson—Yes. I am amazed at the amount of educational work that our commissioners do. They are forever on the go talking here and negotiating there. They come to Canberra very frequently to talk to ministers and other members of parliament. It would be very seldom a week goes by but what you have got all five or six commissioners talking publicly about the responsibilities of Australia in the human rights area. And they are getting quite good publicity. Just what effect it has I do not know—persistence and perseverance are two key requirements. But I think the appointment of a children's commissioner would provide a focus that Australia takes its responsibilities in this area seriously. It gives some hope of having a particular advocate so that there is no danger of these important rights just falling into discard through the gaps presently in the system.

Ms WORTH—I am trying to work out how to put this into question form, so perhaps I will make it as a statement and ask you to comment.

Sir Ronald Wilson—It suits me.

CHAIR—Why should you be different from everybody else?

Ms WORTH—I agree that the children's lobby groups are having greater success—at least I would like to think they are. I think those that argue that parent's rights are diminished by having a children's commissioner would achieve something if they were exposed to them, because invariably I find them to be the most conservative of people—they move in legal circles or they are paediatricians or retired general practitioners—who have a very good understanding of this. That is one thing I wanted to say. The other thing I would like to say is that, in the general community, particularly among those who think that parents' rights will be diminished, they seem to think that all the problems occur in

dysfunctional families or indigenous Australian families—or the lack of them—and the generally underprivileged. But I would have to say from my experiences—as a mother, seeing my own children's friends, in my work in my electorate office talking to the people who come to see me about mental health problems and problems generally associated with children—I see a much wider picture. I see all children suffering and not being as well off as they used to be, except for a few.

I believe—and educational psychologists have said this to me—all children are being educated to go to university, but only 20 per cent achieve that and therefore the others are made to feel that they are failures. Our education system has something to answer for. Drugs are being pushed. That is something that is well and truly under the carpet. We are now seeing increased levels of depression in young people. This is one of the causes, but nobody seems to want to face up to that. All children are being exposed to that. Children from the best of families have some of these problems as well. Marriage breakdown and child abuse is not always confined to lower socioeconomic levels. And, as you have already mentioned, children have to go to court without having that type of support. Anyway, that was a long statement, but I think there is a huge educational challenge ahead.

CHAIR—Do you have the question?

Ms WORTH—I am just wondering how you are planning to achieve all these changes.

Sir Ronald Wilson—You could have added youth suicides to that depressing litany.

Ms WORTH—Yes, absolutely—increasing suicides.

Sir Ronald Wilson—It is probably a pipedream in present circumstances, but you never know. Over the years to come continued advocacy for the needs of children and the necessity of a children's commissioner will go on and we are not going to let it drop. Some people prefer to see a commissioner independently, more like a children's ombudsman. I personally do not favour that because we have got a structure already. Human rights have to be integrated. They are indivisible and it presents a much greater picture of integration to have a commission that is responsible for all human rights of a community. That is the case for including it in the Human Rights and Equal Opportunity Commission. It is not just a matter of self-interest and trying to build up a bigger and better show.

I think it is important that we associate together. They are all integrated. We constantly are confronted with children with disabilities, children who are slow learners or have intellectual problems and problems of integration into mainstream education. Life is pretty tough in Australia still for kids with disability. Out of sight, out of mind, very often is still the dominant mode.

CHAIR—Could I ask a very specific question: is it your intention before you give up the presidency of HREOC to actually make a specific recommendation to the current government?

Sir Ronald Wilson—I am happy to take that on board.

CHAIR—Should you decide to do so, then the committee in its subsequent deliberations after this hearing may be in a position to make some statement on that issue.

Sir Ronald Wilson—I will undertake the preparation of such a submission without delay.

CHAIR—Could you also please update us on where you got to with the Aboriginal children's inquiry?

Sir Ronald Wilson—Yes. I was hoping to come to it and the later in the morning the better in a sense in that it will be one of the significant things that remain in your mind. I want to say unequivocally that this inquiry has exposed a situation the resolution of which is fundamental to the future of this nation and the reconciliation process in particular. It is fundamental because we have heard a lot in recent years about land rights and underlying the land right concern is the dispossession which was acknowledged by the parliament on cross-party lines in 1991 in the preamble to the Council for Aboriginal Reconciliation Act. It acknowledged that the original inhabitants were dispossessed and so you could speak of that as the theft of land.

It has been a fundamental consideration with which the nation has wrestled in the last five years since the Council for Aboriginal Reconciliation Act responded to the deaths in custody commission and established the council, giving it the decade in which to seek to bring the nation to a point where there could be in the year 2001 a united nation which respects its Aboriginal and Torres Strait Islander heritage and provides justice and equity for all. If we do not solve this problem of the stolen children, which is far more significant to human beings than stolen land, we cannot even I do not believe conceive of reconciliation having made a great deal of progress by 2001.

We have significant anxieties, I must say. I am going to be circumspect in my remarks. I want to say that we have had excellent cooperation from the governments of all states and territories. They have gone to considerable pains to take special efforts to produce submissions setting out the history of the policies that have affected Aboriginal children in terms of separation over the past. They have grappled a little bit with the sort of recommendations that they would like us to make, but not as much as we would have hoped. Very substantially the commission is being left to arrive at recommendations which will be practicable and capable of implementation, without having had the benefit of a great many submissions from around Australia.

To put it frankly, our concern is the response of the Commonwealth government. We expect to hear from them next week. Next week will be the final process in the consultation around Australia. We started in November. We have visited every state and territory. In some cases we have visited them twice. We have been to Canberra in July. We had hoped to have a submission from the national government. Of course the contribution of the national government is critical in several ways, not only historically because of its responsibility for the territory until 1978 and the Aboriginal ordinance under which the territory was governed from Canberra, but also very importantly the government's assistance in respect of the principle of self-determination.

It is at the heart of Aboriginal aspirations. What exactly does government see it as meaning? What does the opposition see it as meaning and in the Australian context it fair to say that there is no suggestion from responsible Aboriginal leadership that self-determination extends to sovereignty and independence of that kind, that is political self-determination. But it does extend to achieving for Aboriginal people the same control over their lives that other Australians enjoy.

It is important that government tells us what its belief is as to where Australia can go, because the government cannot simply sit back and abdicate its leadership responsibility in an issue of such fundamental importance to the future of this country. We are expecting to hear from the government next week and I certainly do not want to suggest that the government is not in an overall sense cooperative. It has had the matter under consideration for a long time and no-one can deny a government time in which to consider its position. But as I speak I am reminded that there is an opposition and that democracy in this country is very much dependent upon the roles of both opposition, government and other parties. I will take it up this afternoon, but I am not sure that we have actually invited the other political parties to address us.

I take the chairman's caution, but what I wanted to say is that I believe we have done very well. We have received cooperation that we could not have taken for granted when we embarked on this inquiry. It is extraordinarily difficult. We have been confronted with the depth of emotion that still afflicts these experiences of separation. We have been convinced that we are dealing with a contemporary issue because the suffering of people who have suffered these experiences is still going on. You cannot doubt that when you get people in their fifties. I have one particular example which I just cited—it is not alone—of four siblings that were last together in 1958 when the 12-year-old boy was yanked, and I use the word deliberately, out of his classroom in which his siblings were present. Without any opportunity to say goodbye, he was put on an aeroplane and flown away. He met his siblings again in August 1995; from 1958 to 1995. We had these four members of the family standing in front of us, all of them in tears, talking about what it meant for them to be reunited.

Furthermore, we had been told that there is probably not one Aboriginal family in this country that has not been affected in one way or another, not necessarily in this

generation, but suffering the effects in this generation of past separations because it is intergenerational. You have only to destroy the family life of an Aboriginal family back two or three generations ago to find that the new parents of the next generation have never known what it was to develop deep relationships and have never known what it was to have a sound family life, so they cannot impart to their children those family values that give the children a chance.

If you come through to the present generation, I have no doubt whatever that much of the juvenile offending problem is because their parents suffered this absence of parenting skills because of separation. The consequence is a whole myriad of social problems affecting Aboriginal people today. We have the enormous privilege, but daunting challenge, to somehow take hold of this and produce recommendations that, as I say, will be practicable. It is no use being airy-fairy about these things and citing grand ideals. We have to be down to earth, talking about access to records.

It is not enough to say that there is a freedom of information process where you pay \$20 up front and then are expected to know in order to access the information the very information that you are seeking. We have to have proactive government initiatives to help the people who are still looking for family information to get that information. It has to be accompanied by culturally appropriate counselling, both before and after reunions because reunion after 30 years is a terribly daunting process. If it is with a mother, she very often has a feeling of guilt that the family will blame her for letting the children go. Counselling is an ongoing requirement that will not stop when our inquiry findings are presented to the Attorney-General.

We have problems with current welfare processes: are they sufficiently taking into account consultation with Aboriginal communities and families? We have the juvenile justice problem, for which the country is crying out for a remedy. We have such an enormous opportunity here, but we are going to need the support of every government in Australia. At this consultation stage, which concludes within a few days, we are going to require support and submissions from the only remaining government which has not given us that support yet. But, as I say, we are hopeful. We expect to hear from them next week. I am simply sharing with the commission that hope and expectation now.

CHAIR—Thank you, Sir Ronald. I hope when you produce your report and it goes to government that perhaps the implementation of its recommendations is achieved more successfully than the recommendations from the royal commission into deaths in custody have been achieved.

Sir Ronald Wilson—A significant difference is of course the commission continues to operate. The royal commission went out of existence the moment it presented its report. One of our recommendations is likely to be the constitution of a special unit because it is important within the human rights commission to pursue the selling of the recommendations, the monitoring of their implementation, consultation with government

and other participants in the political process.

In that regard, I hope that we might have an opportunity at the next meeting that the commission has to meet with your committee. That could be a significant item on the agenda, because we are hoping that the report will be ready for presentation by about February.

CHAIR—Maybe—I have not consulted my colleagues on this—after your report is presented it would be appropriate for this committee to, perhaps, sponsor a seminar or something of that sort in the parliament so that you can not just give it to the government but come along and brief senators and members and take questions or something of that sort.

Sir Ronald Wilson—We would appreciate that opportunity immensely.

CHAIR—Would that be reasonable?

Mr Sidoti—I would just like to make one comment. I have worked in human rights activities for all of my adult life, and I have worked with indigenous people throughout that period. Nothing that I have done has prepared me for what I have seen and heard during this inquiry. I do not think that non-indigenous Australians have any concept about the impact of these policies now on indigenous people. I do not think we have any concept whatsoever.

CHAIR—I would agree with you, having had some small experience in the field. It is very difficult to move on from that subject in a sense but we need to, and I am conscious that the clock is ticking. To round out the area that we were talking about in terms of children in the broader sense, could I ask you to comment on that child labour issue that is particularly relevant in the regional context.

Mr Sidoti—It is particularly relevant in the regional context, and it is something we identified even before Darwin. It is something that all of our commissions, in one way or another, have an interest in. The question of children's rights would be one of the issues that has a great degree of commonality amongst the five existing commissions and amongst other governments, and child labour is a critical part of that. The second part of course is child sexual exploitation, which is also being addressed by the commissions and by other processes.

The Indian commission has almost completed a major study of child labour in India. It was a great sign, I think, of international cooperation in this area that the Pakistani representatives in Darwin showed a great deal of interest in that because they are about to undertake a similar sort of inquiry in Pakistan and felt there was much that they could learn from the work that the Indian commission has done. We have no—

CHAIR—Sorry to interrupt, but you are absolutely right. I referred earlier to the Pakistan Senate committee on human rights which, in five years of existence, has produced one two-page report on child labour. So they have an awful long way to go, and I am sure they will be keen to pick up things from elsewhere.

Mr Sidoti—It was exactly that experience we had too, and, given the nature of some of the tensions in south Asia, the fact that these sorts of issues can generate cooperation is a very positive sign. One of the things that we would like to see the forum do would be to actually develop joint activities amongst our commissions. We have already identified child labour as being one potential area for this sort of joint activity. I do not know what kind of joint project we can have. It is premature for me to even suggest that. We need to talk about that further, but it is a current issue. It is one which we are working on and will develop.

Mr Fitzpatrick—At the moment we are also negotiating with AusAid about bringing out a number of representatives from the Philippines—some members of parliament, judges, people that work in child welfare and at child advocacy related services both with the government and the non-government sector and a child rights expert from the Philippines Commission on Human Rights. That is a project that we are undertaking with Lawasia, and we hope to bring them out from 16 November to 12 December with a full range of contacts here in Australia.

We are setting up a program where they will be able to meet the various people that work in government and non-government institutions who are dealing with child welfare related issues. A lot of that is dealing with child labour on the streets, in the Philippines in particular. So perhaps if I provide some further information to Margaret, you may be interested in the details of the project.

CHAIR—We would appreciate that. Are you doing any work at all in child poverty and child labour areas? Have you done or do you plan to do any work in terms of the impact of our aid budget on activities, both governmental and non-governmental at all, or is that really something which is outside your ambit?

Mr Sidoti—I do not think it is outside our ambit but, no, we have not done any work in that area. There are a number of issues relating to the effectiveness of Australian aid and that is one of them that at some stage I would like to take up. But at this stage we have not had an opportunity to do so.

Mr HOLLIS—Mr Fitzpatrick, you talked about the group from the Philippines: why are they coming here?

Mr Fitzpatrick—Why are they coming to Australia?

Mr HOLLIS—Yes.

Mr Fitzpatrick—The initial request for assistance in this area emanated from the Philippines itself.

Mr HOLLIS—They are asking for assistance?

Mr Fitzpatrick—Essentially. Again, I could provide the details through Margaret, but essentially it will be a program of activities stretched over a three to four week period. We are talking about nine representatives from the Philippines. Each one of them will probably have a specialist program made out for them particularly tailored to their needs. For instance, the Philippines judicial representatives that will be coming will have a lot to do with our judicial institutions that have involvement with children. The MP related activities may be quite different from the activities of the street worker non-government organisations.

Senator HARRADINE—Under whose umbrella?

Mr Fitzpatrick—The Human Rights Commission and Law Asia will be coming out. It will be an AusAid funded project.

Mr HOLLIS—It would be fascinating to read the Indian report—and what a daunting task to write it. I remember being in India a couple of years back and talking with a leading human rights advocate. I was very impressed and excited by what the learned judge was saying. I felt how across the issue he was until my colleague, Phil Cleary, and I rather unwisely raised the question of child labour. This leading advocate for human rights looked at us and then proceeded to explain how it had to be because of the economics. To reinforce the argument he kept pointing to the beautiful carpet which was on his floor and he talked about these children who had to make these carpets to support their families. He may have been right too—I do not know. But I must say that there was a contrast between that individual issue about child labour and the general concept of human rights and the role of human rights in a society. I do not think he actually thought of that. Maybe he had not even considered the issue of child labour as a human rights issue.

What is more likely is that he perceived it very much as an economic issue. He went to great lengths to explain to us that, unless these children were making carpets for all hours of the day and night, their family would not survive.

Senator HARRADINE—On the same subject, could the commission indicate what action it is taking in relation to the development of a system of child labour within our own country?

Mr Sidoti—Again, we have not dealt with that subject explicitly as such. It has come up a little bit in the course of this ‘children in the legal process’ inquiry. I have particularly had some concerns—as a result of that study done in Victoria—about the role of children in outwork—

Senator HARRADINE—Yes, that is right—outwork.

Mr Sidoti—Which I think raises some of the most difficult issues. Again, if we are to get to the stage through our forum of having some regional investigation of child labour, the role that our commission would play would be to look at what is going on in this country. We would have the other commissions doing their own work on their own countries. Situations like those in that study are, presumably, situations replicated across the country and are not just restricted to Victoria where it was conducted. It raised serious concerns about the ability of children to work and enjoy a normal childhood while being required to contribute to the family income through the outworking systems.

CHAIR—Thank you. I am still conscious of the time. I want to move into the areas of refugees and immigration, but we will adjourn for five minutes to enable us all to get a cup of coffee and stretch our legs.

Short adjournment

[11.35 am]

CHAIR—Could we move on and look at the area of refugees and immigration. You alluded to this earlier on and certainly it was something I had on my list of areas that we should endeavour to cover. Perhaps you would like to give us some thoughts on some of those issues that you have looked at and some of the issues that you feel are of concern.

Mr Sidoti—The refugee convention, as such, does not fall within the jurisdiction of the commission. The jurisdiction the commission has and which I exercise on behalf of the commission relates to the International Covenant on Civil and Political Rights so we have no role—and I think appropriately we have no role—in the actual determination of whether someone qualifies to be a refugee or not. But we do have a role in ensuring that the processes by which that is done, and the law under which it is undertaken, conform with international human rights standards relating particularly to due process and the protection of fundamental rights, for example from arbitrary detention and from cruel and inhumane treatment.

In those ways we have received over the years a number of submissions or complaints from people who are either claiming asylum or alternatively are writing on behalf of those who are claiming asylum. Earlier this year I decided that the best way to approach this question was, so far as possible, at the most general level of a comprehensive examination of the existing policy and practice of detention of those who are unauthorised arrivals; that is, predominantly boat people.

In January this year, the president of the commission accompanied me, with Mr Fitzpatrick, on a visit to the Port Hedland Detention Centre. We also had a look at the base at Curtin where at one stage during the course of 1995 a large number of boat people

were detained, although it has not been necessary to use that facility for that process since then.

We have not yet completed the report on those visits, or arising from those visits. It will deal generally with both the policy of detention of boat arrivals during the course of the processing of their application and particular issues relating to the conditions under which they are detained.

Clearly, however, the commission as a whole—my predecessor and I as Human Rights Commissioner—have had long-standing concerns which we have expressed repeatedly both through our powers to intervene in court cases to argue human rights issues and through submissions that we have made to parliamentary inquiries about the way in which this policy is working; and indeed about the general policy itself.

I have referred already to the necessity that I found earlier this year to commence action in the Federal Court simply to ensure that the existing law was obeyed. The law provides that the Human Rights Commissioner can write confidentially to people held in detention, in any detention facility in Australia, and that letter has to be passed on unopened. The Department of Immigration and Multicultural Affairs declined to pass on correspondence I initiated with a group of people in the Port Hedland centre. The court, not surprisingly, upheld the law as it is stated to be. As I mentioned, as a result of that the government, with the support of the opposition, has introduced legislation to remove that power.

I said in an appearance before the Senate Legal and Constitutional Affairs Legislation Committee late in June that I saw the response to that court decision as being, firstly, unnecessary because if there were legitimate concerns that the government had in relation to the implementation of policy, there were more appropriate ways of addressing those concerns than through legislating to remove the right of the Human Rights Commission to initiate an investigation like that. I know that the government was concerned about third parties abusing the processes of the commission. The thing that I found, I must say, somewhat ironic is that the legislation does not address that issue; what it does address is the removal of the power of the Human Rights Commissioner to investigate. So it misses the point entirely if that concern is the concern motivating it.

I am pleased to say that since the Senate adjourned the debate on the legislation at the end of June, I and officers of the commission have had a number of quite fruitful discussions with the department to try to develop a protocol that addressed the concern; that is, third party abuse of the legislation, rather than taking the approach the legislation takes. I was, in June—and I am even more so now—confident that that sort of an approach can be developed that meets the requirements and the obligations I have under the legislation, without reducing the power that I have and the commission has to investigate.

At various stages during the commission's now almost 10 years of life, its jurisdiction has been widened. The president has mentioned already the appointment of an Indigenous Social Justice Commissioner, the Disability Discrimination Act and the Privacy Act—which was introduced in 1989—so these various initiatives have been taken. But this legislation represents the one and only attempt to reduce the power of the commission in the 10 years that it has been established. I would think that we would explore all available alternatives if there is a problem rather than immediately having the knee-jerk response of saying, 'We will cut your powers,' if a problem arises or a concern arises in the minds of someone in the department or the government about the way in which the legislation is being used. So there is that very specific issue, but clearly the issue arises within the broader context of frequently expressed concerns on the part of the commission about the human rights issues involved in the treatment of boat people. They will be the subject of a comprehensive report which I still hope will be completed in the very near future and be presented to the Attorney-General and the parliament before the adjournment this year.

Senator HARRADINE—On the issue of the MOU relating to repatriation—for example, some are Vietnamese—questions have been raised about the monitoring of what happens to those returnees when sent back to the PRC. Has the commission a relevant interest in that particular matter? These are those who come under the MOU and who are not convention refugees according to the views of the department.

Mr Sidoti—Yes, we have an interest in the matter, but we do not have the capacity ourselves to undertake the monitoring, and I do not know who has. One of the difficulties even the department faces is that these people are being returned to Beihai. We have no Australian mission within reasonable striking distance of Beihai and, even if we did, the capacity of a foreign mission to monitor the human rights situation of individuals is very limited. There have been people in the past who have been repatriated to China to the major cities where we do have missions. I know Foreign Affairs was quite diligent in seeking to follow up those returnees over a period of 12 months but encountered great difficulty in doing so. Eventually, as I understand it, the attempt had to be cut short at the end of the 12-month period because they really were not obtaining particularly valuable information.

Senator HARRADINE—The department of immigration told the Senator Standing Committee on Legal and Constitutional Affairs last night that it was not monitoring the people that were returned. It indicated in respect of one particular case that it had requested UNHCR to undertake some monitoring but had no response to that request. Do you have any contact, discussions or communications with UNHCR over these or other issues?

Mr Sidoti—We have not over that issue. We certainly have had a lot of discussion with the UNHCR representatives here about the onshore detention policies—what is happening at Port Hedland and ways in which the determination process can be undertaken that meet some of the concerns that we have had about the human rights

dimensions of it. But we certainly have not had contact with UNHCR to date about what is happening on return.

Senator HARRADINE—But your dialogue with UNHCR over human rights issues generally, particularly over human rights issues arising from their particular programs that are developed through UNHCR: do you have any discussions with it—

Mr Sidoti—We have not, no.

Senator HARRADINE—Or with the officers of the department here in relation thereto?

Mr Sidoti—Again, only really in relation to what is happening within Australia itself, not in relation to what happens outside Australia.

Senator HARRADINE—Do you see your function for regional commissions?

Mr Sidoti—I think it is one issue that we could take up through that forum, yes.

CHAIR—Certainly this subcommittee has had submissions put to it by groups—particularly people who are concerned about the Vietnamese refugees being returned—and complaints have been made. They are not substantiated as such, but they have certainly been made about UNHCR actually not carrying out its charter and the fact that people going back to Vietnam are not being appropriately treated and so on. This committee may choose to pursue some of those issues obviously, but if in your discussions with UNHCR on those sorts of matters you become aware of information that you feel able to pass on, we would actually be quite interested in that. Potentially, it is an area that could—I am not saying will, but certainly could—be on my list of inquiries. Obviously, if we have got some substantive information before we make those sorts of decisions, that would help this committee considerably.

I would like to move on to an area that was touched on by one of my colleagues earlier—that is, the subject of, if you like, human rights education in this country. One of the recent phenomena, of course, has been that there has been considerable public attention over recent weeks drawn to comments made in the House by a particular member, but it has also occurred with other members of recent times. These were comments associated with concerns about political correctness and challenging what has been a generally accepted view in the human rights area, I think, by both sides of politics for some time. We have had proposals for the abolition of ATSIC, suggestions that we should have the end of multiculturalism, that we should cut Asian immigration and even that we repudiate the UN human rights treaties.

Is there a message for the commission, quite apart from the parliament, the government or anybody else, about the need for greater public education on human rights

in some of those developments, given that there appears to be significant support—I am not saying general support, but certainly significant support—for some of those views as expressed through the popular media?

Sir Ronald Wilson—Certainly, each commissioner has an educational component in their work. The one that immediately came to mind as you spoke is the work of the Racial Discrimination Commissioner—with the recent legislation on racial hatred and the need for quite deliberate and extensive programs of education for that legislation to convey the message as to what it means and how remedies can be pursued. It is difficult to measure the degree of success for a thing like that. Over time one can see perhaps basic change in attitudes, but certainly it is difficult to see it in the short term.

So every commissioner has their particular challenge to educate. The Disability Discrimination Commissioner is constantly talking about action plans and encouraging the development of standards that will make particular complaints less important and significant because the general framework of understanding is being developed. That is the objective, I think, of all the commissioners.

The Sex Discrimination Commissioner, likewise, has undertaken specific programs that have been very successful, such as workshops in large industrial workplaces on sexual harassment. The industries themselves have been coming to the commission asking it to arrange these workshops and conduct them, because they recognise that they are vulnerable to the conduct of their employees if they do not take appropriate steps to educate and limit the degree of abuse of human rights in their establishment. It is one of the amorphous challenges that are constantly there and affected, of course, by resources.

CHAIR—I was about to say that, presumably, resources are also a factor there in how widespread you can be.

Sir Ronald Wilson—Absolutely.

CHAIR—That really brings one to the question of funding of the commission. I was going to ask, for example, how the commission's activities had been affected by the current budget and the implications for your work in terms of the changes in the budget. Perhaps you would like to comment on that aspect as well.

Sir Ronald Wilson—As long as Chris supplements my comment, I will go first. It has been a very real issue for the last six months at least with the commission. Fortunately, we have an executive director who is skilled in the area of industrial relations and I must say that I think my colleagues and I are very appreciative of her ability to prune staff without creating undue industrial controversy. But it is a very real issue and we have for some time had a policy of limiting recruitment strongly and really examining, when somebody leaves a position, whether it must be filled and, when someone is on higher duties, whether there is some response there. We have been able to achieve significant

pruning. I am open to correction but my understanding is that we have suffered a general cut of about 15 per cent in the current year which, in our budget, is quite significant.

We also have a figure of \$1.5 million hanging over us like a sort of Damocles. This was to have been taken from us early in the financial year in order to mark the move of hearings into human rights complaints that could not be conciliated to a human rights division of the Federal Court. The figure of \$1.5 million was one we contest very vigorously as being far more, significantly more, than what we are in fact spending on our hearing function.

Notwithstanding that, we now face the prospect of losing an additional \$1.5 million from the beginning of the 1997-98 year. Hopefully, it will coincide with some diminution in our hearing function, and that means that we can prune the legal section of some of its staff. On the other hand, the new legislation that is projected will give the commissioners a significant role in public advocacy through the human rights division on matters of national interest and significance in the interpretation of our legislation—they go beyond the individual case.

That is going to be an area that will be quite extensive. My present view is that, really, we would not have any fat arising from the transfer of a hearing function to the Federal Court. Accepting the 15 per cent cut demonstrates the need for efficiency and continuing improvements in efficiency, I am hoping that we might somehow be able to retain that \$1.5 million in order to finance our expanded responsibilities under the new legislation. But much will depend on when that legislation gets through the parliament. Our present understanding is that, whilst it will hopefully be introduced in the present session, it will not be passed until the session in the new year. I do know whether Chris wants to add to that.

Mr Sidoti—Perhaps I should put things in a broader context, if I may. The first thing that I would say is that, leaving aside those parts of government activity that have been quarantined, such as the defence area, the commission has certainly not been singled out for special treatment so far as cuts are concerned. I think it is important for that actually to be said. The cuts that we are taking—

CHAIR—In fact you are not taking as heavy a cut as some other areas.

Mr Sidoti—I was about to say that. Apart from the quarantined areas—

CHAIR—The reconciliation council has taken a much more severe cut.

Mr Sidoti—Apart from the quarantined areas, we are, in fact, at the lower range of government spending cuts and we recognise that. I, and the commission as a whole, certainly see that as an indicator of continuing bipartisan support for the role and function of the commission. We are certainly not commenting in a critical way on that. But the

context in which the cuts are occurring is a context in which our complaint load has already been steadily increasing over a number of years, and particularly over the last two years, so that the demands in that area of our work have already been going up while there has been at the same time a series of so-called efficiency dividends resulting in cuts in real terms in our budget. So, it has been a pattern now for some years that the workload has gone up whereas in real terms the funds have gone down.

Over the last 18 months, an immediate result of that has been the transfer of resources internally from our policy work to our complaint handling work. What that means in on the ground terms is that we are having to put more of our resources into addressing human rights problems after the event rather than into some of the preventative strategies, the education strategies, legal development and policy change that will prevent the abuses or violations occurring in the first place.

Clearly, that is not desirable either in the short or the long term. In the last 12 months, it certainly has resulted in us meeting our complaint load better than we had done in the preceding two years. But I think it is very troubling if we have to continue that practice. The prospects are that, as these cuts bite more deeply now, we will have to, again, divert more resources into the complaint handling area unless we can find some ways to generate savings. Yet because we have been taking between one and two per cent cut in real terms now for the better part of 10 years, there is a limit to the capacity to be more efficient. So far as the commission is concerned, I think we have gone beyond that limit such that the cuts are now having an impact upon program and service delivery.

When we actually balance up areas of activity that are discontinuing over the next six to 12 months, such as this inquiry into the separation of Aboriginal children, when we look at the transfer of the function to the Federal Court, it seems to us on our most detailed work that the effective cut to us in real terms over the two-year period is 10 per cent in real terms. That does not allow in any way for the additional work that will be continuing or growing. There will be a growing complaint load and, as the president says, we will be, of necessity, playing a role in monitoring the recommendations of our separation inquiry. There will be a need to play this greater advocacy role because of the transfer of function to the Federal Court. Even on our existing activities, our detailed estimate is a 10 per cent cut in real terms. As the president indicates, we are facing significant problems, particularly in the next financial year, if this additional \$1.5 million foreshadowed cut, in fact, takes effect.

Sir Ronald Wilson—In supplementing that, I should just mention, if I may, that the national inquiry was given \$1.5 million and instructed, in the terms of reference, to consult widely throughout the Australian community, including indigenous people's governments and community. I saw the previous government to acquaint them with the fact that that was not nearly enough. When you reflect on the cost of much more contained royal commissions—such as the Hindmarsh Bridge royal commission or some of the commissions elsewhere in the country that seem to run into \$2 and \$3 million at the

drop of a hat—\$1.5 million assumed a very modest character.

But, with the change of government and the emphasis on budget restrictions, the commission reviewed its consultation process and decided to do its best to live within its present means. To do that, we have curtailed the consultation process significantly, possibly by contemplating a recommendation that the process of telling stories, as an important part of a healing process, might continue after the report under other specific government provision that there be a simple structure created whereby this can be done. We have done that in order to keep faith with indigenous peoples who are expected to be able to tell their stories to the commission but who look like missing out during the time of the commission.

In fact, we have access to something over 1,500 stories, and we have continued to hear stories as and where we can. But, undoubtedly, the consultation process would have been more extensive had we had supplementary funding. The final thing in that regard is that the commission accepted the inquiry as a corporate challenge to it and has not relied only on the \$1.5 million accorded to it. That has already been spent, and the estimated contribution from the commission in its ordinary processes—the time of commissioners and seconding of staff from within the commission—is well over \$1 million. So that has been a very significant effort which has meant some slowing down of other initiatives which we hope to make up for when we can give our undivided attention to those issues after the inquiry.

CHAIR—Senator Harradine, unfortunately, has to leave us. One of the areas that has, perhaps, been quite controversial of recent years in your activities, and generally in the community of Australia, has been the subject of sexuality discrimination. Perhaps you could give us a brief overview of where that is, where it is going and what you may be doing in that area.

Sir Ronald Wilson—I had my first experience of being on a soapbox in relation to this issue when I appeared at a rally last December on the steps of Parliament House in Perth to deplore the action of the government in Western Australia in declining to accept the recommendation of its Equal Opportunity Commission that legislation be enacted to outlaw discrimination on the basis of sexual orientation.

I had a second experience of this recently in relation to the projected cuts in legal aid. I must say I warm to it. I have learnt that if you are going to—it has nothing to do with that derogatory term of ‘rabbleroising’—participate in a protest rally you have to begin by shouting from the word go. It is rather captivating. I never thought I would be able to accept the challenge, but—

CHAIR—Sir Ronald, you and I served together on the Council for Aboriginal Reconciliation for three years and I have never had any doubt that that is a field in which you would excel.

Sir Ronald Wilson—It is a very live issue and not only in Tasmania and Western Australia, which are the only two states that continue to decline to act to bring themselves into line with the other states. Only this week an opposition bill was defeated by the government on the specious ground, if I may say so with respect, that the community has not shown a desire for it, which seems like an abandonment of leadership in the first place. But that is contrary to the facts because the Equal Opportunity Commissioner published a discussion paper and it was open for discussion for three months last year.

There were approximately 400 responses of which more than 360 favoured the recommendation. There were 32 responses that were negative. The then Attorney-General justified the decision to defer any action by saying that the matter was too lively a subject of community controversy. I found that quite ludicrous, if I may say so with respect, when more than 90 per cent favoured change. I must say that the political process distresses me at times when governments fail to exercise leadership where there is a clear responsibility to exercise leadership, but it is even worse when they seek to shelter behind a non-existent community view.

The other thing, of course, was that in even those states that have such anti-discrimination law, it is a very real problem still. People with a different sexual orientation to the majority are still victimised in many significant ways, notwithstanding the presence of the legislation.

Mr Sidoti—We recently made a submission to the Senate Legal and Constitutional References Committee which is looking at the Sexuality Discrimination Bill which Senator Spindler introduced, I think late last year or earlier this year. It may be helpful for this committee for us to provide you with a copy of that submission.

CHAIR—Have we got that? I think we have got that, yes.

Mr Sidoti—Have you? Okay. I think that that submission basically expresses the view that we have on the subject. To encapsulate that in a sentence or two: as the president has already mentioned, there is no legislative protection in two jurisdictions, Tasmania and Western Australia. In fact, in Tasmania, as I am sure is quite notorious, criminalisation remains on the statute books down there and the High Court will soon decide what effect that has.

But the broader concern that I feel is that there is a need, in this as in other areas of human rights, to ensure proper, consistent, national, minimum standards. I am not talking here necessarily about the Commonwealth taking over the role of the states and territories—although that may be necessary if the states or territories are persistent violators of human rights; I do not retract from such a position at all—but certainly there is a need for proper national standards. Particularly in this area where there are two jurisdictions that are not applying even local standards, the need for national standards is even greater.

We have seen in relation to sex, race and disability discrimination the enactment of that kind of proper national standard and we are firmly of the view that a similar form of enactment or protection in relation to sexual orientation is also required to supplement gaps in the states, to ensure that there is that safety net for people where state laws either do not exist, are not comprehensive enough or are in some way or another somewhat strange in the way in which they approach this subject.

So our submission says that and details the experience we have had in implementing the existing, fairly weak federal laws. It is called dealing with discrimination only on the grounds of sexual preference in employment and only on the basis of conciliation and possible reporting. So the existing federal protection is very weak and the proper provision of a national standard is necessary.

Ms WORTH—I have just one question, which is sort of getting off where we have been for a while. I have not had the extensive overseas travel that my colleague Mr Hollis has—

Mr HOLLIS—Don't bring that into it. This is human rights, not travel—

CHAIR—He has been here longer than you, that is why.

Ms WORTH—That is right. But in some countries, two countries in particular that I have visited, one subject has been raised with me and that is that women's rights are human rights. In Australia I do not think we are too badly off but because of cultures in some parts of the world I think women's human rights are severely impinged on. Have you looked at this area at all or have any of the countries you have been working with? Do you see any progress in this area? That would be a better way of putting it.

Sir Ronald Wilson—Your words bring to mind the question of genital mutilation of children particularly, under the influence of a particular culture. I do not think that the commission has taken a stand on the issue. But I recognise its importance and I am perhaps wrongly inclined towards the view that cultures, important though they are, are not sacrosanct when it comes to the preservation of the unity of the nation and the preservation and prevalence of Australian standards of respect for human rights. I anticipate that it may become necessary at some stage—perhaps the sooner the better—for negotiation with a view to meeting that particular situation. I am not sure whether there are other examples, but that is the one that comes to mind.

Mr Sidoti—Perhaps if I can refer to the work that we are doing—again through national institutions in other countries. Many of the countries have their own particular cultural issues relating to the status of women in the same way as we do. I have been pleased that, in establishing the law for most of these commissions, there is a provision that requires the appointment of women to senior positions as commissioners within the commissions. That certainly is the case in the proposed law for Papua New Guinea, for

example. It also will be the case in the proposed law for Pakistan which, as the Chairman said earlier today, is a case where there are particular issues relating to the position of women. So those questions are being addressed through our regional associations and I think will continue to be addressed.

There is a valuable initiative, though, that supplements the work of our commission in the region and that the president has referred to. The Sex Discrimination Commissioner, through the Asia Australia Institute, provides an annual allocation to bring to Australia a woman in a leadership position in the Asia-Pacific area to meet with women and women's organisations in Australia to see how they are operating and to have some degree of exchange about how to approach some of these issues about the advancement of women within their own cultures. The first person who came to Australia earlier this year under that program is a woman who was a deputy minister in Malaysia. I was unable to meet her when she was here, but certainly she impressed greatly those who did meet her. At the moment, the Sex Discrimination Commissioner is looking at possible nominees for the next fellowship under this program early next year.

CHAIR—I have got a question for you, Sir Ronald.

Sir Ronald Wilson—Do not do it with such relish!

CHAIR—As we said earlier, you are coming to the end of your time as the President. I wondered if you would perhaps like to give us from your obviously vast experience—not only in this particular job, but in related areas over many years—your views? What would you like to see as the direction for the commission in the future? Would you see it continuing as it is or would you see some significant changes? You already mentioned the appointment, perhaps, of a charge commissioner. What in particular would you see is needed? I know you will say money, but what else is needed to enhance the work of the commission?

Sir Ronald Wilson—I think the commission has been fortunate in having been given the scope that it has to work for the promotion and protection of human rights in Australia. I should qualify my assessment, perhaps, by a confession that I am, by nature, an optimist. I believe that there is greater mileage in acknowledging advances and encouraging people to do better rather than banging the doom and gloom drum. We have an odd structure with a collegiate body—which I think is important—but with discrete statutory commissioners who have their own statute and their own statutory authorities. In a sense, they are in competition for scarce resources in order to do the best possible job that they can. We have matured a lot. I have to say this was an increasing anxiety in the early years, but I am pleased and proud to say that I think the commission is operating at the present time with a degree of maturity in its relationships between the commissioners and with the assistance of an executive director that holds the trust of the commissioners and who can often steer a way through when there might be sensitive issues which could lead to a degree of competition between the commissioners.

I think now my assessment would be that I am certainly reconciled to the structure. I would not want to see us abandon or have the government abandon the discrete commissioner role. There is an enormous advantage in having, for example, a sex discrimination commissioner or a disability discrimination commissioner to break through the complacency of the Australian people in their particular area. To go back to the original Human Rights Commission under Dame Roma Mitchell, where you had a number of generalist commissioners, would lack that impact.

The work, for example, that Elizabeth Hastings has been doing as Disability Commissioner and the relationships that she has established with disability groups all over Australia would be a sheer impossibility if she did not have a dedicated role. So I am a supporter of the current establishment notwithstanding its perhaps curious character in the respects I have mentioned.

One of the amendments made a year or two ago required the commission to demonstrate a collegiality. It was a shame really and an embarrassment that it was considered necessary to incorporate that in legislation. But I believe at present it is a very strongly knit commission that does demonstrate that collegiality and, as I said earlier, the way in which it presents human rights as an integrated whole is of fundamental importance.

My anxiety for the future is simply the intransigence of racism in the Australian community and its effects in relation to newer Australians, if I can use that term. I received information just last week of people within the church who refused to be married by a black clergyman. I also heard of an instance when a black clergyman had counselled a family and loyally supported a person who was terminally ill. When the time came for that person to die, the clergyman took it for granted that he would cap his relationship with the person—the deceased—by leading the funeral service. He was peremptorily told he was not wanted. The family did not want a black clergyman presiding at the funeral.

Now that shocked me, but you could go to almost any level of Australian life and find that there is still an endemic racism. So when I make public announcements of how Australia is basically a fair society and getting fairer yet and all these optimistic remarks, I am conscious at the same time that there is a need to undergird those remarks, and I usually try to with the challenge of overcoming complacency. Of course, the indigenous peoples are an example of continuing racism which, I believe, must really be brought home to the consciousness of all Australians.

This is not to downplay the work that Chris does in the general human rights area or that the other commissioners do in their area. I have already referred to disability and the excitement I feel over the progress that has been made in such a short time in bringing the importance of treating people with disabilities as Australians with equal rights to those of the majority. That is my general summation.

CHAIR—Thank you very much. I am sure I speak on behalf of the whole committee in saying that we are full of admiration for the way you have held your position. We would certainly wish you very well in the future and thank you for what you have done for your country.

Sir Ronald Wilson—Thank you very much.

CHAIR—Mr Sidoti, would you want to make any further remarks or cover any areas we have forgotten to traverse?

Mr Sidoti—After the president's closing comments, I feel very reluctant to do so. But, without undercutting them in any way, I would like to be very practical with one other suggestion for the committee, if I may. Obviously, we were very pleased to see last week the announcement by the Attorney-General that the legislation to overturn the Teoh decision will not be proceeding. It is very pleasing that that is the case and I understand that the opposition is also supporting that position. It marks, I think, a very significant turnaround in approaches to the effects of international human rights law decision making in the bureaucracy in Australia. Clearly, the Teoh decision of the High Court has not brought administrative decision making to a halt or seen the end of civilisation as we know it and I am glad that this decision has now been taken.

In the light of that, though, it is also time for a broader look at Australia's commitments under some of these international human rights treaties. With most of the treaties, at the time they were ratified by Australia, reservations were placed on the ratifications and many of the ratifications now are quite old. Some cases—say, the ICCPR and the International Covenant on Economic, Social and Cultural Rights—are going back 15 to 20 years.

I welcome very much the more open approach to accession to treaties that the government has announced and certainly see that as being a very important way of ensuring stronger political and community commitment to treaties. I would like to suggest that, as part of that more open approach, this subcommittee might have a look at some of our existing reservations under the international human rights treaties to determine whether they remain relevant, remain necessary from the perspective of the Australian government and community or whether we can extend our commitments to supporting the treaties by removing or modifying some of those reservations to undertake a broader coverage of the treaties within Australia. So it is a very practical thing and is not as inspiring, I must say, as the president's comments. It is just perhaps another suggestion that the subcommittee may like to take on at some stage during its life.

CHAIR—Thank you. We will certainly take on board that suggestion and look at it very seriously. I have not been on this committee for very long. To get on this committee, you have to be on the Joint Standing Committee for Foreign Affairs, Defence and Trade. Although it is the biggest committee, it is one where membership is most

eagerly sought after: getting on the committee is almost as hard as winning a marginal seat in an election.

Mr HOLLIS—Try being any opposition member and getting on it—that is worse.

CHAIR—I would remind the gentleman from Throsby that, for six years I was, and I did not get on. In fact, under the previous whip's arrangements, people in their first and second terms were virtually told that they could not go on. Having said all that, I am now on and I am obviously pleased to be chair of this subcommittee. The point that I want to make is that I understand there has been a good relationship between your organisation and this committee in the past. I very much look forward to that relationship and hope we meet frequently and that it is just as good and productive in the future.

It may be of interest to you to know that, whilst in the past we have undertaken inquiries, for example, thoroughly reviewing the reports that came out of DFAT—and we have had lengthy and substantial all-embracing reports—we have effectively made the decision that we will be much more targeted in our future inquiries rather than trying to be all-embracing. We will bite off more manageable chunks of regions or specific issues. We look forward to having regular exchange with you in the future because I think that is very important. If at any time there are things which the committee can help you with, then we would always be more than happy to have you approach us on any matter you think appropriate.

Mr Sidoti—It is great to have friends at court.

CHAIR—Well, we may not always agree, but we can talk.

Sir Ronald Wilson—Of course, friends don't always agree.

CHAIR—Unless there are any other questions from my colleagues, we will wind-up the session. Let me just say that I think you are doing an outstanding job. I have talked to the president, but it also applies to everybody else and your staff. I would like to thank you very much for your attendance here today. If there are any matters on which we might want more information when we go through the transcript and so on the secretary, Margaret Swieringa, will in fact write and we will send you a copy of the transcript of your evidence to which you may make corrections of grammar and so on.

I would like to thank the *Hansard* staff and the committee staff and others who have been involved from the parliament—the other staff in the support arrangements for this morning. As usual, they do an outstanding job. I particularly thank the *Hansard* staff, as I know they will have the transcript on my desk on Monday morning, and that will be wonderful. All that remains for me to say is that I now formally adjourn the hearing until Wednesday, 25 September 1996 at 4.00 p.m., which is when we have our next meeting.

Resolved (on motion by Ms Worth):

That, pursuant to the power conferred by paragraph 16 of the committee's resolution of appointment, this subcommittee authorises publication of the evidence, including publication on the parliament database, given before it at public hearing this day.

Subcommittee adjourned at 12.27 p.m.