COMMONWEALTH OF AUSTRALIA

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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Progress towards national reconciliation

MONDAY, 19 MAY 2003

MELBOURNE

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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Monday, 19 May 2003

Members: Senator Bolkus *(Chair)*, Senator Payne *(Deputy Chair)*, Senators Greig, Kirk, Scullion and Stephens

Substitute members: Senator Crossin for Senator Stephens

Participating members: Senators Abetz, Brandis, Brown, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Knowles, Lees, Lightfoot, Ludwig, Mason, McGauran, Murphy, Nettle, Sherry, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Bolkus, Crossin, Kirk and Payne

Terms of reference for the inquiry:

To inquire into and report on:

1. Progress towards national reconciliation, including an examination of the adequacy and effectiveness of the Commonwealth Government's response to, and implementation of, the recommendations contained in the following documents:
    (a) Reconciliation: Australia's Challenge: Final Report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament;
    (b) the Council for Aboriginal Reconciliation's Roadmap for Reconciliation and the associated National Strategies to Advance Reconciliation; and
    (c) the Aboriginal and Torres Strait Islander Social Justice Commissioner's social justice reports in 2000 and 2001 relating to reconciliation.
2. That, in examining this matter, the committee have regard to the following:
    (a) whether processes have been developed to enable and require government agencies to review their policies and programs against the documents referred to above;
    (b) effective ways of implementing the recommendations of the documents referred to above, including an examination of funding arrangements;
    (c) the adequacy and effectiveness of any targets, benchmarks, monitoring and evaluation mechanisms that have been put in place to address Indigenous disadvantage and promote reconciliation, with particular reference to the consistency of these responses with the documents referred to above; and
    (d) the consistency of the Government's responses to the recommendations contained in the documents referred to above with the needs and aspirations of Indigenous Australians as Australian citizens and First Nation Peoples.

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Committee met at 9.02 a.m.

LEWIS, Mr Peter Colwyn, National Director, Covenanting, National Assembly of the Uniting Church in Australia

ROSS, Mr Vincent Trevor, State Director, Uniting Aboriginal and Islander Christian Congress in Victoria

CHAIR—Welcome to this public hearing of the Senate Legal and Constitutional References Committee's inquiry into progress towards national reconciliation. The terms of reference include examining the adequacy and effectiveness of the Commonwealth government's response to the recommendations of the Council for Aboriginal Reconciliation and the social justice reports of the ATSI commissioner. A particular area of interest to the committee is term of reference 2(c), which concerns the adequacy and effectiveness of any targets, benchmarks, monitoring and evaluation mechanisms to address Indigenous disadvantage and promote reconciliation. We have received some 80 submissions for the inquiry, all of which have been authorised for publication and are available on our web site. The current reporting date is 11 August 2003. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers that all evidence be given in public. However, under the Senate's resolutions, witnesses do have the right to request to be heard in private session. In that case, we ask you give us some notice. Would you like to amend or alter your written submission?

Mr Lewis—We have no particular alterations to make, although I will put some new material in the address I will make. If the committee approves, I will speak for a couple of minutes, then Vince will speak.

CHAIR—I was just about to invite either or both of you to do so. Please start.

Mr Lewis—Thank you very much. The position of our church is that we see reconciliation as a foundational issue for the nation, and it needs to move beyond being solely an educational thrust towards dealing with the unfinished business of reconciliation. We believe that a nation built on terra nullius is a nation built on sand. If we do not deal with the foundational issues, we will always be a nation suffering from what we would call arrested development—a nation without maturity. Our concern is that the federal government, through its refusal to initiate a process of negotiation on what is known as a treaty, as suggested in the Council for Aboriginal Reconciliation's draft legislation, is preventing the nation from dealing with the fundamental issues at the heart and soul of this nation. A legislated process of negotiation, which provides the Indigenous nation with a place at the table, has the potential to unite the country. Until then, the divisions between our peoples will remain.

The colonial shadow which these unresolved issues cast over the Indigenous peoples in this land causes the disadvantages from which they suffer. We need to address the causes, not just treat the symptoms. We need to make this country safe for Indigenous peoples. While we are still facing these national failings, the federal government is proposing to limit the ability of HREOC to participate in courts and is also—to our greater concern—proposing to remove the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner. We need this position as a

full-time position to, in particular, keep the country honest on what it is doing regarding relationships between Indigenous and non-Indigenous people and regarding reconciliation broadly. While the federal government acknowledges in its version of the Declaration for Reconciliation that these lands were taken without treaty or consent, it has not suggested any way of redressing this fundamental injustice. We therefore call on the government to take our nation's journey towards reconciliation seriously and to begin to address the unfinished business, particularly by adopting CAR's six recommendations. We believe that, without this, the current state of injustice and disadvantage will be perpetuated.

Mr Ross—Thanks for the opportunity to be here today. I thought about writing a lot of stuff down, but reconciliation is a very important issue in this country of ours and for Indigenous people, and I want to talk to you from my heart today. We find it very difficult to approach some of these subjects because of the personal experiences that we have faced. However, I do not want you to misunderstand why I am here today and am endorsing this submission. My work is with the congress, particularly in Victoria and as a national organisation. We have moved forward in a way that we might address the real needs and issues that face our people in Australia. I want to share with you today some of the hopes and dreams that Indigenous people have. We talk about self-determination, self-management and self-control, but somehow it is very difficult for us to get to that point. One of the things that has encouraged me is the Uniting Church's stance in working in partnership with Indigenous peoples. That has been a very positive move, allowing Indigenous people to realise the potential that they have for self-management.

The Indigenous question is not going to go away. The Indigenous question is going to be with us for a long time. As I see it, Indigenous people are now, for want of a better way of saying it, learning the Wadjala way—or the non-Indigenous way—and becoming more educated about how we should approach it and how we should try and sit together around the camp fire, as it were, to address the real issues. As we go further down the track, the government needs to take a really positive step and say to the Indigenous people in this land, 'We're dead serious about this commitment. We want to see the changes. We want to empower the people,' because many Indigenous people have been disempowered by the system that we have grown up under—the welfare system. That has paralysed the minds of our people, stopping us going forward. As an Indigenous person, I believe—and I think I can speak for a lot of others—that this nation is not going to reach its full potential until such time as we get to the root of it all and cure the cause rather than the effect.

I urge the government and people throughout this land of ours to take hold of the possibilities for building this land. It has been said that there is nothing much Indigenous people can do for or offer this land, but I dispute that. We have contributed a tremendous amount to this nation of ours, and we want to keep doing that through this reconciliation process that allows us, as a nation, to walk together, to share together and to free our people from the bondage that I believe they are in at this point in time. Some of the work that I am involved in is certainly full-on regarding reconciliation and taking it more seriously so that we can find ways to walk together and sit and listen to each other. There are a lot of negatives in our communities—a lot of the things happening out there do not excite me even for my own people. But there are a lot of positives, and there are some great moves to bring about change and put in place the foundation stones that Indigenous people can stand on and from which we can make a worthwhile contribution to this nation of ours. I urge you, as people I believe have understanding and are committed to seeing changes and things happen in our nation, to build on the things that have

already been put in place. Stuff has been written. There is material that I think says very clearly where Indigenous people would like to see things head. I urge you to continue the journey with us but also, if you are in a position where you can make policy or use the influence you have, to consider that in the light of the information before you, and we too might continue this journey.

CHAIR—Thank you. In your submission, you say:

True reconciliation can only be based on purging the demonic spirit of terra nullius from our nation.

The point I draw from that is that, despite strong support for reconciliation, there is enormous resistance to some of the symbolic issues that we are concerned about. For instance, I remember chairing a Senate committee inquiry into a treaty some 20 years ago, and a constitutional change and preamble are enormously difficult things to achieve. If an apology is given now, will it be one dragged out of the system or will it be as meaningful as it should be? Going on, you say that we must not confuse or marginalise reconciliation with the question of service provision. By concentrating on the symbols agenda to the extent that your submission does, are we not in danger of, for instance, creating another stolen generation, in that the kids in the communities are the ones dying because of health problems and substance abuse? How do we balance this agenda? How do we concentrate on trying to repair some of that damage of the past, recognising that the symbols agenda, although necessary, is one that is going to be very hard to achieve in the short term?

Mr Lewis—We believe that the two are integrated. I think the key issue is to make the country safe for Indigenous people. That means having the ability for all the people to go on a journey of understanding and of progressing our understanding, particularly as a nation. The issues that affect Indigenous people are the effects of colonisation, broadly speaking. Without treating the cause—without trying to deal with the fundamental issues—those effects will still occur. While the service provision may be inadequate, it has been going on, and yet the figures for Indigenous people have not changed. In fact, looking at the figures for Indigenous health and comparing, for example, the life expectancy of Indigenous people in cities and in remote areas, the key issue is not that of remoteness but of being Indigenous. This suggests that being Indigenous is unhealthy, and that is a very sorry state of affairs. I think we need to approach it in a three-dimensional way, not a one-dimensional way.

All citizens in Australia have the right to service provision, but repairing the damage that has been done and continues to be done can only be done with an integrated approach. I suggest to the committee that a negotiated process towards an agreement, a set of agreements or even simply local agreements would have a dramatic impact on Indigenous people and would affect their ability to live in this colonised country. It is more than symbolic; it is fundamental and would have legal and political implications.

Senator BOLKUS—Regarding the current processes, we have COAG with their framework and we have Reconciliation Australia. You say to us that the process should go beyond information gathering. Can you elaborate on that and, in answering the question, give us some idea of what responsibility the federal government should be assuming at the moment that maybe it is not?

Mr Lewis—As for the critical issues, in this area there needs to be a balance between capacity building and addressing issues of governance, and a balance between rights and responsibilities. In a sense, you need to tackle all those issues at the same time. But one of the capacity issues is that of the inherent racism of the country, both in terms of its political structures and in terms of the way non-Indigenous people behave, broadly speaking, towards Indigenous people. A lot of it is very subconscious, and people would not necessarily be aware of it. Developing the capacity of non-Indigenous people to be able to be accepting of, welcoming and hospitable to Indigenous people is an important part of that and would create a much safer environment for Indigenous people.

In terms of what the government should be addressing, as we say in our submission, there are certain issues around human rights protection, such as looking at giving the Racial Discrimination Act greater strength. There needs to be a cultural change in the mainstream provision of services because, while a lot of Indigenous people access not only Indigenous controlled service provision but also broad service provision, they have difficulty in doing so because of the attitudes that come towards them and the lack of cultural understanding. A lot needs to be done in those areas.

I was at a forum which the church is a partner in running in Adelaide with secondary students. The students were surprised to hear the sorts of things that were being discussed, such as how the land was settled or invaded—depending on people's perspective—the issues of child removal and the setting up of missions. All these issues were great surprises to these senior students. So there is still an educational issue. I realise that I said before that it needs to go beyond education, but I do not think we are even dealing with the educational side appropriately. It needs a concerted effort.

The way that the COAG process appears to be going is in information gathering, which is quite useful, but you need to be able to interpret and understand the information gathered and also look at how we can improve these things. An example of what the Uniting Church is doing to try to improve things is our involvement in the Indigenous Employment Program. One has been established in South Australia with the South Australian synod for a couple of years now, and the Victorian synod is about to begin its version of that. But the issue that we are actually tackling is not just to find places for Indigenous people to be in the church; we actually have to change those work environments so that Indigenous people feel welcomed and are mentored. We also need to ensure that it is something that will stay. That is part of a response. I realise that that program is an initiative of the federal government, and it is a positive one, but it needs to be seen more broadly and similar processes need to be looked into.

Senator PAYNE—Mr Lewis, you may have started to answer my first question, which was: what aspects of the work of the Uniting Church can you point to in involvement with Indigenous Australia that address some of the concerns that you have raised this morning and that address some of the broad concerns raised in the submissions for this hearing? You just talked about your involvement in the Indigenous Employment Program. Are there other examples that you can point to from the Uniting Church's perspective?

Mr Lewis—Yes. The way the Uniting Church is set up is that we have an Indigenous arm of the church called the Uniting Aboriginal and Islander Christian Congress, which Vince represents. He is also the deputy chair of the national body of that organisation. The congress, as

we refer to it, provides pastoral care, community development and a variety of programs for Indigenous people. The agency that I represent within the assembly—the covenanting agency—is focused on reconciliation issues. We look at how to strengthen the connections between the non-Indigenous and the Indigenous parts of the church. In a sense, that is how we are trying to develop the capacity within the non-Indigenous side of the church to relate to Indigenous people. As I say, we have had that growing involvement in the Indigenous Employment Program, but all the ministry to Indigenous people goes through our Indigenous controlled Uniting Aboriginal and Islander Christian Congress.

Senator PAYNE—In terms of the committee's terms of reference, I think your primary suggestion is that the COAG process needs to have an implementation role to ensure that, whilst the structures might be in place, it is not just reporting on implementation but actually pushing it. How would that best be done? Who would be responsible in that process for ensuring that targets were met and, if they were not met, responding as to why not, and so on?

Mr Lewis—Determining the best way to try and deliver those policies probably needs cooperation between COAG and various Indigenous organisations, including ATSIC. The issue for us is that, for that implementation to be successful, the status of Indigenous people needs to be more broadly recognised. Perhaps thought needs to be put into COAG including Indigenous representation when it deals with Indigenous issues. I have not really thought through the government's issues with that or the complexity of making those arrangements but, without Indigenous involvement, it is very unlikely that the process will be able to take a proactive role.

Senator PAYNE—In the summary of your recommendations to the committee, you talk about establishing a consultative body consisting of equal numbers of Indigenous and non-Indigenous leaders which would create a legislated framework agreement, which you refer to in parentheses as a treaty. In many ways, my question flows from Senator Bolkus's comment about his experience of two decades ago and how far, in public terms at least, we have moved in all of this. The 10 years of council activities certainly brought Australia a long way but, in reading a lot of the submissions for this inquiry and listening to a lot of the evidence, I wonder whether we are still in a position to even contemplate going down the road, even if you do not agree with the treaty or any other formulation of that, given what appears to me to be a diminution in communication and in the promotion and encouragement of thinking about reconciliation. Do you have a view on that?

Mr Lewis—Our view is that there needed to be a continuation of the council in terms of what it was trying to get to in addressing the unfinished business. It is quite possible that the first stage—the first four or five years—of that negotiating process could involve negotiating with and consulting Indigenous communities to establish who their representatives will be. It is important that that is done from the grassroots level, that it involves Indigenous communities and that they have faith and trust in the Indigenous people representing their view in that sort of process.

This still needs to happen, I believe, at the same time as an educational process is happening within the community. In recommendation 3 of our submission, mainly in relation to the constitutional change but also in relation to helping the whole process of being able to hear what comes out of the negotiations, we recommend that a non-party-political education process be put before the electorate on these important issues. I realise that CAR did that to a certain extent, but

it was still sussing out the feelings of the community. Its resources were quite well used, but to actually have an impact on the general community you need to look at the resources in the various areas of education—school, after school and within communities—and you also need to look at political advertisements to dispel some of the misconceptions about Indigenous people. In a sense, it needs to be a non-adversarial process; it needs to be done in a way that involves people, which is what CAR was doing—

Senator PAYNE—But it has fallen into a hole, essentially.

Mr Lewis—That is right, because the funding is finished and Reconciliation Australia have four or five staff and are very limited in what they can do. It would certainly be useful to have a process, even if it were through Reconciliation Australia, to develop advertisements that could go before the community to at least try to dispel the misconceptions. I realise that Reconciliation Australia do not have those sorts of funds. They spend a fair bit of their time seeking funds for various activities that are quite beneficial, but given the dimension of the problems and the issues those funds only go a small way towards addressing community education issues.

Senator KIRK—Thank you very much for your submission. My question follows on from what Senator Payne asked you in relation to the consultative body that you referred to. From your answer, you seemed to say that the Indigenous representatives would be chosen from the grassroots. Are you thinking that they would be chosen through some form of election?

Mr Lewis—An appropriate process would need to be developed by the Indigenous communities. Although our actual recommendation was our original recommendation to CAR, the draft legislation actually does the same thing; it suggests the same sort of process. I think it is important for the Indigenous communities to work out how best to develop it. It could be that you have a representative from each nation group—which would be a very big table to sit at—but the process needs to be done in a way that honours the fact that there were 500 Indigenous nations in the country and most of them continue to struggle in various ways within their own communities.

The national treaty working group have tried to go through an educational process and then a consultative process about the issue of treaty, but when it comes to the issue of negotiation it could well be that there needs to be another process so that the Indigenous community have trust in the people who represent them. I do not have a really clear answer, but it could take some sort of democratic model or it could take a model in which the community says, 'These are the 12 elders that all the Indigenous nations recognise, and these 12 people will be the people you can talk to.' But it is up to them to work that out.

Senator KIRK—Once the body actually comes together, how do you see the body working? You mention having non-Indigenous leaders as well as Indigenous leaders? How do you see it working? Would it be some sort of parliament, and for what sort of duration would you see this body continuing?

Mr Lewis—I guess there are two questions, because I also want to respond to the issue of COAG having that sort of thing. What I have been referring to mainly is the negotiating process suggested in the CAR final report draft legislation. In a sense, because the COAG process is more specific, it would probably need to involve people who have the skills as well as the

representation. We are as sure about that as I am about the negotiating process towards a national set of agreements or a national agreement. I have probably lost your question now.

Senator KIRK—That is okay. I am very interested in the recommendation you have on page 10 about setting up a consultative body for it to create this legislated framework, as you describe it, along the lines that you have set out there. It sounds interesting to me; I just wonder how it would work.

Mr Lewis—In a sense there was an attempt, in the formation of the CAR, to have representation broadly across Australia. I think it was quite a successful model, because it involved not just government people but also people from various parts of the community, various industries. It may be that you might need a similar sort of body to that to go through these issues. A lot of these issues are key political and legal issues. Certainly, when you look at issues around land, given the way our economy runs, the powerful—the mining companies, the pastoral groups, the farmers federation—would also need to be involved when we talk through those issues. Until you start you do not know where you are going to go. If this body were established it would then probably refine its processes and work out how to get the broader representation needed, maybe through side committees of that major committee. There are various models that people could adapt to look at it. Of course, there have been treaty processes in other countries. The things that have happened in Canada, for example, might give us models to look at.

Senator CROSSIN—Thank you for your submission. Given that we have not had a particularly successful rate in amending our Constitution—we have already had one go at it in relation to the recognition of Indigenous people—how do you propose that a government embarks on that process again and ensures success the next time?

Mr Lewis—Basically, if the first stage in terms of constitutional reform is looking at recognition of Indigenous peoples as the first peoples and looking at issues around human rights, you would probably need to separate that out, given the controversy of the human rights issues. But that is still important. Hence in the body of our submission we suggest an education process for the community. I think the issue around the original preamble was that it was not just about the status of Indigenous people. It was about all sorts of things—describing Australia. So there was always a point at which some people would disagree with bits and pieces of it. Perhaps a much better approach would be a preamble that looks at the issue of the people who were here first and which focuses on that issue. As we would know, for any referendum to be successful it does have to get the support of all the major parties. That would need to be sorted out first, I would think.

Senator CROSSIN—Do you think the success of the Council for Aboriginal Reconciliation in raising public awareness of the issues has been sufficiently completed such that we could embark on a constitutional process or do you believe there has been a gap in that information flow, as Senator Payne has suggested, and that we would need to crank that up again before we look at any movement in that area? Do you think people are ready to have another crack at a preamble?

Mr Lewis—These issues ebb and flow. The short answer to your question is yes, I think we need to go through another educational process that deals specifically with the issue of the status

of Indigenous people. It is quite possible that that would not be too controversial, because of the work CAR did, but it would need to be done in a way that is essentially non-party political and you would probably need to have television ads and those sorts of things—CAR did not have the resources to do that sort of major stuff—as a lead-in to a preamble. Constitutional protection—the removal of section 25—would hopefully be non-party political too and would perhaps be able to go through, but I think other issues around constitutional protection of the Racial Discrimination Act would take longer. Again, it would be a long process to get all the parties to agree, let alone get the community to see it as a safe thing for them, because the possibility of scare campaigns is quite high.

Senator CROSSIN—You might want to expand on that a bit. You talk about scare campaigns. Is that from knowledge of what has occurred in other states—and particularly territories—in relation to Indigenous people?

Mr Lewis—The One Nation Party, for example—and, although it is pretty much gone now, it could always re-emerge—certainly fed on the misconceptions people have about Indigenous people, so a lot of what they did was pretty much a scare campaign. Various misconceptions came out during the debate around the Wik decision and then the Native Title Amendment Act. Some of that, of course, arose from the legal complexity of the issue and the fact that you never had total certainty in some respects, but various political groups certainly do try to scare the public and have had a measure of success in doing so. That is why you need a process in which there is broad agreement and leadership on these issues.

CHAIR—One of the most powerful vehicles for dissemination of either explicit or closet racism is talkback radio and talkback announcers. Have you thought of any strategy to try to educate some of those people?

Mr Lewis—The Uniting Church was fairly involved in the Wik debate and we encouraged our people to try to get on talkback to get their views put out. It is probably more of an issue in Sydney than it is in Melbourne—talkback radio seems a bit more reasonable in Melbourne. It is a very difficult issue in terms of particular people with particular views who like to scare people because it is good for ratings. You may not be able to get onto the talkback radio stations, but as part of an education campaign you could perhaps have community service ads that try to dispel some of the misconceptions. Other than encouraging people with goodwill to ring in to talkback programs and try to have their say, I cannot think of much more that we can do.

CHAIR—It just underscores the difficulty of trying to progress this agenda when you have such strong resistance flowing, in many ways unchallenged and uneducated, across the system.

Mr Lewis—Yes.

CHAIR—Thanks very much for your evidence this morning and for the document you have presented to us. Do you want to put in some supplementary evidence, or have you done so already?

Mr Lewis—When I read from my notes I mentioned the issue around HREOC and the proposal to get rid of the position of Social Justice Commissioner. That is what is new to our submission.

[9.39 a.m.]

MARRON, Ms Joella Leigh, Legal and Policy Officer, Equal Opportunity Commission, Victoria

SISELY, Dr Diane, Chief Executive and Chief Conciliator, Equal Opportunity Commission, Victoria

CHAIR—Welcome. You have lodged submission No. 56 with the committee. Do you wish to make any amendments or alterations to it?

Dr Sisely—No, but I wish to note that we will have some more information in relation to Indigenous complaints to the commission, over the next two weeks. We are doing some further analysis of more recent information—I refer to some previous work we have done—and, if the committee would like, we can supply that information in a couple of weeks time when it is available.

CHAIR—I am sure we would like it, so if you could send it to us that would be appreciated. Would you like to make an opening statement?

Dr Sisely—Yes, please. Thank you very much for giving us this opportunity to present on this absolutely vital issue for us as Australians. Before I start, I would like to recognise that we are on Wurundjeri land and pay my respects to the elders and their traditions. There are four points I wish to direct my comments to today. We have focused on the particular sections of the committee's terms of reference where the commission has direct experience and relevance, and in that way I hope that we are able to make a useful contribution to your deliberations. In particular, I wish to talk about the vital connection between human rights and reconciliation and the need for a much deeper and more mature understanding of human rights in that connection.

I would like to talk about the current level of Indigenous disadvantage—and past levels in particular. I would also like to talk about the need to recognise this fact and the need for more effective ways of combating discrimination and disadvantage and protecting the human rights of Indigenous people. Finally, I will briefly go into the need for a change in attitudes and discriminatory behaviours.

Firstly, I would like to look at the connection between human rights and reconciliation. Reconciliation is fundamentally about human rights, and this has been recognised in the CAR documents, but I think that what has not truly been recognised or understood is what human rights are really all about. Yes, human rights are about equal and fair access to goods and services, housing, education and health et cetera. But, fundamentally, it is much more than that; it is much simpler and, at another level, much more powerful. It is fundamentally about our common humanity and our respect for the humanity of others. This is what we need to be concerned about in reconciliation, and this is what I think is sadly missing at the moment.

Part and parcel of this is honestly facing up to the past—since European contact with Indigenous people—and recognising that we have not recognised that the past has denied the

essential humanness of Indigenous people. This is what has done the harm, this is what has done the hurt and this is what needs to be addressed. Yes, it is about fair access to goods and services and the elimination of racism and discrimination, but it is much deeper than that and more fundamental. I think that what we need to develop in this country at all levels—political, business leaders, the community, the playground and at work—is an understanding that to be concerned about rights is to be concerned about another person as a human being and to relate to that person in that way.

We need to look to how we present the notion of rights so that understanding is developed. We may not in future even use the word 'rights', but we might talk about relations between human beings and respect between individuals on that basis. That is where we need to take the discussion about reconciliation. We need to take reconciliation towards understanding, towards respect. Yes, it needs to be about rights, but fundamentally it needs to be about respect for one another as human beings. I do not think we have done that at all well to date.

We need to look at the level of Indigenous disadvantage. We know at the commission that we get more complaints from Indigenous people than you might expect given their numbers in the population. But we also know that the level of complaints that we get could not even be described as the tip of the iceberg. As you have probably heard as you have gone around with your inquiry, Indigenous people will tell you that racism is a fact of life and that they face discrimination every day. Why would they bother, then, putting in a complaint of discrimination to the commission on a daily basis? It is not effective.

How we go about protecting people's rights and promoting rights at the moment is in two ways. One is through broad education programs and the other is through the lodging of individual complaints to commissions like the Victorian Equal Opportunity Commission around the country. Sadly, although we work to overcome these, the barriers to an individual lodging a complaint of discrimination are incredibly high and most, up to 70 per cent, do not—because they fear victimisation, they fear further discrimination, they fear loss of job or loss of wages or loss of other benefits associated with a position. The individual complaint process also puts the onus on an individual victim of racism or harassment to effectively fix the system that has let them down and that has subjected them to abuse.

What we are dealing with here are systemic, institutionalised attitudes, behaviours, laws and policies. What they require are systemic responses. It is inappropriate to expect an individual victim to fix the system. That is why after 25 years of equal opportunity legislation in this state, and indeed the Racial Discrimination Act has been around since 1975, we are still faced with such high levels of racism, vilification and discrimination. The tools that we have at our disposal to promote rights to protect people so that they can enjoy their rights are inadequate for the task today. We need to be looking at different tools and different approaches. We need to be looking at systemic approaches. We need also, as part and parcel of this, to recognise the effects of the past on creating barriers to the enjoyment of rights, to equity, to be free from discrimination. In the CAR documents some of the strategies to overcome these barriers and to redress the effects of the past are listed.

What has not been done, in our view, is an education of the general community as to why such strategies are necessary. We know from the documentation and the surveys done by CAR that, while large numbers of Australians supported the idea of reconciliation, when it came to steps to

specifically address discrimination and disadvantage, the percentage of people supporting such measures—affirmative action measures, if you like, by another name—fell away dramatically. What that tells you is that people do not really understand what is at the core of this. They do not understand the effects of racism and discrimination in the past and how that is operating today and why you need to address them so that people can have a fair go and enjoy the benefits of this community and of participating in this community. We need to address that.

We need to take systematic approaches to this issue. We need to take proactive approaches to this issue. In my position we are not doing that at this stage. We are simply relying on a reactive, individual complaint to attempt to fix the system. Other countries have moved, and are moving, to what might be called a proactive compliance system. Canada, the UK and Northern Ireland have all introduced legislation to require, for example, employers to proactively comply with human rights legislation or legislation directed at eliminating racism—or equal employment legislation in the case of Canada—rather than simply reactively responding to an individual complaint when it comes along. I think it is measures like this that we need to seriously consider if we are going to have a hope of addressing the level of racism, discrimination and the breaches of people's fundamental human rights in this country.

Finally, I think we should take very seriously the need to address racist attitudes and behaviours. We have not done that. We certainly know that we can change people's attitudes and behaviours—we have done it very well with respect to reducing the road toll and quitting smoking, for example. We have not done it in relation to human rights. We have not done it in relation to racism. We know that such campaigns are complex. We know that they need to be comprehensive and we know that they need to be sustained over time. We know, for example, that the federal government is interested in these issues. In fact, at the World Conference Against Racism, the federal government led the other nations of the world in developing the provisions in and around education against racism. But, sadly, we do not have a comprehensive strategy in this country to educate people about overcoming racism. Other countries have—notably the UK, Sweden, the Netherlands et cetera. We still have not done this in Australia.

We also know that next year is the last year of the Decade of Human Rights Education. We do not yet have a program of action, or a plan of action, to promote human rights education. It would have been very nice to have produced that by the end of this UN decade. So we know that all the issues we are facing in relation to reconciliation concern attitudes and behaviour and overcoming racism. Legislation and compliance regimes can only go so far—they are the stick, if you like. We need more serious, systematic, sophisticated programs and campaigns to combat attitudes and behaviour.

CHAIR—I might explain my reaction and that of the deputy chair when you mentioned human rights education and the UN decade. I think of the five major inquiries that both of us are involved in, one of them is on that very subject. That is another hat, another time, but we do recognise the problems there.

You mentioned the term 'respect' and the importance of respect rather than tolerance. Respect, in a sense, is critical to Indigenous people developing a sense of self-respect. You also mentioned the past wrongs. What form do you think recognition of those past wrongs should now take? Would it be sufficient just for a prime minister to apologise? Does it need to be a prime minister and premiers coming together to recognise those past wrongs with an apology and other matters?

So many years into the process, the apology, were it to come from any prime minister as head of this country, would be an apology which would seem to have been dragged out. Do we need to look at new dimensions for recognising those past wrongs?

Dr Sisely—I think recognition needs to come from all levels of our community, from the highest levels—the head of state, the Prime Minister—down to people in the street in their everyday life. At one level, the most important issue is the symbolic level, but at another level the most important thing is between people in their everyday life: understanding between neighbours, understanding between children in the school ground. I do not think it is from any one level; I think it must come from and must be genuine between people at all levels of the community.

CHAIR—For me there needs to be a sense of national leadership on this rather than just leaving it to the so-called people's movement.

Dr Sisely—That is why I say at all levels. It is simply not good enough for it just to be the so-called people's movement; it must be at all levels. It must be from the highest level. It must be from the Prime Minister. It must be genuine. But it also must be from business leaders. Yes, we have some business leaders who have spoken out on this issue but not enough. It must be from state governments. Yes, I think all state and territory governments have made commitments, reconciliation statements, in their parliaments, if my memory serves me correctly, but it needs to be at all levels and in all facets of our community. So far the evidence on this is extremely patchy. So far my impression is that, while statements have been made—particularly, say, 18 months to two years ago—we are still waiting for the hard, concrete evidence of follow-up to those statements. Yes, there are still people of understanding in the community, people who are still reaching out and taking steps to reconcile with people in their community, but not enough. Resources of reconciliation groups—Reconciliation Victoria or Reconciliation Australia, for that matter—are inadequate for the task of doing this.

CHAIR—I want to go to that question of complaints lodged. When you said that you thought that up to 70 per cent of people do not, I instantly thought that may be an exaggeration, but on reflection it is probably an underestimation.

Dr Sisely—It is not an exaggeration; we have done the research on it.

CHAIR—I was going to ask you how you came to that figure. But the other point I want to ask you about is, in terms of your complaints over recent years, what percentage of complaints do come from Indigenous communities and what has been the trend in recent years in complaints? Is there one particular sector that has increased? Victoria is a very diverse community. I suppose all ethnic groups of the world are represented here.

Dr Sisely—Exactly. A comparison of complaints lodged pursuant to the Equal Opportunity Act Victoria shows that race and religious discrimination complaints lodged between April 2002 and March 2003 increased by 27 per cent over the previous 12-month period. The earlier research we had done—and that was based on 1998 information—showed that almost three per cent of our complaints came from Indigenous people but, remembering that only about 0.5 per cent of Victorians identify as Indigenous or Aboriginals, there is an overrepresentation there. But the numbers of inquiries and complaints to the commission are, as I said, a very inadequate

measure of the extent of racism and discrimination in this state, and I would not like to pretend at any time that it was otherwise.

Senator CROSSIN—Given your initial opening statements about the link between human rights and reconciliation, does the Equal Opportunity Commission have a view about the government's proposal to abolish the position of social justice commissioner?

Dr Sisely—Yes, we do. Indeed, as chair of the Australian Council of Human Rights Agencies, I am able to tell you that we have expressed that very strongly. We are strongly opposed to the proposal that HREOC be unable to appear before courts as an independent voice to put the human rights position and also to the proposal to eliminate the position of social justice commissioner. Particularly in relation to Indigenous issues, given that we are so far from Indigenous people enjoying their rights or realising their rights, this is not the time to be either doing away with a particular national focus on these issues nor indeed disabling the Human Rights and Equal Opportunity Commission from appearing and intervening in court cases to make the human rights point.

Senator CROSSIN—In relation to the number of complaints that you get at the commission, have they increased significantly in the last two to three years, say, compared to previous years? Have you done some research into that?

Dr Sisely—Yes. There has been a steady rise in complaints, particularly in relation to race and particularly over the last couple of years. Obviously the effects of September 11, the Bali bombing and Islamic extremists have added to this. But, while ostensibly actions of people have been directed towards Muslim Arab Australians, in fact it has raised the level of racism and vilification across the community. We have certainly had complaints from Greeks, Sikhs and Indigenous Australians about vilification and discriminatory action against them because they have been presumed to be Muslim or Arab. So these things are not isolated or unconnected. Once racist views take hold, if you like, in the community, they are not usually directed at any one particular group. They may appear to be, but in fact they raise the level of racism generally for many in the community.

Senator CROSSIN—Dr Bill Jonas, probably around this time last year, talking about the term 'practical reconciliation', said:

> How can putting money into programs - which they should be doing anyway - somehow bring together indigenous and non-indigenous people ...

Do you find at the commission that people's increased awareness of accessing your services is because of government's focus on practical reconciliation—that is, because people become more aware of your sort of service—or is it because there is such a lack of resources going into a broader education of the community that, in fact, complaints of racism have increased rather than diminished over that time?

Dr Sisely—Probably it is neither of those reasons. I think complaints of racism to the commission have increased because the extent of racism in the community has increased. But also people are aware that there is some government organisation that helps you with these issues—although they will not know the name of that organisation. They might ask a work

colleague or see something in the newspaper or hear something on radio or television—though that is less likely—or look it up or go to a community advice bureau and ask for assistance. I think it is certainly true that there is a level of awareness that you can go somewhere to get help, and that is probably about the extent of the awareness. But certainly I think the increase in complaints is because racism is increasing on the street, in schools, in supermarkets, in banks and in workplaces—and people are tired of it. We have had new legislation here over the last couple of years to combat racial and religious vilification, and there were consultations in and around that. That has raised an awareness of the issue, particularly in relation to different ethnic groups in the community. They have taken the action.

Senator CROSSIN—So, from where you sit, the government's focus on putting money into programs, which they would term 'practical reconciliation', is not working? The bridge between Indigenous and non-Indigenous people is not happening out there to the extent that it should: is that right?

Dr Sisely—That is right. Access to housing services, to health services and to education services is a basic right that everybody in this community has. That is a fundamental. Reconciliation is about respect between non-Indigenous and Indigenous people—understanding the effects of the past and understanding current discrimination and lack of respect. It is about recognising that together and then moving forward—recognising, as I said earlier, our common bond as human beings in that endeavour and recognising that until this point in time we have had separate histories and we do not understand that. It is about charting a common future together that brings those histories together. It is not just simply about the provision of goods and services on a fair and equal basis, which we should expect under our laws today, whether federal or state.

Senator PAYNE—Thank you very much, Dr Sisely. In the report card of Reconciliation Australia 2002, they indicate their disappointment that to date the eight state and territory governments have not responded to CAR's recommendations. Has the commission taken any role in encouraging the Victorian government to make a response?

Dr Sisely—Yes, we have, and in fact I am also the co-chair of Reconciliation Victoria, and my fellow co-chair is here with me. Yes, over the last two years we have put the need for this—the need for respect, recognition and a new approach—in successive annual reports to the state government. The state government did give an undertaking to produce a state plan to take reconciliation forward. It has produced an audit report or a report on Indigenous affairs, but I am not aware of a state plan to further reconciliation at this point.

Senator PAYNE—You are not aware of any response to the Council for Aboriginal Reconciliation's recommendations themselves?

Dr Sisely—No, other than the report that came out in October 2002, which was a statement. It did include statements around reconciliation, but it was a broader report on Indigenous issues in this state.

Senator PAYNE—Can you advise the committee what percentage of the staff of your commission is Indigenous?

Dr Sisely—Yes. Currently we have a staff of around 50, and two of our staff are Indigenous.

Senator PAYNE—You say in your submission that the commission is—I think it is on page 3—in the process of investigating ways to improve its services to Indigenous Victorians and recommending changes to government that would enhance the quality of the services provided to Indigenous clients. You then go on to say that those steps may be applicable to other government bodies. Does the commission have a role in educating, if you like, or persuading other government bodies to adopt the sorts of steps that you might suggest in this regard, particularly in relation to acting with Indigenous Victorians? If you do not, do you think you should?

Dr Sisely—Yes, I very definitely do think that.

Senator PAYNE—That you do have a role?

Dr Sisely—I am sorry. We have a role in the general, as we do with any other organisation, private or public, in this state. We have a role with respect to education, guidelines, policies et cetera and a role in relation to handling complaints that might be made against, say, a government department. However, we do not have a role—a more proactive role—with respect to requiring government departments to proactively comply with equal opportunity legislation or to systemically address issues that may need to be addressed; nor do we have a responsibility to audit achievement in relation to equal opportunity legislation or to require government or non-government bodies to comply with that legislation.

That is precisely the role that we are seeking to explore. That is precisely the role that the Human Rights Commission in Canada has—and the Race Relations Commission in the UK. That is the proactive compliance regime that I was talking about before. It is not dissimilar to what currently exists in relation to occupational health and safety legislation or environmental legislation or indeed business regulation. In all those other spheres, there is that requirement from government for private non-government organisations to proactively comply with legislation. It does not depend on a reactive individual complaint.

Senator PAYNE—Finally, the first point you make there says:

Making government processes designed to assist Indigenous individuals and groups less formal, less legalistic and more flexible to the personal circumstances of Indigenous clients.

I just make the observation that I would have thought that would help every client.

Dr Sisely—Absolutely.

Senator KIRK—Thank you for your submission. On page 5 of your submission, you say:

The Commission believes that any strategy to combat racism and discrimination should include a sophisticated and sustained public awareness component; moreover that is required under the United Nations Covenant.....

You expanded upon that in your comments. You referred to initiatives in the UK and Sweden where there have been, as you described it, human rights or racism education programs. I wonder if you could perhaps just expand on that a little further, for the benefit of the committee, and let us know how you think that may be able to be implemented here?

Dr Sisely—The examples I think we need to look to and learn from are the ones I mentioned earlier. Particularly in this state there has been quite an effective campaign aimed at bringing the road toll down. There have been effective campaigns in relation to breast cancer and also lung cancer and smoking. I think we need to distil the lessons of those campaigns and look at why they have been successful in changing people's attitudes and behaviour and we need to apply that information to campaigns in relation to racism, discrimination and reconciliation. If you look at the road toll campaign, it has been a sustained campaign over 10 or 12 years. It has not just been sophisticated television ads; it has also looked at how we license young drivers and at drink driving and at speed cameras. It has looked at seatbelt legislation and at how we build cars and roads. It has taken a holistic and systemic approach to the problem and said, 'We need to intervene here, here and here, and these are the strategies we need to bring to bear.' It has had support from the highest—from the Premier in the state—and it has been led from there, and it has been sustained and well resourced over time. That is what is required to change engrained, entrenched attitudes and behaviour. That is what we need to put in place for this issue here. I do not have the magic answer. I just know that that is the approach we need to adopt if we are to have any hope of addressing these issues. Certainly we cannot hope to achieve that level of attitudinal and behavioural change on the budget of the Equal Opportunity Commission—or indeed those of all the equal opportunity commissions combined. It is not going to be achieved with $10,000 here, $20,000 there and $70,000 if we are lucky. It will need to be a much more substantial campaign across the community.

Senator KIRK—You mentioned the UK and also Sweden: what sorts of programs did they have? Were those the sorts of things you are describing or were they different sorts of education programs?

Dr Sisely—I will have to get you the details of that. This is a very early stage in the development of these programs. But I will seek the details and provide those to you.

CHAIR—Just reflecting on that answer, changing smoking and driving habits is one thing, but racism pretty much goes to the bone in terms of many members of our community. Are we fighting a losing battle in trying to meet the challenge of educating these people?

Dr Sisely—When they first introduced seatbelt legislation, people argued it was an attack on their civil liberties and so on and so forth, and I think people at that stage probably felt as daunted about that as we feel at the moment about changing people's attitudes in relation to racism. I do not think it is an impossible task. You do hear stories. It comes down to individual stories and engaging people at a personal and an emotional level. It comes down to getting those stories across. It comes down to cutting through the stereotypes and getting to the human beings behind the stereotype and what the actual situation is. It comes down to the hurt and the harm that is done by racist comments and vilification. You are probably well aware of all the medical evidence that we have on the effects of racism. Whether we look at heart disease, depression or mental illness, the evidence is there in terms of the real harm that is done to people's health in relation to this. So, yes, it is a huge task, but I do not think it is an impossible task.

CHAIR—You told us that there had been a large increase in complaints over recent years, but I am not so sure whether you told us which part of the community had actually experienced the increase.

Dr Sisely—I did not. I referred to race complaints et cetera. This is part of the further information from the analysis that we are doing at the moment, which I will supply to the committee. We are trying to disaggregate Indigenous complaints from the remainder of the complaints so that we can be more precise. I will get that information to you.

CHAIR—In that process, I wonder if you can go back to that period when the Wik debate was running hot nationally and give us an indication of whether complaints from the Indigenous part of the community on racism increased during that.

Dr Sisely—My impression is probably that it did, but I will get you the information on that.

CHAIR—Thank you very much for both your written evidence and your evidence this morning. It has been very useful.

Dr Sisely—Thank you very much for the opportunity to present.

[10.18 a.m.]

PURCELL, Mr Marc, Executive Officer, Catholic Commission for Justice Development and Peace.

WALKER, Ms Vicki Joan, Co-ordinator, Aboriginal Catholic Ministry; member, Catholic Social Justice Commission.

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Ms Walker—I am a Mutthi Mutthi woman and a member of the Catholic Social Justice Commission.

CHAIR—You have lodged submission No. 52. Do you wish to make any additions or alterations to it?

Mr Purcell—No, thank you.

CHAIR—Would you like to start with an opening statement?

Ms Walker—Firstly, I would like to acknowledge that we are on Wurrandgeri land and to give thanks to Wurrandgeri people for caring for this land for thousands of years.

Mr Purcell—We would like to table two documents, which we have just circulated to you. One is the final report by the Special Rapporteur on Indigenous Peoples. It is a study on treaties, agreements and other constructive arrangements between states and Indigenous peoples, so it really gives you an outline of where the UN's thinking is on the issue of self-determination and treaties with Indigenous peoples and states. The second document is a paper by Dr Larissa Behrendt, *Foundations and lessons: the Canadian treaty making experience*, which is also a very helpful article. It talks about the positive benefits of self-determination and treaty in Canada, and it is also comparative with Australia as well.

To conclude our opening statement, we would like to present some of the main points made by Pat Dodson at the Vincent Lingiari lecture in 1999, where he spoke to the issue of self-determination. He spoke about what the future of reconciliation could look like. He made a series of nearly 20 points. I will not read them all, but they really revolved around respect for human rights and self-determination. To give you an example and a flavour of where we think the debate needs to go in Australia, we want to read some of Pat Dodson's comments:

1. Equality.

Aboriginal peoples have the right to all the common human rights and fundamental freedoms recognized in national and international law, as well as to our distinct rights as indigenous peoples.

… … …

3. Self determination.

Aboriginal peoples have the right to self-determination. A right to negotiate our political status and to pursue economic, social and cultural development.

4. Law.

Aboriginal peoples have the right to our own law, customs and traditions, and equality before the National Law.

… … …

6. Spiritual and Religious Traditions.

Aboriginal peoples have the right to our spiritual and religious traditions. This includes the right to preserve and protect our sacred sites, ceremonial objects and the remains of our ancestors.

7. Language.

Aboriginal peoples have the right to our languages, histories, stories, oral traditions and names for people and places. This includes the right to be heard and to receive information in our own languages.

… … …

8. Participation and partnerships

Aboriginal peoples have the right to participate in law and policy-making and in decisions that affect us. This includes the right to choose our own representatives. Governments shall obtain our consent before adopting these laws and policies.

Governments shall negotiate partnerships with Aboriginal peoples representative bodies at local, regional, State and National levels.

Thank you. That concludes our opening statement.

Ms Walker—I would like to highlight some of the things I have seen happen in the last 10 years of the process of reconciliation in this country, especially as the coordinator of the ACM here in Melbourne. I have witnessed a lot of great achievements in the last 10 years, with many symbolic actions happening—Aboriginal flags rising around the nation, monuments being placed in special places and plaques acknowledging traditional lands being placed on buildings. I have seen attitudes change in many young ones in our schools, especially in the Catholic schools, and particularly at the secondary level. I have seen more teachers become more aware and more confident in being able to teach Aboriginal studies as such across the curriculum. I have seen many attitudes change within church parishioners and within small community groups. And I have seen a lot of hope within Aboriginal people, not only in this state but throughout the country.

Some Aboriginal people would say that 10 years of hope was really a diversion for them to have justice in this country and land rights. It was a diversion, to take away the rights we had been really challenging and asking for for a long time in this land. Many would also say that it is

time we had reality in this country: the reality of our place. When I say 'reality', I am talking about the fact that there is nothing in this land that guarantees the rights of my child and her children to have their Indigenous place in this land. There is nothing in the Constitution that will guarantee the right for her to be able to sustain our culture and our heritage. So when I talk about reality I am talking about the possibility of an agreement in this country.

CHAIR—Thank you. When you talk about reality, there is probably nothing more real than pages 6 and 7 of your submission, where you go through the reality of being Indigenous in the Australian community: educational outcomes, crime rates, incarceration, child abuse and so on. What do we need to do to steer that on the right course?

Mr Purcell—I think it is clearly recognised, both domestically and also internationally, in other countries that have indigenous populations, that this type of social phenomenon is a legacy of colonisation, it is felt across generations and there need to be not just symbolic or practical, economic measures but a governance and a legal shift to make amends, to recognise the rights of indigenous people to self-determination. The evidence that is in our submission and also in the additional documents we have presented today suggests that in Canada and also in other countries around the world that the Special Rapporteur has looked at, including the Americas, self-determination, governance arrangements and treaties, agreements or compacts—call them what you will—are essential to moving forward. If you are not doing that then essentially you are trapped by your colonial past. You are treading water.

CHAIR—By using the term 'legacy of colonisation' are we in danger of blaming the past, rather than blaming the present? While recognising that there is a lot of unfinished business in terms of recognition of rights, we are actually talking about continual rip-offs now and we are talking about deterioration in health and education. As I said earlier this morning, if you look at the incidence of substance abuse—sniffing—in communities, you can see that we are probably by stealth creating another stolen generation. These kids are dying. I accept that the so-called practical agenda should not be the total agenda, but how do we steer that? Your church has got a lot of experience with what is happening on the ground.

Mr Purcell—It has to be guided by human rights. Unless there is a fundamental pinning of any efforts in practical reconciliation to human rights that Australia has signed on to over the past 50 years, they are not linked to or based on anything; they are merely government programs that will ebb and flow and change with governments over time. You need to pin them down to human rights and also agreements about those rights with Indigenous peoples. We are not sure that that is occurring at the moment.

CHAIR—It seems to me that one of the problems that we have in addressing what I see as the reality is that—and I am sure this does not attach to Senator Payne—the government's popularity at home rises inversely to Australia's reputation abroad. You give us a document from the Special Rapporteur that can quite effectively be used in the broader community to whack Indigenous rights and Indigenous movements with. How do we overcome the leadership malaise that is in the community?

Mr Purcell—I would have to say that I think the Special Rapporteur's document is one of the more turgidly written UN documents I have had to read. But the principles in it are clear, and I think it is showing where the trend is. Australia prides itself on its advanced social policy—we

have been historically leaders in that ever since the Harvester judgment, or respect for the eight-hour day—and it should be no different in Indigenous policy and reconciliation.

At the moment the trend in other countries is far ahead of where we are in Australia, and that is where the Special Rapporteur is very alert to the problems that have been raised in the Australian context of questions around self-determination and sovereignty. There is an unnecessary alarm that indigenous self-determination will somehow be in conflict with Australian sovereignty. He suggests that that is not the case, and indeed the Canadian experiences show that sovereignties can co-exist. Indigenous people's sovereignty has not been extinguished and therefore they have an inherent right to self-determination, and this can enhance the nation state and, in fact, it can be of benefit to the broader community. So I am putting aside any criticisms of the UN that can be made and just saying that he has documented where the drift is in international best practice. What we want our government to do is to look at international best practice and consult with indigenous people about how we move to a rights based program of reconciliation. Vicki, I do not whether you want to talk about what you see as important for reconciliation?

Ms Walker—At this stage I would like to talk about my disappointment about reconciliation. My disappointment has been that we had a lot of people out there walking across bridges and we had a lot of community groups that were supporting reconciliation through study circles and at the end of the 10-year period—and I was not really sure what we hoped to achieve in 10 years—we let all those people down and we let them go.

Now the effects that has had in the spirit of Aboriginal people have been very traumatic, because I talked of hope before. To think that when we walked off the end of that bridge it was like just walking off the edge of the cliff—no different to what they did to the Aboriginal people in Western Victoria 40 or 50 years ago. So it is as if we have gone down the cliff and there is no way of getting back.

Somehow we have to be able to rekindle that spirit back into those people. A treaty could be a possibility—or an agreement. Many consultations I know throughout our community have caused confusion. We are all so unsure—like me sitting here today: I do not even know why I am bothering sitting here. Am I just wasting my time? I have got a lot more things I could be doing. Where is it going to go? What is it going to do? Big deal, if it is written in *Hansard*. If me sitting here is going to make change happen, then it has been worthwhile. If my name has been put on many submissions that have gone into this inquiry and that is going to make a change in the recognition and the attitudes in our playgrounds, in our workplaces and especially on our sporting fields and in our suburbs, then it has been worth it. Because my reflection at the beginning about the highlights of what has happened over the 10 years have been darkened by this current government.

CHAIR—Thank you.

Senator PAYNE—Thank you, Chair. Ms Walker, the Senate committee inquiry process is not always an illuminating one, but we hope that this is a constructive and useful contribution and one that it is important that you participate in, and we are grateful for your submission and for your participation. We will try to do our best with that.

In the remarks that you just made you said that consultations on treaty issues around your community caused confusion: can you elaborate on that please?

Ms Walker—There was confusion really about what that was really going to achieve. Was it just another piece of legislation that, when another government comes in, can change straight away? How concrete would a treaty or a piece of legislation that dealt with the possibility of many treaties in this country be? How was this going to make change for the everyday Aboriginal person? That is where the confusion was.

Senator PAYNE—Isn't that part of the problem that we have in this entire process and this entire debate? We have a number of submissions that say that, where there is an emphasis on what is described as 'practical reconciliation', it is at the most unfortunate expense of 'symbolic and other unfinished business', as it is described in many things, and that that is one of the significant problems. We have been grappling with that in recent days. Then you say that you are still trying to discuss this in your own communities and ending up with a similar degree of frustration. At the end of the day, how to identify the symbolic issues which are important and how to provide an appropriate balance with those aspects of reconciliation, so described, are among the ongoing challenges, I think.

Ms Walker—Senator, I would just like to highlight your word 'expense'. At whose expense has this all been? We have had Aboriginal people die in our prisons—black deaths in custody—so that this reconciliation process could actually happen in this land. Then during that time we had the 'expense' of Aboriginal people spilling out their stories—telling their stories so traumatically about being removed by another piece of legislation in this country. All this has been at the expense of Aboriginal people. I do not see it as being at the expense of non-Aboriginal people at all, personally or spiritually. So it is no wonder that, when we talk about a treaty, we ask at whose expense it is going to be. Will it be another let-down? We cannot keep breaking the spirits of a race of people.

Senator PAYNE—I think that you make the case very well. That is exactly what I meant—that the consistent argument that has come through the submissions is that there is no balance, there is no recognition of what is referred to in a number of them—and they are Reconciliation Australia's words too—as 'unfinished business.' That is the ongoing problem that we as a committee have to deal with in this context. In your submission, at about page 21, you talk about a number of initiatives taken at local government level that you actually talk about very positively. Does that mean that you think, in contrast to those discussions you have referred to, that these local government type initiatives have actually achieved something and are actually useful? Could they be a framework or a platform for building at state and at Commonwealth level, because frankly my impression of state efforts in this regard is pretty poor.

Ms Walker—Certainly. When you are talking about Aboriginal affairs, we have four layers that we always have to deal with. It is unbelievable how many levels we have to deal with to get anything achieved. Yesterday I spent some time over in the City of Whitehorse here in Melbourne, where they just had a two-day forum. My feeling, from the time that I was there, is that it was a very positive forum and many things will be achieved and there will be direction. My problem with bodies like Reconciliation Australia is that there is no leadership coming out of there. We have a body like Reconciliation Australia that is spending most of its time on trying to raise funds to survive. Even our own body here, Reconciliation Victoria, is putting a lot of

energy into just being able to exist and it is not being able to give leadership back to those small community groups—and, of course, to Aboriginal communities as well.

I have great faith at the local level, because that is where it is going to change—with local governments. When the reconciliation process ceased to happen—at the end of its 10-year tenure—I hoped that we could actually back up and support more local governments to achieve some of those practical steps towards reconciliation and to deal with the unfinished business.

Mr Purcell—I think the drift, in Canada anyway, has been to incorporate a central government—or a federal government—policy with the inherent right to self-determination policy, and that's been in existence since the eighties, and in addition they had a constitutional change, a bill of rights, which included indigenous rights to self-determination.

We are aware of the difficulties in making constitutional change in Australia, but prior to that constitutional change in Canada there was an act of parliament—there was legislation around a bill of rights that existed for 20 years beforehand that raised public awareness about human rights, Indigenous rights and the right to self-determination. We have signed on to those things in various conventions, but the level of awareness in the community is low.

It is not sufficient to talk about acknowledgement of Indigenous people in the preamble to the Constitution, which has been ruled out by the government in any case. There needs to be not just symbolic change but also legislative change to help bring Australians forward—progressive legislation on this issue of self-determination. The forms that that self-determination takes can range from agreements at the local council level up to a national federal agreement—a Makarrata treaty—as well. Again, Canada has paved the way. It is not necessarily the way we should go, but it shows perhaps where some of the thinking and inquiry—including this committee, I would suggest—should be looking in Australia.

Senator PAYNE—The only question that stays in my mind, Mr Purcell, relates to public awareness and the need for legislative response. I am still grappling with the chicken or egg aspect of that discussion. Can you have an effective legislative response without enough depth of public awareness, support and push for that—or, if you push a legislative response in an unhappy environment, does that have the potential to exacerbate the problem and make it 10,000 times worse?

Mr Purcell—It is a matter of political will. There was a low level of awareness and resistance to the idea of a GST and there was a high level of awareness and public resistance to a war in Iraq but, if government wants something and wills it, it can take the action it wants to. I think that raising the positive benefits for the community of self-determination and some federal legal arrangement that flows on down through the federal system of treaties is no different, if government gets behind it and pushes it.

Senator PAYNE—That is true, but it may require constitutional change and, as Senator Crossin said earlier, we have had an unnerving incapacity to make what I would regard as constructive constitutional change in recent times, with enormous public support. We are trying to address that as well.

Senator CROSSIN—Ms Walker, you talked earlier about 'walking off a cliff', and I assume you were talking about the people's movement that culminated in all of that activity in 2000. But in terms of the Council for Aboriginal Reconciliation there has now been a real void in continuing that public awareness about reconciliation and what it means. How effective do you believe Reconciliation Australia has been? Also, do you think that, instead of setting up Reconciliation Australia at the end of the Council for Aboriginal Reconciliation's 10-year period, resources and energies should have gone into local groups or local councils to continue that work?

Ms Walker—I have here the latest publicity poster from Reconciliation Australia that I have received at the Aboriginal Catholic Ministry. What is this poster telling me? It is telling me nothing new and nothing different. Basically, it is asking me to be a friend and give some money—some money to do what? The questions are so old and out of date; there is nothing new there—'learning more about Indigenous Australians, their art, culture, history and community life'. Is this how we make reconciliation happen quickly? What have we been talking about for 10 years? I am sorry, I do not have a lot of faith in Reconciliation Australia. What I do have faith in though is local groups: I have more faith in local councils and state reconciliation committees. We had the best database in the world of supporters for reconciliation and change in this country—when it comes to right relationships with Indigenous people—and we let that go. So, yes, I strongly believe that the government took the wrong direction in setting up another bureaucracy—another office in Canberra.

Senator CROSSIN—Would it be more effective if it were better resourced and if it were given a charter and some leadership by government?

Ms Walker—Leadership from government? This current government?

Senator CROSSIN—I am not suggesting that it would come from this current government, but perhaps looking into the future—one hopes that there is a different future ahead of us. If it were better resourced and if it were given some direction by a government, not necessarily this government, could Reconciliation Australia work as a body?

Ms Walker—Is money going to answer the question by giving it more resources to operate? If it is an autonomous body that is able to do its own thing, set its own pace and consult thoroughly across Australia with Aboriginal and non-Aboriginal communities, there is a possibility. But I say, 'Dismantle it and bring it back to our states—to Reconciliation Victoria, Reconciliation New South Wales, Reconciliation South Australia and so on.' Let us prop them up. They are the ones that know what is happening in their local areas and in their states—and also local governments. I have seen some great work done with local governments over the past 10 years, and to sustain them and keep them energised or even alive in relation to reconciliation is almost impossible now, because the momentum has gone.

CHAIR—Thanks very much for both the documents and the verbal presentation this morning.

Proceedings suspended from 10.46 a.m. to 11.03 a.m.

CHANDLER, Ms Jennifer, Chief Executive, Reconciliation Australia

CHANEY, the Hon. Frederick, AO, Co-Chair, Reconciliation Australia

GLANVILLE, Mr Jason, Policy and Programs Director, Reconciliation Australia

HUGGINS, Ms Jackie, AM, Co-Chair, Reconciliation Australia

CHAIR—Welcome. You have lodged submission No. 64 with the committee. Are there any amendments or alterations that you would like to make to that?

Mr Chaney—No, we affirm that submission, but both Ms Huggins and I would like to make an opening statement in which we will put some additional information. Ms Huggins will lead off, if that is in order with the committee.

CHAIR—I would like you to do that. Please start.

Ms Huggins—Thank you. I would like to acknowledge the traditional owners of the land on which we meet today and pay respect to those who have gone before us. Reconciliation Australia appreciates the opportunity to speak to our submission and to provide additional information which comments on the process of reconciliation generally and puts a stronger focus on the work and current status of Reconciliation Australia. Two years after Reconciliation Australia's inception, there are still some misunderstandings about the place that it occupies in the landscape of Indigenous affairs. The Council for Aboriginal Reconciliation intended Reconciliation Australia to operate as an independent body which formed part of a well-structured, statutorily authorised national approach to reconciliation with ongoing government engagement.

The context we find ourselves operating in is rather different. The Council for Aboriginal Reconciliation was a statutory body fully funded by the Commonwealth with a 10-year existence. At the completion of its term, there was a national agreement, including within parliaments, that Australia had not achieved reconciliation and that much business remained unfinished. In forming its recommendations as to what should follow, the council consulted widely. It agreed with the business community's strong advice that the ongoing reconciliation process was a public responsibility and could not, and should not, be left to the private sector. In its final documents, the council specifically recommended that governments and parliaments negotiate a process and enact appropriate legislation to secure a framework 'through which unresolved issues of reconciliation can be resolved'—see recommendations 5 and 6 of the council's final report.

Despite the council's recommendations and the unanimity of community views, the federal government has redefined reconciliation, narrowing it to the delivery of citizenship rights. This inquiry into progress towards national reconciliation provides an opportunity for the committee to revisit the council's recommendations and to consider (a) the appropriate scope of reconciliation, taking into account all the elements of unfinished business; and (b) the ongoing role and responsibility of all governments—and the federal government in particular—in advancing reconciliation.

Reconciliation Australia is charged with providing a continuing national focus for reconciliation. It is an independent, non-government and not-for-profit foundation, funded through a small one-off grant, including GST, from the federal government, through individual donations and through partnerships with business and others. It has tax deductibility status and has recently moved into office space provided by the Commonwealth. In the context of very limited resources, enormous community expectation and the federal government's negative response to many of the council's recommendations, Reconciliation Australia has focused on achieving reconciliation in areas likely to have a major impact on the lives of Indigenous Australians. This has led to the development of strategic partnerships to support specific projects.

Rights: Many Indigenous people see a treaty as a long-term issue. Reconciliation Australia has accepted the view put by ATSIC that there is a need for ongoing development of Indigenous notions of a treaty, and we have supported the ATSIC consultation process and conference. Reconciliation Australia has also seen the need for ongoing and wider community education and engagement, and is working in partnership with the Gilbert and Tobin Centre for Public Law at the University of New South Wales to address the major issues in the treaty debate. This partnership commenced in May 2002 and is supported by a three-year grant from the Myer Foundation. The project will involve the production of community materials targeting a variety of audiences, as well as the convening of workshops, seminars and other public events. It will culminate in the production of a major report on the public law aspects and implications of a treaty and/or a framework agreement or agreements in mid-2005. The first discussion paper has been produced and is currently being distributed.

On the issue of rights generally, the committee will have noted our comments in *Words, Symbols and Actions*, the Reconciliation Report Card 2002, that there are a number of outstanding rights issues for governments to address. There is also a need for governments to respond to the opportunities for wider agreement making, facilitated by the amendments to the Native Title Act in 1998.

Good Indigenous governance: Under a policy of self-determination, Australian governments have, over the past 30 years, encouraged the incorporation of Indigenous community organisations for the conduct of their own community affairs and the delivery of government funded services. The result has been an efflorescence of Indigenous community based organisations, with there being, on one estimate, one such organisation for every 100 Indigenous people. This fragmented organisational environment undermines community decision making, affects program delivery and makes community governance difficult at best.

In 2002, Reconciliation Australia initiated the Indigenous Governance Conference to explore with academics, Indigenous representatives and government departmental representatives better approaches to Indigenous governance. The conference included representatives of First Nations people from North America, Canada and New Zealand and was informed by the best practice findings of the Harvard Project on American Indian Economic Development. To progress the issues arising from this conference, Reconciliation Australia has entered into a formal three-year partnership with BHP Billiton. The central focus of this relationship is to work with Indigenous organisations and communities and, where appropriate, with governments to tackle Indigenous governance issues through specific initiatives.

These initiatives are part of a wider reconciliation program—the Good Indigenous Governance Program—which includes inaugural Indigenous governance awards to encourage, reward and promote best practice in Indigenous governance; development of a best practice manual and associated tools on good governance for use in Indigenous communities and regions; liaison with all levels of government, including the Council of Australian Governments and the Ministerial Council for Aboriginal and Torres Strait Islander Affairs, to have Indigenous governance recognised as a key issue for the social and economic wellbeing of Indigenous peoples and communities and to obtain a commitment to appropriate policy and program responses; and the development of a framework for a major governance research project.

The research framework has been developed, and Reconciliation Australia is working with the Centre for Aboriginal Economic Policy Research—CAEPR—and a range of other partners, including the Western Australian and Northern Territory governments, to undertake applied research on understanding and developing effective governance in Indigenous communities. The research will map the current state of community governance, identify existing governance structures and processes and analyse what works, what does not and why. It will identify gaps in community governance capacities and investigate the links between community governance and sustainable economic development. The findings will inform practical action.

Improving access to banking and financial services: Another structural issue of critical importance to Indigenous Australians is being highlighted by Reconciliation Australia's banking and financial services project. Real improvement in Indigenous access to banking and financial services in rural and remote areas requires mutually beneficial cooperation between Indigenous communities, the financial services sector and governments. It requires appropriate access for individuals and communities and, importantly, it requires access to education in financial literacy.

Notwithstanding Reconciliation Australia having brought together representatives of the financial services sector, major Indigenous organisations and relevant government bodies to explore both gaps and needs, to date these are areas of both market and government failure. Similar failure is apparent when the government encourages the idea of economic development on Aboriginal land as a vital component of reconciliation, while some of the fundamental requirements for economic development—in particular, access to finance—are often missing.

Combating family and sexual violence: The debate on family and sexual violence has been long on expressions of intent to address the issue in Indigenous communities but short on actions. It is in this context that Reconciliation Australia has developed the reconciliation test: do actions equal words? Through a series of public statements and keynote speeches at major conferences, directors of Reconciliation Australia have helped refocus the debate onto substantive issues. This refocus has, in turn, brought better coordination across government agencies. There are some useful initiatives. However, we remain disappointed at the lack of a coordinated national response to this vital issue.

Indigenous employment strategies: In July 2001, Reconciliation Australia commissioned an evaluation of the Moree Aboriginal Employment Strategy to assess its employment placement function and its broader impact. The Moree Aboriginal Employment Strategy, known as MAES, is an inspiring example of community driven reconciliation which has delivered jobs for Indigenous people and transformed relations between Indigenous and non-Indigenous

Australians. It has played a significant role in providing hope for Aboriginal people and in turning around race relations in Moree, resulting in more community pride, security and harmony.

With due regard to the specific circumstances of other regions and communities, this community initiated and driven scheme can serve as a model to help others tackle similar situations. Following an approach from Reconciliation Australia, the Minister for Employment and Workplace Relations, the Hon. Tony Abbott, has committed resources to Reconciliation Australia to enable us to test the MAES model in other communities. Reconciliation Australia is now seeking matching funding from private enterprise to ensure the project is fully resourced. From a broader reconciliation viewpoint, MAES shows the capacity of people and communities to transform themselves, especially when local champions work together and provide the core group to drive the necessary changes. Another reconciliation lesson from MAES suggests that governments should match their programs to the community, not the other way around. It seems success is more readily assured if government programs support communities and are in partnership with them, rather than delivering to them from afar.

Education and young Australians: Reconciliation Australia is working with a number of partners, including ANTaR and the Uniting Church, on the development of a national youth reconciliation convention. This convention will provide a forum for both Indigenous and non-Indigenous young people to deliberate and have their opinions taken seriously as constructive contributions to the future of the nation. To ensure maximum participation and involvement, the convention will be preceded by at least one regional forum in each state and territory, organised through national peak education bodies, teacher associations and state reconciliation groups. Both government and independent schools will participate. Each state and territory forum will select up to 10 representatives to attend the convention. Selected representatives will then meet with key government and non-government bodies to present recommendations. The full results of the convention will be published online and included in Reconciliation Australia reports for community consultation. Fred Chaney will now talk about our next steps.

Mr Chaney—The activities that Jackie has outlined show that we have achieved a good deal in the life of Reconciliation Australia to date. But we are undoubtedly hampered from achieving more by limited resources and, to a lesser extent, by a lack of statutory authority. In seeking to continue and hopefully expand our work, Reconciliation Australia must now divert its resources to become a major fundraiser. In doing so, we recognise that our existence and future priorities will be shaped by the availability or otherwise of funding. This is a most unsatisfactory position for the national reconciliation body, particularly given the widely held community view that reconciliation is a public, rather than a private, responsibility.

I want to address the question: is reconciliation off the agenda? The committee will be aware that an often heard statement is that reconciliation has slipped off the agenda. At the heart of this comment is a recognition that reconciliation resources are no longer visible and a belief that the current federal government is not committed to the reconciliation process. It is certainly true that the federal government has abrogated its leadership role in the broader reconciliation agenda and has substituted a focus on practical reconciliation. This emphasis on practical reconciliation has limited the reconciliation process developed by the council. It is also true that sufficient resources are no longer available to allow wide community communication and education.

Notwithstanding those problems, reconciliation has not slipped off the agenda for the Australian people. Across Australia, people of goodwill are striving to achieve reconciliation where they live and work. We know this from the feedback we get at our office—from the hundreds of phone calls and emails we receive from local reconciliation groups and individuals who have committed themselves to achieving both tangible and symbolic outcomes for Indigenous people. In addition, some corporate leaders have shown consistent commitment to reconciliation objectives, and you will find reference to both the individual and the corporate efforts in the report card which is appended to our original submission.

Reconciliation: we're doing it together: Our recently introduced theme, 'Reconciliation: we're doing it together', captures the reality of reconciliation in Australia. To enable all Australians to see what is happening across the nation in reconciliation, we have today introduced a web database which allows individuals and organisations to post details of their reconciliation projects on the Reconciliation Australia web site. The web database is an important interactive communication. Already our web site receives more than 23,000 hits a week. We expect that number to double, and we expect to build an impressive database of activities which truly reflects Australia's commitment to reconciliation—or perhaps more accurately, Australians' commitment to reconciliation. That is, in the absence of leadership and resources from government, Australians are doing what they can.

Finally, I would like to pose to the committee the question: where to from here? We have, I think, submitted our strategic plan as part of our submission—if not, I will do so today. It presents a detailed way forward in making reconciliation a reality and in implementing the mission of Reconciliation Australia, which is:

To deliver tangible outcomes for reconciliation by forging innovative partnerships to:

- achieve social and economic equity for Indigenous Australians;
- strengthen the people's movement for reconciliation; and
- acknowledge the past and build a framework for a shared future.

In addition to our strategic plan, there are some issues we would like to draw to the committee's attention for its consideration. Firstly, reconciliation requires ongoing leadership from government. As Professor Mick Dodson said in testimony before the committee last Wednesday, government must engage in the process and it must begin to address the areas of disagreement, because, even if agreement cannot be reached, it is through the process of seeing another's point of view that reconciliation is achieved.

Secondly, as part of its leadership role, government must adequately resource the ongoing reconciliation process. The people's movement must be sustained. Young Australians must be educated. The funding responsibility is government's. The resources required are beyond the ambit of private organisations or individuals. In testimony before the committee on Thursday last, the executive coordinator of OATSIA, Mr Peter Vaughan, stated that he thought Reconciliation Australia is ideally placed to take on the production and dissemination of reconciliation materials, to support the people's movement and to educate the young. Subject to our having the resources, we agree with that.

Thirdly, for Reconciliation Australia there are real advantages to independence, but at the same time there are real difficulties in calling governments to account when there is no statutory authority to do so. The failure of governments generally to respond to the recommendations of

the council suggests the need for ongoing statutory imposition of accountability, and Reconciliation Australia would welcome greater authority by statute and accompanying resources to do that task. I would just throw in as an addition to my prepared statement that we have sought responses from all state governments and the federal government. We have had one formal response, which is from the federal government, nearly two years after the recommendations were made. No other government has responded formally to the totality of those recommendations.

My fourth point is that we are conscious that during the first year of our operation we were not able to give priority to networking with state peak bodies and local reconciliation groups. Also, in the absence of available funding from Reconciliation Australia we realised that time was required for those bodies to establish relationships with their own governments. Most are still pursuing real support from their respective state governments, although in a majority of states some support is given. Despite this lack of resources, the state peak bodies and Reconciliation Australia have agreed to work together to create a national framework for our complementary activities and to support each other as much as possible. The state peak bodies and the local reconciliation groups are an integral part of the people's movement and it is vital they be sustained. Subject only to having the necessary financial resource, Reconciliation Australia is perfectly placed to provide them with coordinated support.

Fifthly, Reconciliation Australia maintains regular contact with important groups, like Australians for Native Title and Reconciliation—ANTaR—and Australian Collaboration. We will continue to focus on these and other important relationships to ensure that outcomes are coordinated and delivered effectively.

Sixthly, Reconciliation Australia is committed to producing an annual reconciliation report card. Our last report card is part of our submission to this committee. We would welcome the resources to allow for a more thorough monitoring and reporting process to inform this document. As Mr Peter Vaughan noted before this committee on Thursday, one objective measure of progress is an assessment of changing community attitudes. The council conducted extensive research to assess the public's view of reconciliation. Reconciliation Australia would very much like to replicate that research. Again, it is not resourced to do so.

Seventhly, corporations and other organisations will sometimes fund specific reconciliation projects if those projects fit in with their own strategic objectives. Matching funding from government would provide greater leverage for Reconciliation Australia in seeking corporate funding. In short, Reconciliation Australia believes that reconciliation in Australia would be progressed by: a commitment from the federal government to the reconciliation process, as outlined by the Council for Aboriginal Reconciliation; ongoing government funding to Reconciliation Australia to enable it to maintain and extend its strategic priorities; and greater authority by statute for Reconciliation Australia and for the reconciliation process generally.

CHAIR—Following on from Mr Chaney's comments, I want to ask about the model, or structure, that is currently in place. You have raised a couple of areas where you think the current body should have greater power. Would you advise us to look at the body becoming a statutory authority or some other, more permanent sort of entity? Also, you mentioned the capacity to, in essence, command and demand responses. Are there any other powers that you think either this

body or a remodelled body should have? Finally, in respect of those resources, how much money are we talking about?

Mr Chaney—'How much' is a great question. In terms of a statutory authority, we are trying to draw attention to the fact that the idea of a freestanding, non-government organisation—which is what we are—was put forward by the council within an overall framework for reconciliation which included ongoing statutory intervention. That statutory intervention is set out in the council's recommendation 6. It was to be accompanied by ongoing negotiations by governments, which was covered in recommendation 5. Instead, we find ourselves operating in a much more limited framework than was envisaged by the council. We think that is a significant disadvantage to maintaining the impetus of the reconciliation movement.

In terms of what the final form should be, we stand behind the recommendations of the council. We support those because they were, in a sense, our starting point. I think it is open to the committee to look at a range of statutory possibilities, which would include independently vesting certain statutory authority in and resourcing the existing body, allowing it to deal with things such as monitoring, education and so on. We would personally welcome any move by governments to formalise and build into law the maintenance of the reconciliation process.

In terms of demanding a response, I believe the reality is that while you had a statutory authority process all governments felt it was necessary for them to respond to that process. State premiers and prime ministers of all political colours were prepared to respond to the process. They unanimously joined in the responses to the council and, remember, unanimously took the view that this process was incomplete. The present Prime Minister led the way in making it clear that reconciliation was not accomplished in 2000 and that there was a need for ongoing action.

In terms of how much, our total funding enables us to operate at around $1 million a year, with the risk of a cliff in a year and a half if we do not do better at fundraising. That enables us to undertake only very limited functions. The budget of the council was some $40 million-plus over its 10-year life—four times our budget. However, I think that is a very modest view of what its budget was, because its statutory process engaged so many other elements of government. So we are looking at a substantial additional commitment.

It is really important for the people and governments of Australia to put these things in perspective. I understand from the previous chair of the Council for Aboriginal Reconciliation that the whole cost of the 10-year statutory process equalled the cost of erecting and dismantling the volleyball venue for the Olympic Games in Sydney. We spent as much erecting and dismantling a venue for a single sport in the Olympic Games as we spent on a 10-year statutory process for reconciliation. The recent budget—I have seen a newspaper report on this—allowed $5.9 million for the refurbishment of the Australian ambassador's residence in Washington and $6.5 million for the New Zealand chancery. I do not begrudge those items of expenditure—I do not raise it in that tone. However, against that we had a grant of $5 million, after GST, to last us forever, along with our tax deductible status—which we acknowledge—and the office the government has very generously provided. We cannot do the things that need to be done, on the common understanding of virtually all Australians, in education and communication and, indeed, monitor progress in an area which is full of good intentions by all past governments and littered with bad outcomes. So you are looking at a substantial additional financial commitment by

governments. We have not costed it. If you want us to go away and do that, we would be happy to put up some estimates.

CHAIR—If you could do that, that would be great. It should also be said that a lot of that goodwill and intent depends on outcomes. A sense of frustration must be developing regarding the powerlessness to force outcomes. Have you thought of options that may be able to be vested in either the current entity or a future entity to force a more positive response from all governments, especially the states?

Mr Chaney—There is a very good statutory example already on the books—put in place by, I think, the present government—with respect to education. It requires an annual report on education progress. The COAG work we commend in our report, which is part of our submission, is in line with the recommendations of the council. The work which is currently being done in a quite transparent way to find benchmarks is thoroughly positive. There are many things that we would say are going in the right direction in that particular area. I think the difficulty is in ensuring a transparent, independent process whereby people are called to account. We do that as best we can with our resources, but we would not claim that *Words, Symbols and Actions*, the Reconciliation Report Card 2002, is a sufficient response to the task. Without more authority, and certainly more resources, we cannot up the ante on that and do a better job.

CHAIR—You are positive about the COAG process and the development of benchmarks, but has it not taken too long to date? Also, in respect of those 10 communities around Australia, are you sure they are selecting the communities most in need or would you have approached the selection of those communities in a different way?

Mr Chaney—I have taken quite an interest in this and am hoping to visit two of those regions within the next couple of months with the responsible ministers. It is a worthwhile initiative, but like all initiatives in these areas—and Aboriginal affairs has been filled with worthwhile initiatives for 30 years, in my view—the execution and achievement of outcomes will be difficult. I think it requires a high level of self-examination during this process. I do not want to belittle what I think is a really worthwhile attempt to change the Commonwealth approach to the delivery of services, and I welcome the commitment to that process at the ministerial and departmental head level, but Reconciliation Australia has put the view, and I have put the view to some of the participants, that unless that reorganisation genuinely connects with what is happening on the ground and supports local communities to move in the direction in which they want to go, it will be just another reorganisation.

In reading the contractual and other documents that the government has prepared which relate to this, I believe—and I express a personal view now—that they are on the right track. I think the principles that might lead to an effective connection with people and to what is happening in those communities are adequately set out in the documentation, but the execution will be extremely difficult. I think we say in our submission that there is a role for parliament in monitoring these processes. Governments are not disinterested observers. They have legitimate government interests to protect, as, I suppose, oppositions have legitimate opposition positions to protect. In our view, the parliament is an important part of watching these processes on a long-term basis, and we would welcome ongoing parliamentary scrutiny of the sort you are undertaking at the moment, which is being undertaken with respect to other elements of Indigenous policy, such as capacity building, by the Aboriginal affairs committee.

In all of these things we would say that we apply the reconciliation test: are these just statements of good intent or is something coming out at the end of the pipeline? There is a wonderful statement in *Recollections of a Bleeding Heart*—the account of the Keating government, which you may have read, Chair—where one of the staff in the Prime Minister's office makes the observation that the mistake that is made in politics is that of mistaking good intentions for results. I think that, in this field, all governments and all parties have real difficulty in distinguishing between good intentions and results. Reconciliation Australia sees an important part of its independence and the role it can undertake to continually be, in a sense, whistleblowing when the rhetoric is right but the results are nil or below par. To go back to your question, I think the 10 communities project is a worthwhile experiment. We should be encouraging attempts to better deliver Commonwealth services, and we should be carefully monitoring it to see whether it is effective.

Mr Glanville—I will try and answer the second part of your question, regarding the selection of the communities. While there is, as Fred has already said, a great deal of hope across the community that this new approach will have some real outcomes for people, there is also a lot of concern that the communities that have been chosen might not necessarily be the best ones or the most deserving of this kind of attention. There are some questions about the framework that was used to select those communities. There is an equally serious concern about the level of engagement with those communities in the lead-up to them being selected or announced as part of the trial. I think there have been—certainly in the communications put out by the 10 communities task force—statements about communities being seen as equal partners in the process, but there is real concern that that has not been the case to date.

Senator PAYNE—I have three, hopefully relatively brief, questions, which are at least thematically linked. They are basically about things falling in a hole. Your report card of 2002 comments adversely on the fact that state and territory governments have not provided responses to the CAR final report, and then, to greater or lesser degrees, criticises some state and territory governments, by implication at least, for their lack of action. We find ourselves in a position where only three of the Australian states and territories have felt inclined to make a submission to what is regarded, in my view, as an important inquiry. On the other side of the government coin, we have had emphasised to us some of the very good work being done at local government level, which has that grassroots impact but the not the impact of national leadership that state, territory and—I acknowledge it has been raised—federal governments can provide. Do you see any capacity for Reconciliation Australia to push the state and territory governments harder? You may tell me it is not your role, but at this point it seems to be becoming a very important aspect of this inquiry.

Mr Chaney—If a committee of the federal parliament cannot get a response from some states, the prospect of a small non-government organisation getting a response is fairly small. That is the short answer to your question. I think your short question was really a proper reproof to me for my long answers, so I give that as a short one. In terms of good work at a local government level, we acknowledge in the report that there are examples of good work at the state level. For example, we welcomed the Gordon inquiry and the attempts being made to implement that inquiry in a field in which Jackie Huggins has led the charge in trying to get substantive change.

Senator PAYNE—I am coming to that next.

Mr Chaney—We would not wish to be churlish, because we think it is important to encourage good behaviour at all levels and there are some wonderful examples at the federal, state and local government level. We welcome those but we think it is very spotty.

Senator PAYNE—The next issue I want to turn to is the question of family violence. You suggest, I think, that it is a major gap in COAG's approach. In your chronology, attached to the report card, although Reconciliation Australia seems to have taken a number of steps to push the issue, I am not feeling as well informed on responses. So perhaps, Ms Huggins, you could update us and tell us where you think the holes continue.

Ms Huggins—Certainly. As Fred has pointed out, the Gordon inquiry in Western Australia into family violence is the most comprehensive to date of reports that have been written in this area, closely followed by the Aboriginal women's task force report in Queensland. Unfortunately, in Queensland, where I come from, the recommendations have not seen too much in terms of practical implementation. As to the Gordon report, $75 million was, I think, provided by the government?

Mr Chaney—There is certainly real additional resources in the case of the Gordon report. I could not put an exact figure on it.

Ms Huggins—Recently, I have come back from the Queensland Centre for the Prevention of Domestic and Family Violence—I am on the advisory board of that centre as well. We are hoping to look at a meta-analysis of what actually is going on in Queensland because, as I understand it, in other states that is very sparse as well. It fits very well into our call for a national audit and a concerted effort, which was very much down the track and, unfortunately, we had taken steps not to be involved, because it was taking a long time. There were lengthy delays and we had seen and perceived bureaucratic bungling in terms of getting this national audit in focus. I believe that some attempts now have been made by ATSIC and the government in order to work through that, but it is still very much in the initial stages.

As far as I am aware, there has been no way by which people can put up best practices—what is working and what is not—except maybe through the Gordon report. Also in Victoria, I believe, the government has given some money to family violence. There was a national committee on Indigenous family violence, which was a section 13 committee of ATSIC. They are no longer functioning and I am not quite sure whether their work was strategic in terms of delivering real outcomes.

In a very real way, I feel that we are still at an embryonic stage. We have done a lot of talking at conferences and initiating discussion around this because our people and our communities are now starting to talk about family violence. Mick Dodson and I are very committed to the idea of addressing a problem which affects our communities at a rate that is 45 times greater than that of non-Aboriginal communities. But unfortunately it has moved at a very glacial pace. While there are some good initiatives out there, they are very scare and are pocketed in various areas, and there is nothing nationally that would identify that something real is happening in this area.

Senator CROSSIN—On page 7 of your submission, the second last dot point under 'Summary' talks about the ability of Indigenous people to set their own targets for progress and to pursue them. Is that Reconciliation Australia's way of saying 'self-determination'?

Mr Chaney—Yes. The work that we have done in governance significantly exposes the importance of real Indigenous decision making in achieving outcomes. I think it is very important research because to some extent it is counter-intuitive. The instinctive response of the Australian community and most, perhaps all, Australian governments is that the answers lie in assimilation rather than in self-management or community decision making.

The North American evidence is extraordinarily powerful that the communities which have made the most progress in these matters are those with strong, culturally appropriate institutions. There has been work done on this here, and there are some splendid Australian examples. One that was brought out in one of our conferences, the Katherine West health program, is an extraordinarily successful example of collapsing programs into a single unit which, instead of having a plethora of external Commonwealth and territory programs, is run as a single unit with solid decision making locally. We would say that that is a very important aspect of advancing these matters.

The Gordon report captures this very well in the diagram on page 427 which describes the solution. The critical point about that diagram is that it has a little round circle in the middle of very complex layers of organisations and so on which are relevant, and that circle is the local action group. All of the other agencies are meant to be directed to supporting the local action group. I think there is a very important kernel of truth in that part of the report. If government agencies are coming in to support what the local people are really trying to achieve, you get outstanding results. If agencies are coming in and trying to do things to Aboriginal communities—as against doing things with Aboriginal communities—the results are usually quite poor.

Senator CROSSIN—This federal government goes out of its way not to use the term self-determination, so I was interested to see that you have not used it in your summary either.

Mr Chaney—I do not know that that was deliberate on our part; it certainly was not on my part. But it is true that we are struggling in this field, as in others, to find the language with which to communicate, and it is sometimes true that terms which we have used in the past can be blockages to understanding and agreement. So if we explain what we think is the factual position and the truth in words which are neutral to the ear of the listener, that may be quite a good thing. I do think that one should never let ideology get in the way of the facts and what will work on the ground, and in this field—as in others—it can. We have sought to take not an ideological approach but an approach which is rooted in wanting to make a difference. We quote a lot of examples in our submission which rely on the fact that local initiative and strength is an important driver of real change. If you want to call that self-management—and I have no problem with the expression at all, personally—that is fine.

Senator CROSSIN—Reconciliation Australia was given $5 million in the year it was established. There has been no funding from the federal government since then?

Mr Chaney—From some federal government agencies, yes. We got $5 million plus GST—of course we paid the GST—and $3 million was quarantined into a capital fund to be kept at full value. The government has since agreed to reduce that to $2 million, which gives us access to $3 million. We have run at an annual budget of something like $1 million, plus what we have

raised. In our first full year of operation we got something like $800,000 in sponsorship, but that included some sponsorship from government funded agencies.

I am open to correction by my colleagues on this, but the Department of Family and Children's Services supported something, ATSIC has supported some things—this is overt in our submission. The government has given us rent-free accommodation in Canberra, which we acknowledge, but the notion of direct government involvement in the reconciliation process by further funding has been specifically rejected. We think that is a mistake; we think this is a public responsibility. The Business Council of Australia certainly put the view to the Council for Aboriginal Reconciliation that this was an ongoing public responsibility rather than a private one.

Senator CROSSIN—Your views have certainly been echoed by many witnesses who have appeared before us in previous hearings. There has been quite a deal of criticism about the lack of resources to Reconciliation Australia. I have here a flyer that we saw this morning. In relation to your efforts to fundraise—and we understand why—there has been some criticism of this sort of flyer, where there are mixed messages about whether you are trying to further educate the broader community about reconciliation and move the reconciliation agenda along or whether it is simply a plea for money so you can exist. People have been quite critical. I think they are angry that you have to fundraise and are not being fully supported by the government. Has there been any thought given to separating the two processes and picking up the broader community education role that, say, the Council for Aboriginal Reconciliation had, which was quite separate from fundraising activities?

Ms Chandler—It is true that there are two messages in that poster. Given the critical situation in which we find our funding, we thought if we were going to communicate with people it was important they be aware that funding is an issue for us. Certainly we look at creative ways of going about our fundraising activities. We would dearly like to be able to adopt a major education program throughout the community; we do not have the resources to do it. We have very limited opportunity to go out and engage with the community. Given that, we felt it was important to add the fundraising aspect to it. It is that simple.

Mr Chaney—We would be grateful, Senator, if you would encourage your constituents who are angry about this to communicate with governments across the spectrum to encourage them down the path of righteousness.

Senator CROSSIN—A lot of my constituents communicate that regularly. You talk a great deal about unfinished business. What does Reconciliation Australia define as unfinished business?

Mr Chaney—The most simple answer is the areas of continuing disagreement about what the relationship should be. That is probably the most difficult part of the unfinished business. It covers the rights issues, issues such as treaty and so on. It also has to be said to be unfinished business while the social and economic circumstances of so many Indigenous people are so unsatisfactory.

Senator CROSSIN—Do you think, then, that any progress towards reconciliation has to combine the social as well as the symbolic elements?

Mr Chaney—There was a wonderful quote from Charles Perkins that was used in the submission to the government by ACOSS. He said words to the effect that you cannot say Australia is reconciled whilst the circumstances of so many Aboriginal people are so intolerable. Charlie would have been a great exponent of the rights agenda, but he could see that this is a dual thing.

I thought the previous Governor-General, in what I think was his final interview on the ABC on television just before his term ended, put it in a short and practical way. He said, in response to a question about a reconciled Australia, and this is not an exact quote but I think it is the meaning of what he said: 'I believe Australia will be reconciled when every Aboriginal child at school has the same life prospects as every non-Aboriginal child at school'—so I think that is the social and economic agenda caught in that practical example—'and when there has been an appropriate, symbolic coming together.' So he linked those two elements. We have consistently said that we have linked those elements. We think that it is necessary.

Ms Huggins—Certainly in relation to the rights agenda, unfinished business remains the apology, the treaty, self-determination and customary law. The old council perceived it absolutely necessary to engage and to continue a reconciliation process because they were at the very heart of our people saying, 'We want these things also, because they are symbolic to us'. One of our directors, Mick Dodson, believes that 'reconciliation will occur when it is no longer remarkable, when it is unremarkable to have an Indigenous professor, doctor, lawyer or politician and when people do not make any remarks about that.' I think it is very true.

Mr Chaney—We could invite the committee to look at Canada, the United States and New Zealand where the relationship is, in a legal sense, more settled and at the comparative life expectancy differences. We think there is some fairly strong evidence that these issues are intimately related.

Senator PAYNE—I am terrified. Considering people are still commenting on women achieving positions of prominence, we may have much further to go than we thought. Senator Bolkus has got the same view about ethnicity.

Ms Huggins—Yes, absolutely. And when you couple that with a disabled Aboriginal woman who is a single mother, it makes it very difficult.

Senator KIRK—On that question of unfinished business that we have just been discussing, you say on page 5 of your submission that your concern is that there should be a process for moving this item of unfinished business forward. I wondered if you had any views about what that process should be.

Mr Chaney—Can we start by going back to the recommendations. We would not be doctrinaire about this being the only process that is open, but it is a process which is described by the council as each government and parliament negotiating a process—in other words, being in an active process of negotiation. So that is one of the council's framework recommendations. That was in recommendation 5.

Secondly, recommendation 6 was that the Commonwealth parliament would have legislation to put in place a process which looks at all these issues relating to agreements or treaties. So, at

two quite distinct levels, the council saw an engagement by government of a quite different sort than the sort we have. That might be done in a number of different ways. One might, for example, as we have discussed in the submission, invest this body that we are part of with some statutory authority to do certain things, and so on. That might be a variation on that theme. But clearly we would be operating in a very different context if those things were put in place. We think it would be clearer if there was a real national commitment to reconciliation.

CHAIR—We could probably go on for another two or three hours here, but what I would rather do as an alternative is give you a list of six or seven questions that you could take with you and come back to us with your views in respect of them. That list can come from the secretariat. On behalf of the committee, I thank you for your submission. Thanks for your evidence this morning. If there is anything further you want to bring to our attention, please do so. We were struck by the evidence of a witness earlier this morning who wondered out loud whether this process was going to be of any use and whether it would contribute to progress. We would like to think that, if it does, your views would be quite critical in us going ahead. Thanks again.

Ms Huggins—Chairman, I would like to thank you and the panel members as well on behalf of Reconciliation Australia for conducting this very important and very vital inquiry and allowing us time to speak here today. We recognise the complex nature of the issues that you are dealing with. We are pleased that they are being dealt with in such a comprehensive way, and for that we thank you. An hour seems like such a short time. While there are obviously issues that we did not discuss today or did not get across, if the committee requires any additional information, my co-chair and I, along with the directors and our CEO and staff of Reconciliation Australia, are ready, willing and able to assist you in whatever way possible. Thank you very much.

CHAIR—Thanks. That is an offer you might regret! In closing, could I also apologise for Aden Ridgeway. Senator Ridgeway apparently is too ill to come to the phone, which does not mean that he is in dire straits but that he could not make it this morning.

Proceedings suspended from 12.00 p.m. to 1.00 p.m.

AMBIKAPATHY, Ms Patmalar, Commissioner, Office of the Commissioner for Children, Tasmania

PITCHFORD-BROWN, Ms Marilyn, Advisory Council Member, Office of the Commissioner for Children, Tasmania

CHAIR—Welcome. You have lodged submission No. 14. Do you wish to make any amendments or alterations to it?

Ms Ambikapathy—No, we would just like to speak to it. We would also like some information about the COAG decision in 2002. We would like to know whether the indicators have been developed and established.

CHAIR—I had the impression that we were here to ask you questions. Our understanding is that the benchmarks are still being developed and will be ready sometime in June or July but will not be made public by COAG until about November. That is the timetable that has been put to us.

Ms Ambikapathy—Thank you.

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

Ms Ambikapathy—Yes, thank you. I have been speaking to my adviser here, Marilyn Pitchford-Brown, and for some reason we appear not to have a family violence prevention unit—a particular program—in Tasmania. We are wondering whether that is a gap in service delivery that can be addressed?

CHAIR—I do not know. We can take that on notice and send it off to the government, but you are probably best following that up within your government structures there. We have a few questions we would not mind asking you if you are in a position to answer them.

Ms Ambikapathy—Thank you. I will try.

CHAIR—Your submission quotes some statistics that demonstrate the disadvantage of Tasmanian Aboriginal children and youth, including a high rate of teenage pregnancy and problems with substance abuse. Can you give us an indication of what statistics you have in this area, how they differ to the broader community and what programs you might have in place to improve the situation?

Ms Ambikapathy—To start with, I do not have any programs, because I am the commissioner for children. The statistics that we have shown you were obtained from the Department of Health and Human Services, from a policy framework that they developed last year, so this is secondary information, not primary research that we have done. For that, it shows that we have a significant number of Tasmanian Aboriginal mothers who are under 20 years old. I think that is a real issue for Tasmania.

CHAIR—What about substance abuse?

Ms Ambikapathy—We have just anecdotal information that there is a fair amount of substance abuse in the community among children and young people. For this particular question I would like to put you on to Marilyn Pitchford-Brown, if I may.

CHAIR—Ms Pitchford-Brown, did you understand what the question was? We are seeking information about substance abuse and what programs are in place to redress the problem. Can you help us there?

Ms Pitchford-Brown—I am not 100 per cent sure of what programs are in place. I know that there are a few individual people trying to take on respite and things like that, to help in situations a mother may be having a problem with alcohol abuse or drug abuse—taking the children on weekends to relieve the children from that. I am unaware of any 'programs' as such.

CHAIR—Another point that you raise in your submission is that you have concerns about the longitudinal study of Australian children, which will be used by the Department of Family and Community Services as a base for policy. You say that there are inadequate representative samplings of Aboriginal children. Can you help us with some information on that? Can you explain how that is happening?

Ms Pitchford-Brown—I will pass you back to the commissioner for that one because I am not really up with the longitudinal study. I think the commissioner may have more information on that.

CHAIR—Ms Ambikapathy, the question relates to the longitudinal study on Australian children. Your submission says that there is inadequate representation of Aboriginal children in the study.

Ms Ambikapathy—Yes, that is my understanding and it has the LSAC people have confirmed that it is not going to be representative of Aboriginal children in Australia. Those are the kind of things I am trying to bring out: that in programs that are running for the benefit of children around Australia, Aboriginal children are missing out. But judging from what you are asking me, I think you want something slightly different. Do you want to know what I am doing in Tasmania towards reconciliation?

CHAIR—No. I want to know from what information you drew the claim that there is an inadequate sampling of Aboriginal children in the study.

Ms Ambikapathy—I got that information from the researchers who were doing it. I asked them questions and they answered in the affirmative that there are not sufficient numbers to have a proper study of Aboriginal children.

CHAIR—Could you take the question on notice and see if your researchers could come back to us with some more background information on that claim.

Ms Ambikapathy—Would you like correspondence between my office and the LSAC people?

CHAIR—Yes, please. Could you send it to the secretariat of the committee.

Ms Ambikapathy—Could you give me the details, please.

CHAIR—It is the body to which you sent the submission.

Ms Ambikapathy—Right, I shall do that. Who shall I send it to?

CHAIR—The people you sent the submission to.

Ms Ambikapathy—Okay, not a problem.

CHAIR—Are there any other questions from the committee?

Senator PAYNE—I am interested in how the position of the Commissioner for Children in Tasmania was established. Was it set up under legislation, how is it funded and what sort of office do you operate?

Ms Ambikapathy—Thank you for those questions. We were set up by the Children, Young Persons and Their Families Act, which was passed by the Liberal government in 1997 and proclaimed by the Labor government in 2000. I derive most of my functions from that act. Since I am the first commissioner—and I am a lawyer—and the whole act is based on the Convention on the Rights of the Child, this office has been based on the convention and the human rights of children. So my entire approach is based on the human rights approach and, with respect to Aboriginal children, I have been looking at all the issues in relation to the convention that are not functioning properly in Tasmania for Aboriginal children.

CHAIR—Thank you. That is probably all the questions we have for you. We will try to provide the information that you were seeking and, if you could come back to us with the information that we were seeking, that would be great.

Ms Ambikapathy—Can I say a couple more things?

CHAIR—Sure.

Ms Ambikapathy—My adviser and I feel that there were programs that were available on the ground for children, which somehow or another do not seem to be there any more. We mentioned the mobile kindergarten and early childhood unit. That apparently was very important and significant to communities. That does not exist. The other one is the homework centre. It used to be funded by the federal government. That does not exist. So when you are talking about a process of reconciliation we need to question why these services that were so important to the community have disappeared.

CHAIR—That is a question that is worth asking, and we will see if we can pursue that question with other witnesses.

Ms Ambikapathy—The other thing that is an abiding issue for me when I talk to young and older Aboriginals is the degree of difficulty they still have—and they are struggling to find

themselves and get an education—with the prevailing prejudice against them. We need positive policies to address bullying and other forms of harassment of young Aboriginal children, because that basically denies them their right to education and any chance of future advancement. Those are the key issues that we need to look at for young people: school readiness and, once they are at school, being able to be resilient and stay in school without being sidetracked by the life-threatening issues that they get involved in.

CHAIR—Can you tell us where incidences of bullying are occurring in Tasmania?

Ms Ambikapathy—It is widespread in pockets of areas where there are children. Bullying is an issue all over Australia with every sector of the community but, with the Aboriginal community, we need to address that specifically because it has racial overtones.

CHAIR—Thank you. That is a fair point. On that note, we can bring this part of the session to a close. As I said earlier, if you can provide that extra information to us we would appreciate it. Thank you very much; thanks for your time.

Ms Ambikapathy—Can I possibly have your name? I have not got it down in my notes.

CHAIR—My name is Senator Nick Bolkus.

Ms Ambikapathy—Thank you very much, Senator Bolkus.

CHAIR—Thank you.

[1.29 p.m.]

CHARLES, Mr Christopher Joffre, General Counsel, Aboriginal Legal Rights Movement

WATSON, Dr Irene Margaret, Solicitor, Aboriginal Legal Rights Movement

CHAIR—You have lodged submission No. 17 with the committee. Do you wish to make any amendments or alterations to it?

Mr Charles—No, but we wish to speak further to it.

CHAIR—Please do so.

Dr Watson—I would like to begin by acknowledging the traditional owners of this country and their capacity to continue to maintain their strong spiritual and physical connections to this country. I also acknowledge the work of this committee and thank you for the opportunity to provide further evidence here today. In beginning I would like to remind the committee that in commenting on the adequacy and effectiveness of the Commonwealth government's response to the implementation of the reports that are the subject of this inquiry, it is important to note the prior national report from the royal commission into Aboriginal deaths in custody. This report, while itself making a number of recommendations to specifically reduce the high numbers of Aboriginal deaths in custody and the incarceration levels of Aboriginal peoples, did also point the way toward the establishment of the reconciliation process and the position of Aboriginal social justice commissioner. It is important to note that the recommendations of the royal commission into Aboriginal deaths in custody have not been fully implemented to the satisfaction and benefit of Aboriginal communities in general and, in particular, Aboriginal communities across South Australia, for which ALRM is a legal service provider.

The continuing failings of the state identified in the royal commission into deaths in custody report and the failure to implement its recommendations can be identified in the following areas: in the continuing and increasing levels of incarceration of Aboriginal men, women and children; the continuing poverty that exists, and continues to exist, in Aboriginal communities throughout South Australia; high levels of unemployment, increasing levels of homelessness, poor health et cetera; and the failed protection of Aboriginal heritage and culture. These failings are well illustrated in the reports which are the subject of this inquiry. It has already been said in any number of reports and inquiries that Aboriginal communities are in a state of social, cultural, political and economic crisis which threatens their members' lives and longevity.

There is an urgent need to act, but how? Aboriginal people have consistently answered this question: through land rights, reparation, compensation and self-determination. From an Aboriginal community perspective, that remains the call today—it has not changed. The reports before you also come to these same conclusions and recommend similar directions. We are today no further up the road in our journey to improve the quality of life of Aboriginal peoples than we were in 1788. The measures called for have been researched and reported upon and the resources required for this process recommended many times. How many houses and rehabilitation centres could we have built if it had been done when recommended? It should be clear by now what

Aboriginal peoples need for the survival and future development of Aboriginal communities. What is needed is well-intentioned ears which are really listening to Aboriginal people's voices, for our communities know what needs to happen.

What needs to be addressed is the failure on the part of the Commonwealth and the states to act. It requires that Aboriginal issues are not placed on the backburner but remain up front. Why has government failed us? That is the question; not, for example: why has ATSIC failed us? ATSIC was established to manage the crises that they had, in fact, inherited from the Commonwealth. This is the context. ATSIC continues to manage the same old, same old; it is yet to become self-determining or to go beyond managing government initiatives. The current policy of so-called practical reconciliation is merely the maintenance of an old way of doing business, one which has been illustrated in report after report not to be working. ATSIC is in the position of trying to manage crises that are not of Aboriginal people's making. We should not be blamed or condemned for not being able to fix problems which have come to us from the outside—the results of terra nullius and all the colonial policies and laws which historically and contemporaneously still impact upon our lives today.

All of the previous reports have recommended that any fixing of these crises requires long-term commitment and strategies. Consider one recommendation, which was first recommended by the royal commission into Aboriginal deaths in custody and has been repeated in report after report since then: that there should be triennial funding arrangements so as to enable the development of greater certainty and stability amongst essential Aboriginal service providers. This would better facilitate the process of capacity building in Aboriginal communities. We do not need to spend scarce resources to continue to research, report and further elaborate upon these points that have already been made very well. We need to allocate the resources in a way that will directly benefit Aboriginal communities where Aboriginal peoples live today.

In the past, how have resources been allocated? Crough illustrates on page 1 of his article that was presented as a part of our submission that moneys were allocated to government departments and that the allocations to them were estimated in accordance with the number of Aboriginal clients that each department or agency represented. For example, moneys were allocated to the police department, correctional services and crown law rather than allocations being made specifically to areas of need—that is, to Aboriginal grassroots communities. To continue in this direction would contribute to the growing crisis in Aboriginal communities. This should be obvious, and it is an indictment of Australian society that it is not apparent to the broader community that the way in which the problem is conceptualised is central to the issues that are before this committee. Unless the moneys are spent in a way that is directly applied to the benefit of Aboriginal individuals and their communities, we will continue to be in a place of managing crises because the causes and the symptoms of the crises will continue no matter how many prisons or jails or safe places we continue to build to address the end result of something which should be addressed at a much earlier stage. Capacity building and community development will remain without the provision of critical resources.

We will remain in crisis until priorities shift. This is not new; I think every Aboriginal person that I know, at least of my age and experience, has repeatedly stated this point. Aboriginal service providers such as the ALRM have clearly identified critical needs, and each year ALRM submissions for adequate resources continue not to be met. ALRM is then assessed and measured for performance indicators against the Australian legal aid commission rather than

Aboriginal legal services which are funded in a comparative way to ALRM. We argue that this is an unfair process for, until ALRM is funded to the same levels as the Australian legal services commission by both state and Commonwealth governments, the inequities will continue to exist.

This should not be interpreted as an argument for the mainstreaming of the Aboriginal Legal Rights Movement because it has a specific expertise and is a specialist service which has been developed over 30 years, and this should not be lost. Any such loss of this special measure provision would be to the detriment of Aboriginal peoples. In the same way, the Australian Human Rights Commission Legislation Bill 2003, which is currently before the Commonwealth parliament, proposes to remove the position of Aboriginal and Torres Strait Islander justice commissioner and to replace it with a generalist human rights structure. Aboriginal peoples would no longer have the opportunity to access the special services that have been provided since the creation of this position in 1992 if this proposal were to be ratified by the Commonwealth parliament.

We consider this proposal to be detrimental to the future interests of Aboriginal peoples. It would reduce the capacity for the review, monitoring and evaluation of mechanisms to address Aboriginal disadvantaged. Similarly, any reduction or loss of the Aboriginal legal rights movement would also reduce our capacity to monitor trends in our communities, as the state-wide Aboriginal legal service at another level—at a more local, state-wide level—similarly has a responsibility for monitoring trends through our capacity to continue to gather statistics within the managing of the Aboriginal legal service.

Mr Charles—I would like to endorse what my colleague has said and refer to a number of specific matters. I point out, for instance, that ALRM is actually 30 years old this year. The organisation, as an incorporated association, has been going for 30 years, and that is something to celebrate. We were first funded by the Commonwealth in 1973. The organisation is aptly named. It is a social movement as well as an Aboriginal legal service. That is why it is called the Aboriginal Legal Rights Movement. We point to the long and proud history of involvement in some major justice issues. The Maralinga Tjarutja legislation was passed with the assistance of our lawyers. The land rights struggles in the 1970s and the royal commission and its implementation were matters which ALRM was heavily involved in, as well the stolen generation report and a case which is now before the Supreme Court of South Australia. ALRM is also a native title representative body, for the purposes of the Native Title Act. I think the most recent public matter we were involved with was a recent case in which the remarks of a certain magistrate came to public attention.

Apart from that, we have a number of associated programs which are important for Aboriginal people, including the low-income support program, which is about assisting people with budgeting. The Aboriginal Justice Advocacy Committee is, of course, a recommendation from the royal commission. Recommendations (1), (2) and (3) referred to the need to have Aboriginal people monitoring the performance of governments in the implementation of the royal commission. The AJAC is closely associated with ALRM—in fact, we work together—and we want to speak more about some royal commission issues later. Similarly, the Aboriginal Visitors Scheme, which flowed from the royal commission, is managed through the Adelaide office of ALRM.

We have country offices in Ceduna, Port Augusta and Murray Bridge and we try to cover the whole of the state with inadequate resources. This has been reflected, as Irene said, in our yearly funding submissions. Having been monitored ourselves, and having been the subject of four or five reviews in the last five, six, or seven years, we know very well what our shortcomings are; they are to do with lack of resources to do what we think needs to be done, most particularly in respect of the position of Aboriginal women, remote and traditional people and children. Those are matters for which we continue to seek further resources to cover. Our Port Augusta office is staffed by three solicitors. They are expected to cover an enormous number of country magistrates courts and supreme district courts, as well as cover circuits, which cover most of the area of South Australia, including the APY lands—the Anangu Pitjantjatjara Yankunyatjatjara lands—Oodnadatta and Leigh Creek. It is an enormous area of country they are supposed to cover

That is in the context of our anxiety about our ability to comply with one of the fundamental recommendations of the royal commission, No. 108, which stated that when an Aboriginal Legal Service solicitor attends a country court they ought to be able to do so with at least one spare day before the court circuit starts, so that they do not have an impossible mad rush to treat their clients in a magistrate's court like sausages in a sausage factory. To do that you need the resources to give the lawyers enough free time to get there a day before the court starts, so that they can give the clients an adequate service. It is a fundamental matter. We say that a very good measure of our under-funding—in respect of much of the work done by our Port Augusta office, in particular—is that we are unable to comply with royal commission recommendation No. 108. We say that that is a pretty good indicator of a lack of resources.

CHAIR—Thanks very much, and thanks for a comprehensive and extensive submission as well. I will start with a couple of questions and then pass over to my colleagues. I would not mind starting with the point you made, Dr Watson, about autonomy and decision making and communities setting their priorities. The thing that troubles me about that is that, in the broader community—rightly or wrongly, and sometimes to our cost—we always draw on the best expertise available in setting our financial and policy priorities. In quite a number of communities in South Australia you will find the problems that you talk about: the underresourcing of social and other support workers in a context where you have substance abuse and other endemic problems. But alongside that you will find infrastructure that was very expensive to build—whether it be an airstrip or a building—which is no longer being used, is in disrepair or whatever. How do we, as governments, balance local autonomy and priorities with the evidence of, in many circumstances, expensive infrastructure that is not being used? What sort of role should there be for government and experts in the setting of those priorities?

Dr Watson—The question I hear you asking is what is the role of experts in setting priorities as apart from local—

CHAIR—The question I am asking is, local autonomous decision making quite often gets it wrong whether it is white or black communities. Airstrips are a good example. Expensive airstrips are built according to priorities set by the local community but the social infrastructure to get the kids off the petrol is not being funded. How do we handle that sort of outcome?

Dr Watson—I think I would have to put to you again what I was suggesting in the beginning, that I think we have to listen first and take advice from the local communities, particularly if we

are talking about the petrol sniffing scenario. I refer you to the coronial inquiry that Christopher Charles was involved with; he could probably fill you in further on it. What came out quite clearly in that inquiry was that the people have been talking about this problem for 30 years and suggesting the same sorts of remedies for 30 years, that is, that there needs to be a much longer term commitment to the region, that the problems are big and they are not going to go away. There are huge costs involved in addressing the petrol sniffing problem. Comparing taking advice from local communities to that of the experts, I do not know what I can say other than again to refer to the evidence that was given in that particular inquiry where again it was made very clear by the Pitjantjatjara Anangu people that all the information and evidence is there. There has been 30 years of documented research and reports made into that region and it is quite clear to the community what the resolutions are.

The other side of that, your suggestion that expensive infrastructure is built such as airports et cetera, I think that that is another question entirely, particularly where communities are saying that they need support to address that problem. There was an interesting comment made by one of the doctors in that report where he asked why we look at the petrol sniffing problem in a remote area of Aboriginal Australia differently to, for example, the Cabramatta community, where there is an exploding problem of substance abuse, the substance being heroin. How is it that we come to look at those two situations differently? Of course the difference with petrol sniffing is that we have an Aboriginal community that is isolated living in a remote region that does not have the infrastructure that a community such as Cabramatta would have for example. But the question is never ever put to the Cabramatta community that the heroin problem is their problem and that they should work on initiatives within that community to solve that problem themselves.

CHAIR—I do not know about that.

Dr Watson—I am not saying that that is what you are saying. The factor of being geographically isolated in other ways creates a further isolation, a further sort of social isolation of communities where a lot of the solutions come from the community. For example, the community—and you may want to pick this up too, Chris—are in a position where they are having to police their communities in a way that is not comparative to, for example, Cabramatta, because of the almost absence, in comparison, of those sorts of services in a petrol sniffing community.

CHAIR—I am not sure if those analogies actually help. I know that in Cabramatta and Bankstown there is a degree of local community response in place, but I would see young people in outback communities as being in a much more dire situation, with isolation being one part of it. My point is: does self-determination also carry with it a legacy of bad decision making? For instance, do we need to look at the model by Mr Chivell, the South Australian coroner, which is on page 8 of your submission? Rather than continual reporting, the model supports having an appointed trusted representative who could monitor and evaluate the programs and projects. Maybe there would be a cost to local decision making and autonomy, but the outcome may be a more effective and productive one. Is Chivell on the right track?

Mr Charles—That needs to be put in context. Unfortunately, there had to be quite a lot of complaints made that were precisely about the remoteness of the Commonwealth bureaucracies and the ways in which the community controlled organisations had to waste a lot of their time

writing reports and preparing funding submissions—much the same as we have complained. That is the context of reiterating the royal commission's recommendation for three-year funding. It is also the context of the coroner recommending trusted officials in the field who are able to be in good, close and sensible liaison with Aboriginal community controlled organisations. In that way they can get it right and there can be the kinds of sophisticated coordination that exist between state and Commonwealth officials, as well as coordination with the community controlled organisations and the communities and individual groups that are necessary in order to have some success with that particular problem. As the coroner pointed out, unless you have a combination of three or four different programs running at the same time and coordinated effectively, you are not going to have much chance of dealing effectively with petrol sniffing.

CHAIR—I might move on to another question and then let my colleagues ask questions as well. On page 5 you raised another matter that I think anyone who goes to a community is struck by: the question of food security.

Mr Charles—Absolutely.

CHAIR—There are enormous rip-offs, both in terms of transport costs and the cost of the product. I imagine that in most circumstances the food supplier is a local one-off operator. How do we overcome this sort of problem?

Mr Charles—This committee ought to be consulting directly with Anangu Pitjantjatjara Yankunyatjatjara Council about this. We know about it peripherally, but it might be well worth speaking to the APY Council. They have a specific new food policy, contained in a document called the *Mai Wiru*—or 'Good Food Report'. There are completely revamped stores policies and I think, with respect, it is a matter for them to address you on, because it is a very important initiative they have taken to address this fundamental problem of lack of food security.

CHAIR—Are they running the food outlets themselves?

Mr Charles—They are redesigning the relationship with the stores and they are subsidising staple foods, basically. It was a matter of great importance but, as I say, I think it is not our place to speak about their policy, which they are implementing. We would recommend you speak to APY about it and we can certainly tell you the people to talk to.

Senator PAYNE—Just on that point: we are at the end of that first paragraph on food security in your submission. Citing Crough, it says that this situation is likely to get worse not better in the foreseeable future. Although we can and will talk to APY, probably by way of correspondence at this stage, does that mean you think there is now some improvement in the process?

Mr Charles—There is a policy in place from APY Council about changing the relationship with the stores. There is a fundamental change to the stores policy. There is room for optimism but, as I say, it is a matter that ought to be properly addressed by them.

Senator PAYNE—And we will endeavour to do that.

Mr Charles—I am very glad. It is basically a positive, good story.

Senator PAYNE—Dr Watson, I must say that I agree with Senator Bolkus. In trying to make comparisons and draw analogies you have used part of my constituency, but you might be surprised at the extent of community engagement and the expectations of the community to help themselves in regard to the problem you identified. I have certainly seen and been able to commend significant portions of the community in Cabramatta or Bankstown that, as Senator Bolkus said, do exactly that.

A comparison I would be interested in you drawing is the point you make in relation to personal advisers under the Australians Working Together initiative. You indicate in the submission that it has not been possible to recruit, in South Australia at least, PAs from the indigenous community, and that clearly puts an enormous barrier in the way of that system working properly. In the Sydney papers this last weekend there has been publicity about personal advisers and the engagement that they are having in outer urban communities here in Western Sydney, which is an area in which I work. These seem to me to be particularly significant challenges that you have identified and I wonder if you could elaborate on that.

Dr Watson—I think I will let you talk about personal advisers. I just want to clarify just the comparison I made between the Anangu lands and Cabramatta. I make that in the context of the coroner's report, the report prepared by Wayne Chivell. The point is that we have different issues of substance abuse in different regions, one being a remote community and one being a highly populated community, and quite clearly the discussion on community initiatives and community involvement in taking preventive measures at a community level is best spoken about by the people in the communities themselves, the Anangu people themselves. I am not in a position to comment on that other than really to illustrate the very different nature of remote Aboriginal communities and that the crises in remote Aboriginal communities, particularly when we are dealing with questions such as substance abuse, need to be looked at on a completely different level from how we approach these questions from a mainstream perspective. That is simply the point that I make, There is no real comparison in one sense, but I use that comparison to illustrate the huge inequalities that exist for communities that are geographically remote.

Mr Charles—I would have to endorse that. I think it needs to be looked at in the context of some evidence that by Dr Torzillo, who is the Director of Nganampa Health, gave to the coroner. In fact, he was talking about the remoteness of Adelaide and that the bureaucracies of Adelaide were not listening. That was the context of what he was saying. If we were Cabramatta, they would be listening because it is a national crisis.

Senator PAYNE—I wish that were true. I made the remarks I made in an effort to say that I do not think the comparison is actually serving our discussion effectively and I do not think we need to go through it any further.

Mr Charles—With respect, thank you. I just wanted to contextualise it to what the evidence had been before the coroner. Dealing with this latter question of the point about personal advisers, I guess I can take that to what we saw, particularly in the APY lands, with sniffers who were basically in need of disability support who would collect their CDEP moneys, which would have been reduced because they were physically incapable of working, have it taken from them as soon as they took the money from the counter by other sniffers or friends or relations; people who could not feed themselves and basically required to be fed meals because they could not be expected to go and buy food and cook it. That is a context where personal advisers are needed,

but you also need a disability support program to deal with people who have got the acquired brain injuries that flow from petrol sniffing. You have these anguished tales of the people who are doing the social security CDEP payment system who are distressed in their conscience because they know they are giving the person the money and they know that this person will not be fed, this person will not get the benefit of this money. It will probably be taken out of their back pocket before they got 10 yards from the store.

That is one context. Another context in respect of personal advisers is, again, by close consultation looking to the needs of remote communities, and in a context where there is not much literacy personal advisers may, for instance, take the form of people who are basically secretaries. Individual Anangu need a secretary, someone to answer these long and complicated letters from the government departments that they do not understand. They know what they want to say but they do not really understand what the letter says and they do not really understand what subclause 15 says, so they need somebody to read it and to assist them to prepare a reply. That is a broader context of what is needed. Whether that will be achievable, considering that the Courts Department in South Australia is unable to even supply sufficient Pitjantjatjara interpreters to supply the magistrate's court, I think gives you the basis and the context, with respect, of our concern on that point. Is that clearer on what we are getting at?

Senator PAYNE—Yes, and I appreciate the elaboration. Thank you.

Mr Charles—That is the context of our concern about that particular point, that community need is very dire and very great, and the McClure report suggestion about advisers, yes, it is a step in the right direction, but then closer consultation with communities would have indicated that actually needs are even greater and more fundamental and go to the question of disability support for acquired brain injury and go also to the question of the need for people to basically have secretaries.

Senator PAYNE—But you are saying we have not even reached the first level of the personal advisers, let alone the rest?

Mr Charles—That is my point, with respect, yes.

Senator CROSSIN—Can I just change tack for a moment and go to the issue of practical reconciliation, the emphasis the government has put on that terminology. Dr Bill Jonas asked last year how putting money into programs, which they should be doing anyway, that is, practical reconciliation in the eyes of government, can somehow bring together Indigenous and non-Indigenous people in this country. What is your response to that?

Mr Charles—Practical reconciliation has tended to be seen in terms of things which are essentially assimilationist, and real reconciliation, as it is understood at ALRM for instance, is about recognising particular need, particular disadvantage, and the need for special measures to carry out the sorts of tasks which are needed to make real progress. I point to the difference between a notion of a general adviser to the need for secretaries and the need for disability support as being what essentially are mainstream services, but if they get covered as one cover-all topic, as a personal adviser on the one hand, then you have missed the detail of what is actually needed and then you cannot go that extra step further again to see what would constitute a special measure to overcome the substantive disadvantage which remote Aboriginal

communities particularly live under. Is that a practical way of looking at it? It is not a pun, it is trying to give you simple examples of what we are getting at.

Senator CROSSIN—I guess in a way what I am getting at is that there some notion by this government, the federal government, that putting money into programs is a way of achieving reconciliation in a practical sense. There has been some criticism of that—in fact, someone said this morning they believe that practical reconciliation has failed because it is really only putting money into bringing services for indigenous people up to a level that everyone else enjoys anyway. Therefore, what would you see as being reconciliation? How can the whole agenda be advanced in that instance?

Dr Watson—Just on the point of the idea that practical reconciliation is bringing indigenous disadvantage up to a measure of equality, if only that were true. The process is not even achieving that. So I think that needs to be made clearly understood before we can even have an intelligent discussion about what it is we are talking about here. I think there needs to be an appreciation of that. We see that in our work within the Aboriginal legal rights movement. We are offering a service which I believe is a good service for the level of resources that are made available to the Aboriginal legal rights movement, but comparative to the general mainstream Aboriginal Legal Services Commission we are disadvantaged in the allocation of resources.

Certain fees—transcript fees, for example—are waived by the state government in relation to the mainstream Aboriginal Legal Services Commission. They do not have to pay those fees. We have been lobbying the state government for more than 15 years that I am aware of for the same benefit. So not only are we underfunded at a Commonwealth level but at a state level we are not resourced in the same way as the Aboriginal Legal Services Commission. That is just one example of where there is a disadvantage that remains in service provision to the community.

Mr Charles—That is important as well. It is a fundamental Commonwealth-state issue which will obviously be of interest to the Australian Senate. As we have indicated to you, in our view our budget from ATSIC is grossly underfunded in a number of areas. Yet a significant proportion every year goes as a direct payment to the state of South Australia for the provision of transcripts. We have to have transcripts if we are doing trials in the superior courts, the coroners court and so on and so forth. You have to have them. They cost $5 or $6 a page. If a trial goes for some weeks, it costs hundreds and hundreds of dollars. You cannot do the trial effectively for your client without them. Yet if we were working for the Aboriginal Legal Services Commission of South Australia we would be getting transcripts for free. That is a simple example of where the Commonwealth's money, through ATSIC, is being spent to supply the state.

There are many similar examples of where Commonwealth money is used to prop up state services and finances. That is not our argument. That is a matter between Commonwealth and state ministers. But ALRM is constantly made the meat in the sandwich and ought not be in that position. We said in our written submission that ATSIC's description of itself as a supplementary funder of Aboriginal legal services in the context of the fact that we get virtually nothing from the state makes that point quite clear. If ATSIC is a supplementary funder, then where is the supplement from? There is no supplement. Yet it is arguable that, since most of our work is within state jurisdictions, the state ought to consider its position. They do not supply transcripts. The most recent example is that I have had to get an indemnity for costs out of ATSIC over a state prosecution which ALRM is running. I cannot think of a more extreme example than that.

We have not had a reply from our correspondence with the state, but ATSIC has had to come in and fill the breach. That is where our money goes on doing things where perhaps more sensible arrangements between the state and the Commonwealth would free up the Commonwealth money so we could do more.

To reply to your question, Senator Crossin, it is oversimplifying it to merely say, 'Practical reconciliation is necessarily just assimilation.' That is true and a very defensible position, but it is also true that the provision of mainstream services and the provision of services in a way which creates an equivalence in the position of Aboriginal people to non-Aboriginal people is what we ought to be doing. We cannot even do that. We scarcely get a look-in to be even thinking about the level of refinement of the add-ons that amount to what Dr Watson is calling special measures.

Senator CROSSIN—How important is it for the symbols of reconciliation—the treaty, the apology, discussion about reparations, even protocols for recognising Indigenous land—to be progressed and put in place to advance the whole reconciliation agenda? Are they areas that should also be given attention in order to achieve reconciliation in this country?

Mr Charles—Being lawyers, we have gone to the constitutional questions first. Like many other people who have made submissions here, we say that the provision of the Constitution which allows for discriminatory state laws in respect of voting ought to be amended. We would like an entrenched bill of rights. We do not think we are going to get it. We also share the concern of other witnesses before this committee about the possible interpretations of section 51(xxvi) in respect of special laws. Special laws ought to mean special measures—in particular, laws to overcome disadvantage. But we are concerned about the way in which it may be used to be a special law which operates as a detriment. Those matters of constitutional reform are matters which we take to be of great importance—perhaps greater importance than the symbolic matters.

Dr Watson—Further to that, I think it is also a time of holding ground because that ground is shifting with the current proposal to remove the Aboriginal Social Justice Commissioner position and replace it with a generalist one. I think that is an example of a point of regression. If that proposal is successful, the ground will shift further to the disadvantage of Indigenous peoples. It is also an example of the loss of any reconciliation ground that may have been gained by the establishment of that position. Also, the Commonwealth Racial Discrimination Act 1975 is an instrument that is fundamental to holding ground and maintaining the current position of Aboriginal people, so that should not shift either. There is also the proposal to amend the Commonwealth Aboriginal Heritage Act. There are a number of instances. Any of the examples I am citing are situations in which we are trying to shift the position of disadvantage and not lose any ground we may have gained over the past 30 years through the enactment of the Racial Discrimination Act and the concept of special measures. I think we are in a position where that ground is, sadly, being lost.

CHAIR—Mr Charles, you mentioned transcription fees. Is that just a South Australian problem or is it across the nation?

Mr Charles—I am afraid I cannot answer that question. I am not sure, to be honest with you.

CHAIR—We will check that out. I presume that you have made representations to the state Attorney on the indemnity aspect of it.

Mr Charles—I am afraid we have. Unfortunately, we did not get a response, but we had to proceed. ATSIC has given us the indemnity. Again, we say with great respect that this is a state matter and the state should be dealing with it. ATSIC should not be coming to the rescue.

CHAIR—Was the indemnity asked of the state Crown?

Mr Charles—It was simply an indemnity for costs for the purposes of running a prosecution. We need to do that because we may lose and have to pay costs, and we do not have the funding to do that.

CHAIR—Are you running the prosecution?

Mr Charles—Yes, we are.

CHAIR—I turn back to the transcription fees. Did you write to the Attorney in South Australia about that?

Mr Charles—Yes. It has been raised on numerous occasions.

Dr Watson—Over about 10 or 15 years.

CHAIR—The other point I want to ask you about is customary law. On page 2 of your submission you say:

… social and cultural change has meant that full recognition of customary law may no longer be feasible.

Mr Charles—I think I am going to live to regret having written that.

CHAIR—I am sorry I picked it up.

Mr Charles—Perhaps I wish I had expressed myself in a different way.

CHAIR—I was going to ask you to explain yourself.

Mr Charles—I think there really needs to be greater consultation with communities about what is possible and what kinds of policing work are done, for instance, so as to minimise disruption. I would like to give a positive example of that which flowed from the inquests. In the course of the inquests, the families got to meet the state government pathologist who had performed the autopsies on the deceased which were necessary for the purposes of the inquest process. I do not think I would be doing anybody an injustice if I said that the pathologist came away something of a chastened and humbled man when he realised that what was to him an administrative matter of dealing with bodies as a pathologist in a certain fixed period of time actually caused enormous disruption to sorry camps out in the bush. The families responsible for Anangu traditional funerary arrangements had to wait for his administration to go on in Adelaide.

Then he found out about the responsibility of the families for other people who came to the sorry camp—for the provision of food and resources—and the anxiety and distress to all those families that was caused by the delay caused by his doing his work. The need for him to hurry it up and to have Aboriginal people come down to Adelaide to supervise what was going on and to look after the body themselves became a priority and became the subject of a protocol. That is what good consultation can lead to—the overcoming of real problems about customary law which white officials are simply unaware of causing.

CHAIR—In those circumstances should we not be looking at a greater application of customary law in the policing guidelines rather than when the case gets to court, in terms of decisions to prosecute and so on?

Mr Charles—I think so. I can think of the distress of the Anangu, for instance, if there are arrests around ceremony times. Generally, there has been a great deal of leeway in South Australia so that if ceremonies are on and people have not come to court then the warrants are held for months and months until they get back. There can be distress. The imperative of the ceremony should not be interrupted by court process—that is the simple way of putting it.

CHAIR—The other thing that has been put to me is the potential for specific courses on cultural awareness and engendering self-respect amongst and respect for Indigenous inmates when they are in prison. Has that ever been tried?

Mr Charles—The question of imprisonment and the royal commission recommendations about prisons is a subtopic that I would like to pursue separately because it is actually a complex interaction of a number of different issues.

CHAIR—We have run out of time, but you can put in a supplementary submission on that, or if it takes a couple of minutes you can do it now.

Mr Charles—I would like to say this briefly: in the mid-1990s there were an appalling number of Aboriginal deaths in custody in South Australian jails. The inquests occurred one after the other and it was dreadful. The department saw that it needed to do something. They immediately put a lot of resources into cultural courses for Aboriginal prisoners, who would then go back to sleep in the same cells, with the same exposed hanging points, that they had been in before. Those programs and the money that went with them lasted for a few years and the rate of deaths in custody in South Australia went down dramatically. This is a gross oversimplification, of course. Those programs were significant and important, but the hanging points remained and the money needed to remove the hanging points was not there. So now we have the unacceptable position in South Australia that the coroner is complaining when he does a death in custody inquest that, in February 2003, he is making the same recommendation to remove the hanging points that he made seven years ago.

That is about the allocation of resources to correction centres to remove hanging points. It is a fundamental recommendation of the royal commission. It is a very good reason why the state parliament ought strongly to reconsider its view about the implementation of royal commission recommendations 13 to 17 about making government departments accountable to the parliament and to the families for the implementation of recommendations to prevent further deaths in

custody. We point to the fact that the coroner is saying the same thing seven years later as being a very good reason why that needs to be done. We regret to say it, but it is so.

Senator KIRK—On page 6 of your submission you talk about unfinished business. This is a term we have heard quite a lot today. You say:

> The unfinished business in the recognition of Aboriginal rights is the need to
>
> - Name these denials of rights for what they are, not in abstract jurisprudential concepts but as matters of immediate importance to the Australian Commonwealth.
> - Name those who are responsible for them.

How do you see that coming about? What sort of process do you see for that? Is it through constitutional amendment and reform or is it through some sort of leadership? Those two points are quite vague. What do you mean by them?

Dr Watson—It is a complex question which requires further discussion. We can only put it from the perspective of ourselves as individuals. It is a community process involving Indigenous peoples from across the board, but simply it means the recommendation for a bill of rights and for amendments to the Constitution to repeal some of the more offensive clauses in the Constitution which are associated with the origins of the White Australia Policy and should of course be removed. As I mentioned earlier, we are also in a position, practically and realistically, where there is a strong call to retain ground that appears to be clearly shifting—that is, the special measures provisions that are identified in the Commonwealth Racial Discrimination Act and the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

On the term 'self-determination', Aboriginal land rights, reparation and compensation have always been a universal call that has come from Aboriginal communities across Australia. We need to continue to keep the debate open and keep the opportunity for us to continue to have that discussion. Unfortunately, I see an Australian community which is shifting from that discussion to a very regressive assimilationist agenda, which I see in the face of practical reconciliation. We should not be in fear of the term 'self-determination'. Self-determination is merely an open-ended process which should give us the opportunity to engage and discuss across borders with Indigenous and non-Indigenous peoples as to the real possibilities in settling what we have generally called unfinished business. There is no simple answer. There are many views, many Indigenous views. There is no one universal view. To bury those views and replace them with what is appearing as an overwhelming assimilationist agenda is not the direction we should be heading in.

CHAIR—Thank you for your written submission and for your presentation this afternoon. You have given us a few things to follow up.

Dr Watson—Thank you for your work too as a committee.

CHAIR—Thank you.

[2.25 p.m.]

ENSOR, Mr James, Director, Public Policy and Outreach, Oxfam Community Aid Abroad

McCOY, Ms Nicole Louise, Coordinator, Indigenous Australia Program, Oxfam Community Aid Abroad

CHAIR—Welcome. You have lodged a submission with the committee, which we have numbered 19. Would you like to alter or amend that in any way?

Mr Ensor—No.

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

Mr Ensor—Oxfam Community Aid Abroad works with indigenous people in about 21 countries around the world, including Indigenous people in Australia. In our submission and evidence today, it is important to recognise that we do not represent the views of Indigenous Australians. Our primary interest is in maintaining and enhancing the rights of indigenous peoples with whom we work, including Indigenous Australians. As such, we seek in our submission and evidence today to speak from that rights based perspective, not a representative perspective. This rights based approach to development that we have as an agency reflects our view that poverty and injustice are primarily caused and perpetuated by injustice between and within nations, resulting in the exploitation of marginalised people.

This rights based approach also implies that states have obligations and citizens have rights, and those rights are expressed through international covenants, agreements and commitments. These include the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and a range of more specific commitments that governments have made at a series of international conferences dating back over the last 20 years.

Given our breadth of experience as an organisation, what is striking to us is the similarity of underlying problems that confront indigenous people around the world. Usually they are the most marginalised of the poor. Usually they have the least political power and, often because of their prior ownership of land, they find themselves in conflict with a range of interests wishing to exploit their natural resources. Whether in Indonesia, India, Guatemala or Australia, generally indigenous communities have a history of suffering because their rights, culture and law have all been sacrificed for the economic interests of dominant cultures. A reluctance by dominant cultures to understand often complex indigenous land ownership systems is nearly universal, in our experience.

We broadly endorsed at the time the Council for Aboriginal Reconciliation's proposed national strategies to advance reconciliation. We thought that they were a considered and appropriate framework to present to the Australian government for the achievement of reconciliation beyond the centenary of Federation. We are concerned at this point that the Commonwealth has failed to pass formal motions of support for the key documents of reconciliation in a manner consistent

with that proposed by the Council for Aboriginal Reconciliation. The Australian declaration towards reconciliation was substantially revised to remove references to key issues that we believe are important. Those issues include, for example, the recognition of customary law, the concept of self-determination and a formal apology to the stolen generations.

As the Council for Aboriginal Reconciliation suggested, it is important as part of the reconciliation process that the recognition of past injustices be acknowledged. Following the legislative expiry of the Council for Aboriginal Reconciliation, we note that Australia no longer has any formal process of reconciliation with mandated objectives, monitoring powers and accountability. The final response of the Commonwealth to the Council for Aboriginal Reconciliation's final report in September 2002 signalled a message to the Indigenous community of the degree of priority afforded to the reconciliation process, given the length of delay. We are not aware at this point of any detailed program of implementation, long-term strategy, benchmarks or targets for the reconciliation process to move forward.

Whilst there are a number of initiatives that we support, including the COAG initiative for trialling whole-of-government approaches to engagement and service delivery in Indigenous communities, and particularly in the 10 trial communities, we are concerned about the language of practical reconciliation. We believe it has not assisted the reconciliation process because it has artificially separated practical and so-called 'symbolic' acts of reconciliation, suggesting that the reconciliation process focus on bestowing health, housing and education services for Indigenous communities. These services are obviously essential, and even more so for indigenous communities in Australia than for those overseas, but those services are, in fact, basic rights for all Australians and not special measures to be bestowed on Indigenous Australians.

In linking reconciliation with the provision of services to Indigenous Australians, the Commonwealth appears to have rejected the notion of substantive equality, instead promoting a model of formal equality or equality of opportunity by not being prepared to support any action which would entrench additional special or different rights for one part of the community. This position, we believe, has served to undermine community understanding and support for the reconciliation process. Recognition of difference, which is enshrined in internationally accepted standards of substantive equality—and by that I mean equality of outcome rather than equality of opportunity—is necessary for genuine reconciliation and justice for Indigenous Australians.

Finally, we believe that the failure to progress a number of outstanding Indigenous rights issues has created a significant barrier to the achievement of reconciliation. We encourage the Commonwealth to revisit and continue to work towards the resolution of these issues. These include: the United Nations Committee on the Elimination of Racial Discrimination finding that elements of the Native Title Act are inconsistent with Australia's obligations under the Convention on the Elimination of All Forms of Racial Discrimination; the issue of a formal apology to and addressing compensation needs for victims of stolen generations as proposed in the *Bringing them home* report; the continuing uncertainty over aspects of the Racial Discrimination Act, particularly whether section 51(xxvi) of the Constitution can be used to discriminate against people of a particular race; and, finally, the issue of a preamble or amendment to the Constitution acknowledging prior Indigenous ownership of Australia.

Senator PAYNE—Thank you for your submission and your comments. Can you advise the committee what role you think the state and territory governments have in the reconciliation process?

Mr Ensor—Our feeling would be that there is a role for governments at all levels, from local through to state and Commonwealth, and that they should act in a manner consistent with each other within an agreed framework laid down at the Commonwealth level. We would see the role of state and territory governments as facilitating agreed aspects of the national strategies to advance the reconciliation process, in terms of also looking at improved methods for engagement with and service delivery to Indigenous communities.

Senator PAYNE—From what you say in your submission, you obviously see the importance of the response to the Council for Aboriginal Reconciliation's final report from the Commonwealth government. Does it concern you that not one state or territory government has made a formal response?

Mr Ensor—Yes, it does.

Senator PAYNE—Would it also concern you if you knew that we had received responses to this committee's inquiry from only three of the eight state and territory governments?

Mr Ensor—Yes, it would.

Senator PAYNE—I think that what we have here is, in fact, a larger hole in the government process than just your concerns in relation to the Commonwealth in many ways. Would you agree?

Mr Ensor—I think the responsibilities rest with governments at all levels.

Senator PAYNE—You make some points in relation to Reconciliation Australia. We heard from Reconciliation Australia this morning and have a good submission from them and a copy of their report card 2002. Your submission indicates that you do not believe it is appropriate for the Commonwealth to transfer responsibility for the reconciliation process to Reconciliation Australia and you do not necessarily agree that that is what is being done but take the point. You suggest that it needs a legislated mandate or formal powers for implementation. What would you give them if you were legislating for Reconciliation Australia to be a more effective body in your view?

Mr Ensor—I do not think it is necessarily an issue of giving Reconciliation Australia powers. There might be alternative models to look at. What concerns us more is the lack of a formal legislated and mandated process moving forward that provides a framework for the nation. That has to come from the Commonwealth and provide a framework for all bodies with a role in the reconciliation process moving forward. Some of that mandate may be channelled particularly to Reconciliation Australia; some of it may not, in that the Commonwealth may choose to pick up and run with particular initiatives that fall out of the strategies or particular initiatives that remain unresolved, if you like, as a result of the sort of unfinished business of reconciliation. It is not necessarily a case of transferring all mandated responsibility to Reconciliation Australia but it is providing a framework by which all actors in the reconciliation process can work forward—

one that has benchmarks and key deliverables within it so that we are not dealing with an open-ended process.

Senator PAYNE—In relation to steps that have been taken around the COAG structure, I notice that your strategy comments on the fact that you are still waiting for benchmarks—and we are still waiting as well, so you are not alone in that regard. It seems to me from some of the submissions that we have received that the COAG process does put some structure around certain aspects. That seems to have brought not necessarily reassurance but at least some degree of process for some participants in this environment of trying to bring about what, from the government's perspective, is practical reconciliation and, from others' perspectives, may be just achieving a certain basic standard of living and basic human rights.

Mr Ensor—Our engagement with the COAG process has been fairly peripheral. We have expressed interest in managing one of the 10 pilot projects around the country and we are still in discussion about that. From what we have seen, it seems like a worthwhile model to pursue and, if the results demonstrate improved outcomes on the ground, then to potentially look at scaling up.

Senator PAYNE—Where does Oxfam CAA do most of its Indigenous work in Australia?

Ms McCoy—At the moment it is New South Wales, Queensland and southern Western Australia where the main projects are happening.

Senator PAYNE—Can you identify some communities for us?

Ms McCoy—In Brisbane they are doing some youth at risk work with cultural reclamation camps. When boys get out of boys homes, they take them to culture camps and work on self-esteem and self-confidence issues. In health, we are working with the Western Australian ACCHOs—the Aboriginal community controlled health organisations—on capacity building training and on strengthening their networks and their ability to advocate at the state level and negotiate with state government. We are also working in the area of self-determination, which is backing up the process with the Aboriginal health services in Western Australia. Again, we are working on capacity building, self-governance and issues of best practice in running Aboriginal organisations.

Mr Ensor—One development that is more recent is that about two months ago we signed a memorandum of understanding with what was then ATSIC—we are not sure who the memorandum is with now—on a development partnership whereby Oxfam would work with ATSIC staff around the country in targeted regions on training and community development practice, which is upskilling ATSIC staff in actually how to work with communities in a way that empowers those communities and builds their capacity. We believe that partnership will now be with ATSIS and will continue in that sort of vein, although we are not exactly sure at this point.

Senator CROSSIN—On the last page of your submission you say:

> The … 'practical reconciliation' policy has also served to retard the reconciliation process by artificially separating 'practical' and so-called 'symbolic' acts of reconciliation …

Do you have a view as to whether or not real progress towards reconciliation must also pick up the symbolic aspects of that agenda, separate from the exclusive practical reconciliation that the government now puts emphasis on?

Mr Ensor—As you have picked up, I do not think it is an either/or situation. I think the debate in Indigenous Australia has focused very much on an either/or scenario: it is either rights or services; it is either land rights or housing; it is either practical reconciliation or symbolic acts of reconciliation. In reality, to move forward we need progress on all of these dimensions simultaneously, and if you take one of the significant dimensions of that spectrum of issues out of the equation then it retards that reconciliation process. To give you an example, if we have very good investment in education and health outcomes, particularly in the more remote areas of Northern Australia, and a winding back of Indigenous control of land, then the issue arises that that reduces the capacity of Indigenous communities to actually build an economic base on land holdings achieved through the rights agenda.

Similarly, you could mount a counterargument that, if the investment is overwhelmingly in the rights agenda and not in education, health care et cetera, then Indigenous communities will not be in a position to take the opportunity to enjoy the rights bestowed on them through the Native Title Act or the Aboriginal land rights act. Similarly, symbolic acts of reconciliation are an important element of that overall mix in that it is often the symbolic that provides the driver or the baseline for people feeling a sense of validation or feeling a sense of recognition by the state or whomever.

A couple of years ago, Oxfam Community Aid Abroad funded a very interesting project in the Northern Territory, which involved the relocation of a boulder that sat on the grave of John Flynn—the founder of the Royal Flying Doctor Service—which is outside Alice Springs. That boulder had been taken from the Devil's Marbles, a sacred site about 400 kilometres north of Alice Springs. About 50 years ago it was literally put on a truck, driven down the road and put on the grave.

In the lead-up to that event—the relocation of the stone back to the Devil's Marbles—all sorts of amazing things happened around Alice Springs in that, all of a sudden, the local Aranda people in Alice Springs said, 'All right, we'll go and find another stone that looks like the Devil's Marbles. That'll be a sacred site, and we'll put that on the grave head.' Initially, the project was portrayed as one dividing black and white, but at the end of the day it became a very potent symbolic act of reconciliation because we brought together the surviving family of Flynn, the traditional owners of Alice Springs and the traditional owners of the marbles at Tennant Creek. The outcome for all parties—and then, the message that sent to the broader community—was overwhelmingly positive. That is one small example.

Senator CROSSIN—So who should take the leadership in progressing a symbolic as well as a practical agenda towards reconciliation? Does that leadership start with the Prime Minister, as some witnesses would have it, or should we just leave it to the people and the people's movement to progress it?

Mr Ensor—I think it needs leadership from government at all levels—Commonwealth, state and local—and from those engaged in the process from a range of sectors. I think it also needs leadership from the corporate sector. Clearly, there is a very significant role for government, and

in particular the Prime Minister, in setting that framework and also a direction for the country. The message contained in the Prime Minister's response to any issue is obviously of huge significance to the way that issue is perceived and then played out in the community.

Senator CROSSIN—Page 3 of your submission states that you disagree with the Commonwealth government's view that progressing the issue of a treaty would actually undermine the concept of a single Australian nation. Do you want to elaborate on that view and say why that is in your submission?

Mr Ensor—One of the arguments opposing a treaty is that a treaty, by definition, is an agreement between nation states and as such would lead to the creation of a separate nation state. We do not believe that is the case. We believe there are a number of precedents, including the treaty arrangements that have been negotiated and are currently still being negotiated in Canada, treaty arrangements that exist in Japan, and some degree of treaty arrangements that exists in Malaysia with some indigenous groups. These arrangements have not led to the creation of separate nation states, and our understanding from our discussions with key Australian Indigenous leaders over recent years on the treaty issue is that there is no intent among the Indigenous leadership in Australia for a treaty process to lead to the creation of a separate nation state.

CHAIR—On that note, thank you for your submission to us, drawing from your experience, and for your evidence this afternoon. We realise this is not an easy inquiry, and your assistance is welcome.

Ms McCoy—Thank you.

Committee adjourned at 2.49 p.m.