The Senate

Community Affairs Legislation Committee

Social Services and Other Legislation Amendment Bill 2013 [Provisions]

December 2013

ISBN 978-1-74229-926-6

Secretariat

Mr Matthew Crawshaw (Committee Secretary)

Dr Richard Grant (Principal Research Officer)

Mr Jarrod Baker (Senior Research Officer)

Ms Carol Stewart (Administrative Officer)

PO Box 6100
Parliament House
Canberra ACT 2600

Phone: 02 6277 3515
Fax: 02 6277 5829
E-mail: community.affairs.sen@aph.gov.au
Internet: www.aph.gov.au/senate_ca

This document was produced by the Senate Community Affairs Committee Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

MEMBERSHIP OF THE COMMITTEE

44th Parliament

Members

Senator Sue Boyce, Chair	Queensland, LP
Senator Rachel Siewert, Deputy Chair	Western Australia, AG
Senator Carol Brown	Tasmania, ALP
Senator Nova Peris OAM	Northern Territory, ALP
Senator Zed Seselja	Australian Capital Territory, LP
Senator Dean Smith	Western Australia, LP

Participating members for this inquiry

Senator Richard Di Natale	Victoria, AG
Senator Claire Moore	Queensland, ALP
Senator Nick Xenophon	South Australia, IND

TABLE OF CONTENTS

LIST OF RECOMMENDATIONS

Recommendation 1

1.52 The committee recommends that the Government consider extending the exemptions available in Schedule 10 of the bill to all personnel stationed overseas by the Australian Government, to ensure that diplomatic staff are exempt.

Recommendation 2

1.64 The committee recommends that the Schedules of the bill inquired into by the Senate Community Affairs Legislation Committee be passed without amendment.

The committee's report into selected Schedules of the Social Services and Other Legislation Amendment Bill 2013

1.1 On 20 November 2013, the Social Services and Other Legislation Amendment Bill 2013 ('the bill') was introduced into the House of Representatives. On 4 December 2013, the House conducted the Second Reading debate, Consideration in Detail and the Third Reading stage of the bill. On 5 December 2013, the bill was introduced in the Senate.

The referral

1.2 The bill is an omnibus bill with 12 schedules. On 5 December 2013, the Senate Selection of Bills Committee referred the provisions of Schedules 1, 1A, 3, 4, 5, 7, 8, 10, 11 and 12 to the Senate Community Affairs Legislation Committee ('the committee'). The Selection of Bills Committee asked the committee to report by 11 February 2014. However, on a motion from the Assistant Minister for Social Services, Senator the Hon. Mitch Fifield, the Senate voted to bring forward the committee's reporting timeframe to 12 December 2013.

Conduct of the inquiry

1.3 The committee recognises that the short timeframe for this inquiry reflects:

- the 2013 sitting calendar, and the proroguing of parliament in August 2013, which meant that several of the measures announced in the May 2013 federal budget were not introduced and passed in the previous parliament; and
- that several of the proposed measures are due to commence on 1 January 2014 and therefore need the parliament's assent by the last sitting day of 2013 (see Table 1).

1.4 Within the timeframe, the committee held two public hearings on 9 and 10 December 2013. The first hearing focused on stakeholders' views on Schedule 1 and 1A of the bill. The second hearing provided an opportunity for stakeholders to comment on Schedules 3, 4, 5, 7, 8, 10, 11 and 12. The transcript of these hearings is reproduced in Appendix 2 of this report. The report should be read in conjunction with the evidence contained in these transcripts.

1.5 The committee also received 64 submissions, which are listed in Appendix 1. The majority of these submissions relate to Schedule 11 of the bill.

1.6 The committee thanks all the organisations and individuals who provided both written and verbal evidence to this inquiry at such short notice. It is also grateful to the Parliamentary Library's researchers for providing an advance copy of the *Bill's Digest* to assist the committee with its inquiry and report.

Table 1: Timing and estimated savings of the measures

Schedule	Commencement	Savings
1 – Encouraging Responsible Gambling	Day of Royal Assent	Abolition of the National Gambling Regulator may result in savings
1A	Day of Royal Assent	The financial implications of this amendment are unquantifiable in 2013–14 and 2014–15, and nil in the outyears
2 – Continuing income management as part of Cape York Welfare Reform	Day of Royal Assent	Cost of $4.2 million over two years
3 – Family tax benefit and eligibility rules	1 January 2014	Savings of $76.6 million over four years
4 – Period of Australian working life residence	1 January 2014	Saving of $50.8 million over four years
5 – Interest charge	1 January 2014	Saving of $33.5 million over three years
6 – Student start-up loans	Immediately after the commencement of Schedule 5 to this Act.	Saving of $1,213.7 million over four years
7 – Paid parental leave	1 March 2014	Cost of $7 million over five years
8 – Pension bonus scheme	1 March 2014	Saving of $80.5 million over three years
9 – Indexation – child care rebate	1 March 2014	Saving of $105.8 million over three years
10 – Indexation – remaining amendments	1 July 2014	Saving of $18.8 million over four years
11 – Extending the deeming rules to account-based income streams	1 January 2015	Saving of $161.7 million over four years
12 – Other amendments	Parts 1–4: Day of Royal Assent Part 5: The seventh day after the Bill receives Royal assent Part 6: Immediately after the commencement of Parts 1 and 2 of Schedule 2A to the *Family Assistance and Other Legislation Amendment Act 2013*.	Nil

Source: Social Services and Other Legislation Bill 2012, p. 2. *Explanatory Memorandum*, p. 5.

Schedule 1: Encouraging responsible gambling

1.7 Schedule 1 of the bill amends the *National Gambling Reform Act 2012* to implement aspects of the government's responsible gambling policy and remove parts of the existing gambling regulatory regime. At the public hearing on 9 December 2013, the committee received evidence from several witnesses into the provisions of Schedule 1 (see Appendix 2).

1.8 The bill would abolish all commitments in the *National Gambling Reform Act 2012* relating to pre-commitment systems including:

- abolishing requirements on manufacturers and venues to ensure electronic gaming machines are pre-commitment enabled;
- repealing provisions limiting ATM withdrawals;
- repealing provisions requiring electronic warning messages be displayed to players;
- abolishing the proposed gambling regulator and the proposed levies; and
- removing references to a proposed trial of pre-commitment in the Australian Capital Territory as well as its proposed evaluation by the Productivity Commission.[1]

1.9 The bill would commit the government to:

- work with the states and territories, the gaming industry, academics and the community sector to develop and implement a voluntary pre-commitment scheme on gaming machines in venues nationally, within a realistic time period; and
- work with the gaming industry and the states, to ensure all pokies are capable of supporting a venues-based voluntary pre-commitment scheme, and to do this within a realistic timetable.[2]

1.10 The committee emphasises that while gambling is a significant problem for some Australians, most Australians gamble responsibly. The gaming industry is a major employer in Australia and governments have a responsibility to ensure that legislation does not place undue financial stress on venues. The gambling lobby's concerns with the potential impact of a mandatory pre-commitment system on their

1 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013.

2 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013.

business models were discussed in the first report of the Parliamentary Joint Select Committee on Gambling Reform.[3]

1.11 The committee highlights the fact that the changes proposed in Schedule 1 of the bill were flagged by the Federal Coalition in the lead-up to the 2013 federal election. The Coalition's pre-election policy document on gambling stated:

> The Coalition does not support mandatory pre-commitment because it will not effectively tackle problem gambling. Gambling reforms need to ensure that problem gambling is prevented and problem gamblers helped. Mandatory pre-commitment is highly unlikely to achieve either of these aims.
>
> The Coalition supports voluntary pre-commitment programme for electronic gaming machines adopted in concert with other measures, such as targeted counselling services and an effective self-exclusion scheme.
>
> The Coalition will put a stop to the trial of mandatory pre-commitment in the Australian Capital Territory and instead devote much needed resources to programmes that will actually help problem gamblers and those at risk…
>
> The Rudd-Gillard Government's national gambling regulator represents unnecessary duplication of a function already satisfactorily undertaken by the States and Territories. The Coalition will shut down the national gambling regulator and divert funding earmarked for it to the States and Territories to fund additional counselling and support services for problem gamblers.
>
> We will amend the National Gambling Reform Act to put an end to Labor's bureaucracy and invest resources in measures proven to support problem gamblers, such as counselling.[4]

1.12 The committee acknowledges the strong views put at the public hearing in opposition to Schedule 1 of the bill. This included evidence from the Salvation Army, the Australian Churches Gambling Taskforce and Gambling Impact Society New South Wales.[5] Major Kelvin Alley from the Salvation Army expressed his disappointment with Schedule 1 in the following terms:

---

3 Parliamentary Joint Select Committee on Gambling Reform, *First report: the design and implementation of a mandatory pre-commitment system for electronic gaming machines*, May 2011, pp. 227–228 http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/gamblingreform/completedinquires/2010-13/precommitmentscheme/report/index (accessed 10 December 2013).

4 Liberal Party of Australia and The Nationals, 'Helping problem gamblers', *Policy document*, August 2013, http://www.liberal.org.au/helping-problem-gamblers (accessed 6 December 2013).

5 See the evidence of the Reverend Tim Costello from the Australian Churches Gambling Taskforce, Ms Ros Phillips from *Family Voices* and Ms Kate Roberts from Gambling Impact Society New South Wales, *Proof Committee Hansard*, 9 December 2013.

> I am very surprised to be here…I have worked for the last couple of years tirelessly with the previous government, so it surprises me that the work done to introduce national legislation to reform the area of problem gambling on poker machines is about to be repealed. We were delighted, despite the watered down legislation, to achieve the milestones achieved last year. The Salvation Army, along with the Australian Churches Gambling Taskforce, worked very hard with the previous government to achieve what was achieved…
>
> I appeal to members and senators of this great house—this house for all Australians—that Christmas should be about good news. Let this go through and it is bad news; 33 per cent of players are in danger of harm from these machines—33 per cent of players. If this were a vehicle there would be a national regulation to control the sort of damage caused by any consumer product that would be harmful to 33 per cent of its users. Forty per cent of income—and I hesitate to use the word 'income'; it is actually people's losses—comes from the vulnerable. Take more time, I appeal to you, to think this through. Please.[6]

1.13 Having experienced the impacts of problem gambling, Ms Kelilah Doust told the committee:

> Appearing as someone who has been affected by gambling problems with a family member, I suffered as a child from neglect and financial loss. My family almost lost our home. I am ashamed to be sitting here today in the face of regulations being repealed. Australian families have been fighting a silent battle and will continue to do so without this legislation. If any of these government bodies or clubs actually cared about the issue they would find a way. Instead, they find excuses.[7]

1.14 While the committee shares these witnesses' concern with the social impact of problem gambling, it emphasises that there is no evidence that mandatory pre-commitment would be an effective public policy response in Australia.

Schedule 1A

1.15 On 4 December 2013, during the Third Reading stage of the bill, government amendments inserted Schedule 1A. This sub-schedule would delay the commencement of the *Charities Act 2013* from 1 January 2014 to 1 September 2014. The Supplementary Explanatory Memorandum states that the delayed commencement 'will allow for further consultation on the legislation in the broader context of the Government's other commitments in relation to the civil sector'.[8]

---

6 Major Kelvin Alley, Salvation Army, *Proof Committee Hansard*, 9 December 2013, p. 11.

7 Ms Kelilah Doust, Consumer Voice, Gambling Impact Society, *Proof Committee Hansard*, 9 December 2013, p. 8.

8 *Supplementary Explanatory Memorandum.*

1.16 The committee considered the rationale for Schedule 1A at the public hearing on 9 December and again the following day. UnitingCare Australia, Justice Connect and the Community Council of Australia were all given the opportunity to give their views on the practical effect of delaying the Charities Act (see Appendix 2).[9] The committee notes the views expressed in a submission from the Centre for Independent Studies, which supports the government's consultative approach:

> The government's decision to abolish the ACNC within the next year raises many questions about how the elimination of the commission should be managed. Will the national register of charities be maintained in some form? Will a national 'centre for excellence' be created to replace the ACNC, and if so, what responsibilities will it have? How can the commission be wound down in a way that preserves accountability in the charity sector?
>
> Laudably, the government has committed to consulting with NFP [Not-for-Profit] sector stakeholders and experts over the next several months to develop constructive answers to these questions. It would be counterproductive if, while these consultations are taking place, the sector were simultaneously confronted with changes to the legal definition of 'charity' and 'charitable purpose.' Allowing the Charities Bill 2013 to come into effect on 1 January 2014 would be both distracting and constraining at a time when focus and flexibility are needed.[10]

1.17 From the outset, the Coalition has been clear that it opposes the previous government's reforms to regulating charities and in particular, the creation of the Australian Charities and Not-for-Profits Commission (ACNC). In 2012, Coalition Members of parliamentary committees reporting into the provisions of the Australian Charities and Not for Profits Amendment Bill, argued that they:

> …do not accept that the current Commonwealth regulatory regime, based on the activities of the Australian Securities and Investments Commission and the Australian Taxation Office, is broken, and therefore do not accept the premise for this new regulatory megastructure. We are unpersuaded by

9 Reverend Tim Costello, UnitingCare Australia, Mr David Crosbie, Chief Executive Officer, Community Council for Australia, Mr Nathan Daniel MacDonald, Acting Director, Justice Connect (Not-for-profit Law), Mr Joe Zabar, Director, Services Sustainability, UnitingCare Australia, *Proof Committee Hansard*, 9 December 2013, pp. 15–21.

10 Centre for Independent Studies, *Submission 13*, p. 1.

> claims that this reform will reduce the regulatory burden faced by the sector.[11]

1.18 Commenting on the Charities Bill in June 2013, the then Shadow Minister for Families, Housing and Human Services, the Hon. Kevin Andrews, told the House:

> This bill would be the first time that legislation has sought to comprehensively define in statute, for the purposes of Commonwealth law, charity. Our concern is clear: why create a statute where the common law has and does serve us well? Why depart from 400 years of clarity and consistency? The coalition will oppose this bill and, if elected to government later this year, we will seek to repeal it.[12]

1.19 In the Second Reading Speech on the Social Services and Other Legislation Amendment Bill 2013, Minister Andrews explained:

> The government has committed to consulting with the sector on abolishing the Australian Charities and Not-for-profits Commission and establishing a centre for excellence and a possible national register of charities. The delay will mean we can work holistically with civil society, consulting a range of stakeholders, including charity law specialists who provide advice to the sector.[13]

1.20 The committee asked officials from the Department of Social Services (DSS) and the Treasury about the connection between the *Charities Act 2013* and the proposed abolition of ACNC. DSS responded:

> I think there are intersections for people, for stakeholders, in the sector about how they see these issues connected in terms of the construct of that piece of legislation—how it operates, how it might be implemented by the ACNC, what role they might play in that, whether that construct continues into the future. In our conversations with stakeholders, they do see these things to be connected.[14]

---

11 See Parliamentary Joint Committee on Corporations and Financial Services, *Australian Charities and not-for-profits Commission Bill 2012, Australian Charities and not-for-profits Commission (Consequential and Transitional) Bill 2012, Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*, September 2012, p. 61. Senate Community Affairs Legislation Committee, *Australian Charities and not-for-profits Commission Bill 2012, Australian Charities and not-for-profits Commission (Consequential and Transitional) Bill 2012, Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*, pp. 39–46.

12 The Hon. Kevin Andrews MP, Debate on Charities Bill 2013, *House of Representatives Hansard*, 17 June 2013.

13 The Hon. Kevin Andrews MP, Second Reading Speech, *House of Representatives Hansard*, 4 December 2013, p. 37

14 Ms Trish Woolley, Branch Manager, Program Service Branch, Department of Social Services, *Proof Committee Hansard*, 10 December 2013, p. 28.

1.21 When asked to comment what areas in the Charities Act have been flagged for change, Treasury responded:

> It is impossible to know at this stage and I think that is why the government has asked for more consultations, to see if there are any areas and possibly to flush out areas that they are interested in.[15]

1.22 The government's broader reforms to the regulation of charities in Australia will be a matter for parliamentary consideration in the new year, when the government intends to introduce the legislation to repeal the ACNC. On 4 December 2013, the Minister announced that the government will establish a new Centre for Excellence which 'will support innovation and provide education, training and development opportunities to the sector' and 'will move the relationship from a compliance and regulatory focus to one that advocates for the sector'.[16] In light of these proposals, the delay of the commencement of the *Charities Act 2013* until 1 September 2013 is a necessary and prudent measure.

Schedule 3—Family tax benefit eligibility rules

1.23 Currently, Family Tax Benefit Part A is payable to:

- a parent with children aged 0–15;
- a parent with children aged 16–17 who are still undertaking or have completed secondary study; and
- dependent full-time secondary students aged 18 until the end of the calendar year they turn 19.[17]

1.24 Schedule 3 of the bill proposes to limit eligibility for Family Tax Benefit Part A for children aged 16 to 17 who have already completed their Year 12 qualification. The benefit would only be paid in respect of children over 16 until the end of the calendar year in which they finish senior secondary school. The Explanatory Memorandum states that 'youth allowance…will remain available as the more appropriate payment to help young people transition from school into work or post-secondary study'.[18]

1.25 This measure was announced in the May 2013 federal budget by the previous government. The change will commence on 1 January 2014. The 2013–14 Budget Papers estimate savings from the measure of $76.6 million over four years:

---

15 Ms Sue Piper, Manager, Philanthropy and Exemptions Unit, Revenue Group, Treasury, *Proof Committee Hansard*, 10 December 2013, p. 28.

16 The Hon. Kevin Andrews MP, *Address to the National Disability Services CEO Conference*, 4 December 2013, http://kevinandrews.com.au/media/address-to-the-national-disability-services-ceo-conference (accessed 10 December 2013).

17 *Explanatory Memorandum*, p. 7.

18 *Explanatory Memorandum*, p. 7.

$7.5 million in 2013–2014; $22.7 million in 2014–15; $23.9 million in 2015–16; and $24.6 million in 2016–17.[19] DSS confirmed that the saving of $76 million takes into account not only the saving from terminating the payment of Family Tax Benefit A, but also the cost of the person taking up the youth allowance.[20]

1.26 The committee expressed interest in the process for moving from receipt of Family Tax Benefit A (at the end of the calendar year in which they completed Year 12) to a youth allowance payment (should they decide to study full time at tertiary level). DSS officials told the committee that this transition was possible, provided the person had applied to study at tertiary level.[21] In a response to a Question on Notice, DSS confirmed that:

> FTB recipients are currently sent a letter if they have a child who will complete Year 12 to advise them of the effect on their FTB, and the letter also advises about the option for the child to claim Youth Allowance. This process would continue to apply under the new measure in Schedule 3 to the Social Services and Other Legislation Amendment Bill 2013 (Family tax benefit and eligibility rules).[22]

Schedule 4—Period of Australian working life residence

1.27 Schedule 4 of the bill relates to eligibility for the age pension for recipients living outside Australia. The current requirement for age pensioners to receive the full pension where they have been living abroad for 26 weeks or more is for 25 years of residency during their Australian working life (16 years of age to pension age). The Parliamentary Library's *Bills Digest* gives the example of a person with 16 years Australian residency (16/25) during their working life receiving 64 per cent of the rate otherwise payable if they resided in Australia.[23]

1.28 Schedule 4 proposes that from 1 January 2014, age pensioners will be required to have been Australian residents for 35 years during their working life to receive the full means-tested pension after 26 weeks' absence from Australia. Where they have been absent from Australia for 26 weeks or more, the full pension is payable

---

19 Australian Government, Budget 2013–14, *Part 2—Expense measures*, http://www.budget.gov.au/2013-14/content/bp2/html/bp2_expense-10.htm (accessed 10 December 2013).

20 See discussion in *Proof Committee Hansard* transcript, 10 December 2013, p. 38. (Appendix 2).

21 Department of Social Services, *Proof Committee Hansard*, 10 December 2013, pp 36–37.

22 Response from Ms Diana Lindenmeyer, Acting Branch Manager, Family Payments and Child Support, Department of Social Services, *Response to question taken on Notice*, received 11 December 2013.

23 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013, p. 19.

only where the person has been a resident for 35 years of their Australian working life. If they have been an Australian resident for less than 35 years, their pension would reduce proportionately.[24]

Possible impact of the measures in Schedule 4

1.29 In the *Bills Digest*, the Parliamentary Library reproduced estimates from FaHCSIA officials at a Senate Estimates hearing in May 2012 that:

- around 5,400 pensioners go overseas permanently each year and of these, around 2,100 are paid under social security agreements with New Zealand and Greece; and
- of the 3,300 who leave Australia permanently each year, around '858 have less than 25 years working life residence, 759 have between 25 and 35 years Australian working life residence and 1683 have more than 35 years Australian working life residence'.[25]

1.30 The *Bills Digest* extrapolates that:

> If current trends were to continue under the new rules, then around half of those pensioners who leave Australia permanently each year will not receive a full pension payment, compared to 26 per cent under the existing rules. Around 4,000 pensioners leave Australia temporarily each year and those that stay overseas for 26 weeks can also have their payments reduced under the portability rules. No estimates have been published as to how many of the 4,000 stay overseas longer than 26 weeks, nor how many might be affected by the AWLR changes.[26]

1.31 Another indication of the possible impact of this measure comes from the 2012–13 Budget Papers, where the measure was first announced. Budget Paper No. 2 estimated that the government will achieve savings of $50.8 million over four years by amending the Australian Working Life Residence rules applying to the age pension, from 1 January 2014.[27] DSS confirmed at the public hearing that this estimated cost saving remains accurate.[28]

---

24 To receive any pension payment, a person must have been a resident for at least 10 years.

25 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013, p. 19.

26 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013, p. 21.

27 Australian Government, Budget 2012–13, *Part 2—Expense measures*, http://www.budget.gov.au/2012-13/content/bp2/html/bp2_expense-09.htm (accessed 10 December 2013).

28 Department of Social Services, *Proof Committee Hansard*, 10 December 2013, p. 26.

1.32 The Council on the Ageing (COTA) supported the proposed measures in Schedule 4, noting that the reforms would bring Australia into line with other Organisation for Economic Cooperation and Development (OECD) countries.[29]

1.33 National Seniors Australia expressed some concern that the amendment could impact the pension payment of people who are currently overseas—having made their retirement plans based on the previous 25 year rule—and need to return to Australia for a period of longer than 26 weeks, before returning abroad.[30]

Schedule 5—Interest charges for certain student debts

1.34 The Parliamentary Library's *Bills Digest* notes that a social security debt arises when payments are made to a person who is not entitled, or when overpayments are made to an entitled recipient. It explains that this situation may arise where an individual has failed to declare income or assets that would have been taken into account by the means test, and would have resulted in a lower payment rate.[31]

1.35 Overpayments may be recovered by a reduction in future social security payments or, when a person who has raised a debt is no longer in receipt of a social security payment, they are usually required to enter into a repayment plan. Currently, however, there is no incentive for student income support debtors to repay their debt.[32]

1.36 Schedule 5 of the bill proposes to introduce an interest charge for certain debts relating to austudy payment, fares allowance, youth allowance payments to full-time students and apprentices, and ABSTUDY living allowance payments. The charge will only apply where the debtor does not have or is not honouring an acceptable repayment arrangement.[33]

1.37 The committee asked DSS officials to provide an overview of the number and quantum of social security debts that the measure seeks to address. DSS told the committee that there are currently 22,000 individual debtors comprising 33,000 debts,

29 Ms Jo Root, National Policy Manager, Council on the Ageing, *Proof Committee Hansard*, 10 December 2013, p. 20.

30 National Seniors Australia, Submission 57.

31 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013, p. 21.

32 Statement of Compatibility with Human Rights, *Social Services and Other Legislation Amendment Bill 2013*, p. 7.

33 *Explanatory Memorandum*, p. 17.

with a total value of $72 million.[34] DSS estimates that once the interest charge is imposed, roughly half these debtors will begin to repay their debt.[35]

1.38 At the public hearing on 10 December 2013, the committee took evidence on matters relating to Schedule 5 from the National Welfare Rights Network, the Australian Youth Affairs Coalition (AYAC) and the National Tertiary Education Union. AYAC argued that the additional interest charge is not likely to make debtors pay on time.[36] The National Welfare Rights Network commented that it is more difficult to recoup a debt where people are no longer receiving a social security benefit.[37] It also noted that the proposed rate of interest (new proposed section 1229H) would be difficult for debtors who have only recently entered the workforce to service. The National Welfare Rights Network recommended a number of amendments to proposed new subsection 1229F of Schedule 5 to soften the proposed penalties for non-compliance with, or termination of repayment arrangements.

Committee view on Schedule 5

1.39 The committee believes that the interest charge proposed in schedule 5 of the bill is an appropriate measure to ensure that debts are repaid when the debtor has the capacity to do so. Debtors would have 28 days once notified by the Department of Human Services to enter into a debt repayment arrangement. The potential gain to the public purse is quite significant. DSS stressed there would be no interest charge paid where the debtor is honouring an acceptable repayment arrangement.

Schedule 7—Paid parental leave

1.40 Schedule 7 of the bill would remove the current requirement for employers to make payments to employees under the national Paid Parental Leave (PPL) scheme from 1 March 2014. Employees would be paid directly by the Department of Human Services, although employers would have the option to make the payment to employees themselves. The government estimates that removing this requirement will save employers $48 million nationally, with implementation estimated to cost $7 million.[38]

---

34 Mr Murray Kimber, Branch Manager, Payment Integrity and Performance Information Branch, Department of Social Services, *Proof Committee Hansard*, 10 December 2013, p. 39.

35 Mr Oliver Caddick, Director, Student Payment Program Performance Section, Payment Integrity and Performance Information Branch, Department of Social Services, *Proof Committee Hansard*, 10 December 2013, p. 30.

36 Mr Reyato Reodica, Deputy Director, AYAC, *Proof Committee Hansard*, 10 December 2013, p. 2.

37 Ms Amelia Meeres, Solicitor, National Welfare Rights Network, *Proof Committee Hansard*, 10 December 2013, p. 3.

38 *Regulation impact statement—paid parental leave*, p. 6.

1.41 The Regulation Impact Statement on the provisions of Schedule 7 noted that as of June 2013, 76 per cent of recipients were receiving their PPL from their employer. It also cited the results of an Australian Chamber of Commerce and Industry (ACCI) survey published in May 2013 which found that 84.3 per cent of businesses either agreed or strongly agreed that 'the Government should not require employers to be the paymaster of the Paid Parental Leave Scheme'.[39]

1.42 The committee notes that both major parties took policies to the last federal election to at least partially remove PPL paymaster responsibilities from employers. Pre-election, the Coalition announced that it would fully remove this obligation, meaning that all employees' PPL entitlements will be paid directly by the Commonwealth Government.[40] The Labor Party's election policy was that businesses with fewer than 20 employees would no longer have to administer government-funded PPL.[41]

1.43 Both the Council of Small Business of Australia (COSBOA) and ACCI told the committee that it was highly desirable to have government as a paymaster, rather than employers. Both organisations emphasised that there is no evidence to suggest that payments through the employer's payroll lead to a stronger attachment to the workplace.[42] ACCI noted that in New Zealand, where the government is the PPL paymaster, there has not been 'any compelling policy rationale' to transfer the paymaster role to the individual employers.[43] COSBOA took issue with the costs and complications associated with current claiming processes. The Executive Director of the Council, Mr Peter Strong, told the committee:

> In dealing with a person who is on parental leave, quite often they will come in, especially after the child is born or just beforehand…You will find out and you will talk about the pay. You will do a pay run and the pay will

---

39 *Regulation impact statement—paid parental leave*, p. 2. The sample size was 1700, 1096 of which were small businesses (less than 20 employees). See ACCI, *Submission into the Review of the Paid Parental Leave Scheme*, July 2013, p. 6.

40 *The Coalition's policy for Paid Parental Leave*, August 2013, http://lpaweb-static.s3.amazonaws.com/The%20Coalition%E2%80%99s%20Policy%20for%20Paid%20Parental%20Leave.pdf (accessed 10 December 2013).

41 The Hon. Kevin Rudd, the Hon. Chris Bowen, the Hon. Gary Gray, the Hon. Jan McLucas and the Hon. Bernie Ripoll, 'Cutting business red tape—Paid parental leave payments', *Media release*, 22 August 2013, http://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/1219/attachments/original/1377235782/Fact_sheet_-_Small_Business_Paid_Parental_Leave.pdf?1377235782 (accessed 10 December 2013).

42 Mr Daniel Mammone, Director of Workplace Policy and Director of Legal Affairs, Australian Council of Commerce and Industry, *Proof Committee Hansard*, 10 December 2013, p. 13 and Mr Peter Strong, Executive Director, Council of Small Business Australia, *Proof Committee Hansard*, 10 December 2013, p. 12.

43 ACCI, *Submission into the Review of the Paid Parental Leave Scheme*, July 2013, p. 12. See also Mr Daniel Mammone, ACCI, *Proof Committee Hansard*, 10 December 2013, pp 13–14.

> go off into their account, as it normally does. You will email, if that is what you do, their pay advice to them. That sounds easy except…[T]here are too many problems in there. There are too many issues that you have to change. It is imposed upon you from a third party that has no role of telling us what to do with our pay system above and beyond PAYG and the normal sorts of things you ask of an employer. It does not happen often and it just causes confusion for everybody and creates mistakes. Without a doubt, it creates mistakes that do not benefit everybody as well.[44]

1.44 The committee believes that the measures proposed in Schedule 7 of the bill will provide a significantly more streamlined process for businesses that choose not to 'opt-in'.

Schedule 8—Pension bonus scheme

1.45 The Pension Bonus Scheme provides a lump sum payment to people who are qualified for the aged pension but who choose to defer their pension and remain in the workforce. The bonus payment is paid at the time an applicant eventually claims their age pension. While the scheme closed in September 2009, people remained able to register if they qualified but had not registered at the time of closure.[45]

1.46 Schedule 8 of the bill seeks to establish 1 March 2014 as the cut-off date for late applications to the Pension Bonus Scheme. It will establish a formal cut-off date so that no applications to the Pension Bonus Scheme can be made on or after 1 March 2014. Applicants who are already registered in the scheme will not be affected by this change, and those who are eligible can continue to apply up until 1 March 2014.

1.47 The committee supports Schedule 8:

- the cut-off date for the Pension Bonus Scheme was originally announced by the previous government in the 2013 federal budget and represents an important cost saving of $80.5 million over three years;
- the 2009 Harmer Review of Pensions found that the Pension Bonus Scheme is complex and difficult for people to understand. Moreover, the benefits from the scheme flow to individuals who would have continued working past the pension age in any event;[46] and

44 Mr Peter Strong, Executive Director, Council of Small Business of Australia, *Proof Committee Hansard*, 10 December 2013, p. 12.

45 *Explanatory Memorandum*, p. 60.

46 Mr Jeff Harmer, *Pension review report*, Department of Families, Housing, Community Services and Indigenous Affairs, 27 February 2009, p. 94.

- the replacement Work Bonus Scheme is considered a simpler and more targeted workforce participation incentive for older workers.[47] Under the Work Bonus Scheme, age pension recipients can have half of their employment income, up to a cap of $500 per fortnight, disregarded from the pension test.[48]

1.48 The Committee took evidence on Schedule 8 of the bill from both the Council on the Ageing (COTA) and National Seniors Australia. Both organisations supported the proposed amendments.

Schedule 10—Reduction of period for temporary absence from Australia

1.49 Family and parental assistance payments—including Family Tax Benefit Part A, Family Tax Benefit Part B, Parental Leave Pay (PLP) and Dad and Partner Pay (DAPP)—assist families with the costs of raising children. Currently, recipients can continue claiming these family and parental assistance payments while they are temporarily overseas for up to three years.

1.50 Schedule 10 of the bill seeks to reduce the length of time recipients can claim these family and parental payments while they are temporarily overseas from three years to 56 weeks. The Schedule provides for some extensions to this 56 week period in special circumstances.

1.51 Australian Defence Force and Australian Federal Police personnel who are deployed overseas will, under an addition to section 24 of the Family Assistance Act, be explicitly exempt from the measures and continue to be eligible for the payments for up to three years. Other Australian Government personnel who are stationed overseas temporarily, such as diplomatic staff, appear not to be exempt from the changes given they are not explicitly mentioned in the bill.

Recommendation 1

1.52 The committee recommends that the Government consider extending the exemptions available in Schedule 10 of the bill to all personnel stationed overseas by the Australian Government, to ensure that diplomatic staff are exempt.

1.53 The committee supports the provisions in Schedule 10, which were first announced in the 2013 federal budget. The number of recipients impacted will be relatively small: in June 2013, FaHCSIA estimated that the families of 2,800 children

47 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 10 December 2013, pp 29–30.

48 Dale Daniels, Luke Buckmaster and Peter Yeend, Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Bill 2009, *Bills Digest*, 179, Parliamentary Library, 2009.

will be affected by the changes in the first year of operation.[49] The committee did not receive any feedback from stakeholders critical of Schedule 10.

Schedule 11—Extending the deeming rules to account-based income streams

1.54 When calculating income to assess an income support recipient's financial investments, the investments are assumed to be earning a certain rate of income regardless of what they actually earn (a deeming rate). The EM notes that these deeming rules encourage people to choose investments on their merit rather than the effect the investment income may have on the person's income support entitlement.[50]

1.55 Currently, however, certain income streams are not subject to income deeming. Schedule 11 of the bill extends the income deeming provisions to any asset-tested income stream that is an account-based pension. The government's intent is that people with similar financial assets are treated consistently under the income support system.

1.56 The measures will begin for products assessed from 1 January 2015. They are estimated by Treasury to save $161.7 million. Some witnesses have queried this estimate.

Concerns with the impact of Schedule 11

1.57 As noted earlier, the majority of submissions received by the committee during this inquiry related to Schedule 11 of the bill (see Appendix 1). More than 40 submissions were received from financial advisers. They expressed concern with:

- the potential disincentive the deeming provisions might have on the responsible management of retirees' superannuation assets;[51]
- reducing competition between financial products and product providers by offering preferential social security treatment to pension schemes which are not asset-backed; and
- equity implications, with claims that the measures would disproportionately affect Australians with modest means, and therefore lead to greater reliance on the aged pension.[52]

---

49 Senate Community Affairs Legislation Committee, *Answers to Questions on Notice*, Families, Housing, Community Services and Indigenous Affairs Portfolio, Budget Estimates 2013–14, 3 and 4 June 2013, Question 200, accessed 29 November 2013. See Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013, p. 38.

50 *Explanatory Memorandum*, p. 69.

51 Financial Planning Australia, *Submission 2*, p. 1.

52 Financial Planning Australia, *Submission 2*, p. 1.

1.58 All three concerns are addressed in Financial Planning Australia's (FPA) submission. In terms of a possible anti-competitive effect, the FPA noted:

> If the value of the underlying asset is used to deem the income derived from the financial product, then financial products without an underlying asset (such as Defined Benefits Scheme Pensions or annuity products) may have a lower income than the deemed income of an account based pension. We do not form a value judgment by comparing these products, but stress that product recommendations made by financial planners should be influenced by the circumstances and goals of the client, and not arbitrary distinctions in the social security law.[53]

1.59 DSS responded that people with non-account based income stream products have no access to their capital, no investment choice and no ability to change the amount of income they receive each year to reflect the changes in the deeming rates. The Department stated that 'it would not be appropriate to subject these products to deeming'.[54]

1.60 In terms of equity considerations, the FPA presented data comparing aged pension outcomes for a 65 year old single woman who purchases either a $200,000 or a $500,000 account based pension and has no other assets. For the person with the $500,000 account based pension, there is no effect as the asset will be unaffected by the deeming provisions. On the FPA's figures, the retiree on a $200,000 account based pension will expect to receive $62.40 less per fortnight from the age pension.[55]

1.61 This evidence was put to the DSS for its response. DSS commented:

> This is a consequence of people being assessed under either the income test or the assets test. At $500,000, a person will be assessed under the assets test. Regardless of whether they have their assets in superannuation or non-superannuation holdings, they will receive the same level of pension. That is, the pension assets test already assesses financial assets consistently regardless of how they are held.
>
> The person with a $200,000 balance will be assessed under the income test and…will get a pension payment depending on whether it is held directly or in superannuation. That is, the pension income test does not currently assess income consistently for superannuation account based income streams and financial assets held directly. Thus the schedule changes the social security income test treatment of superannuation account based income streams to ensure equity for people assessed under the income test.[56]

---

53 Financial Planning Australia, *Submission 2*, p. 1.

54 Department of Social Services, *Response to Question on Notice from public hearing 10 December 2013*, received 11 December 2013.

55 Financial Planning Australia, *Submission 2*, p. 2.

56 Department of Social Services, *Response to Question on Notice from public hearing 10 December 2013*, received 11 December 2013.

Committee view

1.62 The committee supports extending the deeming provisions to align treatment of account based superannuation streams with the deemed income rules applying to other assets. The committee agrees with National Seniors Australia that it is important that people with similar financial assets are treated consistently under the income support system.[57]

Conclusion

1.63 The committee supports the passage of Schedules 1, 1A, 3, 4, 5, 7, 8, 10, 11 and 12 of the bill before the parliament rises in 2013.

- The provisions in Schedule 1 of the bill effect a clear Coalition election commitment. The committee is pleased that both major parties now support a voluntary pre-commitment programme for electronic gaming machines. Senators on the committee also emphasise the importance of assisting those with a gambling problem with targeted counselling services and an effective self-exclusion scheme.
- Schedule 1A has been inserted to ensure there is further consultation on the commencement of the *Charities Act 2013*. For some time, the Coalition has clearly stated that it favours a different approach to that of the previous federal government in the regulation of the not-for-profit sector. The proposed nine months delay of the commencement of the Charities Act is prudent given this different path and the need for stakeholder consultation.
- The provisions in Schedules 3, 4, 5, 8, 10 and 11 of the bill would implement commitments made by the previous federal Labor Government in budget statements and Mid-Year Economic Forecasts. These measures are savings measures and will be among several measures that the Coalition intends to implement to improve the budget bottom line.
- Schedule 7's provision to relieve employers of the administrative responsibility of paying their employee's paid parental leave is implementing a clear Coalition election commitment. The government recognises the cost that current administrative arrangements have on business.

57 National Seniors Australia, *Submission 57*.

Recommendation 2

1.64 The committee recommends that the Schedules of the bill inquired into by the Senate Community Affairs Legislation Committee be passed without amendment.

Senator Sue Boyce

Chair

Labor Senators' Dissenting report

Schedule 1

The Labor Senators acknowledge the issues of problem gambling and the evidence of witnesses around concerns for individuals and families. We will be proposing an amendment to this legislation to ensure that, where there is a state-wide pre-commitment scheme in place, venues must continue to have the capability of connecting to that scheme.

The Government's legislation recommits to further consultation across stakeholders and the Labor Senators strongly support such consultation and engagement.

Schedule 1A

The Labor Government's Charities Bill 2013 was to create a statutory definition of what constitutes a charitable entity. The importance of the definition is that it guides the ATO as to whether or not an organisation is eligible for certain tax benefits. The Bill codified existing case law and explicitly stated that charities are free to critique the policies of political parties and candidates. The Bill had widespread support in the sector.

There is broad support within the charitable sector for a statutory definition of charity as very few want to be bogged down in court cases to decide if they are a charity.

The Government report refers to speeches by Minister for Social Services Kevin Andrews and Coalition policy to repeal the act and, in particular, the Australian Charities and Not-for-profits Commission, the ACNC.

Witnesses made it clear any debate over the future of the ACNC should be made separate to the definition of a charity.

Regardless of Government policy in the future regarding the ACNC, Labor Senators strongly support the definition of charity.

Mr Nathan Macdonald, acting director, Justice Connect (Not-for-profit Law):

> In our view the Charities Act is a step towards certainty and clarity for those seeking charitable endorsement and goes some way towards addressing the proliferation of statutory definitions on 'charity'.
>
> We feel the Charities Act represents a piece of policy that is long overdue, having been considered and recommended by several major inquiries, including the 2001 charities definition inquiry and, more recently, the Productivity Commission inquiry in 2010. Consultation on the current definition was adequate and, while a number of the 200-plus submissions asked for some degree of tinkering to the Bill, it is fair to say that there was broad support for a single definition on 'charity' across the Commonwealth,

with the end result being a definition that largely preserves and clarifies the common law.[1]

Mr David Crosbie, CEO, Community Council for Australia:

We recognise, as would everybody who has ever looked at the legislation and the definition of 'charity', that the current provisions are woefully inadequate, that they discriminate against small charities who cannot afford tax lawyers, and they are complex even for the most well-resourced charity in terms of understanding what is charitable and what is not. It was a massive step forward to get the level of consensus that was agreed through the 2011 consultations, the 2013 consultations and the 2001 consultations on a new statutory definition of 'charity' and we, like most of the charitable sector, celebrated the fact that we had clarity and some sense of being able to plan our activities based on a clear, concise definition of 'charity' that included things previously not included like advocacy, Indigenous disadvantage, housing and disaster relief.[2]

Reverend Tim Costello, chair, Community Council of Australia and CEO, World Vision Australia:

This new definition is extraordinarily important for all of us. With the consultations and over 200 submissions made, I have not heard of anyone in the sector who was troubled by this definition.[3]

Mr Joe Zabar, director Services Sustainability, UnitingCare Australia:

The ACNC decision is very different from the statutory definition question.[4]

Schedule 5

The Labor Senators on this Committee do not share the majority's view on the appropriateness of the measure proposed in Schedule 5.

This measure would see interest charges applied to certain debts applying to Austudy payment, fares allowance, Youth Allowance payments to full-time students and apprentices and ABSTUDY living allowance payments.

---

1 Mr Nathan McDonald, Acting Director, Justice Connect, *Proof Committee Hansard*, 9 December 2013, p. 16.

2 Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Proof Committee Hansard*, 9 December 2013, p. 16.

3 Reverend Tim Costello, Chief Executive Officer, World Vision Australia, *Proof Committee Hansard*, 9 December 2013, p. 16.

4 Mr Joe Zabar, Director, Services Sustainability, UnitingCare Australia, *Proof Committee Hansard*, 9 December 2013, p. 18.

The Labor Senators have had regard to the submissions of organisations that work directly with students, including the Student Representative Council of the University of Sydney and the Nationals Tertiary Education Union which highlight the financial stress under which many students already find themselves, including reference to research which shows that up to two thirds of tertiary students are already under significant financial strain.

We also note that during the hearings, the Australian Youth Affairs Coalition argued that this measure is unlikely to make students pay back their debts on time. They said: "in cases where young people are already struggling to pay existing debts the additional interest charge is not likely to serve as an incentive to pay on time".[5]

The National Tertiary Education Union also argued that this measure may act as a disincentive to students seeking access to appropriate support because of fear of punitive debts, and that this may lead to decisions not to engage in tertiary education.[6]

On the basis of the evidence before the committee, the Labor Senators consider this measure to be overly punitive on students who are already under significant financial strain, and we do not consider that it will achieve the outcomes to which it is directed. On this basis we oppose this measure.

Schedule 7

This Bill amends Paid Parental Leave (PPL) legislation to remove the requirement for employers to administer Government funded parental leave pay to their eligible long-term employees.

From 1 March, employees will be paid directly by the Department of Human Services, unless an employer opts in to provide parental leave pay to its employees and an employee agrees for their employer to pay them.

The current PPL legislation provides that employers must administer the paid parental leave for eligible; long-term employees. The employer role in the scheme is designed to help employers retain their skilled staff by enabling women to remain connected to work and their careers when they take time out of the workforce to have a baby or adopt a child. During 2013 election campaign, Labor announced that it would enable businesses with less than 20 employees to have Centrelink administer their PPL payments to their employees on an opt-in basis.

5 Mr Reynato Reodica, Deputy Director, Youth Sector, Australian Youth Affairs Coalition, *Proof Committee Hansard*, 10 December 2013, p. 2.

6 See the comments of Ms Jeannie Rea, National President, National Tertiary Education Union, *Proof Committee Hansard*, 10 December 2013, p. 1.

The PPL scheme was designed to be a workplace entitlement rather than a welfare payment. The submission to this inquiry from the ACTU referred to the Productivity Commission recommendation that employers should act as the agent for the government and pay its statutory leave on its behalf. The Commission noted that 'structuring payments in this way would strengthen the link between employer and employee, which should increase retention rates for the business (and lead to a higher lifetime employment by women).

The ACTU concurs with the PC that the employer's role in the delivery of employees' PPL is critical to developing a culture where a parent's need to take leave to have and care for a baby is connected to their employment relationship. Requiring employers to pass on the government payments assists in categorising PPL as a 'workplace entitlement', albeit subsidised to the minimum wage level. It appears like any other leave entitlement, and in an ever increasing number of workplaces, is being 'topped up' by employers so that employee receives paid leave at their normal wage rate paid by the employer.

The evidence supplied by Mr Phillip Brown, Branch Manager, Parental Payments and Family Research Branch, Department of Social Services referred to the legislation review of the PPL that is due to be finalised in the very early part of next year. This review draws from the separate evaluation process which is currently underway as well as early evaluation reports which are publicly available.

Mr Brown in giving evidence the evaluation, said:

> In broad terms it certainly showed that, overall, while there were some concerns and misunderstandings between Centrelink and different employers, over time, as Centrelink mastered the business of working with employers, and employers, particularly when they had multiple claimants, were able to adapt as well. So, overall, it is not without concerns and issues raised by employers—small, medium, large—but I think the processes have been managed well and they are relatively smooth, notwithstanding the evidence provided here earlier in the day.[7]

Mr Brown when giving evidence from the evaluation said:

> Ease of registering for the PPL scheme', more than half said it was easier to register with the scheme, so it was a minority but a sizeable minority found it was difficult. Attitudes towards organising PPL statements, 'It was easy to organise payments for the PPL scheme', strongly agree or agree was 79 per cent people said they strongly agreed or agreed that it was easy to organise payments for the PPL scheme through Centrelink.[8]

---

7 Mr Phillip Brown, Branch Manager, Parental Payments and Family Research Branch, Department of Social Services, *Proof Committee Hansard*, 10 December 2013, p. 43.

8 Mr Phillip Brown, *Proof Committee Hansard*, 10 December 2013, p. 43.

On the claim made by employer group about the complexity of effectively maintain the PPL, Mr Brown stated:

> The Council of Small Business Australia have raised those concerns with us consistently, but other evidence and feedback, given either through the review or the evaluation, or through correspondence to the minister, is not a uniform view at all.[9]

Recommendation 1

1.1 Labor Senators will be recommending an amendment to Schedule 1 to ensure that, where there is a state-wide pre-commitment scheme in place, venues must continue to have the capability of connecting to that scheme.

Recommendation 2

1.2 Labor Senators will be opposing Schedule 1A.

Recommendation 3

1.3 Labor Senators will be opposing Schedule 5.

Recommendation 4

1.4 Labor Senators support an amendment to Schedule 7 to enable businesses with less than 20 employees to have Centrelink administer their PPL payments to their employees on an opt-in basis.

Senator Carol Brown **Senator Nova Peris**

Senator Claire Moore

9 Mr Phillip Brown, *Proof Committee Hansard*, 10 December 2013, p. 43.

Australian Greens' Minority report

The Australian Greens are very concerned at the very quick time frame of this inquiry. The issues contained within this Bill are significant and, in some cases, have significant implications for students, pensioners, low income families and the not-for-profit sector.

The Bill seeks to undermine two major pieces of reform from the previous Parliament, by repealing the reforms in the *National Gambling Reform Act 2012* and delaying the implementation of the Charities Act 2013.

It is also completely inappropriate to seek to pass so many different and complex issues through one Bill, and to give stakeholders less than a week to contribute to a Senate inquiry, particularly given that none of the measures considered by this committee were time sensitive.

This minority report does not cover those aspects of the Bill where the Australian Greens support the majority report. However, on a range of schedules we disagree with the majority report, and we do not believe that schedules 1, 1A, 3, 4, 5, 7 and 10 should be passed at this time.[1] Our concerns are set out below.

Schedule 1 – Gambling

This Schedule effectively repeals the reforms made in the National Gambling Reform Act 2012 (NGRA). The gambling reforms in the Act were the result of a long and complex process. The issue was examined in great detail by the Productivity Commission whose 2010 Gambling report highlighted the enormous social costs of gambling, particularly with regards to poker machines. The report highlighted the need for reform and made many detailed and evidence-backed recommendations for reform.

The last Parliament examined the issue of poker machine reform in detail. Several inquiries by the Joint Standing Committee on Gambling Reform took submissions from industry, community groups and members of the public whose lives have been touched by poker machine addiction. Significant time was devoted to the discussion of the gambling reforms in the Parliament. Due to the finely balanced numbers in the House of Representatives and the agreement between the Government and Mr Andrew Wilkie MP, the matter got an extraordinary amount of media attention and debate amongst the community. Throughout this process, the need for reform was

1 Note: The Australian Greens also do not support Schedule 2, 5, or 9 but these schedules have been examined by the Finance and Public Affairs and Education and Employment Committees respectively and so are not discussed here.

made clear as was public sentiment against the proliferation of poker machines and in favour of reform.

The original proposal put before the Australian public after 2010 was for a scheme of mandatory pre-commitment on all poker machines in Australia. This policy was a recommendation of the Productivity Commission and was supported by further evidence gathered during the 43rd Parliament. Despite this evidence and the groundswell of support for reform, the lobbying efforts of the gambling industry succeeded in watering down the reform, becoming one of fitting machines for pre-commitment but not enforcing the use of a pre-commitment scheme. The NGRA nevertheless had merit as it brought the Commonwealth Government into the poker machine space and contained some measures, such as ATM withdrawal limits, that have genuine potential for harm reduction. The Australian Greens therefore supported the passage of the Act.

Since the passage of the NGRA in late 2012, no significant new evidence has emerged regarding gambling patterns in Australia, the effectiveness of pre-commitment, or even the profitability of the industry. The case for the reforms in the NGRA remain as strong as ever.

The Senate now finds itself considering the Social Services and Other Legislation Amendment Bill 2013, which almost entirely repeals the provisions of the NGRA. This omnibus bill was introduced without public consultation or fanfare of any kind, and it was left to both parliamentarians and the public to scrutinise the bill in order to divine that it even had anything to do with the subject of poker machines. This is a highly inappropriate way to address a reform of such magnitude and public interest. It is a betrayal of the public trust and of all sections of the community who engaged in a long debate on an important subject.

This was borne out in evidence received by this inquiry. Stakeholders who appeared before the committee were appalled that both the government and the Opposition would unite to repeal a reform that could reduce the harms of poker machines. Ms Kelilah Doust of the Gambling Impact Society (NSW) summed up the sentiment in the community sector:

> I honestly feel betrayed by the government, as do my family and several people that I know who have also been affected by this issue. It is disgraceful that the first meaningful steps towards reform that our government has taken will now be removed to be replaced with nothing. You will be giving vulnerable people back over to the wolves, and there is nothing to prevent them being taken advantage of. I am absolutely disgusted.[2]

2 Ms Kelilah Doust, Gambling Impact Society New South Wales, *Proof Committee Hansard*, 9 December 2013, p.

In response to the ostensible reason for the repeal that poker machine reform is a matter for the states, Ms Kate Roberts, of the Gambling Impact Society said:

> There is an absolute and clear mandate for the federal government to be involved in this issue. As I have already stated, it is a health issue. It needs to be treated as a health issue and we need to develop a very strong public health framework. This has been recommended through the 1999 and 2010 inquiries. That is a federal government responsibility. The conflicts of interest are rampant at state and territory level and this means that we are now being thrown back, as Kelilah said, to the wolves.[3]

The churches were also united in their opposition to Schedule 1 of this bill. Reverend Tim Costello defended the need for regulation and could explain the repeal – backed by the Labor Party – only 'in terms of the political power of the pokies lobby in the industry. That is the only way we can understand this'.[4]

No justification has been offered for winding back these reforms beyond the assertion that it is an issue for the states. The fact that states have jurisdiction over poker machines is not new information. It is the failure of the states to act, allowing the social costs to mount as they become more dependent on the revenue generated, that was the genesis of poker machine reform in the first place. There is no new prospect that the states will take action to limit the harms beyond the usual small investment in problem gambling treatment services, which is already a demonstrated failure. The stated intention by the Government to work with the states on voluntary pre-commitment is similarly doomed to failure. It is a fig-leaf that replaces hundreds of pages of regulation with a single aspirational statement regarding a policy no credible expert is advocating.

Given that the urgent case for poker machine reform has not changed since the passage of the National Gambling Reform Act; that there is no prospect of other meaningful reform by the Commonwealth or State Governments; and that the evidence received by this Committee succinctly expressed the dismay felt by the public at the prospect of a liberalisation of poker machine regulation, the Australian Greens can see no reason to support this Schedule of the Bill.

Schedule 1A – Charities

The Australian Greens strongly oppose the Government amendment which delays the implementation of the Charities Act by 9 months.

The definition contained within the Charities Act does not introduce any significantly new concepts but it rather codifies and consolidates the growing body of charity case

---

3 Ms Kate Roberts, Gambling Impact Society, *Proof Committee Hansard*, 9 December 2013, p. 10.

4 Reverend Tim Costello, *Proof Committee Hansard*, 9 December 2013, p. 13.

law into a single Act, which provides greater clarity and certainty to charities. As a result, it clarifies that working on activities such as housing and indigenous issues can form a charitable purpose.

None of the charities who spoke to the Committee were aware of the Government's intention to postpone the implementation of the Bill and nor were they aware of any concern across the community about the implementation of the Act.

Rather, the witnesses noted that refining the definition of charity has been on the political agenda for over 10 years, and that the passage of the legislation earlier this year was overwhelmingly welcomed and accepted by the charitable sector.

None of the submitters to the inquiry could point to a clear reason why the Government would defer the implementation of the Act.

The Minister has attempted to linked the definition of charity to the operation of the ACNC through his second reading, but this is not a reasonable link to make. While it is clear that the Minister intends to revoke the Charities Regulator and replace it with a Centre for Excellence, this has no bearing on the substance of the Charities Act itself. It is misleading of the Government to suggest otherwise.

Furthermore, one of the stated aims of the government is to reduce red-tape on the charities sector, yet delaying the implementation of the charities Bill is contrary to that goal. Submitters pointed to the significant legal costs that charities face in trying to understand the charities case law - the Charities Act will actually reduce red-tape and uncertainty in the sector.

Uniting Care stated this clearly in their submission:

> While the mission or purpose of the Not-for-profit sector is charitable, it nonetheless operates in the same economic environment as the business sector and is similarly affected by legislative uncertainty. Delaying implementation of the Act would cause unnecessary uncertainty.[5]

The other important component of the Charities Act is that it enshrines in legislation the freedom to advocate, and makes explicit that advocacy is a legitimate charitable purpose, provided that advocacy is not in aid of a specific candidate or political party. This directly reflects existing caselaw, particularly the AidWatch case and subsequent tax ruling (TR2011/4) but in a way that reduces ambiguity for charities in understanding how advocacy may fit within their charitable purpose.

Dismantling the legislative protection for advocacy will only put more pressure on charities who speak upon public policy. One of the biggest risks that charities face is the revocation of their DGR status for failing to operate within their state charitable purpose. There were several attempts during the Howard Government to undermine

5 UnitingCare Australia, *Submission 64*, p. 3.

organisations, such as the Wilderness Society, by challenging their DGR status. The Australian Greens would be extremely concerned if the purpose of further consultation is to try and wind back the advocacy component of the Bills.

For all of the reasons, the Australian Greens do not support the passage of Schedule 1A.

Schedule 3 – Family Tax Benefit

The Australian Greens agree with the arguments presented by the National Council of Single Mothers and their Children, who stated that:

> Contending with financial hardship and poverty is itself is a barrier to education and this policy approach does not address the issue but rather compounds it… hitting the poorest families entrenches poverty and is counter-productive in obtaining increased school attendance, vocational participation, further education and engagement in the labour market.[6]

NCSMC cites the new research completed by Suncorp Bank's Cost of Kids:

> Teenagers take the mantle for being Australia's most expensive children, with seventeen being crowned the single most expensive year in a child's life, Teenagers cost their parents $227.40 per week. This compares to $220.15 per week for infants, $184.73 per week for toddlers and $170.70 for primary school aged children.[7]

Clearly, raising teenagers is an expensive exercise for low-to-middle income families and access to Government support payments are a significant factor in their budgets.

In addition, because the payment is not available for dependent children who are no longer at school, it acts as a 'penalty' for 16 to 17 year old children not enrolled at school or university, or in the workforce.

There is clearly a cohort of families who will be affected by this measure, as demonstrated by the predicted saving outline in the Explanatory Memorandum.[8]

The Australia Greens believe that using the threat of reduced family payments to motivate families to keep their children in education counterproductive. It detracts from the purpose of family payments to ease poverty among children. Furthermore there has been no evidence presented to the committee to demonstrate that making Family Tax Benefits contingent on school enrolment has a positive impact on school attendance or transition to other forms of activity.

---

6 National Council of Single Mothers and their Children, *Submission 7,* pp 2–3.

7 National Council of Single Mothers and their Children, *Submission 7,* pp 2–3.

8 Social Services and Other Legislation Bill 2013, *Explanatory Memorandum,* p. 5.

Rather, it has been demonstrated through the application of other programs, such as SEAM and welfare quarantining, that the pressure on families that results from reduced payments can in fact act as a source of further dysfunction and negatively impact the family relationships.

A more progressive and reasonable method would allow Family Tax Benefits to continue until the child turns 18 years and/or completes their final secondary year and becomes eligible for Youth Allowance.

On the weight of this evidence, it is the view of the Australian Greens that the family tax benefit eligibility criteria should not be modified at this time.

Schedule 4 – Period of Australian working life residence

This schedule will affect approximately 23 per cent of those pensioners who leave Australia permanently each year and who are not paid under social security agreements with New Zealand and Greece.[9]

While the Australian Greens note the evidence from COTA which demonstrates that this measure will bring Australia closer into line with other OECD countries,[10] we share the concerns of Australian Seniors, that this measure will affect those who are currently overseas – having made their retirement plans on the 25 year rule.[11]

The experience of the Australian Greens with respect to changing portability arrangements, such as the recent changes to Disability Support Pension portability, is that it has a significantly disruptive effect on those who have already begun to reside overseas, if applied without grandfathering provisions.

As these measures will be applied to anyone who returns to Australia for a period greater than 26 weeks, after Jan 1, 2014, there will be a number of people who will be caught out by these provisions.

On the weight of the evidence, the Australian Greens oppose this measure.

---

9 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013, p. 19.

10 Ms Jo Root, National Policy Manager, Council on the Ageing, *Proof Committee Hansard*, 10 December 2013, p. 20.

11 National Seniors Australia, *Submission 57*, p. 1.

Schedule 5 – Interest charge (on unresolved overpayments to youth allowance etc)

Schedule 5 introduces interest charges on unresolved overpayments of student support payments such as Youth Allowance, Austudy and Abstudy.

The Australian Greens note that the explanatory memorandum justifies charging interest on debts by threatening a penalty to encourage repayment. Most former recipients of the applicable payments are either young people from disadvantaged backgrounds or members of the Indigenous community. Given that the people in these groups come from disadvantaged backgrounds and are beginning to establish themselves in the job market and broader community, threatening these groups with financial penalties is socially irresponsible.

We note that the disincentives of penalties, such as interest charges, rely on a certain ideal conception of rational action. Yet it is well documented that financial stress impedes rational cognitive function. This is not an inherent trait in people, but a consequence of their environment. A recent study in this field argues that poverty-related concerns consume mental resources, which explains "diminished cognitive performance."[12]

Young and Indigenous people who have just exited social security payments are likely to be under significant financial pressure. Thus the signal of a disincentive, such as an interest charge, is less likely to be received in a rational way by these groups. Indeed, the Department of Social Services estimates that only half of the affected debtors will begin to pay their debt when threatened with the penalty.

Improving the accessibility and affordability of repayment mechanisms should be explored as an alternative to interest charges and other penalties.

On the weight of the evidence, the Australian Greens do not support passing this schedule at this time.

Schedule 7 – Paid Parental Leave

After 30 years of campaigning, women won the right to keep their jobs and economic security when they have a baby. The 18 week federal scheme, which began in 2011, is an important social reform giving assistance to families to adjust to a major life event – the birth of a baby. There are also two weeks of paid parental leave available to all new fathers and partners as well.

12 Mani et al 2013, 'Poverty impedes cognitive function', *Science*, 30 August 2013: 341(6149), pp.976-980. [http://www.sciencemag.org/content/341/6149/976.abstract Accessed 11/12/2013]

The current PPL scheme is funded by the government but can be topped up by employers. For eligible employees, those who have been employed for 10 of the previous 13 months, the payment is paid to employees by their employers.

This is an important economic right that has taken a long time to achieve.

Given the significance of paid parental rights for workers, the Australian Council of Trade Unions have argued that now altering the payment mechanism of the Paid Parental Leave scheme, so that payments are paid via Centrelink rather than employers, will have the unintended consequence of turning what should be viewed as a workforce entitlement into a welfare payment.[13]

This perspective has been reinforced by large not-for-profit employer, Uniting Care, who stated in their submission to the inquiry:

This issue has particular relevance to the Not-for-profit sector as its workforce is predominately made up of women. It is essential that any Paid Parental Leave scheme encourages ongoing workforce participation in this vital social services sector.[14]

The Paid Parental Leave was specifically designed to maintain the role of employers in delivering parenting payments. The Productivity Commission found this arrangement to be the most suitable after weighing all the evidence from a range of stakeholders including businesses and employees.

In their final report, the Productivity Commission states:

> Overall, the Commission continues to consider that the administrative and signalling benefits from assigning payment responsibility to employers are sufficient to favour that approach over direct government payment in most cases.[15]

The ACTU also note that this Bill may result in significant numbers of parents receiving separate payments from Centrelink and their employer, where employees have secured additional paid parental leave rights as a result of their enterprise bargaining agreements.[16]

On the weight of this evidence, it is the view of the Australian Greens that these arrangements should not be modified at this time.

---

13 Australian Council of Trade Unions, *Submission 62*, p. 8.

14 Uniting Care Australia, *Submission 64*, p. 4.

15 Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, 2009, Section 8.34.

16 Australian Council of Trade Unions, *Submission 62*, p. 6.

Recommendation 1

1.1 The Australian Greens recommend that Schedules 1, 1A, 3, 4, 5 and 7 not be passed.

Senator Rachel Siewert

Dissenting Report by Senator Nick Xenophon

Schedule 1 – Encouraging responsible gambling

1.1 Never before have problem gamblers and their families been so cruelly abandoned by those with the power to put in place a framework that would help to limit the harm caused by poker machine addiction. The Federal Government's proposed 'Encouraging responsible gambling' policy will do nothing to curb the extent of problem gambling in our communities. It will only further stigmatise those who suffer from this addiction and make it harder for problem gamblers to control their spending and limit their losses.

1.2 I was unable to support the Labor Government's gambling reforms in 2012 because I believed there was still room to negotiate a more comprehensive and effective package of reforms. The reforms eventually passed by Parliament in November last year were a disappointing watered down version of what had been promised to the independent Member for Denison Andrew Wilkie in exchange for his support for an ALP Government. The Labor Government's reforms fell well short of the aims espoused by then Prime Minister Julia Gillard:

> "I want to get a big reform done on problem gambling… Not getting change is too big a risk for those Australians and their families that struggle day to day with the pressures that problem gambling puts on their shoulders."[1]

1.3 I could not support the former Government's 2012 watered-down reforms because they were in fact giving cover to a broken promise made by former Prime Minister Gillard. I did not want to a party to that cynical breach of trust. It was very much a Hobson's Choice for me back then.

1.4 However, we now have legislative changes before us that will likely take Australia backwards in terms of tackling problem gambling. Prime Minister Tony Abbott has made his aversion to mandatory pre-commitment clear. In an interview on 2 November 2011 at the Canberra North Bowling Club Mr Abbott remarked:

> "Now, it's very important that we do what we can to address problem gambling but you've got to have the right policies, not the wrong policies and mandatory pre-commitment would impose hundreds of millions of

[1] Prime Minister Julia Gillard, Press Conference, 12 January 2012, available at http://australianpolitics.com/2012/01/21/gillard-poker-machines-reforms.html (accessed 9 December 2013).

> dollars of additional costs on community clubs without necessarily improving the predicament of problem gamblers."[2]

1.5 Mr Abbott went on to say:

> "It's important to get maximum help for the problem gambler with minimum disruption for community organisations and that's the difficulty with mandatory pre-commitment, it's taking a sledgehammer to crack a nut".[3]

1.6 The Government's reliance on the assumption that problem gamblers are able to set their own limits and stick to them as the basis for these reforms is fundamentally flawed. Furthermore, by removing the proposed ATM withdrawal limits the Government is further enabling problem gambling behaviour.

ATM withdrawal limits

1.7 An all too common theme when I meet with problem gamblers and their families is the ease with which the gambler is able to exceed the spending limit they have set themselves for that particular day. Accessibility to ATMs within gaming machine venues plays a huge role in this.

1.8 In their submission to this inquiry, the Australian Churches Gambling Taskforce told the committee of research conducted by the Victorian Gambling Research Panel in 2005 which found that:

> "the proximity of ATMs to EGMs means that money could be withdrawn and then inserted into a machine without sufficient time for thought of consequences. EGM gamblers who use an ATM at gaming venues rarely access it for the purpose of purchasing food and beverages (11.7%). Of those EGM gamblers who withdrew money from an ATM, 74% did so for the purposes of gambling. Those who accessed an ATM more than twice did so exclusively to gamble".[4]

1.9 In relation to ATM withdrawal limits the Productivity Commission in 2010 found that:

> "While causality is hard to prove, easy access to ATMs/EFTPOS facilities appears to increase spending by problem gamblers. Problem gamblers use

---

[2] Prime Minister Tony Abbott, door stop interview, Canberra Bowling Club, 2 November 2011, transcript available at http://engage.wa.liberal.org.au/general/the-coalitions-policy-discussion-paper-on-gambling-reform-kevin-rudd-european-debt-crisis-industrial-relations-tony-abbott-doorstop (accessed 9 December 2013).

[3] Prime Minister Tony Abbott, door stop interview, Canberra Bowling Club, 2 November 2011, transcript available at http://engage.wa.liberal.org.au/general/the-coalitions-policy-discussion-paper-on-gambling-reform-kevin-rudd-european-debt-crisis-industrial-relations-tony-abbott-doorstop (accessed 9 December 2013).

[4] Australian Churches Gambling Taskforce, Submission 10, p. 4.

> these facilities far more than other gamblers, and say they would prefer to see ATMs removed from venues so they can better control their spending."[5]

1.10 In line with this, the Productivity Commission recommended that ATM/EFTPOS facilities in gaming venues be limited to $250 a day.[6]

1.11 While imposing a limit on ATM withdrawals would not be as effective in curbing problem gambling behaviour as removing ATMs altogether, I believe this measure would have enabled those experiencing difficulty controlling their gambling to think twice about withdrawing extra cash. By removing ATM withdrawal limits the Government's bill will only serve to exacerbate problem gambling behaviour.

Pre-commitment

1.12 Through this bill the Government plans to remove the requirement for gaming machines to be pre-commitment ready by 2016. This is in complete contradiction to and defiance of the Productivity Commission who in 2010 recommended:

> "Each state and territory government should implement a jurisdictionally-based full pre-commitment system for gaming machines by 2016."[7]

1.13 In fact, the Productivity Commission was so confident in its recommendation that it did not believe a trial was necessary. The trial of mandatory pre-commitment in the Australian Capital Territory will be abandoned should this bill pass. The Government is foregoing not only an opportunity to make a difference to the lives of problem gamblers but also the opportunity to contribute to vital research in an area which is sorely lacking.

1.14 The former Joint Select Committee on Gambling Reform repeatedly heard from former problem gamblers who say that a mandatory pre-commitment system is necessary in order to limit losses and reduce the harm caused by poker machines, such as Ms Julia Karpathakis:

> "If there had been another option, there is no way I would have been an addict. If there had been a pre-commitment card or an opt-out card there is no way I would be an addict. You get your pension and you know you have three kids and rent to pay, but you look at that money and it is not even

[5] Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, p. 57.

[6] Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, Recommendation 15.2, p. 58.

[7] Productivity Commission 2010, Gambling, Report no. 50, Canberra, p. 56.

> real—it is just something to play with. That is free rein. Your brain does not think properly, but if there were a block there I would not think like that."[8]

1.15 In a submission to the Joint Select Committee on Gambling Reform Ms Karpathakis also stated:

> "I believe that pre-commitment has the potential to help people, especially the ones who can't seem to stop. At least they will be able to curb their addiction or at least not cause such extreme damage. I believe that if we had had a pre-commitment scheme when I began to play I would have been a recreational gambler and not an addict. A pre-commitment scheme, including pre-commitment cards and the opt-out system, could result in many benefits. These could include preventing new people from becoming addicted, reducing the incidence of child neglect, as well as a reduction in crime. I find the idea of preventing future pokie addicts with the help of the pre-commitment scheme exciting."[9]

1.16 Based on the views of problem gamblers, the very people this legislation is purportedly supposed to help, it is difficult to form the view the Federal Government is sincere about limiting gambling losses and preventing harm.

1.17 Formal studies have repeatedly shown that voluntary pre-commitment systems are not effective at limiting losses. A study into poker machine pre-commitment schemes prepared for the Nova Scotia Gaming Foundation in Canada found that voluntary schemes consistently failed because they relied on the willpower of players.[10]

1.18 The Nova Scotia study found that high risk players were unlikely to use a voluntary system. It also found that high risk players would often continue to gamble beyond their limits unless they were locked out of play and that they lost more money than they intended "most times they play".[11]

---

[8] Ms Julia Karpathakis, Joint Select Committee on Gambling Reform, *Committee Hansard*, 1 February 2011, p. 11.

[9] Joint Select Committee on Gambling Reform, Inquiry into pre-commitment schemes, Pokies Anonymous, *Submission 34*, p. 3.

[10] T Schellink, et al, 'Evaluating the Impact of the "My-Play" System in Nova Scotia', Nova Scotia Gaming Foundation, October 2010, http://www.nsgamingfoundation.org/uploads/Research/Technical%20Report%20Phase%201%20My-Play%20Benchmark%20Final%20%20_Focal_%20Jan%2028%202011.pdf (accessed 9 December 2013).

[11] T Schellink, et al, 'Evaluating the Impact of the "My-Play" System in Nova Scotia', Nova Scotia Gaming Foundation, October 2010, http://www.nsgamingfoundation.org/uploads/Research/Technical%20Report%20Phase%201%20My-Play%20Benchmark%20Final%20%20_Focal_%20Jan%2028%202011.pdf (accessed 9 December 2013).

1.19 The take-up of voluntary pre-commitment schemes has also been shown to be woeful. In South Australia, Worldsmart Technology's J-Card loyalty scheme allows a player to set self-imposed limits on time and spending. After reviewing Worldsmart's scheme, the Productivity Commission reported:

> "Relatively few consumers have enabled their loyalty card for pre-commitment features. By mid-September, 233 of just under 32,000 loyalty card members (or 0.7 percent) had enabled pre-commitment options."[12]

1.20 However, players who had opted into the pre-commitment system were found to have engaged with the feature extensively, with spending reduced dramatically.[13]

Responsibility of the states

1.21 The cornerstone of the Government's legislation is the reliance on the cooperation of states, territories and indeed individual venues to implement a voluntary pre-commitment scheme. Surely the track record of the states, who are too reliant on poker machine revenue to be expected to implement any kind of meaningful reform, demonstrates the urgent need for a comprehensive national approach to tackling problem gambling. We cannot have Dracula guarding the blood bank.

1.22 Given the cynical abandoning of these minimalist reforms by the former Government and the aggressive commitment by this Government to unwind them, it seems a realistic option now available is for the Australian people to have a say on poker machine reform. Independent surveys indicate a vast majority of Australians want significant poker machine reform, and in particular the implementation of the Productivity Commission's recommendation of $1 bets and maximum $120 hourly losses. A plebiscite to be held on this issue, on or before the next federal election would, if passed, give politicians from the major parties the courage to finally reflect community opinion in any future gambling reform legislation.

Schedule 1A – Charities

1.23 I recall distinctly the guillotining that took place in June 2013 when the *Charities Act 2013* was first debated. At that time I indicated my broad support for this legislation but flagged that certain provisions may need fine tuning in the future.

1.24 Charities meet the otherwise unmet, ignored and underestimated needs of Australian society. Often they step up to the plate and help people and animals who the private sector deem too uneconomical to help. Charities do wonderful

---

[12] Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, p. c2-3.

[13] Ibid.

work that is not easy and they must be recognised for doing so. That is why a definition of a charity is so important. We need to be able to define a 'charitable purpose' and a 'public benefit' to ensure genuine charities are able access appropriate Federal Government assistance, but also to stop those unscrupulous organisations purporting to be charities from accessing that assistance.

1.25 Australia has been relying on a 400 year old definition of charity from England's Charitable Uses Act 1601. We have seen the success of clearly defined charitable purposes frameworks in other jurisdictions like the United Kingdom and New Zealand.

1.26 The benefits of a definition of 'charitable purpose' together with a charities commission was made clear in 1999 when the Charity Commission for England and Wales refused to grant the Church of Scientology charitable status because the Commission was not satisfied Scientology was a religion within the meaning of English law. Furthermore the Commission held that no public benefit arising from the practices of Scientology had been established.[14] This was based on the Commission's conclusion that the private nature of Scientology's auditing, training and practices resulted in a private benefit to its members only, rather than a benefit to the public.

1.27 The delay in implementing a statutory definition of a charity will provide additional time for further stakeholder consultation. However, this time must be used wisely with genuine attempts made to address specific concerns about the definition. The focus of the consultation must not be on whether we need a statutory definition at all, but rather how the definition is framed.

Recommendation:

Schedule 1 of the Social Services and Other Legislation Amendment Bill 2013 not be passed in its current form, particularly without significant alternative and effective gambling reforms in place.

Senator Nick Xenophon

[14] Charity Commission for England and Wales, Decision of the Charity Commissioners for England and Wales (on the) Application for Registration as a Charitable Entity by the Church of Scientology (England and Wales), 17 November 1999, available at: http://www.charitycommission.gov.uk/Library/start/cosfulldoc.pdf, accessed 11 December 2013.

APPENDIX 1

Submissions and additional information received by the Committee

Submissions

1 ATM Industry Reference Group
2 Financial Planning Association of Australia
3 Mr Richie Parsons
4 Hayden Financial Services
5 Goodstart Early Learning
6 Institute of Public Accountants
7 National Council of Single Mothers and their Children
8 Business SA
9 National Tertiary Education Union
10 Australian Churches Gambling Taskforce
11 Gaming Technologies Association
12 Clubs Australia
13 The Centre for Independent Studies
14 Students Representative Council of the University of Sydney
15 Australian Council of Social Service
16 Ms Kathy Haas
17 Ms Kathryn Johnston
18 Mr Angus Stephen
19 Mr Scott Ward
20 Mr Richard Moore
21 Ms Jenny Woodhart
22 Mr Geoff Kaye
23 Mr Peter Foreman
24 Mr Jason McFadden
25 Ms Therese Jarrett
26 Mr Stephen Legg
27 Mr Tom Muir
28 Mr Robert Dawson
29 Mr Neil Cox
30 Mr Jack Laidsaar
31 Mr Anjan Das
32 Mr Alex Cheng
33 Mr Philip Eley
34 Mr Colin Lissner
35 Mr Jason King
36 Mr Kevin Moran
37 Mr Peter Conway
38 Mr Chris Vanden-Driesen
39 Mr Michael Wells

Mr Hayden Hill
Ms Jo Tuck
Mr Peter Lake
Ms Natalie Goodall
Ms Sofie Korac
Ms Louise Parker
Mr David McGregor
Ms Monica Maguire
Mr Martin Watson
Mr Noel McCormack
Mr Michal Bodi
Name Withheld
Ms Anne Steer
Mr Rory Mooney
Mr Ray Costello
Mr Marshall Brentnall
Mr Bernie Scott
National Seniors Australia
Mr Jonathan Scholes
Ms Rebecca Watt
Australian Hotels Association
Mr Robert Latimer
Australian Council of Trade Unions
Australian Chamber of Commerce and Industry
UnitingCare Australia
Mr Theo Marinis
Ms Berenice Roberts

Additional Information

1 Opening address, tabled by Gambling Impact Society (NSW), at Canberra public hearing 9 December 2013

2 My Student Debt factsheet, from National Tertiary Education Union, received 11 December 2013

3 Graphs displaying Government investment in higher education and students contributions, from National Tertiary Education Union, received 11 December 2013

Answers to Questions on Notice

1 Answer to Question on Notice received from Department of Social Services, 11 December 2013

2 Answers to Questions on Notice received from National Welfare Rights Network, 11 December 2013

3 Answers to Questions on Notice received from Department of Social Services, 11 December 2013

APPENDIX 2

Transcripts of public hearings

Monday, 9 December 2013 and

Tuesday, 10 December 2013

Parliament House, Canberra

COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Social Services and Other Legislation Amendment Bill 2013

(Public)

MONDAY, 9 DECEMBER 2013

CANBERRA

BY AUTHORITY OF THE SENATE

[PROOF COPY]

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

To search the parliamentary database, go to:

http://parlinfo.aph.gov.au

SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Monday, 9 December 2013

Members in attendance: Senators Boyce, Carol Brown, Di Natale, Siewert, Xenophon.

Terms of Reference for the Inquiry:

To inquire into and report on:

Social Services and Other Legislation Amendment Bill 2013.

WITNESSES

STEWART, Mr Paul, Manager, ATM Industry Reference Group

WINGROVE, Mr Andrew, Member, ATM Industry Reference Group

Committee met at 16:10

CHAIR (Senator Boyce): The committee will now commence its first public hearing into the Social Services and Other Legislation Amendment Bill 2013. This committee has been referred schedules 1, 1A, 3, 4, 5, 7, 10 and 11. Tonight we will be looking at schedules 1 and 1A. Committee proceedings are protected by parliamentary privilege in Australia. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public, but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If you are a witness today and you intend to request to give evidence in camera, please bring this to the attention of the secretariat staff as soon as possible.

I thank in advance all those witnesses who are appearing tonight for coming in on very short notice to provide evidence to the committee on the bill. I welcome representatives from the ATM Industry Reference Group. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I invite you to make a short opening statement and, at the conclusion of your remarks, I will be inviting members of the committee to put questions to you.

Mr Wingrove: Thank you for the opportunity to appear today. There is a great deal of uncertainty surrounding the ATM industry at the moment, and we felt that it was important that the committee hear firsthand from us about this. For those of you who are not familiar with the ATM industry, here is a snapshot: there are 30,000 ATMs in Australia altogether. Of these 30,000 ATMs, approximately 55 per cent are owned and operated by independent companies such as ours. The remainder are owned and operated by financial institutions such as banks. Regarding independent ATMs, we estimate in excess of 5,000 are located in pubs and clubs that have electronic gaming machines. Almost all ATMs in gaming venues are operated by independent ATM companies.

The ATM industry reference group is the industry body for independent ATM companies, and our members represent more than 90 per cent of all independent ATMs in Australia. The reason independent ATMs have grown in the past decade is because we specialise in providing a convenient way for Australian consumers to access their cash in a variety of locations including service stations, shopping centres, retail outlets, corner stores and hospitality venues. We are all about providing convenience to consumers in locations where they want to access their cash. We are not owned by gaming companies and we recognise the need to promote responsible gambling and gaming venues.

With regard to the changes proposed by the Social Services and Other Legislation Amendment Bill 2013, our sole focus is the amendment which would allow the responsibility for ATM limits in gaming venues to again rest with state and territory governments. The ATM industry strongly supports this amendment. The ATM industry also strongly supports this amendment being passed by parliament before it rises for 2013. The reasons for this are as follows.

Firstly, as things stand, current federal legislation provides for the introduction of a national daily withdrawal limit on ATMs and gaming venues to commence on the 1 February 2014. However, the new federal government has a clear policy position that states and territories should resume regulation of ATM limits. This is in conflict with the current federal legislation, and the amendment seeks to align the legislation with the government's policy.

Secondly, the ATM industry is uncertain about how to proceed and, given the imminent start date, 1 February 2014, the sooner the situation is clarified the better. The most effective way to achieve this is for the amendment to be passed by parliament before it rises this year. The ATM industry can then get on with the business of complying with the law with certainty and without duplication of costs.

The ATM industry is working with states and territories and understands that South Australia and the ACT are in the process of introducing daily ATM limits. The structure of these limits varies from the federal legislation and the uncertainty surrounding the Commonwealth legislation is complicating our compliance plans.

Governments in New South Wales, Queensland and the Northern Territory have indicated that they do not propose to apply ATM limits at this time. In all jurisdictions we have to ensure that our systems comply with the law, and there is a risk that the ATM industry will have to invest time and money complying with ATM limits in some jurisdictions, only for the limit to be withdrawn or varied once federal legislation changes. In essence our industry would be incurring wasted costs, in addition to the impact on consumer confidence in using ATMs, and

this is the principle concern that we wish to put forward to you today. Thank you for the opportunity to appear today, and we are happy to take questions from the committee.

CHAIR: Mr Stewart, do you have a statement?

Mr Stewart: No, Andrew's statement represents the group as a whole.

CHAIR: Senator Di Natale.

Senator DI NATALE: I want to interrogate that a little bit more. So the basis of your support for the amendment is that it is a conflict between national and state policy?

Mr Wingrove: In part, yes.

Senator DI NATALE: So just explain that a little bit further.

Mr Wingrove: Sure. I guess at present there is a landscape for change and there has been for some time.

Senator DI NATALE: Please excuse me. I have to attend a division.

CHAIR: Perhaps you might like to continue answering Senator Di Natale's question anyway.

Mr Wingrove: Shall I proceed?

CHAIR: Yes, please. He will be able to pick it up on *Hansard*.

Mr Wingrove: Of course. So what we are describing is a landscape of some uncertainty between the legislation that is in place today, to be implemented on the 1 February 2014, and a policy position of the government which seeks to amend that. The senator asked me specifically about South Australia and the ACT. Working with all states and territory governments, the ATM industry has been consulting with those governments and they have indicated to us that they intend to have, in South Australia, a $200 limit on ATM withdrawals. Whereas, in the ACT, they seek to have a $250 limit that will be on a different time line per day—based on a gaming venue clock, as opposed to a calendar day clock, which is different from the federal legislation today. So, from an industry perspective—and companies that Paul and myself represent—we have a range of measures to seek to try and meet, and from a compliance perspective that is very difficult.

Mr Stewart: I guess our situation at the moment is, having consulted with those state and territory governments in the context of an overriding assumption that the new federal government's policy will be implemented at some point during this term of parliament, that we are trying to align those requirements of how the state and territories see that they will adopt ATM limits in comparison to the current federal legislation, which we still have as a piece of law as we sit today.

CHAIR: Are you able to give us the average cost of changing a machine to meet whatever the requirements happen to be?

Mr Stewart: It will vary from company to company, depending upon the technology that each company employs. But it is certainly tens of thousands of dollars for each company and would run into hundreds of thousands of dollars across the industry—

Senator XENOPHON: Per machine? How much per machine?

Mr Stewart: I do not have an exact figure per machine. As I stated, it will vary from company to company, depending upon the technology that they employ for any given machine.

Senator XENOPHON: Can you urgently let us know what it would be—without referring to any commercial confidentiality but could you give us a range of what your members say it would cost to alter a machine to-

CHAIR: Is it more about the fact that you need to develop the software and the per machine cost is not quite so relevant?

Mr Stewart: In some instances it is the cost of deploying it per terminal. In some cases, companies run terminals that rely upon a particular piece of software loaded to that terminal. Some of that can be done remotely and some of it needs to be done by a physical site visit to the ATM.

CHAIR: So it is different for each company?

Mr Stewart: It is different for each company. To your point, Senator Xenophon, we are happy to look at those numbers and come back to you on notice with a range of figures, because I do not have that data to hand from all of our members. The point that we are endeavouring to make is that, in the interests of some certainty and in the interests of not duplicating costs—

Senator CAROL BROWN: We were looking at a 1 February implementation. How far down the road are you with developing software?

Mr Wingrove: We have certainly commenced our preparedness for the change. I think it is fair to say though that, with the changing landscape and the uncertainty that we face, we are perhaps not as progressed as what we might have been without it. But certainly we have been working in the background, because, as you say, Senator, we have known about it for some time.

Mr Stewart: I think the other point that is worth making on that is there is still a large degree of education within our customer base that is hampering our efforts to move towards that compliance, should it be required, because there is a fairly strong feeling within the industry that the incoming government's policy will be what is delivered at a point in time.

CHAIR: So it is not unreasonable to say that on a commercial basis you did not perhaps progress as quickly as you might have from about mid-August or so?

Mr Stewart: Senator Boyce, that is absolutely correct.

CHAIR: Thank you.

Mr Stewart: Part of our inability to do that is the reluctance of engagement with our customers, given what they believe the outcome is likely to be.

CHAIR: Senator Xenophon, have you got questions?

Senator XENOPHON: Yes, I have, just very briefly, because I know how constrained we are for time. I do not quite understand the logic of your submission. If you are concerned about having a state-by-state approach, would it not make more sense for there to be a uniform federal approach so there is some national consistency, greater certainty for your members, and therefore lower costs? Ultimately that would be a better approach than having a state-by-state approach.

Mr Wingrove: Certainly that is possible, Senator, but what we have observed firsthand is that states are proceeding with different regulations, if you like. Cases in point are South Australia and ACT. From a technology standpoint, in order to make the machines and the systems compliant, we are dealing with multiple regulations already.

Senator XENOPHON: Right, but if there was just one set of rules at a national level, that would be preferable to a state-by-state approach in terms of consistency?

Mr Stewart: Even if the current federal legislation did remain in place, there are a number of other different rules at a state basis that we would still need to comply with, such as ATM placements et cetera, that effectively mean we are complying with yet another level of government. We are not actually removing the state and territory governments.

Senator XENOPHON: But ATM placements do not relate to the technology or software, do they?

Mr Stewart: No, they do not, but it is still a compliance burden that we need to—

Senator XENOPHON: But we are talking about the compliance burden, for want of a better phrase, in terms of having some uniformity with respect to ATM withdrawal limits at gambling venues.

Mr Stewart: And it may be that certain states and territories apply different limits to the Commonwealth, which again means that we are required to be compliant with a whole range of governments, not just a Commonwealth government.

Senator XENOPHON: To what extent do any of your members, private ATM operators, have any links to the venues in which they are located? Are there any commercial agreements or other arrangements that we ought to know about? In other words, is there a link between, say, a gambling venue and any of the ATM companies that you represent?

Mr Stewart: In terms of an equity position, is that the question?

Senator XENOPHON: Either equity or commercial relationships.

Mr Stewart: There are customer/supplier relationships, of course.

Senator XENOPHON: Anything with equity?

Mr Stewart: No, no equity. That is a question that would have been asked on several occasions.

Senator XENOPHON: So no issues of related parties or anything like that?

Mr Wingrove: No, it is purely a service and supplier relationship that we have.

Senator XENOPHON: And you are familiar with the Productivity Commission finding on gambling—at least in its first report back in 1999—that referred to a very close correlation between problem gamblers, particularly pathological problem gamblers, and access to an ATM at a venue? Non-problem gamblers rarely

needed to use an ATM, whereas problem gamblers invariably had access to an ATM. It was quite a stark difference. Do you acknowledge that there is a link between ATM usage and problem gamblers—using those machines at a greater proportion?

Mr Wingrove: I am aware of the 1999 report, but not all of the complete details. From the industry's perspective, we have continued to support government initiatives around restrictive measures on ATMs to assist problem gambling, as it were. So, in that sense, as an industry, we do what we can to support that issue.

Mr Stewart: We are here today really not to debate records that may be in place on this. We are really here to represent our interests in relation to the great degree of uncertainty that our industry currently faces in our compliance efforts.

Senator XENOPHON: Can you give me a cost estimate of what it would cost to alter the machine as suggested in the legislation that is currently the subject of amendment? What range could you give us? Can you give me an approximate range of what it would cost to alter the machines in terms of software to comply with the proposed changes to be implemented by February 2014?

Mr Stewart: Senator, I think that is something that would be best taken on notice to give you some accuracy in those figures because we do not have those with us today.

Senator XENOPHON: But you would have been told by your members, would you not?

Mr Stewart: They are not figures that we have readily at hand today that we can quote to you.

Senator XENOPHON: But you are saying that there are significant costs involved for your members for the changes proposed in this legislation, correct?

Mr Stewart: Yes, we are.

Senator XENOPHON: But you cannot tell us what those costs are?

Mr Wingrove: I think it is fair to say that we are talking multiple thousands, multiple tens of thousands of dollars to implement.

Senator XENOPHON: Per machine?

Mr Stewart: For each of our companies the figures that we have spoken about would be tens of thousands of dollars per company that would run into hundreds of thousands of dollars across the industry. So, breaking that back to a per ATM level, it is something that we would have to get some accuracy on before we were able to quote those numbers.

Senator XENOPHON: Can you at least provide details of the basis upon which those assertions are made? In other words, quotes or whatever?

Mr Wingrove: Yes, we can take that on notice.

Senator XENOPHON: I think that is quite important, thank you.

CHAIR: Can I just advise you that we are reporting early on Thursday, so if you can get that information back to us as quickly as possible, that would be great. One more question, Senator Xenophon?

Senator XENOPHON: If there was a uniform national law, in terms of software for ATMs and respective withdrawals, that would actually be good for your members in the longer term?

Mr Wingrove: I think it is true in most walks of life that if there was a single uniform law it would make things simpler.

Senator XENOPHON: Rather than having six or eight jurisdictions?

Mr Stewart: I think the essence is, however, that we will always have six or eight jurisdictions applying different aspects that impact on our doing of business with our customers. The Commonwealth being involved in that just as one more jurisdiction that we need to be cognisant of with our compliance efforts.

Senator XENOPHON: But not if the Commonwealth's laws on withdrawals were the one and only uniform law that related to withdrawals?

Mr Stewart: That would be the case but I do not believe that is possible given that the states would still have the ability to apply differential laws over and above what the Commonwealth has imposed.

Senator XENOPHON: That is not quite what I asked but, anyway.

CHAIR: Senator Brown.

Senator CAROL BROWN: Thank you. You said earlier that one of the reasons that you have not progressed the work on the software that would be needed was because there were some issues around educating your ATM

businesses. Can you just let the committee what the issues are around the education and how are you attempting to educate the sector?

Mr Wingrove: Simply put, while there is legislation before us to make this change, we also have a government with a policy position that will see changes and we also have some state governments, like South Australia and the ACT, with different positions. It is those issues that our clients, our members, if you will, are grappling with in seeking to understand that. So one component of us moving towards compliance before that date is the education of our client base. They are faced with just the same questions as we are: when or will that change, and if so how, and how do we seek to accommodate that? So, with that uncertainty, it is proving difficult to get a single clear message to our client base in terms of that education piece.

Senator CAROL BROWN: When did you start the dialogue with your members into what was required?

Mr Stewart: It varied a little per company, but typically around August of this year all of our companies commenced communications with our customers in terms of what they would need to do and what we would need to do to help them in their compliance efforts.

This piece of legislation is very different to any other state-based legislation that we have previously dealt with. There are actually fines and penalties that are levied on both the ATM companies and the venues under this piece of Commonwealth legislation, which is not something that we have had before. So we saw it as very much a joint effort with our customers in moving towards compliance. The thing that really stalled that, I guess, was the coalition's policy. When that was announced, there was a degree of reluctance on the part of our customer base to continue moving down that path. That is probably the thing. Moving forward to the election to where we are today, there is still that degree of uncertainty that is making it difficult to move towards that compliance level.

Senator CAROL BROWN: Thanks, Chair.

CHAIR: Thank you. I am just trying to think how to phrase this. Is the profile of an ATM user uniform nationally, or would some ATM machine owners configure their machines differently because of something about the local population—that might want more money or less money or something?

Mr Stewart: It is probably not driven by, strictly speaking, geography. It is probably driven by, perhaps, individual venue needs. There is not a lot of difference in the way that a machine behaves other than what is governed by regulation or legislation. There may be some particular requirements of an individual venue operator or merchant that may apply to that machine. And I do not really think there is anything other than that that really varies that is not driven by legislation.

Mr Wingrove: I think that is fair.

Mr Stewart: Our industry is made up of the companies that are represented by the ATM industry reference group, which are the three largest providers within the industry, as well as a wide number of medium- to small-sized companies, whose technology is perhaps not as sophisticated as ours, who we help through this process in making sure that they are aware of the compliance that they need to achieve as well.

CHAIR: Thank you, gentlemen. If Senator Di Natale has further questions he will put them on speedy notice. Thank you for your evidence here this afternoon.

DOUST, Ms Kelilah, Consumer Voice, Gambling Impact Society (New South Wales)

HATCLIFFE, Mr Gary, Consumer Voice, Gambling Impact Society (New South Wales)

PHILLIPS, Mrs Roslyn Helen, National Research Officer, FamilyVoice Australia

ROBERTS, Ms Kate, Executive Officer, Gambling Impact Society (New South Wales)

[16:35]

Evidence from Mrs Phillips was taken via teleconference—

CHAIR: I welcome the representatives from Gambling Impact Society and FamilyVoice Australia. I understand information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. FamilyVoice Australia are appearing via teleconference. Mrs Phillips, it is Sue Boyce, the chair, here. Also here are Senator Carol Brown, from the Labor Party, and Senator Nick Xenophon, who is from the Xenophon party, aren't you, these days?

Senator XENOPHON: No, still Independent.

CHAIR: You are just an Independent?

Senator XENOPHON: The Clerk says I can call myself an Independent, Chair.

CHAIR: I now invite each of you to make a short opening statement and, at the conclusion of your remarks, I will invite members of the committee to put questions to you. Mrs Phillips, we might start with you, if you have an opening statement.

Mrs Phillips: Certainly. Thank you for the opportunity to give evidence before you. I had not heard of the omnibus Social Services and Other Legislation Amendment Bill 2013 until this morning. It seems to have slipped under the media radar. However, my quick skim of its 164 pages over the past few hours has indicated that several matters would be of concern to FamilyVoice Australia supporters as well as the wider community.

Current constraints mean I can comment on just three main issues—gambling regulation, the Charities Act delay and paid parental leave provisions. Firstly, on gambling regulation, gaming machines, commonly known as 'pokies', are the most addictive form of gambling, causing severe suffering to the addicts, their families and their employers. These harms cost the community billions of dollars each year—I have seen figures of around $5 billion. The reforms achieved under the previous government did not go nearly far enough in addressing these harms. Nevertheless, those reforms, including mandatory precommitment and limits on ATM withdrawals, were better than nothing.

The present government wants to have yet another inquiry on the issue. That is quite appropriate, but on past experience it may take two years to gather evidence, make recommendations and implement those recommendations. Such an inquiry is no reason at all to abolish or emasculate the reforms introduced just last year. I would remind the committee that pokies reform is still a very great concern in the community.

I notice that Nick Xenophon is present today. I am not sure whether the other senators understand that he stood for the South Australian legislative council in 1997 with just one policy: no pokies. He was an unknown lawyer but he gained nearly three per cent of the primary vote and more than a quota with preferences. He was the first Independent of any kind to win an upper house seat in 60 years. In the 2006 election, he gained over 20 per cent of the primary vote and when he reached—

CHAIR: Mrs Phillips, Senator Xenophon is trying to look embarrassed at this, but also you have less than 10 minutes.

Mrs Phillips: Yes, I realise that but I wanted to make the point. I am nearly at the end.

CHAIR: And we do want to ask you some questions.

Mrs Phillips: Indeed, but the point is he gained a quarter of the vote in the election a few months ago and although he has broadened his concerns, pokies remain a high priority and governments that ignore community concerns about pokie harms may find they lose rather than win votes. I oppose the passage of this bill that would abolish or amend past gambling reforms. Such amendments may be appropriate when the government has something better to put in their place, but not now.

I turn to the Charities Act delay. Registered charities rely on voluntary donations in order to provide important community support. I understand that there are a number of concerns about the provisions of the Charities Act, including the definition of what a charity is and what a charitable purpose is and the increase in red tape that may limit the services that charities can provide. I welcome the bill's amendment to delay the commencement of the Charities Act while further consultation takes place.

Lastly, there is paid parental leave. It is and has been a controversial issue. The current scheme is fundamentally unfair in that women who work hard caring for young children at home receive only the $1,000 baby bonus after the birth of their next baby, while women in the paid work force receive over $9,000. If the government and opposition believe in equal pay for equal work, why should paid nannies get $9,000 from the government while unpaid nannies caring for their own children receive just $1,000? It is not possible to right this huge wrong in the current bill, but insofar as the bill reduces red tape for businesses and recognises that the paid leave comes from taxpayers—in other words, the government—it is appropriate that the government's Department of Human Services should pay mothers directly. I support this part of the bill.

Ms Roberts: I will speak on behalf of the Gambling Impact Society (NSW) and then will give people an opportunity to add anything. Thank you for the opportunity to come along at very short notice; it is interesting to find myself here once again. Most 'responsible gambling' literature opens with the normalisation of gambling in Australia and then goes on to identify the difference between perceptions of 'recreational gamblers'—implied 'normal people'—who gamble in an unquantifiable 'responsible' manner and others who apparently fail to maintain personal control and recklessly damage both themselves and others close to them. To quote a section of a recent paper by Professor Linda Hancock:

With mounting evidence on the harms caused by gambling, many jurisdictions have responded by emphasising harm minimisation and responsible gambling; but frequently frame this in terms of individual responsibility (take control of your gambling); rather than industry/government/regulatory responsibility for prevention of avoidable harms.

The original concept of responsible gambling was, according to Professor Jan McMillen:

… the provision of gambling services in a way that seeks to minimise the harm to customers and the community associated with gambling.

However, the term 'responsible gambling', as used today, is stigmatising, leads to victimising and not only fails to support those affected but actively works against them reaching out for assistance. This has been most recently identified by the ANU, with Annie Carroll's recent Report into Gambling and Stigma. She says:

It puts all the onus on the person to gamble responsibly rather than admitting that gambling products, like alcohol and drugs, are innately risky products to use.

We are here to challenge that responsible gambling concept and place the 'irresponsible provision' of gambling services firmly back in its place as a case of regulatory failure. The ongoing depiction of ourselves—people affected by problem gambling, by both government and the gambling industry as irresponsible 'sick individuals' serves only to disguise the facts and protect the vested interests who ultimately benefit from our demise. The concept of a gambling sickness goes deep into the belly of the institution of community gambling in Australia, particularly poker machine gambling. This is an area where conflicted state/territory governments have consistently failed the population and failed to protect those most vulnerable to gambling harm.

We are here today to provide a voice on behalf of those five million Australians affected by problem gambling. These are people hidden by stigma, shame and stereotyping who are facing today yet another betrayal. We are here to tell you about our view on this sickness in an effort to stop what we see as the door to meaningful, national, social, structural and regulatory reform slamming in our face once again.

We are sick of being labelled as aberrant, irresponsible deviants by both governments and industries who ultimately gain from our so-called recklessness. We are sick of the term 'responsible gambling' when no-one can define the dose parameters, and hence it becomes a pejorative weapon to further disempower us. We are sick of having our concerns silenced by powerful lobby groups with vested interests, who seek to minimise our existence and discredit our right to be heard. We are sick of being used as political footballs between government parties and big business and the taxes they seek to protect. We are sick of supporting over a decade of research, prevalence studies and public inquiries which are ultimately ignored and thus fail to contribute to meaningful—

Proceedings suspended from 16:45 to 16:58

CHAIR: Ms Roberts, you tabled your statement, I understand.

Ms Roberts: I would like to table my statement and then just conclude with a few remarks.

CHAIR: That would be fine.

Ms Roberts: I do not want to miss the opportunity.

CHAIR: That would be excellent. Thank you.

Ms Roberts: In essence, we are appalled to be back here with so little time to be consulted and to discuss the implications of what is about to occur if we repeal these acts, which are the first time that a national government has stood up and taken some kind of responsibility for an issue that has for a long time been firmly placed with

states and territories who, we believe are conflicted. More importantly, the repeal will place back on the shoulders of individuals the main burden of so-called responsible gambling—which, as we have already explained, is a term that is pejorative and not helping our issues in any way whatsoever. One of our concerns is that once again we seem to be swept under the carpet as a group of people who have been affected by problem gambling—both people who gamble with difficulties and the families around them, who, as we say, are about five million Australians.

Our main concern is that we have a product in the community that we believe is doing harm. We know—we have had research now for over 14 years that is indicating this—that there is a significant problem in the community specifically related to poker machines and that this is basically not a personal issue; this is a product safety issue involving dangerous consumption of a product that requires more stringent regulation than we have been able to acquire to date. Without basically looking at the technology we are facing a new wave of gambling product coming in. .At the moment we know 85 per cent of people turning up with gambling problems are to do with poker machines.

CHAIR: Was that 85?

Ms Roberts: Eighty-five per cent. I also am a problem gambler. My role, having set up the Gambling Impact Society, was to try to create a voice for people who have been affected, particularly those in New South Wales where we have managed to export the problems to every other state and territory. I am also a problem gambling counsellor. I have been a professional social worker for 30 years and I am also a family member affected by problem gambling. In my experience working as a counsellor, talking with my advocacy hat on to numerous consumers across the country, there is a significant difficulty that arises with the technology. These laws sought to modestly approach that, as far as we are concerned.

CHAIR: Sorry, what was the 85 per cent?

Ms Roberts: People presenting with gambling problems. Eighty-five per cent of people coming in for counselling are coming in with poker machine addiction. The other issue that I have raised on numerous occasions is that this is usually managed through states and territories by the regulatory body for the industry—certainly in New South Wales where we have the largest number of poker machines. It means that that close association creates a conflict in developing effective policies and good governance. One of the issues with people affected by gambling addictions is that it has not been dealt with by our health departments. We are looking for national leadership in getting this onto the health outcomes where we can start developing some measured public health approaches to the issue. The Productivity Commission report over 1999 and 2010 recommended that approach and we are astonished to think that the repeal of these acts would basically put us back 15 years.

CHAIR: Either Mr Hatcliffe or Ms Doust, do you have a comment?

Ms Doust: Appearing as someone who has been affected by gambling problems with a family member, I suffered as a child from neglect and financial loss. My family almost lost our home. I am ashamed to be sitting here today in the face of regulations being repealed. Australian families have been fighting a silent battle and will continue to do so without this legislation. If any of these government bodies or clubs actually cared about the issue they would find a way. Instead, they find excuses.

Mr Hatcliffe: I have been a problem gambler, specifically with the pokies, for 25 years. I have been gamble-free for two years. Primarily, it started as a fun thing but I was caught up with the machines. It slowly built into a life-changing loss of 25 years of my life because of what was involved in maintaining my addiction to the pokies. Technology-wise, I know in the beginning I was drawn to the noise, the lights, the false winnings. For example, even if I placed a $5 bet and I won only $2.50 back there would still be all sorts of wonderful congratulations from the machine telling me that I had been a winner. With the ATMs as well, I was one of those people who used my limit of $1,000 in one day but then I would wait potentially only a few minutes after midnight, or I would learn when the banks changed over the 24-hour period, and I would take out another $1,000. So there was a problem there. I have had 25 years of pokie addiction and, as to technology—and say we stopped using technology to safeguard—if we had used it back then, there may be a high chance that I could have halted my spiral.

Senator CAROL BROWN: I will only ask one question because I know others want to talk about the gambling part of this bill. Mrs Phillips, do you support the Australian charities legislation?

Mrs Phillips: I understand that charities have serious concerns about it and, therefore, I do support the amendment in the bill because I believe there is a need for further consultation.

Senator CAROL BROWN: Can you tell me whether FamilyVoice Australia supports the legislation?

Mrs Phillips: No, we have had concerns about it and we were glad that the new government has said that it will look at it further.

CHAIR: What you have basically told us in that regard is that you support the idea of delaying the introduction—is that right?

Mrs Phillips: Yes, that is right.

Senator DI NATALE: Ms Doust or Mr Hatcliffe, I am interested in hearing a little more about your experience—and thank you for your testimony, by the way; it takes a lot of courage to stand up in front of a committee like this, particularly when you have been so directly affected. Mr Hatcliffe, I think you said that you would regularly breach the ATM limit of $1,000 in a night—is that right?

Mr Hatcliffe: I regularly breached it, primarily to do with access at the venues. Some venues have 24 hour access. So in one day—for instance, a Saturday—I would use $1,000, and then early on Sunday morning I would have access again to another $1,000 for the following day.

Senator DI NATALE: Would you take the money out from the ATM at the venue?

Mr Hatcliffe: Absolutely.

Senator DI NATALE: If the limit had been $250 and you had had to go outside and get in the car and go to the bank around the corner—so if you had had to just get out of what problem gamblers often describe as 'being in the zone' and remove yourself from the environment, because you did not have access to the money—do you think that would have made any difference?

Mr Hatcliffe: That would have made a monstrous difference. Just to have, as you say, taken myself out of being in front of that machine and had to actually physically walk outside—and to maybe get some fresh air and rethink bills that I needed to pay—would have made a huge difference.

Just one more thing: at most of the clubs where I accessed ATMs—and I experienced this with my winnings, too—what was given to me out of the machines and by the club as my winnings were primarily $20 bills, because the machines only took $20 bills. So if I had been given 50s or 100s out of the ATMs, or had been given those for my winnings, then I may have again paused and thought about putting the money into the machines.

Senator DI NATALE: Could you just explain that? So the ATMs only dispense 20s, which is what the machines take?

Mr Hatcliffe: Correct.

Senator DI NATALE: I am not aware of this—are you saying there is actually a direct link there? Is that coincidence?

Mr Hatcliffe: For me there is.

Senator DI NATALE: Do we know if that is actually intentional? I suspect it is and this is probably a very naive question.

Mr Hatcliffe: I suspect it is, yes.

Ms Roberts: People have also raised that, if you have a win, it is often paid in small denominations such as $20 notes, and change is often given in that way as well. These are, I guess, what we would consider to be lapses in duty of care, and of course there are no guidelines for it.

Mr Hatcliffe: The excuse that was given to me each time when I had winnings was, 'We don't have the change.' I saw this time and time again over a long period of time: 'We don't have the larger denominations.' So I would get $300 or $400 in $20 bills and, being a compulsive gambler who was already sitting there, bang, I was into it.

Senator DI NATALE: What about the capacity to set a limit and know that it is going be networked with machines right around the state? Do you think you would have used that or do you think you would have said, 'Look, I'm interested in winning as much as I can and I'm not going to bother with this precommitment nonsense'?

Mr Hatcliffe: For the last 10 years of my gambling, I knew I had a problem. I started going into clubs with a certain amount in my wallet that I could afford to lose, and the rest I would leave at home. So, if I had had the option of precommitment and if I had gone into a club and only had $300, I would have pressed in $300. That would have stopped me from going over that $300. But, of course, once I reached that $300 and had no money on me I would drive all the way home, get my credit card that I had left at home and then go and access those ATMs. Obviously it would be different if there were a legislated duty of care by the manufacturers. As an addict, I needed it to be taken out of my hands. My control or access to the machines needed to be taken out of my hands.

Senator DI NATALE: Ms Doust, I just want to know how you feel as somebody who has been affected by this. We spent three years doing what we could to try and get reform in this area and, to be frank, most of us who were working very hard to get reform were disappointed with the outcome. It was very modest. I think it is fair to say what we got was modest, but at least it was something; it was the first time the federal government did something. How do you feel about those of us here now that it looks like the government and the opposition might vote to basically undo everything that we did in the last parliament?

Ms Doust: I honestly feel betrayed by the government, as do my family and several people that I know who have also been affected by this issue. It is disgraceful that the first meaningful steps towards reform that our government has taken will now be removed to be replaced with nothing. You will be giving vulnerable people back over to the wolves, and there is nothing to prevent them being taken advantage of. I am absolutely disgusted.

CHAIR: Ms Doust, were you aware that this change to the precommitment and the poker machines and the ATMs was part of the now government's policy that they took to the election campaign?

Ms Doust: No, I was not. I did not find out about any of these proposed changes until Friday afternoon.

Senator DI NATALE: I have one more question. Ms Roberts, the minister responsible for this legislation says that actually this is a state responsibility and really should not be dealt with by the federal government; it should be dealt with by state governments. What is your response to that?

Ms Roberts: State governments are totally compromised. For instance, in New South Wales it is the Office of Liquor, Gaming and Racing that manages all the implications around regulation. Their relationship is primarily with the industry. They manage the counselling services and have no cultural background in dealing with that; they had no organisational responsibilities prior to using the Responsible Gambling Fund. There is an absolute and clear mandate for the federal government to be involved in this issue. As I have already stated, it is a health issue. It needs to be treated as a health issue and we need to develop a very strong public health framework. This has been recommended through the 1999 and 2010 inquiries. That is a federal government responsibility. The conflicts of interest are rampant at state and territory level and this means that we are now being thrown back, as Kalilah has said, to the wolves. We had a glimmer of hope and worked very hard alongside government to achieve some meaningful reform. As you have said, they were modest achievements and got watered down. We believe they need to be strengthened and there needs to be a lot more strength in consumer protection and duty of care. But technological change is required. States are so aligned with industry there is no way they are going to bite that bullet, so it would be an absolute catastrophe to see these laws repealed. We need to have our national regulator. David Marshall from ANU in 2006 made this very clear through his research, and here we are in 2013 turning back the small changes we have taken.

Senator XENOPHON: I raise a procedural matter. Ms Roberts wanted her opening statement to be tabled as she could not read it out. I move that it be tabled.

CHAIR: Okay. I thank witnesses very much for coming.

COSTELLO, Reverend Tim, Chair, Australian Churches Gambling Taskforce

ALLEY, Major Kelvin, Salvation Army

[17:16]

CHAIR: I welcome Reverend Tim Costello from the Australian Churches Gambling Taskforce and Major Kelvin Alley from the Salvation Army. I understand information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Is that correct?

Rev. Costello: Yes.

CHAIR: I invite you to make a short opening statement. At the conclusion of your remarks I will invite members of the committee to put questions to you.

Major Alley: I am a member of the Australian Churches Taskforce and also today represent the Salvation Army. I am very surprised to be here. I have come at relatively short notice. I have a few points to share and then will pass to Tim. I have worked for the last couple of years tirelessly with the previous government, so it surprises me that the work done to introduce national legislation to reform the area of problem gambling on poker machines is about to be repealed. We were delighted, despite the watered down legislation, to achieve the milestones achieved last year. The Salvation Army, along with the Australian Churches Gambling Taskforce, worked very hard with the previous government to achieve what was achieved.

We felt progress was significant in terms of having national regulation of poker machines especially and controls over the use of what are deemed to be dangerous and harmful consumer products. Whilst I am not surprised by the coalition's bill to repeal most of the legislation—I have been aware of coalition's position on this and the Salvation Army has made representations to the coalition task force in trying to get them to understand our perspective—I am very surprised by the now opposition, whom we supported to achieve a significant milestone, has effectively rolled over.

We feel strongly there has to be a national regulator. The provisions in this bill repeal the national regulator. Leaving it to states and clubs, who are both beneficiaries of poker machines, is asking recipients to turn off their own sources of income, 40 per cent of which is from people who suffer and battle with gambling addiction. We just feel that is too much of a contradiction to work.

The national regulator is the conscience of the nation, and ensures that those who prey on the losses of the addicted and others are required to act reasonably and according to some kind of common principle. The national regulator is essential; pokies are most highly concentrated in the most vulnerable communities. You tell me the suburbs where unemployment is the highest, where the highest concentrations of government-dependent incomes are and where school achievements are the lowest—where society's most vulnerable live—then I will tell you where the intentional concentration of poker machines are targeted the most.

The other point about ATMs: the Salvation Army is very supportive of limits placed on ATMs in gambling venues. Our counsellors, and I have had conversations today, would say that the more difficult we make it to get access to family funds then the more difficult it is for the addicted gambler to gamble. Addicted gamblers always chase losses. The industry knows this, which is why these limits are being repealed. It all adds to the profits of venues where one person's losses are another person's profits to be maximised.

I would like to draw attention to the submission by the Australian Churches Gambling Taskforce on the very point that was being discussed here before. We make the point on page 4 that gamblers can have access to funds either by EFTPOS or by ATM withdrawal. To get EFTPOS does require a transaction with a staff member, which does at least have some sort of cushioning effect. But the venue gets a cut of the fees charged on ATM transactions and so I guess from our perspective, now we see the limits raised and that more money will be going out through those ATMs to problem gamblers with, of course, more profits rolled to the venues that are supporting the lifting of limits on ATMs.

Just to close: I appeal to members and senators of this great house—this house for all Australians—that Christmas should be about good news. Let this go through and it is bad news; 33 per cent of players are in danger of harm from these machines—33 per cent of players. If this were a vehicle there would be a national regulation to control the sort of damage caused by any consumer product that would be harmful to 33 per cent of its users. Forty per cent of income—and I hesitate to use the word 'income'; it is actually people's losses—comes from the vulnerable. Take more time, I appeal to you, to think this through. Please.

CHAIR: Reverend Costello?

Major Alley: Thank you, Kelvin. I share Kelvin's emotion. I think this is a very sad day. I think in 1999 when my brother had the courage to introduce a Productivity Commission report, that was unmistakable and shocking

in its impact—so shocking that the then Prime Minister, John Howard, said, 'I am ashamed'. Australia has 20.4 per cent of all the world's pokies. Every single visiting delegation talks about the Australian gambling disaster. The public all know about the Australian gambling disaster. Most recently it has been sports betting, and I am thankful there have been some moves there. But sports betting is coming off a very small base—it is a worry. The great damage that Kelvin has been expressing is actually with pokies. That is where the damage is done.

Ten years on from John Howard saying, 'I am ashamed', nothing had happened. The states were allowed to continue to have their jurisdiction, and states with jurisdiction over pokies is Dracula in charge of the blood bank. Twelve per cent of state revenue in Victoria comes from pokies, so them regulating for the protection—which is what a state government, or government at any level exists for—of those who are most vulnerable has absolutely failed. This is why I talked to then opposition leader Kevin Rudd to reinstitute the Productivity Commission, which he did. It is the second Productivity Commission now, equally bipartisan and with the same devastating evidence: this is profoundly out of control.

The earlier Productivity Commission inquiry had found that Australia has 20.4 per cent of all the world's pokies in 1999, prompting John Howard's outburst about being ashamed. The Productivity Commission has now found that 40 per cent—up to 60 per cent; 40 per cent is the conservative figure—of money going through pokies comes from addicted people, from problem gamblers. So the moves that occurred in the last government at least said there is some action, we are hearing your cries. *The Sydney Morning Herald* in October last year reported that 81 per cent of people wanted pokies reform, and we want to be able to say we actually are hearing. This is why today is such a tragic day. It is a tragic day. In Victoria just two months ago we finally got the coroner's inquest figures, which had been closed down and stopped. They showed that there are 130 suicides from pokies alone in the last decade. We cannot get the figures elsewhere. We have also known about marriage breakdown and the kids going hungry and the bankruptcies and the courts being clogged with crime, but there were 130 suicides. That was a conservative figure, because it had to be just pokies—it could not be pokies and alcohol or pokies and depression or pokies and anything else. Obviously sometimes these things are entwined.

This is very sad. It is a failure, as Kelvin has put it, and it is now potentially a failure of both sides. Churches, along with other agencies such as Kate's, are the ones running the ambulances at the bottom of the cliff. This was a very modest attempt to build a fence at the top of the cliff—that is all it was. It looks like that fence is about to be pulled down. I can only endorse the plea that Kelvin has made, to think again.

Senator XENOPHON: Is your basic proposition that you cannot rely on state governments for regulation?

Rev. Costello: Yes, that is the view of both of us. I hear the argument of Kevin Andrews about subsidiarity, push it back to where the impact is most. Where the impact is most is on local government. Local government has tried, unsuccessfully, to have a pokies tax on top of rates to deal with the damage, and that has been repealed by state governments at least in Victoria. That is where subsidiarity—that notion of pushing it back to the lowest area that is most affected, would apply. Pushing it to the states, who are hopelessly captured by this revenue, has proved to be a failure. That is clear from two Productivity Commission reports.

Major Alley: We have the paradox of those receiving the most revenue from this being the ones we are asking to reduce the revenue by helping people control their gambling habits. It is not going to work—it never has worked.

Senator DI NATALE: I could ask you a lot of the questions I have already asked you over the years, and I suspect I know the answers I would get. Like both of you I have been wrestling with this, and I have not yet been here long enough to cease being shocked by some of the things that occur in this place. Perhaps that is a reflection of my own naivety. Can I ask something that is a little out of left field. You are here as the interchurch gambling task force—you represent some of the major Christian faiths. The minister responsible for this has been has been publicly associated with the Christian faith—he has been public about that. In your view, is what the minister proposes to do here consistent with what it means to be a good Christian?

Rev. Costello: Without ever being one to judge anyone's faith—I will not go there—Cardinal Pell and Archbishop Denis Hart of Melbourne, who sit on the task force, have made public media comments with us on this. The Catholic Church is unequivocally committed to these reforms. The minister is a Catholic, so you then have to work out what is going on.

I think that when all the Christian churches are united in this—and I might say that if we included the Muslim community or any other community it would be exactly the same; one thing that Christians, whatever their hostility at times towards Muslims, certainly get is that Muslims are concerned about family breakdown and divorce and pornography, and gambling—exactly the same issue. So people of faith are saying: 'We are not prohibitionist. People have a right to gamble.'

I find the minister's statements very puzzling, because he has written a very fine book about family and relationships, which I have read. We know the pokies have a major impact on marriages—on family breakdown. So I just do not understand that. I will not go to questioning what that means in terms of what a good Christian is, but I certainly would say this: there is no-one in the churches who actually understands this; we can only understand this in terms of the political power of the pokies lobby in the industry. That is the only way we can understand this.

Major Alley: For the record, I would like to say: I have the utmost respect for the minister, as I still have for the previous minister, so it is not for me to reflect upon a person's faith and how that translates into action. The story, though, that I did present to the coalition task force was the story of—

Senator DI NATALE: Can you explain the task force? This is the coalition?

Major Alley: Yes. You might not be aware of it.

CHAIR: This is based on the fact that the coalition took the policy in this bill to the last election.

Major Alley: That is correct. This bill reflects accurately the policy that went to the election. I told the story of the good Samaritan. It is sometimes the political ideology that we do not interfere in the lives of individual people so much, but I said: if Jesus were to tell the story again, I think he would incorporate some provision whereby the road was made safe. In that story, the life of every traveller was at risk if they travelled that road, and I think it reflects well upon a government—in this case, both sides of the House—for it to make this road safe. That does come up against particular political ideologies; I do understand that. I understand about getting rid of unnecessary regulations. I understand about giving as much power and responsibility back to the states as possible. But I think this is a case where a road has to be made safe. These are consumer products that are intended to do harm, and I think we need to recognise that at a national level.

Rev. Costello: I might just add that I do not understand how the nanny state argument—'Let people be adults'—sits with the coalition's great reforms. A Liberal Premier, Sir Henry Bolte, was the first in the world to introduce seatbelts, which saved lives. A Liberal Premier, Jeff Kennett—and I had my stoushes with Jeff Kennett, but on this one I totally agreed with him—was the first to introduce compulsory fences around swimming pools: if you like, a nanny state interfering in the family home. Where a nanny state is actually restraining harm—and this is massive harm—I think it fits with Liberal philosophy. I just do not understand it here at all—other than what I have speculated on, in terms of capture from the industry.

Senator DI NATALE: How did you learn about the coalition's policy on this issue?

Rev. Costello: I learned about it when I was in St Petersburg at the G20, I think—or it might have been on the way from Rwanda, where I had been before. I saw that it was with Anthony Ball of Clubs and was announced on their website and in what appeared to be a joint press conference; that is how Richard Willingham of the *Age* reported it. I was horrified.

Major Alley: I make it my business to track with the policies of both sides—or the three major parties—in particular. In order to make our submissions to the then opposition coalition, who were developing their policy, which started with the draft, I was familiar with the draft and so we addressed aspects of that draft when we presented to the six in that task force.

Of course, going into the election I made it my business too to grapple with the various policies of the various parties. So the policy was no surprise to me. I guess what did catch me was just the swiftness of the legislation coming into the House, particularly under a title that really hid away the importance and relevance of these particular provisions. And—

CHAIR: You are aware that some of these things are time sensitive and—

Major Alley: Absolutely.

CHAIR: if the legislation does not happen—

Major Alley: No, I understand that. I rang the minister's office, and he knows this. I spoke to the chief of staff, actually, because I was just taken by surprise that it had actually been tabled and there was no media, know nothing—not a breath, not a word. That is why we thought that someone has to be serious about this because this is something that we do not want to happen.

I guess, to be fair, it was both sides of the House—there was no opposing vote and it went through. So folk like me are just surprised that those who we fought very hard alongside in the last few years to get the legislation to where it got—even I was ringing coalition members on that day when it passed by one vote because of the stalling of the voting. We had done our bit to get this over the line, it is just very surprising that it has come to this, to nothing. In fact, it will go backwards.

Senator DI NATALE: Given that it was one of the issues that defined the 43rd Parliament—and it was a significant reform in the end, we got through—to be sort of buried amongst a range of other measures, what did you think of that?

Major Alley: I have just addressed that: I was really quite surprised that something of such significance to a lot of Australians and a lot of campaigners was packaged as part of a composite bill and tucked away. Because of that it kind of went in under the radar and so it was actually in the House before we had a chance to talk to the people. Again, I want to reiterate here that I have great respect for the folk I deal with—the minister and the shadows. We only deal at a level of respect, but we do not want this to go through.

CHAIR: So you became aware of this about two weeks ago?

Major Alley: Yes, just within the last two weeks—that is right.

CHAIR: Thank you very much, gentlemen, for coming this afternoon.

Rev. Costello: Thank you.

Major Alley: Thank you very much.

COSTELLO, Reverend Tim, Chair, UnitingCare Australia

CROSBIE, Mr David, Chief Executive Officer, Community Council for Australia

MACDONALD, Mr Nathan Daniel, Acting Director, Justice Connect (Not-for-profit Law)

ZABAR, Mr Joe, Director, Services Sustainability, UnitingCare Australia

[17:38]

Evidence from Mr MacDonald was taken via teleconference—

CHAIR: The committee will now move to schedule 1A—Delaying the definition of a 'charity' in the Australian Charities Act 2013. I welcome representatives from UnitingCare and the Community Council for Australia, and Justice Connect are joining us by phone. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to everyone. I now invite each of you to make a short opening statement. At the conclusion of your remarks, I will invite members of the committee to put questions to you. Mr MacDonald, would you like to kick off with your opening statement?

Mr MacDonald: Sure. I will keep it brief. Thanks for the opportunity to address the committee this evening. Not-for-profit Law was formerly known as PilchConnect. We are ourselves a charitable, not-for-profit organisation providing free and low-cost legal information to community organisations. We see our role as helping the helpers by providing legal information, advice and training to not-for-profits. Our model suggests that, by relieving the burden of legal and regulatory issues, community organisations can better focus their time and energy on achieving their missions. Specific to this forum, our policy work focused on reducing red tape for the not-for-profit sector, helping not-for-profits to be more efficient and better run, and ensuring that law reform takes into account impacts on the community sector.

In relation to the statutory definition of 'charity', our view has been and continues to be that the statutory definition as contained in the Charities Act is very much a codification of the existing common law that has been developed over the past 400 years. Currently, small, volunteer led organisations have the unenviable task of trying to comply with charity laws that are unclear and at times inconsistent. Unless an organisation is large enough to be able to afford a specialist charity tax lawyer, they are unlikely to be able to work through the common law and lengthy tax rulings to work out whether their organisation might meet the legal definition of a charity.

In our view, the Charities Act is a step towards certainty and clarity for those seeking charitable endorsement and goes some way towards addressing the proliferation of statutory definitions of 'charity'. For example, in 2007, the National Roundtable of Nonprofit Organisations noted that, in the absence of a single statutory definition, there were 15 pieces of Commonwealth and 163 pieces of state legislation under which various definitions are used to determine charitable purpose or status. The move to a single federal definition of 'charity' and the possibility of cooperation between governments at federal and state levels offers the opportunity to rectify this situation.

We feel the Charities Act represents a piece of policy that is long overdue, having been considered and recommended by several major inquiries, including the 2001 charities definition inquiry and, more recently, the Productivity Commission inquiry in 2010. Consultation on the current definition was adequate and, while a number of the 200-plus submissions asked for some degree of tinkering to the bill, it is fair to say that there was broad support for a single definition of 'charity' across the Commonwealth, with the end result being a definition that largely preserves and clarifies the common law.

Finally, with regard to the government's broader commitments to the civil sector being the instigator of this proposed delay, we take the view that deferring any statutory definition of 'charity' would be a missed opportunity and one that need not be embroiled in the current conversations about the future regulation of the charitable sector—in particular, the future of the Australian Charities and Not-for-profits Commission. In this sense, regardless of the agency responsible for interpreting or applying this definition, the policy principles of certainty, clarity and accessibility should remain a priority and, in our view, are more achievable through a single statutory definition. Thank you.

CHAIR: Mr McDonald, can I just clarify: you are saying that disbanding the ACNC can be achieved without delaying the definition of 'charity'?

Mr MacDonald: The definition of 'charity' is not contingent on one agency over the other in applying it, so that is correct.

CHAIR: Okay. Thank you. Mr Crosbie.

Mr Crosbie: Thank you for the opportunity to make this presentation. The Community Council of Australia is an independent, nonpolitical-based member organisation dedicated to building thriving communities by supporting and enhancing the work of the not-for-profit sector in Australia. On our board we have the CEOs of Good Beginnings, Lifeline, DRUG ARM!, RSPCA, Mission Australia, Musica Viva, The Smith Family, Wesley Mission, Benevolent Society and The Big Issue, and of course Tim from World Vision is our chair. We have been working in this space for almost three years trying to support and strengthen what is one of the most critical sectors to Australia's economy and to our community, employing over a million Australians and generating around five per cent of GDP.

We have also been heavily involved in negotiations to establish a new definition of 'charity'—something that the Howard government initiated back in 2000. Like Nathan and PILCH, we recognise, as would everybody who has ever looked at the legislation and the definition of 'charity', that the current provisions are woefully inadequate, that they discriminate against small charities who cannot afford tax lawyers, and they are complex even for the most well-resourced charity in terms of understanding what is charitable and what is not. It was a massive step forward to get the level of consensus that was agreed through the 2011 consultations, the 2013 consultations and the 2001 consultations on a new statutory definition of 'charity', and we, like most of the charitable sector, celebrated the fact that we had clarity and some sense of being able to plan our activities based on a clear, concise definition of 'charity' that included things previously not included like advocacy, Indigenous disadvantage, housing and disaster relief. For that to be now put on hold for nine months is beyond our comprehension. We cannot understand on what basis you would do that. It creates uncertainty, it serves no useful purpose and it leaves the charity sector again wondering what the motive of the government is in seeking to further delay a piece of legislation that has been widely supported and is very long overdue.

Rev. Costello: Let me add to that, and I am speaking in the World Vision capacity but, as you have heard, there is a Mission Australia, The Smith Family, Wesley Mission and lots of other members of CCA. They are not just the family services area—they include animal welfare and arts and Indigenous. This new definition is extraordinarily important for all of us. With the consultations and over 200 submissions made, I have not heard of anyone in the sector who was troubled by this definition. They all feel it gives greater clarity and certainty. I have not heard anyone in the sector saying we need more time to consult on a definition. When you say that maybe this is now going to be pushed out to September and there will be consultation, in my capacity as chair of CCA members ask why that will happen when this was the least contested, least difficult issue. This is the thing that everyone in the sector is united around. It could begin seamlessly on 1 January.

As David has said, adding Indigenous disadvantage is incredibly important for Indigenous organisations who can benefit from a clarification and consistency of decision making under the Charities Act, potentially assisting Indigenous native title or traditional owner groups in registering as a charity. I could talk about housing and, in my area, disaster relief. This clarification is incredibly important for these sectors and, as I say, it has been welcomed and people have rejoiced over it.

In echoing what David has said, I do not understand—I can take you through so many quotes of charities welcoming this—why we are now postponing this. Jamaica's upper house has just passed a charities act, this month. It will introduce a new charities commission. The UK passed their charities act in 2011, Northern Ireland in 2008; Scotland in 2006; New Zealand in 2005. To overcome 400 years of Elizabethan rule and have clarity is cause for great joy and is welcomed by the sector.

Mr Zabar: On behalf of UnitingCare Australia I would like to thank the committee for the opportunity to share our assessment of the Social Services and Other Legislation Amendment Bill 2013. UnitingCare Australia is the Uniting Church's national body supporting social services and advocacy for vulnerable and disadvantaged people and families. We represent a network of agencies operating nationally across more than 1,300 sites in urban, rural and remote Australia. Our network makes a strong contribution to the economy by providing services to over two million people each year, with an annual turnover in excess of $2 billion. We employ 35,000 staff and 24,000 volunteers. My comments today to the committee focus on the delay of the Charities Act.

UnitingCare Australia has been an active participant in the national not-for-profit reform agenda for many years, and I will say I have been here before in this committee or previous ones. We have long advocated for legislative measures that will help Australia's not-for-profit sector maximise its resources, expertise and skills whilst upholding its independence and diversity. I want to emphasise that issue of independence because I think it is critical.

UnitingCare Australia was actively involved in the consultation process for the Charities Act. The process of consultation in our view was sound, with the final bill addressing many of the concerns that we had with the

original drafts. We believe that the Charities Act 2013 offers the sector greater certainty with which to manage our activities, in particular in dealing with the issue of political advocacy.

In considering whether the commencement of the Charities Act is delayed, we ask the committee to be mindful of two points. Firstly, the bill has been through a comprehensive consultation process; the sector has invested significant resources and good will in the bill in the form in which it was passed in June 2013, and it would be unfortunate if that investment was lost or had to be repeated at a later date.

Secondly, while the mission or purpose of the not-for-profit sector is charitable, it nonetheless operates in the same economic environment as the business sector and is similarly affected by legislative uncertainty. So delaying the implementation of the Charities Act will cause unnecessary uncertainty for the sector. Accordingly, we see no reason to delay the implementation of the Charities Act and we ask the committee to recommend that it commence as planned on 1 January 2014. I am happy to take any questions.

CHAIR: Thank you. Senator Siewert will start.

Senator SIEWERT: My question to all of you is: what do you think is motivating the government's desire to delay the implementation of the Charities Act?

Rev. Costello: I do not know. I would like the government to tell us. I really am—

Senator SIEWERT: Have you asked them?

Rev. Costello: puzzled by it. Our members ask the same question: 'Is it that the advocacy part troubles the government?' I can only say that working with the charity World Vision it is impossible for us to do our charitable work without advocacy being part of that charitable work. In the most basic case it is asking when we are building a school: 'Why isn't your education department building the school? Where has the money gone?' Then teaching them how to lobby and organise and put the acid on government. My colleague Kelvin Alley from the Salvation Army—which I do not think is known as a radical left-wing organisation in this country—

Senator SIEWERT: It depends where.

Rev. Costello: Okay. Tell me where it is radical. You have just heard Kelvin advocating. I am only surmising: is it advocacy that is troubling the government? I don't know. I would like to know.

Senator SIEWERT: Mr Zabar?

Mr Zabar: I am in the same boat. I just do not know.

Senator SIEWERT: Mr Crosbie?

Mr Crosbie: It is certainly confusing and I have to say that across the sector a lot of questions are being asked. The problem is that, because it is not clear, people are assuming. I think this is a sector that wants to work with the government on its positive plans for the sector, the reducing of red tape, the better grants administration, the encouraging of more charitable giving, the creation of community business partnerships—we have been involved already in pushing around the commission of audit for more effective engagement with the sector. We think there is lots that can be achieved. Then, in the middle of that, we suddenly find that legislation that we worked very hard on for over a decade is being delayed with no explanation. So I have to say that some of my members are saying well this is a coalition government that supports advocacy; it supports charity; it does not support the two together.

Senator SIEWERT: Mr MacDonald?

Mr MacDonald: I would reflect those statements. I would be guessing if I were to talk about motivation, so I had best not.

Senator SIEWERT: When did you first know that this was going to happen?

Mr Crosbie: I was with Joe, I think—we were at a reducing red tape seminar with the Australian Charities and Not-for-profits Commission at the ANU.

Senator SIEWERT: What day was that?

Mr Crosbie: Wednesday.

CHAIR: But you would have been aware that the then opposition opposed this act when it was put through parliament?

Mr Crosbie: Yes, but the opposition opposes lots of bills and regulations. I did not think they were going to turn around and say that they were going to introduce legislation that actually postponed its implementation. I can quote from Prime Minister Howard about how unacceptable the current situation is and why we need a statutory definition of 'charity'. That has been the case for over a decade. We are really floundering. What worries me about

this kind of discussion is that if we were an industry group that employed a million Australians and you were telling us that you were going to change the rules under which we operated and we had already spent a long time and lots of consultation finalising those rules, developing our forward plans and activities around those rules, and they had passed through parliament and you now tell us you are going to delay them, I wonder whether the government would do that, if it was an industry group or a business group.

CHAIR: But you would be discussing it with the government, not with a Senate committee.

Mr Crosbie: You would expect the government to discuss it with you before they introduced the legislation. A million Australians are employed in the sector.

Senator SIEWERT: You would have been consulted and I would have thought it would have made newspaper headlines. I am sure you have read the concluding comments of Mr Andrews in discussion of the bill in the House of Representatives where, to my mind, he aligned this with getting rid of the ACNC process. Linking the two—we know the government's policy on that—do you need to delay the implementation of the Charities Act in order to facilitate getting rid of ACNC? Do the two have to be linked?

Mr Zabar: In my opinion, no. They are two quite separate issues.

Senator SIEWERT: That is what I understood, so why would the minister link the two?

Mr Zabar: You would have to ask the minister—I do not know.

Senator SIEWERT: You cannot speculate?

Mr Zabar: No, I cannot. As David said, this certainly took us by surprise. We did not know that this was coming until it happened, and at the end of the day the issue for us is that the two are separate. The ACNC question is very different from the statutory definition question.

Senator SIEWERT: Could it be that you would be taking some of the ACNC's job away?

Mr Crosbie: I do not see how that could possibly be the case. Someone has to determine whether you are a charity or not, unless we are saying that anyone who wants to be is a charity. You have to register in some way. The question is are you going to make it clear, concise, easy, modern and accessible or are you going to rely on statutes from 1601? Everyone says it is silly to rely on statutes from 1601 and all the court cases since, which is why for so long we have been trying to get a statutory definition. It does not matter whether the ACNC is overseeing who is a charitable organisation, or the ATO, or the Department of Social Services, although I do not think the latter two do it very well. It does not matter who does it—you still have to have a legal reading about whether you are a charity or not.

Senator SIEWERT: My question specifically is about, if the government does not want the ACNC, if it is the ACNC that is doing it under the current system, taking away part of their workload by delaying augmentation of the Charities Act.

Mr Crosbie: There are lots of people who want to be charities and you still have to determine that. Who do they apply to? What are you going to say—no more charities in Australia, or everyone is a charity? I am not sure how that works. We have two lawyers here—Nathan and Tim are both lawyers.

Mr MacDonald: As I said in my opening address, the two are in my view mutually exclusive. As David said, what agency is making that determination of charitable status is irrelevant. The question before us is whether that determination is based on a piece of legislation or common law.

Senator XENOPHON: The legislation that was passed last year gave some certainty and clarity to the charity sector. Are you aware of any concerted effort within the charity sector to repeal the legislation?

Rev. Costello: I am not.

Mr Zabar: I am not.

Mr Crosbie: I am not.

Mr MacDonald: No.

Mr Crosbie: All our members are very supportive. We have over 60 members. I do not know of anyone anywhere who has been—

Rev. Costello: It may have been someone in a minister's ear. It is very surprising, but I do not know who.

Senator XENOPHON: But it is fair to say that the charities represented would represent 80 or 90 per cent of charitable donations and charitable work in this country?

Rev. Costello: Yes.

Senator XENOPHON: So the overwhelming majority. I do not have the 1601 definition in front of me, but I am familiar with it. Hopefully I will get a chance to read it.

CHAIR: It is getting played around with a little bit.

Senator XENOPHON: Yes, but will repealing this legislation actually mean more compliance costs, more red tape and more uncertainty for the sector?

Mr Crosbie: Yes, if you do not have a clear set of principles about how you are going to determine charitable status. Perhaps I can quote from John Howard. He said on 18 September 2000 in announcing the establishment of the charity definition inquiry:

We need to ensure that the legislative and administrative framework in which they—

charities—

operate is appropriate to the modern social and economic environment. Yet the common law definition of a charity, which is based on a legal concept dating back to 1601, has resulted in a number of legal definitions and often gives rise to legal disputes.

The difficulty of working out whether you are a charity under common law is quite challenging, and it is especially challenging for smaller not-for-profits. So I fail to see why anyone would oppose a clearer, cleaner definition that has been supported by the vast majority of the sector after extensive consultation.

Senator XENOPHON: I have an extract from the Charitable Uses Act 1601. It includes 'the marriages of poor maids; the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed'. So that must be very useful to you!

Mr Crosbie: We often refer to that!

CHAIR: There are a lot of decayed persons around!

Rev. Costello: You are included, Senator Xenophon!

Mr MacDonald: Could I please add something to that. I think that, if this definition were to be repealed—going back to your point, Senator Siewert—it probably places more importance on the charities commission in their ability to produce plain-language guidance material if we are going to be sticking with the common-law definition of 'charity'. I think it really promotes the importance of having a sector-based regulator that can produce readable guidance for smaller not-for-profit organisations trying to determine their charitable status.

CHAIR: Nevertheless, this legislation is not about repealing the current definition or the proposed new definition; it is about delaying it, isn't it?

Mr MacDonald: That is right.

Senator SIEWERT: Until after the new Senate is in place.

Rev. Costello: Yes. Why? We would genuinely like to know.

Senator XENOPHON: I am trying to get my head around this. The charity sector do not want this legislation delayed. They certainly do not want it repealed. Has the minister explained to you why they are doing this—the rationale for it?

Senator SIEWERT: That is what I asked.

Senator XENOPHON: Sorry.

CHAIR: We have been there.

Senator SIEWERT: Ask again, because it is—

Rev. Costello: None of us know.

CHAIR: Have you sought information on it?

Senator XENOPHON: Have you had a meeting with the minister yet?

Senator SIEWERT: They only found out on Wednesday.

CHAIR: No, that is not quite true.

Senator SIEWERT: Yes, it is.

Mr Crosbie: We only found out on Wednesday that this was happening. We did not know that there was going to be any delay or that there was even a policy to delay the implementation of this legislation.

Senator XENOPHON: Have you sought a meeting with the minister as a sector?

Mr Crosbie: We have sought meetings, and I have to say the minister has been very willing to meet with the Community Council for Australia. He has met with us on four occasions over the past 12 months and attended our AGM. But I cannot recall ever having this discussion with the minister about the Charities Act being our concern.

Senator XENOPHON: Will you seek an urgent meeting with him, since you are all here?

Rev. Costello: Absolutely.

Senator MOORE: I just want to clarify what the impact of the delay is. Everyone was ready for it, after years of discussion and so on. Everyone was ready for 1 January. Given that, what is the impact of the delay now until September?

Mr Zabar: I would answer that in three parts. There are three parts to this. In terms of our interactions with Commonwealth agencies, it probably will not make a lot of difference. The second part is that we are now going to go down the path of another set of consultations. I tried to outline the size of the UnitingCare network; it is hard work to go out and do a full consultation and come down with a position. It is a lot of investment. It is appropriate investment because we are actually representing our network and our agencies, and it is important that we get it right, but it is something that we have to resource. They then go offline once they help us. The third part is that it just creates more uncertainty for the sector. That is the issue. It is another thing that is hanging over us—we are not quite sure what is going to happen. That is the issue for me. You just have another thing sitting there that we are not clear about. The consultation may lead anywhere. I do not know where it will lead.

CHAIR: No current charity is about to lose its status in the next—

Mr Crosbie: Yes, they are. There are charities right at the moment in the High Court where issues around advocacy are being discussed. I think it was John Howard who said that even the biggest charities struggle to know which of their activities are charitable and which are not.

Rev. Costello: We at World Vision raise $350 million a year, and we found ourselves in court at the hands of the ATO, who were threatening to withdraw out charitable status because we applied to do work in Indigenous Australia. It was thrown out and it was ridiculous, but we spent donors' dollars on that ridiculous claim. And, to answer your question, this is going to be more cost, more time, for the sector, more sheer confusion. We have settled this. We have done this. Herding our sector together takes a lot of work because they are out there rolling their sleeves up and doing things. That is what is distressing about it.

Senator SIEWERT: I want to go back to Senator Xenophon's question. As far as you are aware all of the charities are supporting the act. I know that you know that there are some charities and not-for-profits that do not support ACNC. So, even the charities that do not support ACNC are still supporting the Charities Act. Would that be a correct understanding?

Mr Crosbie: That is my understanding from talking with representatives of groups. Even those who are hesitant about their support of the ACNC are not hesitant about their support for the new definition of charity.

Senator SIEWERT: I want to go back to that point that you just made around the High Court. You said that there are currently organisations in court around issues to do with advocacy?

Mr Crosbie: Yes. There are cases in court at the moment. I am not sure what my legal status is in terms of talking about them, but there are certainly cases involving organisations that advocate around wind farms in court at the moment and in dispute. There is one involving a former senior coalition minister who is their president. This issue of where advocacy sits, where housing sits, where disaster relief sits and—as Tim has pointed out—where Indigenous disadvantage sits is quite complex for organisations involved in those areas. If you have the wrong wording in your constitution, then you can lose your charitable status. You really need to use a very good lawyer, Nathan, in order to ensure that you are not putting your charitable status in jeopardy. Not every not-for-profit who wants to be a charity can afford a very good lawyer.

Senator SIEWERT: I will take you through a scenario, and you tell me where I have it wrong.

The Charities Act is delayed until September. We get rid of ACNC, because we know that is on the agenda. The task of ACNC goes back to ATO and we do not have a definition of 'charity', particularly as advocacy has gone, so the only place protecting advocacy is the bill that came in—I always forget its name—

Mr Zabar: The Not-for-profit Sector Freedom to Advocate Bill 2013.

Senator SIEWERT: I always call it the gag bill. That would be the only piece of legislation to protect advocacy.

Mr Crosbie: But it does not protect advocacy on charitable status.

Senator SIEWERT: I know it is only about government funding, so Australia has got rid of all the legislative protections for advocacy.

Mr Crosbie: No, only within charitable standards.

Senator SIEWERT: That is highly important for those organisations.

Mr Crosbie: One of the changes the sector wanted to the Charities Act was raised in the discussions—I know you were involved in the discussions, I was involved and other people were involved. The change was to ensure that the findings of the High Court around AID/WATCH were reflected in the new definition of charity, because we were trying to codify the existing common law application. One of the concessions was that rather than refer to it in the bill itself it was referred to in the explanatory memorandum, so that the AID/WATCH case is referred to as part of explaining what is meant by it.

Senator SIEWERT: We had the full text put in.

Mr Crosbie: Across a lot of the sector this capacity to be an advocate is really important, because achieving a better life for your community or the people you are representing or working with often involves a level of advocacy, whether it is trying to get a ramp at the local school hall or a major policy change. It often involves advocacy and people are very concerned that they will put their charitable status in jeopardy if there is no clear definition of advocacy in the definition of charity.

Senator SIEWERT: That is a real-case scenario if we lose. This is delayed implementation.

Mr Crosbie: We go back to common law. You can be challenged and have your charitable status questioned by the ATO. Then you go through the Administrative Appeals Tribunal and end up in court. Unless you have a significant amount of money, a good legal team and a significant amount of time, people will avoid that at all costs.

CHAIR: That concludes today's hearing. We thank all witnesses who appeared.

Committee adjourned at 18:13

COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Social Services and Other Legislation Amendment Bill 2013

(Public)

TUESDAY, 10 DECEMBER 2013

CANBERRA

BY AUTHORITY OF THE SENATE

[PROOF COPY]

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

To search the parliamentary database, go to:

http://parlinfo.aph.gov.au

SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Tuesday, 10 December 2013

Members in attendance: Senators Boyce, Carol Brown, Moore, Peris, Seselja, Siewert.

Terms of Reference for the Inquiry:

To inquire into and report on:

Social Services and Other Legislation Amendment Bill 2013.

WITNESSES

MEERS, Ms Amelia, Solicitor, Welfare Rights Centre, Sydney, National Welfare Rights Network

REA, Ms Jeannie, National President, National Tertiary Education Union

REODICA, Mr Reynato, Deputy Director, Youth Sector, Australian Youth Affairs Coalition

THOMAS, Mr Gerard, Policy and Media Officer, Welfare Rights Centre, Sydney, National Welfare Rights Network

Evidence was taken via teleconference—

Committee met at 16:15

CHAIR (Senator Boyce): The committee will now commence its second public hearing into the Social Security and Other Legislation Amendment Bill 2013. This committee has been referred schedules 1, 1A, 3, 4, 5, 7, 10 and 11. Committee proceedings are protected by parliamentary privilege and it is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the committee as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence be given in public but under the Senate resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If you are a witness today and you intend to request to give evidence in camera please bring this to the attention of the secretariat staff as soon as possible.

I would like to thank in advance all those witnesses who are appearing tonight for coming in on very short notice to provide evidence to the committee on the bill.

I welcome representatives from National Welfare Rights Network, the Australian Youth Affairs Coalition and the National Tertiary Education Union. Ms Rea, would you like to make an opening statement first?

Ms Rea: Thank you very much, yes. We see these matters as clearly related because they are about, in our view, students' capacity to successfully make a decision to enter studies, make their way through them, and have a successful outcome. And I would argue that, whenever anybody is speaking, sometimes quite blithely, about the access, entry and participation and so on, I think we must always keep our eye on getting successfully through the course and out the other end with a degree. So we would argue that any actions which impact upon the most financially disadvantaged students actually work against the interests of getting people to come in and successfully participate.

Our argument would be that these prospective changes to legislation could impact upon the fairness, access and equity, and so the disadvantaged are penalised—those who are already the most disadvantaged. I think in most cases there is already adequate legislation and so on to deal with people who are actually abusing the system or trying to do something that they really should not be doing. But those who are in (inaudible) circumstances find themselves in difficult positions to repay and the like.

But, rather than on repayment, I want to keep my main focus on people's capacity to make the decisions to come into undertaking their studies. We seem to have taken it somewhat as a truism in Australia since we introduced the HECS-HELP loan scheme that it is not a deterrent to participation, and I think there is some increasing querying of that, because while we have many, many more students in higher education, there are many reasons for that. But my personal experience indicates—and this is actually backed up by some of the research we mentioned in our submissions—that for particularly vulnerable students, and those coming from backgrounds with lower participation in post-secondary education, this is indeed an issue in their making a decision. They and their families are likely to be more sensitive to anything that may deter wanting to proceed. And the most disadvantaged groups are rural and Indigenous students.

So there is a debt aversion there, and a debt aversion that is demonstrated in things like students taking gap years not to travel the world but to work, to pay their HECS up-front, to save money, to qualify for income support or to save to actually undertake their studies. And I think, if we look at the other end of it, and look at graduation, those who have accumulated more debt—whether that be through the HECS loan situation and the conversion of the start-up scholarships—but also in relation to students making the decision of whether to take advantage of Austudy or Abstudy when they are concerned about what may be the sanctions for getting in some trouble with repayment and so on. They just fall into those sorts of traps of taking out the loans and not being able to repay them. Now, people have learnt that that can be a very significant problem, and they see that within their communities. So that concern about trying to avoid finding yourself in debt, from either living allowances or fees, is a reason students then do not take advantage of a living allowance.

And then we have Universities Australia research amongst students which shows that we are getting up towards 20 per cent of students who say that they are having trouble paying for food and other necessities, are and working more and more hours. As a teacher of many years in TAFE and higher education, I know that students working many hours instead of concentrating on their studies—while I do understand why—this is a great deterrent to successful and, indeed, very good progress in their courses.

So all of these things just make those that are more vulnerable more likely to not go forward with the decision to become involved in post-secondary education and then to continue with it—again, there is nothing worse than starting then dropping out because one cannot afford to continue, and of course still having debts there but also having lost the confidence to have a go.

So most of my comments have been in relation to students coming from secondary school, but I think there is also a whole cohort of people coming into study as adults—some of them changing careers; there is a lot of career change having to go on with our changing economy at the moment. Those people are going to also be very sensitive to what costs may be involved, what debt they may accumulate, what sort of repayment schedules they might get stuck on.

So, just to conclude quickly, I think we must look very carefully at any moves which may mean that people who really want to gain access to post-secondary education are not deterred from doing so by amendments to legislation which do not have that intent but which may increase that sensitivity and may mean that there are more vulnerable sections of the population who really need to make their mark in post-secondary education and may not pursue it. Thank you very much.

CHAIR: Thank you, Ms Rea. Mr Reodica, do you have a statement to make?

Mr Reodica: Yes. Thanks for the opportunity to speak to this inquiry. The Australian Youth Affairs Coalition is the national peak body representing young people aged 12-25, and the services that support them. Unfortunately, due to the time frames, we were not able to consult directly with young people on, I guess, the possible benefits and challenges they would experience under any of the proposed changes, including disadvantaged young people within our networks. This change affects young people on youth allowance, many of whom live on approximately $29 per day, which is well below the poverty line. That means that their capacity to pay off debt to the Commonwealth and to others is highly limited.

CHAIR: You are talking about schedule 5, the interest charge on debts, is that right?

Mr Reodica: The interest charge, yes. We have looked at schedule 6 and the changes to the student start-up loans, but we were informed that that was being looked at by another committee and so we have not focused on analysis of that with these statements. So we are focusing on schedule 5, in relation to the interest charge. As it is noted, the key purpose of the interest charge is to encourage debtors to repay their debt in a timely fashion as well as saving the budget a bit over $3.3 million over three years, but AYAC really questions whether or not this measure will have the desired effect. In cases where young people are already struggling to pay existing debts the additional interest charge is not likely to serve as an incentive to pay on time. We suggest that if this is to move forward then transparent data collection on the effects of the interest charge is made available to review the effectiveness of this change, including feedback mechanisms for young people affected to suggest alternative options on how they can actually make the system better. We have looked at the provision of powers to the minister under section 1229D, subsections (2) and (3) that allow the minister to prescribe payments that will be subject to the interest charge in future. Whilst there are no immediate obvious concerns around this, we do have some questions around what scope these powers might be used for in future to expand the application of the interest charges to areas not currently under consideration.

CHAIR: Sorry, what do you mean by 'areas not currently under consideration'?

Mr Reodica: Other types of payment. There is that level of concern although, in our thinking, we cannot actually specifically think of which ones would fall into that category. So it is just something that we would like to have noted. Just finally, we have been talking with the Department of Human Services about the intended review of student payments that has been expected to report in 2014.

We would really like to continue to have the opportunity to feed into these processes and especially to ensure that the views and experiences of young people, particularly our most disadvantaged, can form any future directions for student payments.

CHAIR: Thank you. Who from the National Welfare Rights Network would like to speak?

Mr Thomas: The National Welfare Rights Network welcomes the opportunity to comment on this bill. We appreciate the committee's and the senators' time this afternoon to address the issues in the legislation. However,

we wish to express our deep concern over the inordinately limited time allowed for the inquiry. This places an unfair burden not just on community stakeholders but on the committee secretariat, on the senators—

CHAIR: Thank you for your concern, Mr Thomas.

Mr Thomas: to understand and scrutinise the bill. The haste with which the bill is proceeding, some might say, undermines the role of the Senate committee process.

CHAIR: I do not think that is the case, Mr Thomas, and I would not have thought you were in a position to be able to comment on that, but could you please get on with your statement for us?

Ms Meers: My name is Amelia Meers. I am a solicitor at the Welfare Rights Centre in Sydney. I have been doing casework with clients in social security law for 10 years. First, I thank you for the opportunity to give evidence today in relation to schedule 5. We only support the passage of schedule 5 if there are major amendments—the most important being the introduction of discretion not to apply the penalty interest, including where there is reasonable excuse. There has been no explanation or justification for not replicating the existing provision in the Social Security Act, as it stands at the moment, into the proposed new regime. We also have a number of other important amendments to propose—five in total. These provisions are an improvement on the existing provisions in Section 1229A of the Social Security Act, which we understand have not been utilised that much for the past few years.

The amendments are based on the principle that people with capacity to repay should be encouraged to do so in a timely fashion, and we support the stated purpose of the amendments. However, the measure is a penalty by nature and, as such, it is critical that it be targeted to people who have refused or have shown an unwillingness to repay; and it is essential to ensure it does not unfairly penalise people who are either unaware of the requirements to repay or are unable to make arrangements to repay.

Our proposed changes to the drafting of the bill would support the stated purpose more fully and ensure that the legislation includes sections to ensure that people in these circumstances are not adversely affected. In terms of people who are unaware of the requirement to repay, I will give a little background. For people currently receiving income support payments, withholdings are taken from the person's pension or allowance. It is less straightforward, obviously, to recover debts where recipients are not current—when people have gone off social security. It is to be expected that student debts would have more debtors who are no longer receiving social security, because they are generally more mobile at that age and with new qualifications. So they are more likely to secure a job and go off social security once they complete study.

For a person whose debt is raised while they are in receipt of income support payments, it is fair to say that they are on notice that they have a debt, assuming that a debt notice was sent. However, for people who are no longer receiving social security payments, they generally do not update the DHS with their new contact details, quite reasonably because they are no longer on payment. DHS therefore uses the person's last known address, and debts are often picked up and raised years after the person has gone off social security. Our member centres have advised on lots of cases over the years where a young person finishes study, moves away or moves house and years later discovers that they have a debt to Centrelink that they had not been aware of. We currently have a client who was working part-time in a supermarket job while they were a student at university. They finished university, went to work in England in the finance sector, they were overseas for about eight years. Two years after going off social security a debt was identified and raised. The client returned to Australia six years after the debt was raised and had been completely unaware that he had a debt. That is just one example of a case that we have at the moment. In another case we have a client who moved to Queensland. Centrelink had his telephone details but only sent out a letter to his last known address, the result being that he could have been paying off the debt for years and was perfectly willing and able to, but had not been aware of the debt.

There may also be a number of other factors impacting on a person being actually notified of a debt. These include issues such as being homeless or itinerant, people with certain disabilities, literacy issues or people from Indigenous backgrounds or culturally and linguistically diverse backgrounds. In practice, notice provisions which involve a written notice to a person's last address will not always be adequate to put a person on notice that they have a debt.

In terms of people who are unable to make or meet arrangements to repay the debt, there are likely to be situations where a person is aware of the debt and has some capacity to repay but is unable to make or meet arrangements to repay the debt. Such a person may not be wilfully avoiding repayment and may have a reasonable excuse for the lapse or delay. Examples that we have thought of based on our case work experience might be situations where a person is hospitalised for a lengthy period and misses correspondence about the debt, situations where an employer is delaying payment of someone's wage, for example, or even something as simple

as someone changing a bank account and forgetting to update their direct debit details for a period of time. So it is critical that DHS asks the question why the person has defaulted or not entered into a repayment arrangement. It is appropriate that the department have a discretion not to apply the penalty in the absence of an unwillingness to pay or if there is a reasonable excuse for noncompliance.

We are also concerned about the period of the penalty—when the penalty starts and ends. We are concerned that the penalty interest will not end until a person catches up on missed payments. For some people, catching up might not be possible. They might be able to get back on track and restart repayments but might not actually be able to catch up. We are going to propose that the period should end instead when the person enters or re-enters a repayment arrangement and makes the repayment. That is consistent with other debt recovery provisions already in the act.

The recommendations that we will make in relation to schedule 5 are as follows. The first is the insertion of a general discretion not to apply the penalty interest to a person. It could mirror the existing section 1229AA(1). The next recommendation that we will make is the insertion of a provision similar to 1229E(3) of the draft of the bill to 1229F. 1229E is the provision that deals with people who are not in a repayment arrangement and 1229F is the one that deals with people who have failed to comply with an existing arrangement or terminated an existing arrangement. 1229E contains a provision which allows the minister to prescribe an instrument declaring situations where the penalty interest will not apply. There is no clear explanation as to why there is not a similar provision mirroring that one for 1229F. So the recommendation is that there be a similar provision inserted for 1229F.

The next recommendation is that the provisions 1229D(2) and 1229D(3), which enable the minister to extend the new penalty interest regime beyond student debts, be removed. We are recommending that that be repealed. The next recommendation is that 1229F(2) be amended to end the penalty period when a person re-enters or enters a new arrangement and makes a repayment to deal with the problem of the period that the penalty goes for.

Our last recommendation is that there be consultation with the National Welfare Rights Network on the drafting of the ministerial instrument as envisaged by 1229E(3) and the development of policies for implementation of the penalty. The policies might include, for example, how many times people were contacted and what constitutes reasonable attempts to contact people, similar to the way in which we were consulted about compliance penalties when there were similar provisions put in there.

We also have some comments to make in relation to family assistance eligibility changes, if we may, and also on the freezing of indexation.

CHAIR: That is fine.

Ms Meers: In relation to family assistance eligibility changes, we would like to express concern that money from family assistance, which is critical to reducing child poverty, should be put back into the young people who are affected by the removal of that assistance. The family assistance payment scheme has been very effective at mitigating child poverty, especially in single-parent families. We would like to see an increased payment for parents and young people who are on very low rates of youth allowance, rather than just taking the money out of one part of the system and failing to address inadequacy overall.

We support the freezes on indexation, generally. These changes will generally affect higher income families, with incomes of $100,000 per year. However, we are concerned about the indexation freeze on the family tax benefit supplement. Although the freeze is small on an individual basis, it will mean about $20 per year less for the lowest income families. A more targeted family assistance system is critical for alleviating child poverty and these supplements now are a critical part of the budget of low-income families. We constantly get calls from people who explain to us that they use those bonuses, the FTB supplements, to help them budget and pay for one-off big expenses like car insurance, white goods, the sorts of the things that they cannot regularly pay for on a social security payment. I think that wraps it up from us. Thank you.

Senator SIEWERT: You have all been very comprehensive. Can I ask Welfare Rights Network: do you have any comment on the other schedules that you have not mentioned? Does that make sense?

Ms Meers: Yes. We always have comments. I have thought about them; we have not prepared them in the way that you might imagine, because of the short time frames and because we understood that we were here to talk about schedule 5.

Senator SIEWERT: We are going to be voting on the whole bill, so I am interested in any thoughts you have got on any bits of the schedules.

CHAIR: Would it be easier to just run through the schedules and say, 'Have you got anything to say about gambling?' Have you got any comments on the gambling part of the bill?

Mr Thomas: We put in submissions early on in the piece around gambling reform. Of course, our caseworkers across the network see the consequences of people getting large compensation payments, for example, and blowing that money because they are not used to getting large amounts. They see the stress that that causes family and ongoing issues with their health and things. We actually wanted to see some national response. We have not gone into this in detail, but we do not think what we have—

CHAIR: This was into a previous inquiry, was it?

Mr Thomas: Yes.

Ms Meers: I have a very brief comment in relation to the change, from 25 years to 35 years, to the Australian working-life residence requirement. I guess the comment that I am about to make will also apply, in a sense, to the portability of family assistance payments. We often get calls from clients who have to travel overseas. Although they have been for a long time in Australia—let's say, for the sake of argument, they have 25 years of Australian working-life residence—people often need to return home as their elderly parents or other family members overseas age, to return to their countries of origin to care for family members who might be in crisis, ageing or unwell, that kind of thing. Reducing the portability of family assistance payments from three years down to one year will have an impact on people who are required to go overseas with small children for long periods of time to that end.

On the Australian working-life residence, the only point to make is that, after 26 weeks, proportional portability kicks in, so their rate is assessed according to how many years of working life experience they have in Australia. That rate, though, is already not the highest rate that a person would receive in Australia because they lose some of the pension supplement, they lose rent assistance and they lose most of those sorts of add-on payments. You are starting at a relatively low rate anyway, so, for people who are required to go overseas in those sorts of circumstances, it is going to make it harder for them to survive for lengthy periods overseas. I guess that is the only comment that I would make and the main concern that I have about increasing the length of Australian working-life residence that is required.

Senator SIEWERT: The Cape York reform income management?

Mr Thomas: Certainly we accept that the Cape York income management is a very different model with the Families Responsibilities Commission. There are a lot of extra resources and support and a lot of engagement with the Families Responsibilities Commission in the community, with communities that are involved. It is not clear, though, how much improvement there has been. You read different parts of the evaluation and it is not clear what has brought benefits and increased school attendance or whether that has been prolonged. We are sort of ambivalent about that. We recognise that it is certainly a better model than blanket income management from that point of view, but we are not fans of income management, as the committee would be aware.

In relation to the deeming provisions, we note that this general approach was supported by the Henry tax review, and we support the phase-in arrangements. That would give people until January 2015 and the option of changing if they want to. We note that the deeming provisions work well and have worked well since they were introduced back in the early nineties, and it is worth noting that the beneficial application of these provisions whereby earnings above the deeming rate are exempt from the income test continues to apply. So we think those are changes that would be acceptable.

In relation to the pension bonus scheme, our caseworkers celebrated the end of that scheme. It has caused a whole lot of complaints, appeals, confusion, reports from the ombudsman and a whole lot of appeals at various tribunals because the system and scheme were not very well worked out. We think that the work bonus appears to be very successful and people are seeing the benefits from that. I think that is one scheme we would be glad to see the end of; our caseworkers would be.

Senator SIEWERT: I am aware of time. I have one more question around the deeming provisions. Have you had an opportunity to look at the Financial Planning Association of Australia's submission?

Mr Thomas: No, we have not.

Ms Meers: No, we have not.

Senator SIEWERT: I really hate to ask you to do further work, but I am wondering if you could have a look at it. I know we have a very short time frame, but could you let us know if you are of the same opinion once you have had a look at that. It makes comments just about the deeming provisions.

Mr Thomas: Yes, sure.

Ms Meers: Yes.

Senator SIEWERT: Well, it is essentially about that. That would be appreciated. Thank you.

Senator CAROL BROWN: I will just throw this question out there. I am interested in whether you have any information on how many students have accessed the start-up loans and whether you have information about who is accessing the start-up loans and where they are located.

Ms Rea: Do you mean the start-up scholarships?

Senator CAROL BROWN: Sorry, the start-up scholarships, yes.

Ms Rea: No, I do not have that is in front of me at the moment. However, if one looks at the magnitude of the funds that were in put in the forward estimates spend on the scholarships, which were targeted for cutting back and being turned into loans, it was quite significant and it was indicative of, I think, the very problem that Professor Bradley and co. exposed in the Bradley review of higher education. They recommended the start-up scholarship because, for that group of people who were eligible for student allowance or Abstudy or Austudy, there were fairly stringent financial hardship circumstances to be able to access that. They recognised that the start-up scholarship was needed to recognise that the costs of study are a lot more than trying to live without studying, and that was its purpose. Now, the take-up of the start-up scholarships did increase quite rapidly, I understand, as more people from, obviously, more financially straitened circumstances were getting into higher education. So it has become quite significant and indeed it was, I hope, testimony to the significance of providing the financial support for poorer students to go to university—they were indeed taking it up. Of course, our concern is these deterrents are going to put them off doing so in the future.

Mr Thomas: I think the Bradley report actually noted that Australia had the balance right between income contingent loans and other sorts of financial assistance. So I do not think the Bradley report was lending itself to moving in the direction which we are moving now. It is $1.2 billion over five years; that seems to be a hell of a lot of student loans within that package. In one sense, it has been the only sort of significant financial increase that students have had over quite a considerable time, and they are on the lowest rates of payments, much lower than the low rate of Newstart allowance.

Ms Rea: That very quote was why there was that recognition of the increased costs for students studying in an environment where we find increasing levels of student poverty anyway. Turning what was $1,000 per semester for students under that scholarship from, in effect, a grant to something that said, 'Get on your way and get on with it; let's add to your graduate indebtedness, is no incentive to study.

Senator CAROL BROWN: So have you done any work or had even informal discussions within your networks about what you expect to happen if these scholarships were converted to loans?

Ms Rea: From talking amongst, obviously, our membership but also with the student unions, we know a lot of people are talking about not taking out the loan because they do not want to add to the HECS-HELP debt—because students certainly recognise that as a problem for them on graduation. So, instead, what students are most likely to do is take out other forms of loans. But the thing they are most likely to do is increase their working time, if they can. As I said, there is a direct relationship between the impact of increased work and students' capacity to successfully complete their studies, in that students will drop out, they will perform poorly, they will fail, the more work they do. Of course, that affects how good a job and what sort of rate of pay they can get. It puts them in a really invidious situation.

As I said earlier, I think we all have it in our heads that students are aged 18 to 22. Remember: increasingly our universities have people who are over that age group coming into the universities to try and do their study and support themselves—they often also have dependants—and are forgoing income to do so. Everything that can be done to assist them to successfully complete their course, go out and get their good graduate job, and pay more tax is advantageous; whereas any of these sorts of disincentives have quite a big impact. Think about people who have maybe been made redundant; people who are coming back into the workforce, maybe after raising families and the like; the prospect of debt upon graduation. All of those things make it a bit more difficult, a bit more unlikely. All of these things put people off and will lead to a drop-off in diverse participation across the Australian population in higher education, and that would not be of benefit to any of us.

Senator CAROL BROWN: In that response, you talked about students perhaps accessing other forms of loans. Are you talking about commercial loans?

Ms Rea: I do not have data on this. This is very much anecdotal; as students and families talk about these things; the undercurrent of discussions through the community and networks and on social media and the like. This is not evidence-backed research—which, as an academic, I would prefer to put before you—on this at the moment. This work needs to be done, obviously. Looking at the some of the North American examples, you have more people taking maybe commercial loans but also people taking more informal loans with their own family, extended family and friends, which could also lead to all sorts of problems in terms of repayment and

relationships and so on. Again that makes the path more rocky. That is what I am referring to; across-the-board sorts of things there.

Senator CAROL BROWN: I will again throw the question out there because I cannot remember who said it in their opening statement—in fact, you probably all mentioned it. When we talked about interest charges applying to certain debts, you talked about not believing that this measure would actually be an inducement for students to enter into a payment arrangement. You mentioned some reasons why, but I wonder if you could expand on why the fact that interest charges will apply would not enter into payment arrangements.

Mr Reodica: The feedback that we get, particularly from young people who are already struggling to pay off the existing debt, is that the addition of an interest charge or increasing the debt does not serve as any incentive to pay on time when they are already struggling to pay off the debt, along with other debts that they might have that might be more immediate, particularly things like buying food or having rental costs.

Senator CAROL BROWN: Does anyone else want to comment on that?

Ms Meers: I would like to make a comment about the rate of interest. We anticipate that most of the people affected by this measure are going to be working, and working enough that they are no longer entitled to social security, obviously, otherwise withholdings would just come out of their social security payment. However, not all are going to find well paid jobs right at the outset. A significant number are probably going to be just above the Newstart allowance cut-off, which is pretty low. The rate of interest that is proposed to be applied could well cause considerable hardship for people who will lose their healthcare card and so on and so forth. That amount of interest—the tax office, the commercial rate of interest—may well be quite a burden on people who have just moved off social security and into the workforce.

CHAIR: I have a couple of questions for Ms Rea. Are you able to tell me what the average HECS debt of a student would be?

Ms Rea: It is hard to use averaging because of the different rates that people have, depending on what courses they have done.

CHAIR: What about, say, for an arts student. What would the average HECS debt of an arts student be?

Ms Rea: Most arts courses would accumulate—depending on what subjects they do—up around $2,500 to $3,000 a semester. A three-year degree would take it to $16,000 or so. It would climb from that to the courses where it does become quite a lot more than that, particularly when they are longer courses. So a student could pick up a course which would accumulate $50,000 or so—

CHAIR: And the start-up loans, as I understand it, at $1,025—so we are talking about $2,000 a year for a start-up loan.

Ms Rea: Yes, and so on top of what they had it is quite a lot. It is quite significant, as it is at the moment, in effect, a grant to the students and it is recognised as such. So it is a good thing in that way. But if it is taken as a loan and adds to the rest of the graduate debt it does get to be quite problematic, particularly because of the different sorts of jobs that people will get on graduation when they start getting into paying the rate at which they pay. Of course, with returning students people are already coming from studying and coming into a job, or maybe are still holding onto a job. In terms of the HECS-HELP loans they are retained all the time and immediately. So it does affect people differently, and I do not think we quite understand that as clearly as we could when we just look at the amounts of the loans and the way that people go about repaying.

CHAIR: Nevertheless, with a maximum proportion of a HECS debt the loans would add, what, 20 per cent maximum?

Ms Rea: Yes, I would say that would be about it.

CHAIR: And that is the maximum. Senator Brown was asking earlier about what would happen if the scholarships were turned into loans. You are aware that the bill includes grandfathering provisions so that recipients who are on a scholarship prior to 1 January 2014 will stay on the scholarship until they finish having student payments?

Ms Rea: Yes. That is to not disadvantage those currently on it. I was pleased to see that, but I would prefer it not go through at all.

Senator CAROL BROWN: Senator Boyce talked about the costs for various degrees, but I just wondered: are you able to provide the committee with how Australia stands in terms of university fees in a world context? You can take it on notice if you like.

Ms Rea: Could I take it on notice and I could forward you a graph, but I do not have it in front of me at the moment.

Senator CAROL BROWN: I am just interested in the level of university fees for our students compared with comparable countries.

Ms Rea: There are graphs on that I can forward you one.

Senator CAROL BROWN: My other question was: with the start-up scholarships, if they were converted to loans, I am assuming, with the discussion you have had with your networks and the student body, that would actually be a barrier to some students actually taking up university.

CHAIR: Senator Brown, there are grandfathering provisions in there.

Senator CAROL BROWN: I am talking about the people coming on board soon.

Ms Rea: New students, as it was converted to loans, would take out the loans. So we are talking about that group, not those that are currently—

Senator CAROL BROWN: That is right. Would you see that as a barrier for them to actually enrol?

Ms Rea: I think it would be both a barrier to enrol and also, can I emphasise, a barrier to progress because getting in is one thing; staying in and continuing studies is another. The students that are more likely to drop out are the students that are in more financial stress because they cannot afford to study and they are worried about accumulating their debt. They are working too many hours and therefore are often sacrificing their study. So they fail and/or they give up. Then they have to start again and they have also accumulated some HECS debt in that process, so it is not a good situation. We want to decrease the attrition of students who are at university as well.

CHAIR: Thank you to all the witnesses. I think some of you have got some questions on notice to answer, if you are able to provide that information by midday tomorrow that would be very helpful to us in terms of our ability to produce the report.

CH'NG, Mr Adam, Adviser, Workplace Relations and Legal Affairs, Australian Chamber of Commerce and Industry

MAMMONE, Mr Daniel, Director of Workplace Policy and Director of Legal Affairs, Australian Chamber of Commerce and Industry

STRONG, Mr Peter, Executive Director, Council of Small Business of Australia

[17:07]

Evidence from Mr Mammone and Mr Ch'ng was taken via teleconference—

CHAIR: I welcome representatives from the Council of Small Business of Australia and the Australian Chamber of Commerce and Industry who are appearing today via teleconference. I understand information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite each of you to make a short opening statement and at the conclusion of your remarks I will invite members of the committee to put questions to you.

Mr Strong: I am here to talk to you about the paid parental leave provisions and removal from employers of the need to administer the payment process to eligible workers. When the feasibility of this was done most employers said 'No, don't bother, it is just an extra addition of work that is not necessary.' It all went ahead, of course, which shows that no-one need have bothered to consult. This is an example that we use now of failed regulation in that it cannot work in a business, particularly a small business—even large businesses. I think people have to experience a pay run to understand these issues. In a small business if you have a worker that is eligible for the paid parental leave that money will turn up in your account, you then have to bring it into your chart of accounts somehow or other. You bring it into your chart of accounts—it is not income against sales or anything, it is not a grant, thank heavens, because you would have to acquit it; it is some sort of other income. It is never nice to have other income, but you bring it into your chart of accounts as other income and then how do you take it out of your chart of accounts?

Intuitively you would put this through your pay system, and I have spoken to accountants who also say yes that is what you would do. But once you put it through your pay system it then affects the integrity of your business activity statement and your end of year payment summaries. Intuitively you would then, at the end of the month when you do your business activity statement—or the end of the quarter depending when you do it—you would press on your software: give me the total gross payments that I have made for pay. It prints out the gross payments, which you then put on your business activity statement, and you send it off to the tax office.

The problem, of course, is that figure is wrong unless you know how to go into your system and remove the paid parental leave from that gross payment. You also have to remove superannuation payments from that gross payment. You need to remove taxation from that payment. You would have to make sure that no leave is accrued against that payment. It is impossible to do it in one hit. At the end of the financial year, when you send your payment summaries off to the tax office on behalf of your employees, anybody that was on paid parental leave would more than likely have a wrong amount sent to the tax office. So it actually fails the ability to administer this particular payment system. As I said, we use it now as a way of saying this is where the consultation failed because it did not really look at the way it worked as a process within a small business.

When this was pointed out to the public sector—there is nothing wrong with the public sector; they operate on instructions from above—the first reaction was someone got pretty excited and said that we could do a help page; we could answer some questions about how to do it. There are so many different software programs out there and so many different ways of doing a chart of accounts, you would need hundreds and hundreds of FAQs to help people through the process. So that fails. Then another person said, 'But, Mr Strong, this is good for business because the person on leave will feel loved and cared for. They will come back. They will be highly productive and the skies will turn blue and it will be a wonderful place.' My answer to that was whenever a public servant tells you what is good for your business, it means they want you do something for nothing. The paternalism of that sort of approach is the other thing that really disturbs me—that someone somewhere would think there are two million people out there who have no idea what they are doing and need to be led along by their noses and told how to do their business. Normally people who say that have never run a business, but gee they know what is good for us! So this is a great failure and I love using it in my case studies demonstrating that we cannot do this.

I was talking to one woman who runs a financial business, so she understands accounts and software, and I said 'How did you go?'. She had two women go on paid parental leave during the year. She said she had to spend four hours going through her MYOB file, fixing it up so that these people got the right tax information to send to the tax office. It is bad business to include a third party in a payment process that is not necessary. Thank you.

CHAIR: Thank you very much. I understand we now have the people from the Australian Chamber of Commerce and Industry on the phone. Do you have an opening statement?

Mr Mammone: Thank you, Chair. I have a brief opening statement. The Australian Chamber of Commerce and Industry is the peak council of Australian Business Associations. Our member network has over 350,000 businesses represented through chambers of commerce in each state and territory, in addition to a nationwide network of industry associations. ACCI welcomes the opportunity to participate in this inquiry examining the provisions of the Social Services and Other Legislation Amendment Bill 2013. We confine our submission to this inquiry to the provisions of schedule 7 of the bill, which directly relate to the Paid Parental Leave Act 2010. The objective of schedule 7 is to remove the requirement for employers to make payments to employees under the Paid Parental Leave Scheme. We note that schedule 7 broadly reflects the government's pre-election policy commitment that 'employees will be paid directly by the Commonwealth Government, not by the employer.'

ACCI participated in a number of inquiries and reviews into paid parental leave schemes which are relevant to this inquiry. Specifically, we have participated in a Department of Families, Housing, Community Services and Indigenous Affairs review of the former government's paid parental leave scheme, and our submission to that review is dated July 2013. Previous to that there was a Senate Community Affairs Legislation Committee inquiry into the exposure draft of the Paid Parental Leave Scheme Bill May 2010, and, earlier, there was a Productivity Commission inquiry into paid maternity, paternity and parental leave, in November 2008. For the purposes of this inquiry and the time available, we refer the committee to our written submission to the departmental review, the most recent inquiry, which was sent electronically to this committee approximately half an hour ago.

ACCI's consistent position as set out in its pre-election blueprint entitled 'Getting On with Business—Reform Priorities and the Next Australian Government, is that the act should be amended by removing the requirement for employers to act as the paymaster unless the employer opts into the system. To the extent that the provisions of the bill give effect to the above position, ACCI supports their expeditious passage into legislation and commencement as soon as possible. We reiterate ACCI's support for a fully government funded and administered social security paid parental leave scheme which does not unnecessarily impose a significant administrative cost burden upon employers if supported. These submissions are without prejudice to our members' considerations of this bill. That is our opening statement.

CHAIR: Thank you very much.

Senator CAROL BROWN: . Before I get into the detail of the paid parental leave scheme and how it works through small businesses particularly, what happens with other wage-connected subsidies that go to businesses? How are they dealt with?

Mr Strong: They do not go through the pay system. They come in as income and are dealt with as income, not pay. Most employers I know do not see them as pay, they see them as subsidies.

Senator CAROL BROWN: But that is a decision they make.

Mr Strong: That is right.

Senator CAROL BROWN: Have you had any problems with your software systems being able to handle a wage-connected or any other wage subsidy?

Mr Strong: No, because you still have the person at work, so you still pay them as you do normally, and that money comes in as another mechanism. It is not in the employer's mind connected to the pay as a process;, it is an income they bring in which is put against the pay.

Senator CAROL BROWN: But obviously you pay people when they are on holidays, so they are not at work.

Mr Strong: That is right, and they normally pick that up before they leave, so that is all part of something we are used to doing, and with those things you do not normally have to change the tax or change anything or exclude that from your business activity statement. It is all included in what you do. The problem with this process is that it is quite different and it is very difficult to manage. Talking to accountants, when I ask them how do they change it is MYOB, they themselves say yes, how do you change it in MYOB? I actually had a go at doing it and it is not easy. You have to basically not put it through your pay system, which then defeats the purpose of it in some ways.

Senator CAROL BROWN: I cannot really get my head around why you say you do not put it through your pay system. MYOB is obviously a very popular software that small businesses use. I would have thought it would have been a rather simple matter to put it through.

Mr Strong: It is not, because you want to produce a pay slip as well, but you do not put hours in so you have to go in and manually produce the pay slip. We are not paymasters so we are used to doing a process in MYOB and doing the pay run and having it done quite quickly and doing our BASes, etcetera. This is something that makes it more difficult, and the people who I spoke to did not even understand that it was being included in their BAS until it was brought to their attention. Worse than that of course is the end-of-year payment summary. The expectation that we are all accountants and understand the process is flawed—we run businesses, whatever they may be. The problem with this is that it did not take into account the process. If you want, one day I can get the payroll systems out and show what you have to do to go in and change it so that there is no tax and there is no super.

Senator CAROL BROWN: I thought it was tax not taken out of the pay packet.

Mr Strong: That is right, it is not taxed.

CHAIR: Perhaps you could explain what the problems are if it goes into your BAS. I do not think people understand that problem, either.

Mr Strong: That is the issue with the people who designed this—they did not understand the problem that faced us out there. When it goes into your business activity statement, the tax office get it and they can look at it and say hang on, this does not match—the amount you have paid these people does not match the amount of tax that you took out in PAYG. They would come and investigate us. The other group is the superannuation funds. They would come along and say hang on, we have this gross payment here and the superannuation you have taken out does not match the gross payment. The industry super funds in particular are appalling. To save having them come onto your back with all the paperwork that they send out, you have to make sure that that amount is not registered on their superannuation. Again, it is not that easy to do that. You have to know about the software. The people who designed the system are like you, Senator—they did not get the system because they had never done a pay run. They did not understand the difficulties that you have to face when you do these sorts of things.

Senator CAROL BROWN: I have used my system quite extensively, actually—

Mr Strong: So if you did a pay run you would find it easy to stop people's tax?

Senator CAROL BROWN: The question I was interested in asking you, and I understand you might not have the information, was how many people have taken up the paid parental leave option in the small business area?

Mr Strong: The figures here say 10 per cent of small businesses. If it is true, that is quite a high figure; that is a couple of hundred thousand.

CHAIR: Do you have a reference for that?

Mr Strong: No, I was looking at it a minute ago. It says in 2012-13, only 10 per cent of small businesses paid PLP in respect of more than one of their employees. I am assuming that means small business employers—otherwise it would be 200,000, which makes no sense. It would be 10 per cent of 850,000, which is 85,000, which is an awful lot.

CHAIR: Mr Mammone or Mr Ch'ng, do you have any comments on that point?

Mr Mammone: I was not clear on the other payments that Senator Brown was talking about. We are in quite a unique situation where money has to be passed by an employer to eligible employees. This is not akin to paying wages and conditions.

Senator CAROL BROWN: I was simply asking how they were dealt with in the software system.

CHAIR: I think the point is that a lot of people would assume that you would handle it the way you would handle any other leave payment. Perhaps we need some clarification of why that is not the case. I think Mr Strong started off on that line, so if you could keep going that would be great.

Mr Mammone: I think one of the issues, which is why we strongly support part of these measures to remove the paymasters—we call it the paymaster function—from the existing system is that they employ a tool kit which gives examples as to what needs to be identified in payroll-keeping records, which have to be kept for seven years. There is a requirement to withhold pay-as-you-go withholdings from those paid parental leave payments. There are issues in terms of storing that, and I think Mr Strong said this, and the amounts have to be properly identified—whether they are payroll requirements, superannuation requirements and just normal leave requirements. So it does add to the overall complexity of record keeping and payroll requirements.

Senator CAROL BROWN: I really could not hear very well.

CHAIR: Your voice is coming across in a rather clipped way, Mr Mammone, which makes it very hard to understand. When you were speaking directly into the microphone earlier, it was improved, but then it became more difficult again.

Mr Mammone: I apologise; I will try my best.

Senator CAROL BROWN: What I was going to ask Mr Strong particularly or Mr Mammone is: what typically happens when somebody applies for and is granted paid parental leave? Do you know the interface between a small business and Centrelink? Are you able to give us some information about that?

Mr Strong: Are you right if I answer that, Daniel?

Mr Mammone: Yes, I will add to it if I am able to.

Mr Strong: Basically, because in small business there is a relationship between us and our employees—it is different from business to business, but in most cases you see them every day. They come in and they will bring their form in from Centrelink. They bring the form in and they will have filled it out sometimes, and they ask us to sign it. Other times they will bring it in and say, 'Can you help me fill this out, because I am not sure.' So we sit down and help them fill it out. Already we have got an activity happening there. You do that with your employees—not always, but quite often you help them through the situation. Then they send that off to Centrelink, and Centrelink process it and they communicate with the eligible person. As far as I know, they come back to the employer eventually and they say, 'Okay, this money is going to turn up in your account on such-and-such a date. 'They pay us three pays in advance, so you will get, say, $800 coming into your account. Again, you have to remember we are running a bookshop or we are driving trucks or whatever; we are not accountants. But this money turns up in the account, and it is: 'Oh, what's that for?' It will have some code in there and we have to think, 'What's that for?' Then we have to move that through our system. We have to account for the money that we do not spend straightaway and we have to make sure that money is there to give to the people over the next six weeks. So it is a cash flow issue as well. It does not appear to be a big issue; but, in small business, they are all issues and they all add complexity to something that we should not have in front of us.

In dealing with a person who is on parental leave, quite often they will come in, especially after the child is born or just beforehand. We will have pictures up on the wall. We will have pictures on the website. They will come and visit customers and fellow staff, and it is all quite a good event normally. We all know it is not always like that, but in most cases it is in any workplace. You will find out and you will talk about the pay. You will do a pay run and the pay will go off into their account, as it normally does. You will email, if that is what you do, their pay advice to them. That sounds easy except for all those things that I have said. There are too many problems in there. There are too many issues that you have to change. It is imposed upon you from a third party that has no role of telling us what to do with our pay system above and beyond PAYG and the normal sorts of things you ask of an employer. It does not happen often and it just causes confusion for everybody and creates mistakes. Without a doubt, it creates mistakes that do not benefit everybody as well.

One of the things I have not mentioned is the ideology of it, which I understand is to have a woman in particular still feel connected to the workplace, and I understand that. But, in small business, you are either connected or you are not. A payment system is not going to make someone feel more connected or less connected. Some of the people who leave say, 'I'm not going to come back for the next 12 months,' and they do not come back. Others come back every couple of months, they come in every month or they come in every week. It just depends on the workplace and how it functions. You cannot impact upon that with a payment system that somehow or other causes that to happen. And, if you are a woman who employs people, for some reason or other you are expected to spend more time away from your family, managing a payment process so somebody else can spend more time with their family as a result of that payment process, when it is completely unnecessary; if you just pay them direct then everybody wins.

Senator CAROL BROWN: I just want to clarify something. I have looked on this website and it says that under paid parental leave you have to withhold PAYG, so I thought you said that—

Mr Strong: There you go. I did not know that until then. This is what I—

Senator CAROL BROWN: Which would mean that that BAS issue probably was not—because it adds up then.

Senator MOORE: Yes, the taxes you have to take account of the tax.

Mr Strong: Yes, but it is still complicated. It is completely unnecessary. Don't do it. If I have to pay someone, I do not go to a third party and say, 'Can you pay them for me?'

Mr Mammone: Could I just add to that?

CHAIR: Yes.

Mr Mammone: I think the issue for us is the transactions—by way of the worker needing to read, comprehend and fill out a 75-page form to apply for paid parental leave. It is 47 pages of a form and the rest are notes.

CHAIR: But you would need to read the notes to fill in the form. That is the thinking?

Mr Mammone: Correct. And the feedback that we have received is that it is so detailed and prescriptive that a lot of the time employers have to sit down with the worker and help them fill out the form. I am not saying that is in all the cases but we have had reports of this form taking up to an hour to work through and fill, and that is obviously lost productivity time for the employer, the small business, concerned.

Compare this to the system in New Zealand, which we have referred to as something that we should look at as a workable model: a four-page document; a two-page form, with two pages of notes. In New Zealand the government administers the scheme and provides the payments directly to the eligible worker. It is a system that has been in place for some time; they have had a review of the scheme. It seems to be delivering on those laudable policy objectives.

So I think some of the problems we have had have been in part when payments are not delivered on time to the employer; and, in terms of the employer providing those payments for workers, it undermines the trust in the employment relationship. It is not the employer's fault necessarily that payments are not delivered on time, but obviously with a complicated system it is going to have some inbuilt inefficiency and problems. We have had some experience of employers saying: 'Look, it just has not happened on time, and the employee is frustrated for good reason. It would be far better and more efficient if payments were directly provided to the worker.'

Senator CAROL BROWN: Just to follow on from that point: is the feedback you are getting from your networks that the payments are not being paid on time because there is an issue because of the workload in the business or is it an issue from Centrelink's perspective? Do you know?

Mr Mammone: I think it is a mixture. Some of the cases we have heard it is that, for whatever reason, the payments from the government just have not been able to be processed. There may be some back and forth between the processing agency and the worker to verify information. But also the employer has to register and set up the system. That can take time, particularly if they have not registered before for an eligible worker. I know that we were trying to help with the implementation of the scheme by encouraging employers to sign up early and have all those details, so that they could facilitate the payments.

Mr Strong: If I could support that as well. That assumes they have a paymaster. We should not be asking employers to go and do something beyond their business because it puts an employee's job at risk. Let them concentrate, especially in small business, on their business; and part of that is PAYG. When you employ someone, that is not debatable; that is part of what we do in this country. But let them concentrate on their business. Let's not impose another process upon them that is complicated—look at the discussion we are having today—and that takes their mind off the business. It is pretty easy. Let's concentrate on business not on government payment processes.

Senator MOORE: I have two questions. Can I just ask generally—and I know you are a representative of small business people as opposed to being in small business—what is the standard interaction between a small business employer and an employee who is taking parental leave. Taking away the paymaster role—though I think every business does have a paymaster, be it the person who owns the business or someone who does that job for them—in terms of the process, what is the linkage between the employer and the employee if you take away the paymaster's role between the people in the period of parental leave?

Mr Mammone: If I may attempt to answer this, obviously there are entitlements to paid and unpaid parental leave, whether that is for the expectant mum or for the father who has taken some time off to assist with a newborn, and also for adoption leave, which we should also mention. I think, if you take away the paymaster function, the usual relationship and the issue that needs to be managed will be managed, whether or not that is simply ensuring that a return-to-work plan is put in place. Obviously there are notice requirements under the National Employment Standards, but also policies are going to be different in different companies. I think that with small business, as Mr Strong alluded to before, there is already that strong connection. A lot of these small businesses are family businesses, and our experience is that there already is that relationship. Obviously a scheme which looks at workforce participation, which is a paid parental leave scheme as distinct from workplace participation and attachment, is slightly different and there is no strong link with a paymaster function and trying to encourage workplace attachment or retention.

Senator MOORE: So your view is that the workplace link, which is the background to this whole process, would be maintained effectively in terms of communication linkages, information about changes in business, information about changes in employment conditions and an effective return-to-work plan, and this would all operate independently of the paymaster's role? There is no linkage now in the fact that the worker is linked into being part of the business and the employer is linking with them every week or fortnight or whatever the payment cycle is?

Mr Mammone: Our view, and it has been a consistent position that we have put to the Productivity Commission inquiry and throughout, is that there is no evidence which suggests that payments being provided through the employer's payroll provide a stronger attachment to the workplace. In New Zealand, which I have just referred to, they reviewed the scheme in terms of the employer experience and the employee experience. They were receiving paid parental leave payments directly from the government; all the employer had to do was co-sign a form and verify information. The scheme was generally assessed as operating effectively. So to us there is no net benefit from the administrative costs associated with the paymaster function which would outweigh any perceived or real benefits. I think the submission that we have lodged indicates this, and I appreciate you probably have not got a copy of it just yet. The New Zealand review was in 2005-06, and I quote from it:

… the scheme enjoys considerable support from mothers, fathers, and employers alike.

We attached a copy of the evaluation as an annexure in our submission.

Senator MOORE: Mr Mammone, in terms of the time of process, we are talking about a scheme that has not yet been in place for two years. I think one of the issues has been the time frame it has been around. In the New Zealand model to which you refer, which I do understand, how far into the process of the scheme was the review of that scheme? How soon after people started using it was it reviewed?

Mr Mammone: The New Zealand scheme commenced in 2002.

Senator MOORE: The review you had that said it was working generally well—

Mr Mammone: Yes.

Senator MOORE: was actually done in 2005?

Mr Mammone: 2005/2006. There may have been an earlier review, and I can take that on notice if you require further information.

Senator MOORE: I just want to make the point that the scheme about which we are talking and about which the two organisations have put forward their concerns, quite rightly, has not really been bedded down.

Mr Mammone: I think that we have been involved in a process of implementation and a period of time to bed it down to gauge the employer experience. There is a review, as I mentioned in my opening statement, which the department is conducting. It has also done research, as you would be aware. So we have some data and some firsthand experience from both the employee and the employer perspectives that I think we reiterate to this committee when it considers the impact of these measures.

Senator MOORE: And the opposition amendment actually means that small business is defined, as in many cases, as 20 employees or less—and we would be supporting the optional Centrelink process operating for those levels of employers. What is the two organisations' view of that? Mr Strong, in terms of your business, what is a small business?

Mr Strong: It is less than 20, but we believe that all businesses should not be involved in this unless they opt in, as you say.

Senator MOORE: So 20 or less would cover your membership, so the outrageous impost on the employer would then be taken away?

Mr Strong: Yes, if that goes through, but we support the total removal.

Senator MOORE: And Mr Mammone?

CHAIR: You support the fact that Centrelink would make the payment?

Mr Strong: That is right. If any employer, no matter what size, wants to be involved, it can opt in.

Senator MOORE: And Mr Mammone?

Mr Mammone: Yes, our pre-election policy is quite clear: we support removing the mandatory requirement unless the employer opts into the system, and obviously with the consent of the employee, which is what is reflected in these measures.

Senator MOORE: Okay.

CHAIR: Could I just ask either of you: are you aware of any circumstances, given the fact that this money is paid ahead of time, where companies have gone broke or whatever and had not paid out the parental leave to the employee?

Mr Strong: I am not.

Mr Mammone: I am not aware. I would like to take it on notice, if I may, and just have a look at that issue.

CHAIR: Again it strikes me as another potential risk for employees that that could occur.

Mr Strong: That is right. Again, we have seen nothing actually happen. We have the fears as well, and it is only a matter of time. What concerns us is if a business is under extreme pressure, having to pay rent or whatever it is, and they look at that amount of money and think, 'Well, I'll use that, then I'll find that money later,' and when individuals are under—

CHAIR: It has happened with super in the past. There is no reason why it could not happen with other things.

Mr Strong: That is right. It is something that will happen, and that is one of the things. When you ask another party to do a payment, mistakes will happen.

Senator MOORE: Would that happen with any entitlement? If a business were to go broke suddenly, there would be potential impost on a whole range of employee conditions?

CHAIR: You would hope a business would have kept the entitlements separate from the moneys.

Senator MOORE: You would hope so.

CHAIR: They would have kept the money needed to pay their debts, of which those things are part, but often that does not happen.

Mr Strong: If I can say so, the best thing you could do is set up another bank account and give that bank account to Centrelink so that you know that what is in that bank account is definitely paid parental leave, and there is the extra red tape that is really not necessary.

CHAIR: Okay.

Senator CAROL BROWN: In terms of the connection between staff and their place of work—and anyone can answer this if they are able—has there been any work done on the retention rates, on employees actually returning to work?

Mr Strong: I know there has been, but I cannot recall it. I do not know if Mr Mammone has figures.

Mr Mammone: Yes. We are aware that the phase 2—I think it is—research conducted in relation to the department review did look at some of those questions, and I would be happy to take that on notice, if I may, and look at that. I think our submission does not touch on that issue per se but rather looks at female participation rates generally since the commencement of the scheme to see if there is any correlation between the Paid Parental Leave scheme and female workforce participation. That is in our submission that has been lodged.

Senator CAROL BROWN: Thank you. I would appreciate it if you could—

CHAIR: Senator Brown, given that we have the department coming later tonight, perhaps we could ask Mr Mammone to take it on notice if we do not get a satisfactory answer later, rather than do the work and then discover we have already got it.

Senator CAROL BROWN: If he would like to put in some additional information as well, that would be good. That is fine, Chair.

CHAIR: Thank you. I do not think we have any further questions, so thank you very much, Mr Mammone, Mr Ch'ng and Mr Strong, for appearing.

Mr Mammone: Thank you.

Mr Strong: Thank you.

PAGE, Ms Samantha, Chief Executive Officer, Early Childhood Australia

[17:47]

CHAIR: I welcome Ms Page from Early Childhood Australia. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you, Ms Page. I invite you to make an opening statement. At the conclusion of your remarks, the committee will be asking you some questions.

Ms Page: Thank you for the opportunity to be here.

Senator MOORE: You have come back again, Ms Page.

Ms Page: I have—two days in a row.

Senator MOORE: Thank you very much.

Ms Page: I am working almost as hard as you! Thank you. We just wanted to make ourselves available to the committee in case there were any questions you had for us. We do not have a lot to say on the bill, but I will make a couple of remarks and then take any questions.

CHAIR: We have been trying to just direct questions to particular schedules of the bill. If you are able to do that, that would be great.

Ms Page: Yes, I can do that, absolutely. Just by way of background: Early Childhood Australia is the peak body for young children from birth to eight, an advocacy organisation. Primarily our members are early childhood education and care services across the country, so that is our perspective and that is where we come from.

The comments we want to make on the bill are these. In terms of schedule 12, we support the amendments to the time provisions around claiming family tax benefit and related payments. We understand that there would be extensions allowed for families in special circumstances.

We would like to see more active communication to families about their entitlements. We think the entitlement system generally is very complicated for parents who are having their first child, particularly the interface between family tax benefit and childcare assistance through childcare benefit and childcare rebate and the various other payments that they may be eligible for. It concerns us that families are not always claiming everything they are eligible for and that that might impact on their decisions around care arrangements for very young children. So we would really like to see better communication, more active communication, to let parents know what they are entitled to. But, in terms of the time provisions per se, we are quite supportive of those.

CHAIR: Just to let you know: schedule 12 is not one of the schedules that was referred to this committee. There have been referrals to other committees as well, but we are more than happy to alert Education and Employment, I think it is—

Senator MOORE: Ms Page actually attended the other committee last night.

Ms Page: I was here last night, but I think we have had a miscommunication and got our schedules muddled up, so I am sorry.

CHAIR: Never mind.

Senator SIEWERT: Was that referred specifically to Education—

Ms Page: No.

Senator SIEWERT: because we got everything else that was not referred to Finance and Public Admin or—

CHAIR: I understood that we did not have schedule 12, but anyway, I beg your pardon. Let us go on.

Senator SIEWERT: That was the intent of your referral. The intent of your referral was everything else that was not then shuffled off.

Senator MOORE: And family payments come under us.

CHAIR: Okay, keep going.

Ms Page: Okay. We did not feel we were qualified to comment on schedules 9 and 10, but we support the measures in principle.

Schedule 7 is around the current Paid Parental Leave scheme. We are supportive of that scheme and recognise the value of parents having time out of the workforce to spend with very young babies. We do believe it needs to complement and interface better with the transition into early childhood education and care, but we support the scheme.

The change from direct payment—from employers paying the paid parental leave to parents, to the Department of Human Services doing that—is one that we support and one that we raised in our submission to the review of

Paid Parental Leave earlier in the year. That is particularly coming from our member constituency, which is largely small business or small NGOs. They found the administrative burden of that quite significant. They are employing primarily women, many of whom are of child-bearing age, so it was particularly significant in our neck of the woods that that was an administrative burden on employers, and they are very happy to have that paid directly by the Department of Human Services.

Other than that, we just had some comments around paid parental leave reform more broadly and the fact that we would like that to be considered as part of the Productivity Commission inquiry into child care and early learning. We think that, whatever time period you have for paid parental leave, that will impact on when parents choose to return to work and when children are entering early childhood education and care, so having a very strong interface there is important. We also think that having a much more generous Paid Parental Leave scheme will raise the expectations—and quite rightly so—of families around affordable and high-quality early childhood education and care. We just want to make that point. That is it, and I am happy to take any questions.

Senator MOORE: In terms of the process, Ms Page, you mentioned the administrative burden. What size employers would those people be?

Ms Page: In early childhood?

Senator MOORE: Yes.

Ms Page: The majority are small businesses—

Senator MOORE: So under 20?

Ms Page: so, yes, under 20 employees, and some in the 20-to-35-employees category.

Senator MOORE: We have an amendment that says that if it is under 20—the traditional definition of a small business is 20 or under—those people could actually have their payments made through Centrelink. You would support that?

Ms Page: Yes, we would.

Senator MOORE: That is the only area I have questions about in your area, Ms Page, because we covered the specific issues about child care and so on in the hearing yesterday evening.

Ms Page: We did, absolutely.

ACTING CHAIR (Senator Siewert): When you say you are supporting schedule 9, that is the other indexation changes?

Ms Page: Sorry—

Senator MOORE: It is complex.

ACTING CHAIR: It is, isn't it. I have been looking at this bill quite a bit, and I still get confused between the schedules. I thought you said you support schedule 9, which is the freeze on the indexation.

Ms Page: Mine is not numbered, so it is a bit tricky. I only have the explanatory memorandum; I do not have the bill itself. It is indexation pauses on higher income limits.

ACTING CHAIR: Yes.

Ms Page: We were comfortable with that. We would generally like to see more generous benefits for lower income families, and we are comfortable with pausing indexation rates at the higher end of the income scale.

ACTING CHAIR: But not on the childcare?

Ms Page: On the childcare rebate? No, because our calculations indicate that hits middle-income families the hardest.

ACTING CHAIR: I appreciate that you were talking about that last night in the other committee, but I just wanted to be sure on the other indexation—

Ms Page: You had we worried, because generally we do not support pausing indexation, but on that one we did because it is the higher income end.

ACTING CHAIR: What about the family tax benefit and the eligibility rules which is schedule 3—although I may have numbered that first one wrong.

Ms Page: Are we talking about schedule 3?

Senator SIEWERT: Schedule 3, yes. That is the teenage children one, which is the one where it ends at the end of their school year.

CHAIR: The end of the calendar year rather than on their birthday, isn't it?

Ms Page: Yes. I have not to be honest done any analysis on that. It is a different age group to where we are now focused. However, it sounds sensible to make it a calendar year, if that is when people are leaving school. Just, in terms of the indexation on the childcare rebate, we do not support the pause on indexation but we do support means-testing the rebate. So we would rather the rebate be indexed and means-tested than not means-tested and not indexed.

Senator SIEWERT: Yes.

Senator MOORE: Does that mean you would rather have means-testing as a general process, than indexing at that level. That was new evidence last night. Rather than having the freeze on the top cap of $7,500, you think means-testing would be a fairer way of ensuring that the most appropriate people access the most appropriate payment.

Ms Page: That is right. So the problem is that childcare benefit and childcare rebate have eroded in terms of value. So low-income families and middle-income families are paying more because of the freeze in terms of indexation on both of them—well, childcare benefit still gets it but childcare rebate has not, and childcare benefit has fallen out of step with the actual cost of delivery. We are not suggesting that high-income families should be completely cut off but there could be a tapering down of the level of assistance for high-income families, if that allowed for higher levels of subsidy for lower and middle-income families. The data we had available suggested that the pause on indexation would have the biggest effect on middle-income families.

Senator SIEWERT: The other question that comes in there, though—and I think it was Welfare Rights Network that made this point—is the concern about the FTB supplement being frozen.

Ms Page: That is for single parents.

Senator SIEWERT: They are concerned about the impact on child poverty on that one.

Ms Page: Yes. Again, in the time frame for this, we have not looked at that, but certainly we would be concerned about the impact on single parents.

Senator SIEWERT: One of the comments that was made on the paid parental leave issue—and I must admit it is not my portfolio area, so I am not an expert on this—was that they were concerned about the transfer of payments to Centrelink because then it is seen as a welfare payment. Do you have concerns about that? Has anybody raised that with you?

Ms Page: We do not have concerns about that. No. Given that childcare rebate, childcare benefit and family tax payments are all through Department of Human Services, we would be hoping that families might be better informed about all of the things they are eligible for, if it is handled through the Department of Human Services. But I am happy to take it on notice, go back and talk to members and see whether there are any reasons. But when we did the submission to the review of paid parental leave there was general support for it being handled through Department of Human Services rather than through employers.

Senator SIEWERT: Thank you.

Ms Page: It is out of date now, but I did understand there was quite alarming data about people not accessing the baby bonus when they were eligible for it. We thought possibly that confusion was about having to pay it back if your income was different to your estimates. That is a few years old now, so I do not know whether that is still the case. But I do think that there should be some regular monitoring of whether people are getting the benefits they are entitled to.

CHAIR: Across the board?

Ms Page: Across the board, and across family payments in particular, and around young children, because that is when people are making sometimes very difficult decisions about when they return to work and how many hours they return to work and other things with newborn babies. They really should be making those decisions fully informed of the support that is available to them.

CHAIR: Wouldn't you anticipate that that is something Centrelink is doing as a matter of course? When someone comes in for a particular benefit, they would analyse whether they were also receiving other things to which there were entitled?

Ms Page: I would have anticipated that to be the case, but it was a bit alarming at the time when we were looking at that data. It pre-dates the current scheme so I do not know where things are at now, but certainly there was an extraordinary number of people not claiming entitlements when they should have been claiming; them they were clearly eligible for them.

CHAIR: Thank you, Ms Page.

Senator SIEWERT: Following up on the Australia Institute report from a couple of years ago?

Ms Page: Yes. I am sorry I don't have the date in my mind.

Senator SIEWERT: It was a couple of years ago, and I think they have updated it relatively recently, but the original work was done three or four years ago.

Ms Page: Yes. I was also on a review committee when the baby bonus changed from a lump-sum payment to fortnightly payments. There was data presented to that committee. I think that was before the Australia Institute report came out. But that would have been also before the current paid parental leave scheme.

CHAIR: Any further questions? No. Thank you, Ms Page.

Proceedings suspended from 18:01 to 19:19

ROOT, Ms Josephine, National Policy Manager, COTA Australia

[19:19]

CHAIR: Welcome. I understand information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to make a short opening statement, and at the conclusion of your remarks committee member will put questions to you.

Ms Root: I thank the committee for giving COTA the opportunity to appear before you, particularly as we have not put in a submission. It saves me a task. Your aware of who COTA is, but for the record COTA Australia is the peak national body for older Australians. Our focus is on national policy issues from the perspective of older Australian as citizens and consumers. We aim to protect their rights and to promote their interests in all our work.

We believe that the income support system should assist people as and when they need it. So it should be there for when people need it, and we think it is an important part of a civilised society. COTA was and still is a member of the Fair Go for Pensioners Coalition, which has worked tirelessly to improve pension conditions for older Australians and which has had some success. So, whilst I am not speaking on behalf of the coalition, some of what I say is applicable to them as well.

We think it is important that the income support system is targeted to those most in need. We do not think people should get a payment simply because they think they are entitled to it or necessarily because of their age. If people have the means to support themselves regardless of their age then they should be encouraged to do so. But we need an adequate safety net that means that all Australians can live in dignity. That was the premise for the Fair Go for Pensioners and our work.

We were asked to comment on three schedules: schedule 4, schedule 8 and schedule 11. I hope I have got that right.

CHAIR: You have.

Ms Root: Schedule 4 deals with extending the time that somebody has to be a resident before they can start claiming the pension when they move overseas. We support that proposal in schedule 4. We think it is only reasonable that people should have to show that they have been a resident of this country for a reasonable amount of time. It brings us into line with most OECD countries and it shares the burden of an ageing population between Australia as the country of current residence and any other country where people might have been in residence. So we support that one.

We also support the closing off of the registrations for the pension bonus in schedule 8. We believe the replacement Work Bonus Scheme introduced by the then government is a much better scheme, providing a better incentive for older people to work and giving them a better return on their work. In particular, the annualisation of the work bonus does help meet the policy objective of getting older people to continue in the paid workforce. We think that it is important. We also think not cutting it off for a few months does give late people the chance to have a last minute rush, so we hope that the Department of Human Services is prepared for the rush when it comes. We support that one.

The deeming of all assets is something that COTA also supports: the extension of the deeming rates to all forms of income stream. We think it is important that there is a level playing field. We do not want to see one class of older person preferenced over another in terms of where they have their financial assets and how they have managed to arrange their affairs. There is quite a growth industry in helping people arrange their affairs to maximise pensions, and we think any measure that reduces that opportunity is probably a good one. That is us in a nutshell.

Senator SIEWERT: I want to go to where you just left off: schedule 11. The Financial Planning Association of Australia have said that they have concerns around schedule 11. I appreciate that you probably have not seen their submission.

CHAIR: They were invited to attend but they were not able to.

Senator SIEWERT: They say:

… the way that account based pensions are assessed under social security law, and forms a disincentive to the responsible management of retirees' superannuation assets.

… … …

Account based pensions are highly effective financial products. They are structured in a way that encourages and rewards retirees for withdrawing the minimum allowable from their balance, while still retaining flexibility and control to the beneficiary.

Do you share their concern and, if so, have you had any discussions with anybody about it?

Ms Root: We have not discussed it with them this time round. We did discuss it with them when a similar proposal was put up by the previous government. Our view is that, yes, one of the deficits in our superannuation/pension system is the availability of products that help people deal with longevity. Account based incomes could do that. However, depending on the size of your lump sum, you can get quite a big tax advantage. You can get quite a big pension advantage if you put it into an account based pension. There are other ways of encouraging people to go into products that give longevity. Whilst we note that—and the financial planners said this before—we do think if we are going to argue to keep deeming rates then deeming rates need to be applied across the board.

Senator SIEWERT: Are the other ways that you mentioned available now, or do other changes have to be made to facilitate that?

Ms Root: The issues around treating deferred annuities in the same way as other products for tax purposes is an important reform. The market has been quite slow to develop products to deal with longevity in this country, and we are in discussion with many of the super funds and financial planners to look at ways that we can encourage people not to take lump sums but to see their superannuation as a pension. One way would be if we could just change the terminology and not call it 'superannuation' but call it 'self-funded pensions'. That might help people to view them in a different way. We need some other reforms and some market response.

CHAIR: As I understand it, the vast majority of people do take their super as a lump sum from industry super funds. Is that correct?

Ms Root: I think so, yes; and then they look for products. It is quite an identified gap by the funds themselves that the concentration in superannuation policy has been on contributions, not on the withdrawal stage. As the population ages and as our superannuation matures, we need to move onto products that deal more with how people are going to make their super last.

Senator SIEWERT: The financial planners recognise there is a problem, and I understand you say that there is a bit of a problem around that. Are the changes that are necessary to deal with the longevity issue solely from the industry and what we call it and those sorts of things? Or are the legislative reforms needed going to be a bit behind before they are done? In other words, we are creating a problem for a while, until legislation catches up?

Ms Root: Possibly. I am not an expert on that.

Senator SIEWERT: My problem is that I am not an expert on super either. So we cannot be sure or positive about that?

Ms Root: No. It has been identified as a bit of a loophole for people to arrange their affairs. That is okay if you can do it, but if you do not have the capacity to do that then you are disadvantaged. We are trying to avoid that.

Senator MOORE: One of the things that COTA raised generally was having standardisation so that people did not have too many rules to get their head around. It was certainly in some of the discussions that we had—not around this issue but just generally.

Ms Root: That is right.

Senator MOORE: One of my thoughts about the deeming stuff—and I think fondly of deeming because I had a job for six months in the department selling the original deeming scheme to the pensioner population; not too effectively, I believe, but nonetheless that was my job—in terms of process is the confusion if one pension is handled one way and there is another process. That came out with your members at one stage. I remember reading one of your discussion points.

Ms Root: Yes. So anything that keeps it simpler—

Senator MOORE: Consistent.

Ms Root: and consistent, I think, makes for better decision making on the part of individuals about what they do with their money.

Senator MOORE: My understanding also is that COTA have discussions with their members about that, so one of the things we need to keep open is that, if the issues raised by the financial planners and raised by Senator Siewert are real, we need to look at subsequent actions to fix it up.

CHAIR: The government have said that they would make no detrimental changes to superannuation. We certainly have not had any evidence from anybody suggesting that they feel that that is the case here. It is certainly a watching brief, I guess, yes.

Ms Root: I guess I would add to that that we have not had representation from people against this particular provision. There were some other changes on which we have had quite a lot of correspondence. We have had no older people, no pensioners, write to us about this.

CHAIR: Ms Root, you were commenting earlier on things that made it easier for people to stay in the workforce in regard to the Pension Bonus Scheme. I am just after perhaps a more general comment. The media often portrays any suggestion that people would work post 60 or 65 as akin to some sort of slave labour. Could you perhaps just outline for us COTA's view on people working after pension age?

Ms Root: Certainly. COTA's position is that people should be able to work if they want to. So, if they want to work past the age at which they are eligible for an age pension providing they meet the means test, they should be able to. There should not be any legislative barriers that stop them doing that, which there are currently. We also believe that it is important that there are many people living on the pension. To live just on the pension means that you are always going to have what ASFA, the Association of Superannuation Funds of Australia, calls a 'modest' lifestyle. Most people probably aspire to more what ASFA would call the 'comfortable' or 'reasonable' level, which is slightly higher. To make the difference between the modest and the comfortable, which is overseas trips, going out to dinner and doing a few things that most of us consider to be part of life, people like to work. They like to work part time. They like to have flexibility of working. But that is if they can. We believe in choice.

The age of the age pension I suppose is one of the things that you are getting at. We have to get people working till they are 65 before we start talking about raising it. The ABS statistics released yesterday show that the average age of retirement is 59.

CHAIR: It is surprising.

Ms Root: We are nowhere near 65, and it is going up to 67, so we have a piece of work to do to change employers' attitudes and employees' attitudes to say that that is not when you retire, when you might think of leaving the paid workforce.

CHAIR: Thank you, Ms Root.

Ms Root: It is a pleasure.

CHAIR: Thanks a lot.

Ms Root: That is it? Thank you all.

CHAIR: Thank you for coming.

BERKELEY, Ms Brendalyn Anne, General Manager, Indirect, Philanthropy and Resource Tax, Department of the Treasury

BROWN, Mr Philip, Branch Manager, Parental Payments and Family Research Branch, Department of Social Services

CADDICK, Mr Oliver, Director, Student Payment Program Performance Section, Payment Integrity and Performance Information Branch, Department of Social Services

CAVALLI, Mr Sam, Manager, Financial Markets Section, Seniors and Means Test Branch, Department of Social Services

HUTCHINSON, Mr Peter, Manager, Portability Policy and International Agreements, Social Security Relationships and International Branch, Department of Social Services

JOYCE, Mr Ian, Acting Manager, Seniors and Means Test Branch, Department of Social Services

KAY, Ms Jennifer, Section Manager, Program Service Branch, Department of Social Services

KIMBER, Mr Murray, Branch Manager, Payment Integrity and Performance Information Branch, Department of Social Services

LAFFAN, Ms Amy, Acting Branch Manager, National Gambling Branch, Department of Social Services

LINDENMAYER, Ms Diana, Branch Manager, Family Payments and Child Support Branch, Department of Social Services

PALMER, Mr Bryan, Group Manager, Housing, Homelessness and Gambling, Department of Social Services

PIPER, Ms Sue, Manager, Philanthropy and Exemptions Unit, Revenue Group, Department of the Treasury

ROBERTSON, Ms Amanda, Manager, Age Pension Policy Section, Seniors and Means Test Branch, Department of Social Services

WOJCIECHOWSKI, Ms Dilreene, Parental Payments and Family Research Branch, Department of Social Services

WOOLLEY, Ms Trish, Branch Manager, Program Service Branch, Department of Social Services

[19:35]

CHAIR: I welcome the officers of the Department of Social Services and the Department of the Treasury. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and should be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I now invite you to make an opening statement and at the conclusion of your remarks I will be asking members of the committee to put their questions.

Mr Hutchinson: Thank you, Chair. I do not think we need to make an opening statement.

CHAIR: Senator Moore, would you start the questions.

Senator MOORE: Mr Hutchinson, you are specifically here for the going overseas bit, aren't you?

Mr Hutchinson: Yes, schedule 4.

Senator MOORE: On the issue of raising it from 25 to 35 years, has the department received any complaints about this? It was raised as a probability in our government's budget 12 months ago, so it was out there then. It has now come back on the table. There has been a period of time when people who have concerns have had the ability to raise them. Has your branch received concerns?

Mr Hutchinson: Very few. We have been putting information out about the proposed changes, subject to the passage of legislation, since the original announcement, in correspondence when we are replying to people's letters that raise subjects relevant to payment of pensions overseas. The only complaint, I guess, that I can recall is a fairly recent one, from about a month or maybe six weeks ago. I could not tell you the name now, I am sorry,

but it was a letter to the minister and a petition signed by about 10 to 12 people. It was basically saying: do not proceed with this legislation.

Senator MOORE: On the basis that they have either 25 years residence or are coming close to 25 years residence and they would expect that this will now disadvantage them?

Mr Hutchinson: Yes.

Senator MOORE: We heard from COTA, and it has been in some of the other things I have read, that this particular change brings us into line with other countries. One thing I would like to see, and you do not have to do it straight away, is a schedule showing the different countries that we compare ourselves with and what their rules are in this area. Over the last 18 months to two years we have had a number of changes around things like the ability to move overseas and maintain payments, and a question that is always raised is whether we are going out on a limb, whether Australia is harsher. On this one in particular we have had a number of pieces of evidence that say this is quite a common standard. To the best of your knowledge, is that true? Do you have access to data that would show comparative rates?

Mr Hutchinson: Our system is quite different to most other systems.

Senator MOORE: The contributions systems.

Mr Hutchinson: Yes, generally they are contributory.

Senator MOORE: It is more a super system.

CHAIR: People pay their money in and they are getting their own money back, whereas in Australia we hand over other taxpayers' money .

Mr Hutchinson: Exactly. In the contributory systems often there is not an upper limit, in the sense that you contribute for as long as you contribute and that is your ultimate pension. New Zealand has a similar residence based system. They have 45 years as the basis for payment overseas.

Senator MOORE: So we have a goal there, Mr Hutchinson?

Mr Hutchinson: Sorry?

Senator MOORE: We have a goal of 45 years.

Mr Hutchinson: So yes—

Senator MOORE: That was offering an opinion, Mr Hutchinson.

Mr Hutchinson: Basically, yes, a person in Australia can accrue up to 49 years working off residence at the moment. It will be 51 years after pensioner age becomes 67 in 2023. I think the view is pretty widely accepted that 35 years is not an unreasonable period, given a person does not have to work or pay taxes or contribute at all—just has to live in Australia.

Senator MOORE: Once they have reached that 35 years, they can come in and out at will?

Mr Hutchinson: They can come in and out at will with 10 years. The general requirement for a full pension in Australia is 10 years' residence, at any age, but payments outside a base strictly on working life residence, which, despite the name, is only residence during what would be expected to be a person's working life, so residence between 16 and pension age. So, yes, providing a person has got their 10 years, they can come and go and get a proportional pension based on that 10 years. We do have agreements with 29 countries now, I think, under which people can claim a pension, having left Australia before pension age. Again, those pensions are almost universally paid based on the same approach.

Senator MOORE: This is just an interest question. What constitutes living here? So if you are coming backwards and forwards regularly—it is an issue for lots of people with family. We have also had issues raised about caring responsibilities for people who have to go in and out. What constitutes residence in that sense?

Mr Hutchinson: A person normally has to be an Australian citizen or a permanent visa holder. Then the arguably discretionary piece of the puzzle is to be considered residing in Australia—

Senator MOORE: Maintaining a residence?

Mr Hutchinson: From memory, there are seven criteria specified in the legislation. I will probably get it wrong.

Senator MOORE: Do not worry.

Mr Hutchinson: Accommodation, frequency of absences, economic and financial ties—

Senator MOORE: Even between the 25 years that we now have and the 35 proposed in this legislation—

Mr Hutchinson: There is no change to that.

Senator MOORE: Could be acquiring residency even if they are mobile?

Mr Hutchinson: That is correct.

Senator MOORE: Subject to the limitations in the legislation?

Mr Hutchinson: Yes.

CHAIR: We have here the officers responsible for schedules 4, 8 and 11, which were the items that Ms Root was talking about.

Senator SIEWERT: Have we done 11 yet?

CHAIR: No. We are waiting for you.

Senator SIEWERT: I beg your pardon. Could we go to 11? I think you were in the room when I was asking the question about whether any legislative changes would be required to achieve the outcomes in terms of the longevity products and making sure that those people that may be affected by this amendment would have other products to go to?

Mr Cavalli: I think that starts to get into some other issues around superannuation. I would start by saying that this measure is about the treatment of people's income streams by the social security system and all that this measure is doing is attempting to treat people with the same levels of assets in the same manner. I think your first question was whether the FPA was concerned that this would stop people taking out account-based income streams, we do not believe that will be the case. The main driver for people taking out account-based income streams is that they get that stream of income, but the main concession that they get is that it is tax free over the age of 60 when you are drawing down—and not only the money that you draw down but also the investments, the earnings, in the account are also tax free. So you do not pay any tax either on the draw down or on whatever income is made.

So we do not see that there will be any disincentives for people to take up these particular products. They are very flexible products and they have that very significant tax advantage. In terms of longevity, you are starting to get into some other issues about the sorts of forms of products that industry may or may not want to produce. Our objective, and what deeming does, is to treat all investment products the same way. So there is neutrality of treatment. In that regard, we would see that that is the main criteria.

Mr Joyce: I think, as Mr Cavalli said, the key thing is that we do not think this change will discourage the take-up of this product, so it sort of makes the rest of your question—

Senator SIEWERT: So, you think that the comments that the Financial Planning Association are making are—and I am not putting words into your mouth—are inaccurate, and that it will not actually put people off?

Senator MOORE: The department does not agree with the statements.

Mr Joyce: We have not actually seen the submission, but that is right, we think they will continue to be a popular product. As Mr Cavalli says, they are flexible and all these rules are doing is actually making a reasonable assessment of the income those products are generating.

CHAIR: Would it be reasonable to ask the department to have a quick look at it, Senator Siewert?

Senator SIEWERT: That is what I was wondering.

CHAIR: There has been a submission received from the Financial Planning Association and it is online, but they chose not to come along as witnesses. Before lunchtime tomorrow if you are able to have a quick look and provide any extra comments you think you might need to make, having read their submission, that would be helpful, Mr Cavalli.

Mr Cavalli: Yes.

Senator MOORE: Mr Joyce, what is your relationship in your area with the FIS officers that are out in the network of Human Services, providing information to people who are claiming payments? Do you have a linkage?

Mr Joyce: Obviously, the FIS officers are part of the DHS network, as you know, so when we are putting any sorts of new measures in, we will provide information to them.

Senator MOORE: Training packages and things like that?

Mr Joyce: And Q&A documents and the like, that they can then draw on to provide information.

Senator MOORE: But you provide the policy advice to them?

Mr Joyce: Yes, that is right.

Senator MOORE: It seems to me that these kinds of questions that are being raised by the FPA are the kinds of things that FIS officers are dealing with all the time, with people coming to see them saying, 'How do I handle this and what should I do?' I know they cannot give personal investment advice and all that stuff, but they can give people information about the impacts of decisions they would make. This would be the kind of stuff that the FPA are raising with which you would be familiar. It would be not that difficult, I would imagine, to respond. There are quite specific concerns. They are talking about access to products and disincentive for people to take up choices by this change. That is a fair enough summation, is it not? If we get that to you, would you mind just having a look at it and seeing whether that seems reasonable to you?

Mr Cavalli: Yes.

Senator SIEWERT: I think it is probably better if you look at the submission and give us any feedback on the it.

CHAIR: I am just wanting to confirm from the revised explanatory memorandum that schedule 4 is anticipated to save $50.8 million over four years. Is that still the case, Mr Hutchinson?

Mr Hutchinson: That is what I understand, yes.

CHAIR: Schedule 8, $80.5 million over three years, Mrs Robertson?

Ms Robertson: Yes.

CHAIR: And the deeming rules, $161.7 million over four years. That is our current view of what we will save by doing that.

Mr Cavalli: That is correct.

CHAIR: Thank you very much.

Senator SIEWERT: I realise that you have just said that you would take this on notice and reply but one of the points that is made twice is that it affects those on modest incomes more than others. At one point it says it will target those with the smallest superannuation balance. I presume that you disagree with that statement? If so, why?

Mr Cavalli: As I said before, what this measure actually does is provide equity with people who hold assets in the superannuation environment with people that hold assets in the non-superannuation environment. Do they give anything about what small superannuation—

CHAIR: They talk about people with superannuation, yes.

Mr Cavalli: What levels?

Senator SIEWERT: They give an example of someone with an account who invests in an account based pension and give a difference between $200,000 and $500,000.

Senator MOORE: Mr Cavalli, we know we have got a hard copy here somewhere and I think if you could see it you might have a better chance than us reading it out to you.

Mr Cavalli: Someone might be holding $200,000 in an account based income stream. Superannuation is just a vehicle; the assets that you hold in your superannuation account can be the same assets that someone, who has saved all their life, has decided to purchase directly. They might have decided to purchase shares and put some money into a managed investment—they are the same sorts of things you have in a superannuation account and an account based income stream. So you can have two people with $200,000, one who has saved in super and one who has saved outside of super. That person, because of the way the concessional rules work at the moment for people with account based income streams, would get a full age pension. A single person who has saved $200,000 and is receiving the age pension would receive $75.78 less age pension a fortnight than the other person. Their circumstances are exactly the same except one person has saved in superannuation, has gotten tax benefits, is receiving tax benefits—because it is tax free—but is getting a maximum rate age pension. That is the objective of this measure. The FPA is suggesting we are hitting people with moderate amounts of superannuation, but at the moment we are actually treating them a lot more concessionally than people who hold potentially the same assets outside of superannuation.

Mr Joyce: The people who hold the same assets directly might be a small businessman who sold their business and purchased shares for their retirement.

Senator SIEWERT: So the point you are making is that, while it may be hitting that person with a modest super, it actually puts them equal with a person—

Mr Cavalli: I guess they are doing a comparison to people who have got significant super, who have been assessed, I am assuming, under the assets test. But that is what the current assets test is designed to do. As Ms

Root said, it is about providing assistance based on peoples' needs. So if you have got $500,000, obviously you will have less need than someone with $200,000. But if people have got $200,000, they should be assessed the same way.

Mr Joyce: So it is a designed feature of the operation of the income and assets test that is creating the result that the FPA is demonstrating here because the assets test is the test coming into effect at much higher asset holdings. The key thing again, as Mr Cavalli was saying, is that when the FPA use the words 'we are hitting them', we are just assessing a reasonable level of income for what that product would be generating. We do not think the current test is effectively doing that—$200,000 is still a reasonable level of income; we might not be counting any income at all under the current test.

Senator SIEWERT: Thank you. If you could have a look at it and provide any other feedback, that would be appreciated.

Mr Cavalli: Yes.

Senator MOORE: The information you have just given us is more detailed than in any of the data we have had up until now. So to explain the impact, if we could get in writing the kind of information you have just given us verbally that would meet our needs.

Mr Cavalli: Yes.

[19:56]

CHAIR: I welcome further officers from the Department of Social Services and from the Department of the Treasury. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I remind you the Senate has resolved that an officer of the department of the Commonwealth or a state shall not be asked to give opinions on matters of policy and should be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only question is asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I now invite you to make a short opening statement and then members of that committee will be asking questions. We have here all the people related to the charities section, schedule 1A—am I correct in that? All right. Senator Siewert.

Senator SIEWERT: What is the rationale for delaying the implementation of the Charities Act?

Ms Woolley: The intention is to allow for further consultation on the legislation in the broader context of the government's other commitments around civil society.

Senator SIEWERT: I understand that there has been extensive consultation around it, in fact. I used to work for a not for profit and I remember being consulted—though that was a long time ago. What was the form of that consultation and why is more consultation needed?

Ms Woolley: To enable to government to have conversations with stakeholders in respect of the Charities Act, its intentions around the ACNC and the implementation of its commitments around civil society to see how all of these things intersect in the context of feedback from stakeholders. With the legislation due to commence in January, this enables a further period of time to talk about the mix of these issues with stakeholders.

Senator SIEWERT: What sorts of changes do you envisage would be needed to the Charities Act in order to deal with ACNC and civil society?

Ms Woolley: I guess, for an opportunity to see how, based on feedback from some stakeholders, the Charities Act may not be the most appropriate vehicle to be in place in the context of the construction of the ACNC and in the context of the government's agenda—thinking about all these issues together in the context of the government's agenda.

CHAIR: The minister has announced publicly that the ACNC will be disbanded and replaced by a centre of excellence, hasn't he?

Ms Woolley: That is correct.

Senator SIEWERT: Why would the Charities Act need to be amended? I can only think that it is about amending the Charities Act. At the moment the government says that it is delaying the implementation but, if you are doing more consultation around it, it seems to me to be fairly obvious that you are thinking of amending it. What would need to be amended in view of the ACNC going?

Ms Woolley: It would really be an opportunity to hear what stakeholders thought about it before it commences.

Senator SIEWERT: Surely an act does not need to be delayed in order for it to be amended down the track?

Ms Woolley: Though, if you wanted to look at those issues in context, the sequence of those things, you might—

Senator SIEWERT: What does the implementation of the Charities Act have to do with getting rid of ACNC?

Ms Woolley: I am not sure I can add anything further to the comments that I have made other than that these things are interrelated in terms of issues.

Senator SIEWERT: How? How is the definition of 'charity' and what it does interrelate with getting rid of ACNC?

Ms Woolley: I think there are intersections for people, for stakeholders, in the sector about how they see these issues connected in terms of the construct of that piece of legislation—how it operates, how it might be implemented by the ACNC, what role they might play in that, whether that construct continues into the future. In our conversations with stakeholders, they do see these things to be connected.

CHAIR: When is the new definition of 'charity' due to come into force if this legislation is not passed, Ms Woolley?

Ms Woolley: 1 January 2014.

CHAIR: So, any other changes around the ACNC and other aspects of the sector would be based on a definition that was put in place in contemplation of a system that the minister has now announced to be disbanded. Is that one way of understanding it?

Senator SIEWERT: Tell me examples of that.

Ms Woolley: I think that the connections are related to the way in which the sector, or this issue, is regulated, the views of different stakeholders—

Senator SIEWERT: Which stakeholders have called for the delay of the implementation of the Charities Act?

Ms Woolley: I do not have that.

Senator SIEWERT: I know a number that have called for getting rid of ACNC. I do not agree with them, but I have heard of them. I have not had anyone lobby me about delaying the implementation of the Charities Act.

CHAIR: Ms Berkeley, did you have something you want to add on that?

Ms Berkeley: I was just going to make the comment about interactions between the Charities Act and the ACNC. It is the ACNC that will administer the Charities Act and make decisions as to which entities are or are not charities.

Senator SIEWERT: That is what it is about. It is about not enabling the ACNC to do some work, in terms of starting to implement. Is that correct?

CHAIR: You would not let an organisation you are about to disband start work. Is that what you are saying the problem is?

Senator SIEWERT: No, it is not about the organisation. This is about the definition of 'charities' and is about charities. The government is prepared to delay the implementation of the Charities Act so that it can do away with ACNC. It does not want to enable ACNC to do any work, so they can prove it does not do anything.

Ms Piper: They just wanted to take more opportunity to do further consultation. I suppose that is consultation in the context of the announcement that the ACNC was going to be removed. Charities have not had formal consultation, I suppose, on the existence of the Charities Act, or the environment in which they are operating since the government announced that intention, and perhaps that is the opportunity they are looking for, to discuss further the Charities Act, and they have announced this to delay that.

Senator SIEWERT: How is it going to be implemented?

Ms Piper: It is just an opportunity for further consultation.

Senator SIEWERT: In the process the ACNC can surely start the implementation of the Charities Act. Do you intend changing anything in the Charities Act?

Ms Woolley: These are all matters for consultation.

Senator SIEWERT: What areas in the Charities Act do you think have been flagged for change?

Ms Piper: It is impossible to know at this stage and I think that is why the government has asked for more consultations, to see if there are any areas and possibly to flush out areas that they are interested in.

Senator SIEWERT: So why can you not implement it and then do the consultation?

Ms Piper: It is a decision of government to make the delay.

Senator SIEWERT: Was it made on advice that you gave, or did the government decide they were going to delay the implementation?

Ms Piper: I do not have information on that.

Senator SIEWERT: Can anyone answer that? I am not asking what advice you gave, I am asking did you give advice to government?

Ms Woolley: In the course of briefing a new government on a range of issues, including their commitments, advice is given in that context.

Senator CAROL BROWN: I was not here for a lot of the evidence that you have probably given but there was a lot of consultation undertaken in the formulation of the legislation that currently stands. I fail to see how further consultation is going to reach those people, the stakeholders, that are involved in this. I think we know what their views are. Do you have a consultation plan?

Ms Woolley: There is no detail at this stage available about the consultation but there will be detail made available as that comes to hand.

Mr Brown: Do you have a timeline?

Ms Woolley: In the new year would be the time for consultation.

CHAIR: One presumes that given the definition will be delayed until 1 September, it is before then.

Senator SIEWERT: That is a wild assumption pre-empting what the Senate is going to do!

Senator CAROL BROWN: The new year, to me, is the first three months, maybe. What does 'the new year', mean to you? Obviously not before February.

Ms Woolley: That is right, given that many community organisations over December and January are not available for consultation. The intention would be that soon after that there would be a process of consultation.

Senator CAROL BROWN: Who do you propose to consult with? The same group of stakeholders that have been consulted for years over this piece of legislation?

Ms Woolley: The detail of the consultation is not settled at this time.

CHAIR: The point has been made, Senator Brown, that they would be consulting on this and the development of a centre for excellence, not this and a commission.

Senator SIEWERT: What role does a centre of excellence have in regulating charities?

Ms Woolley: These are matters that are the subject of the consultation, in terms of working out the role of the centre of excellence in the context of these considerations.

Senator CAROL BROWN: So these consultations are around the role of a centre of excellence?

Ms Woolley: That is right. They are around the range of commitments that they are aligned to in the beginning around the civil society agenda, yes.

CHAIR: As I understood it, part of this was to consider whether states and territories should continue to be the bodies that would register charities. Is that your understanding, Ms Woolley?

Ms Woolley: I do not think decisions have been made about the exact scope.

Senator SIEWERT: Geez, that is cutting red tape—not!

Senator CAROL BROWN: When can we expect some sort of terms of reference around this consultation? Probably around February will we expect some understanding of the breadth of the issues that will come out of consultation?

Ms Woolley: Yes.

Senator CAROL BROWN: Do you have any further information that you can share with us around that? Any sort of timeline you are looking to complete those consultations?

Ms Woolley: No, not at this time. No.

CHAIR: Can I just hop in here with a couple of questions? They are not related to what you have been talking about. The membership of the ACNC board, Ms Woolley, are you able to tell me who they are?

Ms Woolley: I would have to take that on notice; I do not have that information.

CHAIR: One thing I was just trying to confirm is whether Mr David Crosby is on the board. If you could let us know as soon as you can, that would be fine. Ms Berkeley, it has been put to me by some people that the definitions that would come into force if this legislation were not passed on 1 January are very broad, and could lead to a lot of organisations that would not currently be considered to undertake charitable work achieving tax-deductible status. Are you able to comment on those views?

Ms Berkeley: The explanatory memorandum to the Charities Bill when it was debated in the parliament last year set out what the differences are between the common-law definition of charities that currently applies, and the statutory definition of charity that is contemplated by the Charities Act. That explanatory memorandum makes it clear that the definitions are in fact very close and there are only a few areas in which they do digress, so I do not know that I would agree with the comment that there is a wide difference between the two definitions. Certainly the stated intention of that explanatory memorandum was that the statutory definition would essentially reflect the existing common-law position.

CHAIR: The revised explanatory memorandum for this bill says that the financial implications of the charities amendment are unquantifiable in 2013-14 and 2014-15. Am I to take it from what you have just said that the 'unquantifiable' is more at the 'not very much' end rather than 'huge'?

Ms Berkeley: I think it expressly says unquantifiable but small, and that reflects a reversal given that this current bill contemplates a delay—

CHAIR: It does not actually say 'or small' in the revised EM, but I am happy to add that in.

Ms Berkeley: Certainly there is no anticipation that it was going to be anything other than small.

Senator CAROL BROWN: If this has already been answered just let me know: has there been any consultation with the states and territories over the proposals in this bill to do with the ACNC? Have you talked to the states and territories about the direction that the government wants to take?

CHAIR: But this bill is not about the ACNC, is it?

Senator SIEWERT: It has just been directly linked to the ACNC.

Senator CAROL BROWN: Yes, it is about postponing the enactment—so has there been any discussion with the states and territories?

Ms Woolley: In relation to the delay of this? Not that I am aware of. I am happy to take that on notice.

Ms Berkeley: Not that we are aware of.

Senator CAROL BROWN: Also can you take on notice whether the states and territories have themselves indicated any interest in this bill? Were there any concerns or any issues?

Ms Woolley: Sure. I am anticipating that the consultation process would enable them to have an opportunity to comment on this.

Senator CAROL BROWN: So no-one has been consulted and the states and territories have not been consulted. I just do not understand why we would defer something when there has been no consultation.

CHAIR: Perhaps because there has not been consultation yet.

Senator CAROL BROWN: Well, there has been plenty of consultation on the legislation. At least from 2001 that we know we started to talk about it.

Senator SIEWERT: But the definition of 'charity' has been under discussion for years. That is what witnesses told us yesterday.

Senator CAROL BROWN: There has been no consultation on going down this path.

Ms Woolley: This represents the opportunity, I guess, for consultation. The rationale for the delay is to enable that discussion to occur in the context of the other commitments around the ACNC and the Centre for Excellence, so that is the logic of the delay.

Senator MOORE: Ms Woolley, you just said that you believe the rationale for this particular delay is to have consultation around the other changes that have been proposed. Nowhere in the information, which we have to this date around the bill, has that been spelt out.

Ms Woolley: There have been a number of media comments and commitments by the minister to that effect, talking about the mix of these issues and enabling conversation or consultation.

Senator MOORE: Do we have a copy of that media release? It certainly did not come to me.

CHAIR: The 'ACNC replacement unveiled' was today's media release. It is not very good quality.

Senator MOORE: Is that where it spells it out?

CHAIR: Well, sorry, this is in today's *Pro Bono* news, but I think it was done by the minister—you might be able to tell me—a little earlier.

Ms Woolley: I have had a look at the document you are talking about, and I think there may be direct comments from the minister.

Senator MOORE: Well can we find out, because you are from the department. I know that you are not automatically involved in the ministerial press releases, but if we could find out what media releases have been put out by the minister, and the dates, and then we can get copies of them.

Ms Woolley: The other thing I would draw your attention to is in the explanatory memorandum. There is a reference to the delay allowing for further consultation on the legislation in the broader context of the government's other commitments in relation to the civil sector.

Senator MOORE: That is a very general thing. Your comment was about the ACNC.

CHAIR: Going back to election commitments, the ACNC was to be disbanded, and there would be consultation around how the sector functions.

Senator MOORE: Yes, but for the purposes of this bill we are struggling with why the definitional aspect is now linked in with the ACNC. We are just trying to get that clear. I am sorry I came in late, I had to talk about asbestos. If we could get those media releases that would be very useful, because I have not seen them. Also, at this stage, do you have a schedule for consultation?

Ms Woolley: Not at this stage.

Senator MOORE: Between now and?

Ms Woolley: February.

CHAIR: They are anticipating that in February they will have the consultations' schedule and terms of reference. Is that right, Ms Woolley?

Ms Woolley: Yes.

CHAIR: Thank you very much for appearing. Those officers from the Treasury were specific to this particular charities area. As I understand it there are no further questions for Treasury, is that right? Treasury, go home, and thank you very much.

[20:20]

CHAIR: I welcome further officers from the Department of Social Services. You are comfortable that I assume that you have heard all the stuff about parliamentary privilege and the like?

Mr Palmer: Yes.

CHAIR: Do either of you have an opening statement?

Mr Palmer: No.

CHAIR: Senator Moore.

Senator MOORE: I am fascinated by these titles—National Gambling Unit, I like that. In terms of the process, my understanding of what we have before us is a reversal of the range of issues that were in place in the previous legislation—so everything that was in the previous gambling legislation is being recommended to be changed. Is that right?

Mr Palmer: Would it be easier for us to go through the measures, because not everything in the—

Senator MOORE: Okay. And if you have a table there, we would very much like to see it, Mr Palmer.

Mr Palmer: I have a table with my notes on it.

Senator MOORE: We would like a table a lot. That would be really useful.

Mr Palmer: We can provide that .

Senator MOORE: But if you could just go through them for the record, that would be great.

Ms Laffan: With respect to precommitment, there is a repeal but it is to be replaced with the government's commitment. The government has committed to working with a range of stakeholders to develop and implement a voluntary precommitment scheme in venues.

Senator MOORE: I will come back to that, but continue.

Ms Laffan: With regard to the gaming machine capability referred to in the current legislation as manufacture and importation requirements, again that is for repeal, but also to be replaced with the government's commitment to working with state and territory governments and the gaming industry to ensure machines are capable of

supporting venue-based voluntary precommitment. With respect to dynamic warnings, the bill proposes the repeal of those. With the ATM measures, the bill proposes the repeal. The government considers state and territory governments are best placed to regulate ATMs in gaming venues. The regulator is proposed for repeal, as is the supervisory levy. With respect to the ACT trial, the trial had not yet commenced. Agreement was not reached. The trial did not require legislation to take place, but for clarity purposes references to the trial are proposed to be repealed from the act. Productivity Commission reviews are for repeal, as matters legislated to be referred to the Productivity Commission are no longer relevant or are inconsistent with the government's policy. With respect to the Australian Gambling Research Centre, there is no amendment, so the Australian Gambling Research Centre is to be retained.

Senator MOORE: That is the full range? If we could get that in a table form, that would be very useful. I am interested in what we have in front of us: the only commitment is the one you read out first, which is about going into an effective consultation process. Can you get any indication from what is before you of what is the form of that consultation process, with whom is there going to be consultation, and is there any form of advisory group as there was previously—there was a National Gambling Advisory something that was actually looking over the whole process. Do you have any detail of that kind?

Mr Palmer: In terms of the specifics of how the consultations were run, that is still to be determined.

Senator MOORE: Is there a time frame on that?

Mr Palmer: My understanding is that in the new year we will start the process of consultations. In clause 20 of schedule 1 of the bill, it goes through that we would be looking at consulting with states and territories, the gaming industry, academics and community sectors—so a wide range of consultations.

Senator MOORE: Does the community sector include NGOs?

Mr Palmer: Yes, it would.

Senator MOORE: And does it include individual support groups as were on the previous advisory committee?

Mr Palmer: I do not know if it will include the specific same bodies that were in the previous arrangement, but the views of a wide range of people are important in the process.

Senator MOORE: In the bowels of the department is there a full list of the kinds of people and organisations that had previously been consulted?

Mr Palmer: I do not really wish to comment on the bowels of the department.

Senator MOORE: The bowels of the department, in the sense of somewhere deep within the department. It is a common phrase. Do you have a contact list?

Ms Laffan: We do have a contact list of stakeholders who have demonstrated an interest in the past and with whom we have had dealings with in the past.

Senator MOORE: So, all that knowledge is there and can just be reactivated?

Mr Palmer: Yes.

Senator MOORE: In terms of the process we would have hoped to have more information about that in the new year.

Mr Palmer: Yes.

Senator MOORE: This is similar to what we heard from the Treasury group about the charities, that it would be in the new year, but there is no particular date that you have yet?

Mr Palmer: No.

Senator MOORE: We talked about the consultation with the states and territories and the industry. That was in terms of the particular changes to the machinery to the industry. Is the list that was read out complete? Are there openings for further consultation with academics and people who also have knowledge in this area, such as the people who go to the conferences on gambling?

Ms Laffan: Are you asking about what the consultations would be focused on or who we would be consulting with?

Senator MOORE: Further down when we talked about something being appealed.

Ms Laffan: About the capability requirements?

Senator MOORE: Yes, that is right.

Ms Laffan: I would assume that the discussion on capability requirements would happen at the same time as those.

Senator MOORE: There are no separate areas of consultation. It would be concurrent.

Ms Laffan: Not for those two measures, no.

Mr Palmer: The two measures are very closely linked.

Senator MOORE: In relation to the process in terms of an end date, in section 20 it does not talk about an end date.

Mr Palmer: An end date has not been set.

Senator MOORE: The areas that have been wiped out previously had budget linked to it. With the elements that have been retained, such as the research council, is there a budget line still attached to that?

Ms Laffan: There is. The Australian Institute of Family Studies has separately appropriated funding for that purpose, and there has been no impact on that.

Senator MOORE: Okay. So the existing funding stream through the AIFS is being maintained at this stage.

Ms Laffan: That is correct.

Senator MOORE: Do you have a figure for the savings that has come out through the things that have been mentioned so far in gambling?

Mr Palmer: No, we do not at the moment.

Senator SIEWERT: I just have one issue, about the ATM. My understanding, from what you have just said, is that the Commonwealth believes that it is more appropriate for states to regulate the ATM. Have you done any work with the states about whether they are likely to take up that particular measure?

Mr Palmer: The states already regulate.

Senator SIEWERT: I am aware of Victoria.

Ms Laffan: All state and territory governments have implemented a ban on ATMs from gaming areas in hotels and clubs. All states and territories also prohibit gaming venue operators offering access to credit to a patron for gambling purposes in relation to land based gambling, that is, people are unable to use a credit card in a gaming venue. You mentioned Victoria. Tasmania has a ban on ATMs in all hotels and club gaming venues, and a $400 ATM withdrawal limit in casinos. In Western Australia's casinos, ATMs must be 40 metres from the entrance to any gaming area, unless the ATM has a $400 limit per customer per day. The ACT has a $250 per day ATM withdrawal limit commencing on 1 February next year. South Australia has a $200 dollar daily withdrawal limit on ATMs in gaming venues.

Senator MOORE: And the unmentioned states have no restrictions?

Ms Laffan: Other than the credit card that I mentioned before, and with regard to the placement of ATMs in gaming venues.

Senator MOORE: So they cannot be inside a gaming area or a gaming building.

Mr Palmer: They can be within the building.

Senator MOORE: Can we get that in table form as well?

Mr Palmer: Yes, we can provide that.

Senator MOORE: My understanding is that COAG worked together until very recently and there was a segment of COAG that looked at gambling. Is that right?

Ms Laffan: There was a ministerial council on gambling. I am sorry, I do not know the correct name. **There was a select council as well.**

CHAIR: And that was social services ministers?

Ms Laffan: There was a COAG Select Council on Gambling Reform, and the remit of that select council expired in December 2011.

Senator MOORE: And at this stage there is nothing in the current information that indicates the reactivation of such a body?

Ms Laffan: Not currently, although there are commitments about the consultation with state and territory governments.

Senator MOORE: Yes.

Ms Laffan: But, for that precise mechanism, no.

Senator MOORE: I know that had a general remit of gambling but, on the specific process in which ATM restrictions were agreed and discussed, was that through that or through another area?

Ms Laffan: Was that discussed in a—

Senator MOORE: Yes. There was discussion around ATMs, which was real. Was that through that process on gambling or was it through financial restrictions or some other grouping?

Ms Laffan: I am not sure I understand the question, but states and territories independently applied these restrictions on ATMs. Potentially there was some discussion too.

Senator MOORE: Yes. I am particularly interested to know whether the discussions around ATM access in venues were linked to the discussion on gambling which was then done through the COAG process. I am trying to find out whether the ATM restrictions that were already in place and have changed a bit over the years were a particular part of the discussion at that—

Ms Laffan: Whether they were as a result of those?

Senator MOORE: Yes.

Mr Palmer: We would have to find out. We do not have that knowledge here.

Senator MOORE: Can you check that. You do not have to get back to us by tomorrow; this is an ongoing area. But, as one of the particular areas in the previous legislation was around the limitation to ATMs at the level which was already in the ACT and South Australia, I think—South Australia was a $200—

Ms Laffan: South Australia's was $200. The ACT's was $250, but that commences on 1 February.

Senator MOORE: Yes, so they had already come to around the level that was in the federal area. The other states that you mentioned had higher levels.

Mr Palmer: That is correct.

Senator MOORE: And some states had no restriction at all.

Ms Laffan: Yes.

Mr Palmer: Can I just be clear: are you asking whether these ATM measures were discussed in that Commonwealth-state forum?

Senator MOORE: Yes—whether this particular discussion point was linked to the pre-existing COAG process that looked at gambling. This committee has done two or three inquiries into gambling, and at each of them this ATM measure came up in different ways, so I am trying to track back where it came from. Thank you.

CHAIR: I think you have both had and presumably continue to have discussions with state and territory counterparts around this area.

Mr Palmer: Yes.

CHAIR: There was a suggestion made here yesterday that the states might in fact be behaving in a less than honest fashion because of the revenues that they receive from gaming. Are either of you able to characterise your relationship with the states in view of that comment?

Mr Palmer: I do not think we can make any comment on those comments that were made yesterday.

CHAIR: Thank you, Mr Palmer. Thank you, witnesses. Senator Siewert, do you want witnesses on the increase from 25 to 35?

Senator SIEWERT: Do you mean schedule 3?

CHAIR: We have done schedules 4, 8 and 11, so we are up to the interest charge. Which schedule is that?

Senator SIEWERT: I only have a short question on that.

CHAIR: Schedule 3, family tax benefit and eligibility rules? Is that who is on their way?

Senator SIEWERT: This is the 17-year-olds.

[20:34]

CHAIR: There is one short question on 3.

Senator MOORE: Is it one of your questions, Chair?

CHAIR: No, it is one of Senator Siewert's questions. Hers are as short as mine sometimes.

Senator SIEWERT: We are now discussing, I think under schedule 3, the measure that cuts off payments at the end of the school year. Once they finish school at the end of year 12, this cuts it off?

Ms Lindenmayer: This measure supports families with children up until the end of the calendar year that they finish year 12.

Senator SIEWERT: Effectively regardless of age?

Ms Lindenmayer: Regardless of age.

Senator SIEWERT: If they are older than the normal age for finishing year 12, they will still be carried through to when they finish year 12?

Ms Lindenmayer: They will be carried through till the end of the calendar year they turn 19.

Senator SIEWERT: If they are doing year 12?

Ms Lindenmayer: Yes.

Senator MOORE: You say they are eligible til the end of the calendar year, which will be 31 December. When is the last payment in the cycle?

Ms Lindenmayer: I think payment cycles vary but they would be paid up until that date—31 December.

Senator MOORE: Is it prepaid or postpaid?

Ms Lindenmayer: It is paid in arrears.

Senator MOORE: So with 31 December you would be likely to get a payment sometime in January, and that would be the last one. Is that how in arrears works?

Ms Lindenmayer: Yes, that is my understanding.

Senator MOORE: So the last payment would be some time after Christmas?

Ms Lindenmayer: Yes.

Senator SIEWERT: My understanding is that the amount of money saved is $76 million over four years, is that correct?

Ms Lindenmayer: That is correct.

Senator SIEWERT: Is that on that particular measure or is that overall to the budget?

Ms Lindenmayer: It is for this particular measure. As an example, you might have a 17-year-old who is finishing school at the moment, so in December this year, but they do not turn 18 until March. Their payment would cease at the end of December this year, which is in line with when they finish school. So they are finished year 12 rather than continuing the payment until their 18th birthday.

Senator SIEWERT: Then they have to go through the whole process of approved study—

Ms Lindenmayer: They protest their eligibility for youth allowance.

Senator SIEWERT: So how long a period is there where families are not getting support in one way or another?

Ms Lindenmayer: My understanding is they could claim youth allowance from I January. They could lodge their intent to claim youth allowance and if they meet the eligibility criteria for youth allowance they will be eligible for youth allowance from January.

CHAIR: Has there been the potential for people to double up?

Ms Lindenmayer: No, you cannot receive both payments.

Senator SIEWERT: So they finish in the calendar year ending 31 December, and you are saying they could be prepared enough to then claim youth allowance from 1 January?

Ms Lindenmayer: They could lodge their intent to claim with Centrelink, yes.

Senator MOORE: Can you remind us of the eligibility for youth allowance—age, income and all that. What do we have to do to get youth allowance?

Ms Lindenmayer: I am not the expert on the youth allowance, but my understanding with youth allowance is that they need to be full-time students or apprentices aged between 16 and 24, they could be job seekers aged under 22 looking for work, and there is a parental income test and a personal income test.

Senator MOORE: So you could easily be a job seeker. You could end up at the end of December and put your claim into Centrelink and start being a job seeker. That would be a relatively straight forward claim. But if you were looking at taking up study, your eligibility would only be once the course begins—is that right?

Ms Lindenmayer: I cannot answer that question.

Senator MOORE: Can anyone answer that question? We are trying to identify the—

Ms Lindenmayer: I am not a youth.

Senator MOORE: I know, but we are trying to identify the gaps. You said that you could actually lodge your intent to claim. So at the end of the calendar year, 31 December, you finish school, and if you intend to go into a study situation in the next year, you may get your results and your HECS offer in late December—I am looking at the first possible way. You may get that, but your eligibility to get the payment would only be from when you start the course—is that right?

Mr Caddick: Oliver Caddick, Director of the Student Payment Program Performance Team in Department of Social Services.

Senator MOORE: This is your area, Mr Caddick?

Mr Caddick: This is, yes.

Senator MOORE: When are you eligible?

Mr Caddick: We pay on intent in youth allowance.

Senator MOORE: So you do not have to have actually started the course?

Mr Caddick: That is correct. So there can be a seamless transition between family tax benefit and youth allowance as a student.

Senator MOORE: If you have your offer and are going to study—

Mr Caddick: The offer is not really relevant. We pay on intent to study—

Senator MOORE: I did not know that.

Mr Caddick: at that point for people transitioning between school and—

Senator MOORE: Higher education of any kind.

Mr Caddick: and tertiary education.

Senator SIEWERT: You do not have to have been accepted into a course?

Mr Caddick: That is correct, not at that point.

CHAIR: In most cases, would transition officers or other school staff tell students about youth allowance when they tell them all the other things that happen in the big bad world?

Mr Caddick: Now we are moving away from my area of expertise, but I think that would depend on the school or the institution. I am sure that happens in some cases in some schools.

CHAIR: Thank you.

Member of the committee interjecting—

CHAIR: I was just asking if eligibility for youth allowance would be something that students would be told about, the things you can get when you leave school.

Senator SIEWERT: Certain schools, perhaps; I do not think all schools.

Senator MOORE: Basically, it would be knowing your entitlements and knowing your options. I know DSS does not do that, but Centrelink does.

Mr Caddick: Centrelink would do that as well. I am sure that Centrelink does inform—and this is where you guys might be able to help me—families that there will be an information campaign around the measure. Centrelink will certainly be informing families about eligibility for youth allowance.

Ms Lindenmayer: There is information on the DHS website—

Senator SIEWERT: Yes, there is. I have seen that.

Ms Lindenmayer: For students, families by cohort. So there is information available.

Senator MOORE: If you pay on intent and the intent is not fulfilled, is an overpayment created?

Mr Caddick: No.

Senator SIEWERT: Do they get charged the interest?

Mr Caddick: No, that is not right.

CHAIR: No, we just chop their heads off straightaway.

Senator MOORE: What does happen, Mr Caddick, in that case? If you pay on intent, and someone with good intent puts their claim in, knowing the system, and then for whatever purpose does not then go into a study circumstance, what happens?

Mr Caddick: Whether they have a place is uncertain and they tell Centrelink about their intent, they will pay on intent, provided they inform Centrelink of their circumstances, they will not acquire a debt.

Senator MOORE: But they could be receiving money for two or three months by the time they have actually—

Witness interjecting—

Senator MOORE: If they come to see the department in January—

Mr Caddick: We do not pay on completely vague intents, but we do pay on an intent to study or an intent to enrol in university.

Senator SIEWERT: Can we double-check what intent does mean? I am sure it has not changed that much since we were there. For example, when my son was applying for university, he did not get an offer until after the new year. You get your results after Christmas and you do not get an offer until after new year.

Mr Caddick: We do currently pay for that period on intent.

Senator SIEWERT: So if you have actually lodged an application for various institutions, that counts as intent?

Mr Caddick: It certainly does, yes.

Senator SIEWERT: Okay. What happens for those who end up not getting an offer? Bearing in mind that there are two or three rounds and sometimes you do not get an offer until early February, I think it is still the same, and you miss out?

Mr Caddick: We still pay you then on intent. At some point, if it becomes impossible for the person to study, they would be expected to notify of their change in circumstances. At that point, it is possible that they could become a job seeker. But, provided they are pursuing the pathway to study, we will pay on intent while they are awaiting offers.

Senator SIEWERT: It is not their fault if they miss out. They then need to notify that have missed out. What happens if they take up the job seeker path?

Mr Caddick: If there were no educational options open to them in tertiary education, yes.

Senator SIEWERT: If they decided to apply for TAFE within that period, would that be covered?

Mr Caddick: I believe it would. Yes, it would cover their intent, but bearing in mind their intent must be for full-time study.

Senator MOORE: Do you happen to have the figures for the current youth allowance versus job seeker allowances?

Mr Caddick: In terms of the rate of payment—

Mr Kimber: In terms of students and youth allowance, there is a range of rates, depending on individual circumstances. Under 18 at home, it is $223 per fortnight and over 18-plus at home, is $268.20 a fortnight.

Senator MOORE: Is that the full payment—that they have met all the criteria that Ms Lindenmayer talked about?

Mr Kimber: Yes, that is right.

Senator MOORE: What about job seekers?

Mr Kimber: Youth allowance other for job seekers, under 18 at home is $223 and 18 to 21 at home is $268.

Senator MOORE: It is very similar.

Ms Lindenmayer: To clarify, I only mentioned two of the eligibility criteria. There were probably others.

Senator MOORE: Parental income test, self-income test and you have proven what you are going to do—study or seeking work.

Ms Lindenmayer: That is my understanding.

Senator SIEWERT: I want to go back to notification. You are saying it is available through school, but surely the parent will be notified that their family tax benefit is going to cease at the end of the calendar year in which their child finishes year12.

Ms Lindenmayer: They will get notification from DHS, yes.

Senator SIEWERT: Will that automatically include the issues we have just dealt with?

Ms Lindenmayer: It is my understanding, but I would like to clarify that.

Senator SIEWERT: If you could, it would be appreciated. Are the eligibility criteria around parental eligibility different to those for the family tax benefit?

Ms Lindenmayer: Yes.

Senator SIEWERT: So there is no guarantee that a person intending to study will receive youth allowance even though their parents are receiving the family tax benefit.

Ms Lindenmayer: That is correct.

Senator SIEWERT: There is a gap. Some of the savings will be picked up paying the person youth allowance, so it is a case of moving payments around. Is there potential saving where the person is not eligible for youth allowance but their parent would have been getting family tax benefit for them?

Ms Lindenmayer: Yes, that is correct.

Senator SIEWERT: Do we know how much that is?

CHAIR: That would be that amount.

Senator SIEWERT: No. That is just the amount that is saved through this measure. That is what I understood from the answer that you gave me previously.

CHAIR: Are you asking whether there will be a cost to the youth allowance from this measure?

Senator SIEWERT: I am asking what the net saving is.

CHAIR: Do you understand that, Ms Lindenmayer? The question is whether there is a gross or a net saving?

Ms Lindenmayer: It is a net saving. This is a saving.

Senator SIEWERT: The $76.6 million—

Ms Lindenmayer: Over four years is a saving.

Senator SIEWERT: For family tax benefit?

Ms Lindenmayer: For family tax benefit, but it includes taking into account that some students will move to youth allowance.

Senator SIEWERT: Okay. From the answer I had previously, I understood it was just about family tax benefit and did not take into account youth allowance.

Ms Lindenmayer: No, it does.

Senator SIEWERT: Thank you.

CHAIR: We have completed schedule 3. Thank you very much, officers. We now move to schedule 5, interest charges, primarily for student debts. Do either of you have an opening statement.

Mr Kimber: No.

CHAIR: Okay. We will go to questions.

Senator SIEWERT: What are the circumstances in which this provision would be invoked? What are the criteria and assessment processes for this to be invoked? I understand it would be invoked, that they will be charged, where students refuse to pay but are not unable to pay.

Mr Caddick: Firstly, the measure primarily and in its entirety on implementation focuses on ex-recipients, so it is not really students we are talking about in the measure. It is former students who are no longer on income support, so these are former students who are employed.

Senator SIEWERT: When does the interest start accumulating?

Mr Caddick: Where a debt is raised, the person will receive a notice that they have 28 days to enter into an agreement to repay the debt. If they either fail to respond to that notice or fail to negotiate an agreement then interest will start from the 29th day.

Senator SIEWERT: That is if they do not respond or stop paying?

Mr Caddick: Yes.

Senator MOORE: How do they appeal?

Mr Caddick: All of the provisions in the bill would be subject to full merits review, including through the SSAT, the AAT—

Senator MOORE: So if they were going through an appeal process, whichever stream of appeal process, they would not incur the interest rate, that would be frozen pending the appeal?

Mr Caddick: That is correct.

Mr Kimber: Usually there is an internal DHS review, social security tribunal, administrative appeals—yes.

Senator SIEWERT: Some of the issues raised earlier in evidence—I do not know if you heard this—were around people moving after they finished studying and being hard to track down, and there was a range of other issues raised. How is that take into account?

Mr Caddick: First off, I would say that people are under a notification obligation to inform DHS of a change of circumstances. If they have a debt that they have been notified of and they owe DHS, or owe the government and the community the money then they are under a notification obligation to notify of any change in address. Having said that, if a significant period of time has elapsed I do understand there is case law and provisions within the legislation around notification. Again, they would also be subject to appeal as well.

Senator SIEWERT: So if the notification somehow got lost, they could use that as a basis for an appeal?

CHAIR: If they went overseas for five years, for example.

Mr Caddick: I would not want to give any sort of cut and dried answer there, simply because it would depend on the circumstances. The interest charge itself is an ordinary social security debt under the social security legislation, so it is subject to special circumstances waiver provisions. So if there was a genuinely special reason why the person had not notified or it had got lost, as you say, then that could be taken into account under the legislation.

CHAIR: And if you were not working or did not have an income?

Mr Caddick: I imagine if you did not have an income you would probably be on income support, in which case you would be subject to the withholdings regime and the interest issue does not arise because it does not apply to people who are subject to withholdings from income support or family payment.

Senator SIEWERT: The debt would be subject to withholding, you mean?

Mr Caddick: Indeed, as it is at the moment. And that is not something we are touching here.

CHAIR: Are you able to give us a sense of the quantum of loans that are involved and what the interest owing and whatever is—\?

Mr Kimber: In terms of ex-recipients, there are something in the order of 33,000 debts held by around about 22,000 debtors—so there are some debtors who have more than one debt—and there is around $72 million owed to the Commonwealth.

CHAIR: Wow. And that is 33,000 debts out of millions—

Mr Kimber: There are about 96,000 student debts held by about 65,000 debtors.

CHAIR: So you are telling me that a third of the money from students is outstanding—have I misunderstood that?

Mr Caddick: There is about $205 million outstanding in the debt base for students. About $114 million of that is held by ex-recipients, and about $72 million of that is not under recovery.

Senator MOORE: What does that mean?

Mr Caddick: It means there is no recovering it.

Senator MOORE: It has just been waived, or—

Mr Caddick: No, it has not been waived, it is just not being recovered.

CHAIR: Because you cannot find the person to recover it, or—

Mr Caddick: Or because they just do not want to.

CHAIR: They do not want to get involved in paying it back, is that what you are saying?

Mr Caddick: Yes. There are mechanisms, as some of you would be aware, to recover the debt through garnisheeing from wages, tax returns, et cetera, but those options are not always available in all circumstances. Recovery through the courts is an available option to DHS as well, but that is incredibly expensive.

CHAIR: How many people are there right now that you would choose to charge interest on, and how much do they owe that this legislation would cover?

Mr Kimber: It will target those that are not in any sort of recovery arrangement. There is $72 million outstanding that is not subject to any recovery arrangements.

CHAIR: And you do not know how many people it is?

Mr Kimber: It is 22,000, and there are about 33,000 debts.

Senator SIEWERT: I understand that there are existing provisions to charge interest.

Mr Caddick: Yes; they are not used at the moment.

Senator SIEWERT: Why not?

Mr Caddick: They were suspended, as I understand, in about 2005.

Senator SIEWERT: Why was that?

Mr Caddick: That would have been a decision of government. I am not aware of the particular details.

Senator SIEWERT: So 2005—that was the previous previous mob! I do not know the detail of those provisions or why they were suspended, so are these the same as those provisions?

Mr Kimber: No, they are different. They are designed differently. Those provisions go back, I think, to the late 1990s. Originally there was a penalty interest imposed of around about 20 per cent. That was in place from about 1999 to about 2002-03, I understand. Then that was reduced to three per cent from about 2003 through to 2005. The first one was obviously seen, in commentary that was around, as very punitive and close to credit card rates. The second one was obviously too low to have any sort of incentive effect in terms of encouraging people to enter into a repayment arrangement. As I understand, it was suspended from 2005 onwards. This is designed differently. This is a general interest charge that is fixed against the Treasury bill rate plus seven per cent. It uses the exact same formula as the ATO uses for a general interest charge for tax debts.

CHAIR: Tax debts?

Mr Kimber: That is actually in the legislation.

CHAIR: In fact we are treating these particular social welfare debts in the same way that we treat taxpayers who do not pay back money.

Mr Caddick: Not entirely. We are somewhat more generous in the sense that a debtor who has one of these social services debts will be able to escape the interest charge completely through entering into and honouring a repayment arrangement. While tax does have some capacity to remit, which is the term they use, the remission of their interest charge, generally speaking, if you are late paying your tax you are going to have to pay the interest. It operates similarly to credit card debt.

CHAIR: That is why there is a saving of $33.5 million over three years in the EM, yet you are saying there are $73 million worth of debts outstanding. If people, because of the threat, for want of a better word, of the interest charge, the incentive, of having to pay an interest charge enter into an agreement to pay you back, then they do not pay an interest charge.

Mr Kimber: That is correct.

Senator SIEWERT: In relation to the 24,000 that are not under any recovery arrangements, is there an assumption that once the interest is able to be charged they will suddenly start paying?

Mr Caddick: There is an assumption, I think, that a proportion of them will, about 50 per cent in the first year.

Senator SIEWERT: What is special about the student related provisions? Were those interest provisions only suspended for student related debt?

Mr Kimber: My understanding is they were suspended for all payments. For the student related debts, I think some of the thinking behind the particular measure was that students, after receiving income support whilst they are studying, then move into paid employment and are more able to settle their debts to the Commonwealth that they may have incurred while on student income support.

Senator SIEWERT: This is on top of paying HECS?

Mr Kimber: These are debts that are incurred that they were not entitled to in terms of the student income support payment.

Senator SIEWERT: Are you saying they are all related to people that were falsely claiming, or that made mistakes claiming?

Mr Kimber: There can be a range of reasons. One might be that they changed their study load and did not inform DHS and continued to receive higher levels of payment. They might have had employment and did not declare earnings, or just other changed circumstances that might have come into play, that is, they were partnered and then were single. It could be a range of circumstances.

Senator SIEWERT: These provisions of interest charges will be different for people that receive student assistance than other forms of income support?

Mr Kimber: That is right, Senator.

Senator BOYCE: We have had some comment from organisations saying that it is most likely that it would be students who had just entered the workforce who would bear the brunt of these interest charges. Could either of you comment on whether you think that is the case?

Mr Kimber: I think that it is important to remember that the interest charges only come into play when an ex-student does not enter into a repayment arrangement.

CHAIR: Refuses to pay back the debt when asked by DHS.

Mr Kimber: They would be contacted by DHS and get 28 days to consider whether to either pay back the debt in full or enter into a repayment arrangement. It is only after that that the general interest charge would actually be applied.

Senator SIEWERT: What period of time would that be?

Mr Kimber: 28 days.

Senator SIEWERT: 28 days after they have been contacted?

Mr Kimber: After the issuing of the advice, so on the 29th day interest would be applied.

Senator SIEWERT: This will apply into the future, but it is also about those situations where you have no recovery arrangements.

Mr Kimber: That is right.

Senator SIEWERT: How old are they?

Mr Kimber: There would be a range—some very short in duration and some could be also a number of years.

Senator SIEWERT: Sorry, I am not trying to be difficult, although I am sure I am managing to be. When you say 'a number of years', are you talking about since tracking back to 2005?

Mr Kimber: There would be some that are as old as five to six years.

Mr Caddick: It would be unlikely that there would be too many more than six years old.

Senator SIEWERT: Why is that?

Mr Caddick: Because of the statutory limitation. There has not been any recovery action on them.

Senator SIEWERT: So there is a statute of limitation—

Mr Caddick: Within the social security law, yes.

Senator SIEWERT: So that same rule is applying?

Mr Caddick: That rule applies to all social security debts.

CHAIR: Do current students receive an end-of-year reconciliation or anything like that of what they owe?

Mr Caddick: Not in a sort of family tax benefits sense because as an income support payment, it is based on your need at that time.

CHAIR: No, I am talking about these debts. In my last semester, would I be aware that I owed money to DHS?

Mr Caddick: Yes, you would have received notification of the debt from DHS.

CHAIR: So I do not have the excuse that, 'Oh, I didn't know I owed you anything'?

Mr Caddick: Correct.

CHAIR: Theoretically.

Mr Kimber: Yes, you would receive advice.

Senator SIEWERT: Surely that would be in your last year though, because if you owed a debt and you were still on some sort of payment, you would already be recovering that from that payment, would you not?

Mr Kimber: That is right. There would be a withholdings arrangement in place.

Senator SIEWERT: So this is at the end of your study?

Mr Caddick: My understanding is that all debts are notified.

Senator SIEWERT: Yes, but how soon after you finish studying are you notified?

Mr Caddick: I think you are notified more or less as soon as the debt is raised.

Mr Kimber: That could be answered by DHS, but I would envisage a process whereby, if you were a student on a student payment and subject to withholdings because you were still on Austudy or Youth Allowance, once you finish studying, you would be provided advice as to if you did not continue to make some type of repayment

through some type of agreement with DHS, that a general interest charge will apply. There would be that notification process as you transition from being a student into the work force.

[21:09]

CHAIR: I call the remaining two officers to the table. Welcome. As you have no opening statement, we will go straight to questions. Senator Moore.

Senator MOORE: I know that you know what these questions are because you may have heard them in previous evidence we have had, which is not new evidence. First, is there a current departmental review of the paid parental scheme going on?

Mr Brown: Yes.

Senator MOORE: What is the timing of that review?

Mr Brown: The timing of the legislative review is that it had to commence at the beginning of this year, which it did. Within the legislation there is not a technical end date but we are currently working on a report and we would expect to finalise that probably in the very early part of next year. Once it is provided to the minister, there is a requirement that it is tabled in parliament within 15 sitting days.

Senator MOORE: I remember when we put that in the legislation. You are hoping to finish that early in the new year. That is covering the whole implementation process, how it worked?

Mr Brown: On our internet site there are terms of reference for the PPL scheme review. It sets out the issues but we are not restricted to those issues. It also will draw from the separate evaluation process which is also underway. Some of the earlier evaluation reports are now publicly available and they are being finalised over the coming months.

Senator MOORE: Is the review internal or consultants?

Mr Brown: It is being done by the department but it involved public submissions, a range of meetings with stakeholder groups, analysis of administrative data, those kinds of things.

Senator MOORE: We heard evidence this evening from a couple of industry groups and their comments were not new, being consistent. One of the specific issues raised was the complexity of the form and the complexity of the claiming process. They made a statement which is on the record now that it is a 75-page form that people have to fill in. Why?

Mr Brown: Clearly there is a range of different information that is required by Centrelink in order to make assessments. This is one that DHS is probably best able to respond to, but they have sought to combine claim processes as well. They have gone an online arrangement as well, so if you claim online you do not necessarily have to go through all the questions, you can be streamed through depending on which ones there are. Generally speaking, they do not collect information that is not required for the payment processing.

Senator MOORE: The statement was 75 pages but when I asked them is not 75 pages of actual claim form, it is information combined with claiming—

CHAIR: It is 47 pages of claim form.

Senator MOORE: That was my next comment. In terms of process I am interested because it just seems to be a lot of claim form. Comparison was made with New Zealand, where apparently you can claim with six pages. Has the complexity of the claim form been looked at in the review? I know it is not one of the terms of reference that it seems to me to be appropriate.

Mr Brown: I think the claim process more generally is being picked up within the review. There are certainly comments about the claim form and complexity. DHS are well aware of this and we would be seeking to work with them constantly to try and enhance and simplify those arrangements.

Senator MOORE: Another thing that was raised was the complexity of the employer's role as paymaster. When we had the review introducing paid parental leave we did it in the Employment and Education Committee, not in this committee, but there was a lot of outcry at that stage, at the beginning, about how hard it was going to be as a paymaster to balance the requirements of having someone on paid parental leave. At that time we were assured by the department that there would be ways of making this simpler and the department were aware of the issues about how you would have to as an employer maintain your pay system and be able to interact effectively without causing too much trouble. I tried to find it earlier but I know, because I was on the committee, that we were assured at that time that that would be able to be a more simple process as it got bedded down. The evidence that we had this afternoon from two employer organisations was that it is still—and one gentleman went has far to

say, 'almost impossible'—to actually use your current payroll system and effectively have someone on paid parental leave work within the system without causing complexity. Is that the view of the department?

Mr Brown: What we are looking at is the feedback from the review and the evaluation process. The evaluation is four phase, and it is certainly focused on process issues in the first couple of phases, and it will continue over the next little while. In broad terms it certainly showed that, overall, while there were some concerns and misunderstandings between Centrelink and different employers, over time, as Centrelink mastered the business of working with employers, and employers, particularly when they had multiple claimants, were able to adapt as well. So, overall, it is not without concerns and issues raised by employers—small, medium, large—but I think the processes have been managed well and they are relatively smooth, notwithstanding the evidence provided here earlier in the day.

Senator MOORE: The specific claim made by an employer group was that it was impossible to actually maintain effectively, through your computer based pay system, an employee who was on paid parental leave. That because of complexities with tax and superannuation, BAS statements could not be completed easily and it would be too difficult. He went as far as to say, impossible, to make sure that it all added up effectively. It was going to create extraordinary amounts of work for small business in particular to use existing payroll systems to come up with an outcome that would be straightforward. That particular issue was raised before the scheme started and we had evidence from the department that they were aware of those issues and that that would not be the case.

Mr Brown: The Council of Small Business Australia have raised those concerns with us consistently, but other evidence and feedback, given either through the review or the evaluation, or through correspondence to the minister, is not a uniform view at all.

CHAIR: The early childhood people supported that view, did they not?

Senator MOORE: There has never been an argument that employers did not want to take on the job, and that is what we got. What we tried to establish at the legislation committee at the beginning of the process was taking on board concerns about this and what would be the expectation of putting it into place. The information that we had at that time, which I have received subsequently, is similar to yours, Mr Brown, that claims were made about how difficult it was but then, when you talked to other people, they said once you had your system in place it works smoothly. As someone who does not do payroll work anymore, and used to do it in the department, not in a small business, I have not been able to get a clear answer in this short time about what is the correct statement. Is there system availability? At the time of the introduction of the scheme we were talking about products such as MYOB, which was the most standard software around. There were statements made at that time that MYOB should be able to be adjusted so that, if you are paying a number of employees and they have different hours, and you then had an employee or more who were in the middle of paid parental leave, that employee's records should be able to be entered in as 'on paid parental scheme,' and your ability to do your BAS return, which is so important, and any interaction with tax, should be able to be adjusted.

The gentleman from the Small Business Association said that is not true and I am trying to find out from you, Mr Brown, with the work you have done with the evaluation and the review—whilst of course, there will always be complexities and some people will find transition more easily than others—is it possible under the range of software that people use for payroll to be able to do that without too much trouble?

Mr Brown: The advice that we have been given from a range of different stakeholders is to say that the answer is yes, but it varies across organisations. Going back to the phase 2 report of the evaluation, to assist this, on page 107 where it says, 'It was easy to get information about the PPL scheme,' 83 per cent strongly agreed or disagreed, only 13 per cent said less than that. 'Ease of registering for the PPL scheme', more than half said it was easier to register with the scheme, so it was a minority but a sizeable minority found it was difficult. Attitudes towards organising PPL statements, 'It was easy to organise payments for the PPL scheme', strongly agree or agree was 79 per cent.

Senator MOORE: 79 per cent of people—

Mr Brown: of people said they strongly agreed or agreed that it was easy to organise payments for the PPL scheme through Centrelink.

CHAIR: Who were the people?

Mr Brown: Sorry?

CHAIR: Who were the survey people?

Mr Brown: This was a stratified sample of employers who had been paying PPL.

CHAIR: Are you able to table that document?

Mr Brown: Yes. These are publicly available on the website, on the phase 2 evaluation report. So there is still a sizeable minority who have found difficulties, they have found costs, including one-off costs, but sometimes on-going costs, time, and they have been spread across small, medium, larger organisations as well. But it is not evident to us that the issues raised earlier today exist across all organisations.

Senator SIEWERT: It is fair to say that the representative from the Small Business Association did not particularly value the input from bureaucrats in Canberra and felt that there was not an understanding of the rigours of small business by people who do not work in that area and that is a common statement. That was a view—that he did not feel that people truly understood. Is that the kind of information you get back from employers—that they do not think that people who are involved in setting up these schemes truly understand the difficulties of small business or any business having to do this extra work?

Mr Brown: Certainly that is a view that I have heard expressed throughout the course of this year undertaking the review. On the other hand, the department has been at pains to consult with a wide range of groups, including employer groups, and has received submissions. I have met with a wide range of stakeholder groups as well, so we certainly attempted to understand the issues that have been presented.

CHAIR: What you are saying is that it is possible for a small business to go about its weekly, fortnightly, monthly, whatever, payroll without needing manual intervention to pay a person on paid parental leave on the pay cycle that everyone else is on, so to speak?

Mr Brown: It would take manual intervention to set up each claimant. We would need to check, I think, whether or not the answer is that they would need it for every fortnight or for every payment.

CHAIR: Whether you had to do it on every pay cycle, so to speak?

Mr Brown: No, my understanding is that once set up, it is reasonably good to go, although Centrelink also makes payments into the employer's account and then that would need some manual intervention to pass it on, I assume.

CHAIR: We are seeing a cost involved in this measure. What is that cost?

Mr Brown: That is not program outlays; that is basically Centrelink administration costs but really to change their IT systems and make some adjustments to claim forms and letters and things like that.

CHAIR: So you would expect the majority of that over five years would be in the first year?

Mr Brown: Yes.

Senator MOORE: We have an impossible time frame and I do not expect this information by tomorrow, but I am really interested in what feedback we have from IT companies. This was a particular issue that was raised at the beginning of this payment, about exactly these concerns about people who rely on things like MYOB. I am particularly interested to see what information, if any, the department has from talking to accountants and the people who do payroll. We asked a lot of questions about that at the start. What came out of those discussion? The information we had in evidence today was no different from what we had from employer groups before it came in. I want to see what the reality is, because I do not know and I honestly have not had to do it myself. I would like to know what information the department has.

This is an important point and I know it is going to be part of the evaluation, but any information the committee could have about these claims about the difficulty will be helpful. Even with the proposed change we have, it is an opt in, opt out thing—if employers want to retain it, they can. I am interested to know what that option would include. As I say, we do not need that by tomorrow. We would not ask you to do it all by then. I am trying to understand the expectations of the paymaster role, which we have heard so much about. There is such a gap between what we hear from some people and what I have read in that review about the feedback that we have.

CHAIR: Is this something we should be thinking about in terms of a briefing once the review is complete?

Senator MOORE: I would think so. I think it is a critical point. Until this inquiry we thought we had until the time of the review, but now this inquiry has a predate before the expectation of the review that is due in February next year.

CHAIR: That concludes the hearing of the committee into the Social Services and Other Legislation Amendment Bill 2013. We thank the witnesses and Hansard, Broadcasting and the secretariat for the work they have done.

Committee adjourned at 21:27